

SECURITIES INDUSTRY (APPLICATION OF LAWS).

No. 31 of 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. This Act may be cited as the *Securities Industry (Application of Laws) Act 1981*. Short title.

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

Division into
Parts.

3. This Act is divided into Parts as follows:

PART I.—PRELIMINARY ss. 1-5.

PART II.—APPLICATION OF LAWS ss. 6-15.

PART III.—TRANSITIONAL PROVISIONS ss. 16-36.

Interpreta-
tion.

4. (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;

“paragraph” means a paragraph of the section or subsection in which the term is used;

“Schedule” means Schedule to this Act;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term is used;

“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.

Fees payable.

8. (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; and
- (e) the making of inquiries of, or applications to, the Ministerial Council or the Commission in relation to matters arising under the applied provisions,

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 regulations 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) 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.

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

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 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).

- (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).

Publication
of provisions
amending
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 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),

- (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.

Amendment
of certain
provisions in
accordance
with
approval
of
Ministerial
Council.

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 *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

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.

General provisions.

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

References
to Securities
Industry
Act 1975.

19. (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.

Proceedings
by or
against
Commissioner to be
proceedings
by or
against
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. Where—

(a) the institution of the particular proceeding under the *Securities Industry Act* 1975, was subject to the consent of the Minister; and

Power of
Minister to
consent to
institution
of
proceedings.

- (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.

Registers,
funds and
account.

21. (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.

examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

Licences.

24. (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.

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.

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.

Accounts of
deposits.

30. (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.

Order of
Court
establishing
claim on
fidelity
fund.

33. 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*.

Preservation
of records.

34. (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 subsection (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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- (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"; and
- (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*".

2. (1) In subsection (1) of section 4 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) 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; ’ ;

- (d) in the definition of "exempt dealer"—

- (i) the word "or", at the end of paragraph (c) were repealed;

- (ii) after paragraph (d), there were inserted the following word and paragraph:

“ or

- (e) a person who, as Public Trustee, carries on a business of dealing in securities by reason of his powers under the *Public Trustee Act 1941*; ” ;

- (e) after the definition of "licence" 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 "member firm" 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:

“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*; ’ ;

- (h) after the definition of "securities" 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; ' ;

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

‘ “stock exchange” means—

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

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

' "trust account" means a 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; ' .

(2) In subsection (7) of section 4 of the Commonwealth Act for the words "that Ordinance" there were substituted the words "that Act".

3. In subsection (1A) of section 8 of the Commonwealth Act—

- (a) for paragraph (a) there were substituted the following paragraph:

" (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 " ;

and

- (b) for subparagraph (i) of paragraph (b) there were substituted the following subparagraph:

" (i) a contravention of, or failure to comply with a provision of a relevant Code referred to in paragraph (a); or " .

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".

5. In paragraph (d) and paragraph (e) of subsection (3A) of section 12 of the Commonwealth Act for the expression "Act 1980" there were substituted the passage "*(Western Australia) 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 sub-section 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 sub-section 16 (6)—the Minister; or " .

7. In section 16 of the Commonwealth Act—

(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) for the word "Commonwealth" there were substituted the word "State"; and

(b) for paragraph (b) of subsection (5) there were substituted the following paragraph:

“ (b) the Ministerial Council or the Minister,
as the case may be, receives—

(i) a certificate of the Attorney-General stating that the publication of the report would be prejudicial to the administration of justice in the 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 another State or of the Northern Territory stating that the publication of the

report would be prejudicial to the administration of justice in that State or Territory; and " .

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. " .

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".

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:

" (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) by reason of an order of a court under section 47 of the *Securities Industry Act* 1975 or under a corresponding previous enactment; or

(b) under the corresponding law of a State other than Western Australia or of a Territory by reason of an order of a court under that corresponding law or by reason of the operation of a provision of that corresponding law,

shall, while he is so disqualified or deemed to be disqualified, be deemed to be disqualified from holding a licence under this Code. " .

17. In paragraph (c) of subsection (2), paragraph (c) of subsection (3), and subsection (6) of section 75 of the Commonwealth Act for the words "this Act" there were substituted the passage "this Code or Part III. of the *Securities Industry (Application of Laws) Act 1981*".

18. In section 107 of the Commonwealth Act—

- (a) in subparagraph (ii) of paragraph (a) of subsection (1), after the word "fund", there were inserted the passage "(whether under this Part or 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 sub-sections (1) and (4) the Governor—

- (a) may by Order in Council prescribe amounts for the purposes of those sub-sections; and

- (b) may, by like Order, vary or revoke any Order made under this sub-section.

- (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 sub-section (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 thereof were contained in an Order in Council made under sub-section (6); and

- (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".

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. (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 sub-section (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 sub-section (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 sub-section (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 134 of the *Securities Industry Act* 1975, and in force immediately before the commencement of the *Securities Industry (Application of Laws) Act* 1981, shall be deemed to have been made under sub-section (1) and shall with all necessary adaptations apply accordingly. " .

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".

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.

No. 31.] *Securities Industry (Application of Laws)* [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 " .

Securities Industry (Western Australia) Code

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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*. Short title.
2. This Code comes into operation on the day on which the *Securities Industry (Application of Laws) Act 1981* 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, and has effect subject to and in accordance with— Agreement.
 - (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. (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

The publication of this document was authorized by the Attorney-General in accordance with section 10 of the *Securities Industry (Application of Laws) Act 1981* on 23 June 1981.

The several provisions set out in this document come into operation in Western Australia on the day on which the *Securities Industry (Application of Laws) Act 1981* comes into operation.

also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

“arbitrage transaction” means a purchase or sale of securities effected in the ordinary course of trading on a stock market together with an offsetting sale or purchase of those securities effected at the same time, or at as nearly the same time as practicable, in the ordinary course of trading on another stock market for the purpose of obtaining a profit from the difference between the prices of those securities in the 2 stock markets;

“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
- (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) the Primary Industry Bank of Australia; or
- (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;

“business rules”, in relation to a body corporate that maintains or provides, or proposes to maintain or provide, a stock market, means the provisions of the constituent documents of the body corporate and any other rules, regulations or by-laws made by the body corporate but does not include rules, regulations or by-laws that are listing rules of the body corporate;

“committee”, in relation to a stock exchange, means the committee of management, board of directors or other governing authority of the stock exchange;

“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;

“dealer” means—

- (a) a person who carries on a business of dealing in securities; or
- (b) 2 or more persons who together carry on a business of dealing in securities, whether or not that business is part of, or is carried on in conjunction with, any other business;

“dealers licence” means a dealers licence granted under Part IV;

“dealer’s representative” means a person who is employed by, or acts for or by arrangement with, a dealer, other than an exempt dealer, in connection with a business of dealing in securities carried on by the dealer;

“dealer’s representatives licence” means a dealer’s representatives licence granted under Part IV;

“dealing”, in relation to securities, means (whether as principal or agent) acquiring, disposing of, subscribing for or underwriting the 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 or underwriting the 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 or underwrites the securities or to any of the parties to the agreement in relation to the securities;

“director”, in relation to a body corporate, includes—

- (a) any person occupying or acting in the position of director of the body corporate, 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 body corporate are accustomed to act;

“executive officer”, in relation to a body corporate, means any person, by whatever name called and whether or not he is a director of the body corporate, who is concerned, or takes part, in the management of the body corporate;

“exempt dealer” means—

- (a) a corporation that is declared, pursuant to paragraph 38 (7) (b) of the *Companies Act* 1961 to be an authorized dealer in the short term money market;
- (b) a body corporate that is incorporated within Australia and is a public authority or an instrumentality or agency of the Crown in right of the Commonwealth, of a State or of a Territory;
- (c) subject to sub-section (2), a person who does not carry on a business of dealing in securities except—
 - (i) in his capacity as an official receiver or trustee within the meaning of the *Bankruptcy Act* 1966;
 - (ii) in his capacity as a receiver, as a receiver and manager, or as another person appointed by a court to carry on the business concerned;
 - (iii) in his capacity as a personal representative of a deceased dealer; or
 - (iv) in such other capacity as is prescribed or in such other circumstances as are prescribed;
- (d) a body corporate that carries on, or holds itself out as carrying on, a business of dealing in debentures of that body corporate but does not carry on a business of dealing in any other securities; or
- (e) a person who, as Public Trustee, carries on a business of dealing in securities by reason of his powers under the *Public Trustee Act* 1941;

“function” includes a duty;

“investment adviser” means a person who carries on, or 2 or more persons who together carry on, a business of advising other persons concerning securities (whether or not that business is part of, or is carried on in conjunction with, any other business), or a person who issues or publishes, or 2 or more persons who together issue or publish, in the course of a business carried on by him or them either alone or together with another person or other persons, analyses or reports concerning securities, but does not include—

- (a) a bank as defined in section 5 of the *Banking Act* 1959, the Primary Industry Bank of Australia or a bank constituted under a law of a State or Territory;

- (b) a body corporate authorized by a law of a State or Territory to take in its own name a grant of probate of the will of a deceased person or of letters of administration of the estate of a deceased person;
- (c) a body corporate registered under the *Life Insurance Act 1945*;
- (d) a solicitor or accountant in public practice as such whose carrying on of that business is solely incidental to the practice of his profession ; or
- (e) a person who is the proprietor or publisher of a newspaper or periodical that is generally available to the public otherwise than only on subscription who, only in such a newspaper or periodical of which he is the proprietor or publisher, advises other persons concerning securities or issues or publishes analyses or reports concerning securities, not being the proprietor or publisher of a newspaper or periodical whose principal or only object is to advise other persons concerning securities or to issue or publish analyses or reports concerning securities;

“investment advisers licence” means an investment advisers licence granted under Part IV;

“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 Western Australia 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 Western Australia or elsewhere, acquired in or under like circumstances;

“investment representative” means a person who is employed by, or acts for or by arrangement with, an investment adviser, other than an investment adviser who is the holder of a dealers licence or is an exempt dealer, in connection with a business that is carried on by the investment adviser of advising other persons, or in the course of which analyses or reports are issued or published, concerning securities;

“investment representatives licence” means an investment representatives licence granted under Part IV;

“licence” means—

- (a) a dealers licence;

- (b) a dealer's representatives licence;
- (c) an investment advisers licence; or
- (d) an investment representatives licence;

"*Life Insurance Act 1945*" means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;

"listing rules", in relation to a body corporate that maintains or provides, or proposes to maintain or provide, a stock market, means rules, regulations or by-laws governing or relating to—

- (a) the admission to, or removal from, the official list of the body corporate of bodies corporate, governments, unincorporate bodies or other persons for the purpose of the quotation on the stock market of the body corporate of securities of, or made available by, bodies corporate, governments, unincorporate bodies or other persons and for other purposes; or
- (b) the activities or conduct of bodies corporate, governments, unincorporate bodies and other persons who are admitted to that list,

whether those rules, regulations or by-laws—

- (c) are made by the body corporate or are contained in any of the constituent documents of the body corporate; or
- (d) are made by another person and adopted by the body corporate;

"marketable parcel", in relation to securities that are listed for quotation on the stock market of a stock exchange, means a marketable parcel of those securities within the meaning of the relevant business rules or listing rules of that stock exchange;

"member", in relation to a stock exchange, means—

- (a) a member of the stock exchange who carries on a business of dealing in securities on his own account and not in partnership; or
- (b) a partner in a member firm of the stock exchange;

"member firm", in relation to a stock exchange, means a partnership that carries on a business of dealing in securities and is recognized by the stock exchange as a member firm;

"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;

“officer”, in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body corporate;
- (b) a receiver and manager of the property or any part of the property of the body corporate appointed under a power contained in an instrument;
- (c) an official manager or deputy official manager of the body corporate;
- (d) a liquidator of the body corporate appointed in a voluntary winding up 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,

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;

“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 Western Australia or elsewhere;
- (b) in any common enterprise, whether in Western Australia 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;

“quarter day” means 31 March, 30 June, 30 September or 31 December;

“recognized dealer” means, subject to sub-section (3), a person who is the holder of a dealers licence under the provisions of the law of a participating State or participating Territory that correspond with Part IV;

“recognized dealer’s representative” means, subject to sub-section (4), a person who is the holder of a dealer’s representatives licence under the provisions of the law of a participating State or participating Territory that correspond with Part IV;

“recognized investment adviser” means, subject to sub-section (3), a person who is the holder of an investment advisers licence under the provisions of the law of a participating State or participating Territory that correspond with Part IV;

“recognized investment representative” means, subject to sub-section (4), a person who is the holder of an investment representatives licence under the provisions of the law of a participating State or participating Territory that correspond with Part IV;

“recognized licensee” means, subject to sub-sections (3) and (4), a person who is a recognized dealer, recognized dealer’s representative, recognized investment adviser or recognized investment representative;

“registered company auditor” has the same meaning as in the *Companies Act* 1961;

“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;

“representatives licence” means a dealer’s representatives licence or an investment representatives licence;

“securities” means—

- (a) debentures, stocks or bonds issued or proposed to be issued by a government;
 - (b) debentures, stocks, shares, bonds or notes issued or proposed to be issued by a body corporate or unincorporate;
 - (c) any right or option in respect of any such debentures, stocks, shares, bonds or notes; or
 - (d) a prescribed interest,
- but does not include—
- (e) bills of exchange;
 - (f) promissory notes; or
 - (g) certificates of deposit issued by a bank;

“*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*;

“share” means share in the share capital of a body corporate, and includes stock except where a distinction between stock and shares is expressed or implied;

“sole trader” means a member of a stock exchange who carries on a business of dealing in securities on his own account and not in partnership;

“stock exchange” means—

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

“stock market” means a market, exchange or other place at which, or a facility by means of which, securities are regularly offered for sale, purchase or exchange;

“trust account” means a 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;

“underwrite” includes sub-underwrite;

“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.

(2) A person who, but for this sub-section, would be an exempt dealer by reason that he does not carry on a business of dealing in securities except in his capacity as a personal representative of a deceased dealer ceases to be an exempt dealer at the expiration of the period of 6 months after the date of the death of the dealer or upon his being discharged or removed as such a personal representative or upon the final distribution of the estate of the dealer, whichever first occurs.

(3) For the purposes of this Code, a person, being the holder of a dealers licence or the holder of an investment advisers licence under a law of a participating State or participating Territory, is not a recognized licensee unless—

- (a) in the case of a natural person, not being a partner in a firm—he is ordinarily resident in that State or Territory;
- (b) in the case of a natural person who is a partner in a firm—the principal place of business of the firm is in that State or Territory; or
- (c) in the case of a body corporate—the body corporate was incorporated in that State or Territory.

(4) For the purposes of this Code, a person, being the holder of a representatives licence under a law of a participating State or participating Territory, is not a recognized licensee unless the dealer or investment adviser by whom he is employed or for or by arrangement with whom he acts holds a licence as a dealer or investment adviser under a law of that State or Territory.

(5) In determining for the purposes of this Code whether a person carries on a business, or holds himself out as carrying on a business, of dealing in securities, regard shall not be had to an act done on behalf of the person by the holder of a dealers licence, by an exempt dealer or by a recognized dealer.

(6) A reference in this Code to a stock exchange permitting trading in securities on the stock market of the stock exchange includes a reference to the stock exchange listing the securities for quotation, or otherwise permitting the securities to be quoted, on the stock market of the stock exchange.

(7) For the purposes of this Code, the question whether bodies corporate are related to each other shall be determined in the same manner as the question whether corporations within the meaning of the *Companies Act* 1961 are related to each other would be determined under that Act.

(8) For the purposes of this Code—

- (a) a parcel of securities constitutes an odd lot if the number of securities in that parcel is less than one marketable parcel of those securities; and
- (b) if the number of securities in a parcel of securities is greater than one marketable parcel of those securities and, after excluding so many of the securities in that parcel as constitute a marketable parcel or marketable parcels of those securities, a number of securities remains, that remaining number of securities constitutes an odd lot.

(9) In this Code a reference to a body corporate, in relation to securities, includes a reference to a government, unincorporate body or other person that issues or makes available those securities.

5. (1) Subject to this section, a person has a relevant interest in securities if—

Relevant
interests in
securities.

- (a) in the case of securities that carry a right to vote at a meeting of a body corporate or unincorporate, that person has power—
 - (i) to exercise, or to control the exercise of, that right to vote; or
 - (ii) to dispose of, or to exercise control over the disposal of, those securities; and
- (b) in the case of securities to which paragraph (a) does not apply—that person has power to dispose of, or to exercise control over the disposal of, those securities.

(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, a right to vote carried by securities; or
- (b) to dispose of, or to exercise control over the disposal of, securities,

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 security, 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, a right to vote carried by securities; or
- (b) to dispose of, or to exercise control over the disposal of, securities,

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 those securities 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 securities;
- (b) has a right relating to securities, 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 securities, and, on performance of the agreement, enforcement of the right or exercise of the option, that person would have a relevant interest in those securities, he shall, for the purposes of this section, be deemed to have that relevant interest in those securities.

(7) For the purposes of this section, where a body corporate is deemed by sub-section (6) to have a relevant interest in securities and—

- (a) 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, or the control of the exercise of, any right to vote attached to those securities, or in relation to the disposal of, or the exercise of control over the disposal of, those securities;
- (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 those securities.

(8) A relevant interest in securities shall be disregarded if—

- (a) 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;
- (b) the relevant interest is that of a person who has it by reason of his holding a prescribed office;
- (c) the securities are subject to a trust, the relevant interest is that of a trustee and—
 - (i) a beneficiary is deemed, by sub-section (6), to have a relevant interest in the securities by virtue of a presently enforceable and unconditional right referred to in paragraph (b) of that sub-section; or
 - (ii) the trustee is a bare trustee;
- (d) 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 those securities on behalf of the other person in the ordinary course of business; or

- (e) the relevant interest is that of a person who has it by reason of his having been appointed as a proxy or representative to vote at a meeting of members, or of a class of members, of a body corporate or unincorporate, 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) (c) (ii), 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 securities 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, or relevant interests held by particular persons or by particular classes of persons, in securities, or in particular classes of securities, 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 or for the purposes of such of those provisions as are specified in the regulations.

Associated
persons.

6. (1) A reference in this Code to a person associated with another person shall be construed as a reference to—

- (a) if the other person is a body corporate—
 - (i) a director or secretary of the body corporate;
 - (ii) a body corporate that is related to the other person;
or
 - (iii) a director or secretary of such a related body corporate;

- (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 body corporate, 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 substantially influence the exercise of, any voting power attached to a share in the body corporate;
 - (ii) with a view to controlling or influencing the composition of the board of directors, or the conduct of affairs, of the body corporate; or
 - (iii) under which either of those persons may acquire from the other of them shares in the body corporate 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 relation to the matter to which the reference relates;
- (d) where the matter to which the reference relates is a matter other than the extent of a power to exercise, or to control the exercise of, the voting power attached to voting shares in a body corporate—
 - (i) a person who carries on a business of dealing in securities in partnership with the other person;
 - (ii) subject to sub-section (2), a person who is a partner of the other person otherwise than by reason that he carries on a business of dealing in securities in partnership with the other person;
 - (iii) a trustee of a trust in relation to which the other person benefits or is capable of benefiting otherwise than by reason of transactions entered into in the ordinary course of business in connection with the lending of money;
 - (iv) a person who is a director of a body corporate that carries on a business of dealing in securities and of which the other person is also a director; or
 - (v) subject to sub-section (2), a person who is a director of a body corporate of which the other person is a director, not being a body corporate that carries on a business of dealing in securities;

- (e) a person with whom the other person is, by virtue of the regulations, to be regarded as associated in respect of the matter to which the reference relates;
- (f) 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
- (g) 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 any of the preceding paragraphs—that last-mentioned person.

(2) Where, in proceedings under this Code, it is alleged that a person referred to in sub-paragraph (1) (d) (ii) or (v) was associated with another person at a particular time, that person shall be deemed not to have been so associated in relation to a matter to which the proceedings relate unless the person alleging the association proves that the first-mentioned person at that time knew or ought reasonably to have known the material particulars of that matter.

(3) For the purposes of this Code, where 2 or more persons constitute a dealer or an investment adviser, a person is associated with the dealer or with the investment adviser, as the case may be, if he is associated with either or any of those persons.

(4) A person shall not be taken to be associated with another person by virtue of paragraph (1) (b), (c), (e) or (f) by reason only that one of those persons furnishes advice to, or acts on behalf of, the other person in a professional capacity.

PART II—ADMINISTRATION

DIVISION 1—GENERAL

Interpretation.

7. In this Division, “books” includes banker’s books.

Power of
Commission
to require
production
of books.

8. (1A) The powers of the Commission under sub-section (1), or the powers of an authorized person under sub-section (2), to make a requirement of a corporation or person shall not be exercised except—

- (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

(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 referred to in paragraph (a); or
- (ii) an offence relating to securities that involves fraud or dishonesty.

(1) The Commission may, at any time, by notice in writing—

(a) give a direction to—

- (i) a stock exchange;
- (ii) a member of the committee of a stock exchange;
- (iii) a person who is or has been (either alone or together with another person or other persons) a dealer or an investment adviser or is or has been a dealer's representative or an investment representative;
- (iv) a nominee controlled by a person referred to in sub-paragraph (iii) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that sub-paragraph;
- (v) 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 stock exchange or a person referred to in sub-paragraph (ii), (iii) or (iv); or
- (va) any other person who, in the opinion of the Commission, has been a party to any dealings in securities,

requiring the production, to a person authorized by the Commission to receive them, at such time and place as are specified in the direction, of such books as are so specified, being books relating to—

- (vi) the business or affairs of a stock exchange;
- (vii) any dealing in securities;
- (viii) any advice concerning securities or the issuing or publication of a report or analysis concerning securities;
- (ix) the character or financial position of, or any business carried on by, a person referred to in sub-paragraph (iii) or (iv); or
- (x) an audit of, or any report of an auditor concerning, a dealing in securities or any accounts or records of a dealer or of an investment adviser; or

- (b) give a direction to any person requiring the production, to a person authorized by the Commission to receive them, at such time and place as are specified in the direction, of any books relating to matters mentioned in sub-paragraph (a) (vi), (vii), (viii), (ix) or (x) that are in the custody or under the control of the person.
- (2) 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 a stock exchange or a person referred to in sub-paragraph (1) (a) (ii), (iii), (iv), (v) or (va) to produce to the authorized person forthwith such books relating to matters mentioned in sub-paragraph (1) (a) (vi), (vii), (viii), (ix) or (x) as are specified by the authorized person and are in the custody or under the control of the stock exchange or person of whom the requirement is made; or
 - (b) to require by notice in writing a stock exchange or any other person to produce to the authorized person forthwith any books relating to matters mentioned in sub-paragraph (1) (a) (vi), (vii), (viii), (ix) and (x) that are in the custody or under the control of the stock exchange or other person.
- (3) A reference in sub-section (1) to a dealing in securities or to a business carried on by a person includes a reference to a dealing in securities by a person as a trustee or to a business carried on by a person as a trustee, as the case may be.
- (4) An authorization under sub-section (2) may be of general application or may be limited to making requirements of a particular stock exchange or other person or particular stock exchanges 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 the Commission, or person authorized by the Commission, exercises a power under this section to require another person to produce books—
 - (a) if the books are produced, the person to whom the books are produced—
 - (i) may take possession of the books and 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 person to whom the books were produced 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 Commission or the authorized 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) 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.

(8) For the purposes of sub-section (7), "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 its creditors.

Power of
magistrate
to issue
warrant to
seize books.

9. (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 Western Australia any books the production of which has been required by virtue of section 8 or by virtue of a provision of a law of a participating State or of a participating Territory that corresponds with section 8 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 Western 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) A warrant issued under sub-section (1)—

- (a) remains in force until the expiration of one month from the day on which it is issued; and
- (b) shall be executed by day, unless the magistrate by warrant authorizes its execution by night.

(3) 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.

(4) 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 a 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 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.

(5) The powers conferred by this section are in addition to, and not in derogation of, any other powers conferred by law.

(6) In this section, "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.

10. (1) A person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under section 8 or 9. 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 8 or 9, 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.

(2A) 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.

(3) A person shall not, without reasonable excuse, obstruct or hinder—

- (a) the Commission or another person in the exercise of any power under section 8; or
- (b) a person executing a warrant issued under section 9.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(4) The occupier or person in charge of any premises that a person enters pursuant to a warrant referred to in sub-section 9 (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.

(5) A person is not excused from providing an explanation of any books pursuant to a requirement made of him under section 8 or 9 on the ground that the provision of the explanation might tend to incriminate him but, where the person claims before providing the explanation that the explanation might tend to

incriminate him, the explanation is not admissible in evidence against him in criminal proceedings other than proceedings under this section.

(6) Subject to sub-section (5), a statement made by a person in compliance with a requirement made under section 8 or 9 may be used in evidence in any criminal or civil proceedings against the person.

Copies or
extracts of
books to be
admitted in
evidence.

10A. (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 a matter mentioned in sub-paragraph 8 (1) (a) (vi), (vii), (viii), (ix) or (x) 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 Commissioner or person authorized to take affidavits or statutory declarations.

Privilege.

11. (1) Where—

- (a) the Commission, or a person authorized by the Commission, makes a requirement under section 8 or 9 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 is 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 Commission or authorized person.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(2)

(3)

12. (1) The Commission may require a dealer to disclose to the Commission, in relation to any acquisition or disposal of securities, the name of the person from or through whom or on whose behalf the securities were acquired or to or through whom or on whose behalf the securities were disposed of and the nature of the instructions given to the dealer in respect of the acquisition or disposal.

(2) The Commission may require a person who has acquired or disposed of securities to disclose to the Commission whether he acquired or disposed of those securities, as the case may be, as trustee for, or for or on behalf of, another person and, if he acquired or disposed of those securities as trustee for, or for or on behalf of, another person, to disclose the name of that other person and the nature of any instructions given to the first-mentioned person in respect of the acquisition or disposal.

(3) The Commission may require a stock exchange to disclose to the Commission, in relation to an acquisition or disposal of securities on the stock market of that stock exchange, the names of the members of that stock exchange who acted in the acquisition or disposal.

(3A) Where the Commission considers—

- (a) that it may be necessary to prohibit trading in securities of, or made available by, a body corporate;
- (b) that a person may have contravened section 123, 124, 125, 126, 127, 128 or 132 in relation to securities of, or made available by, a body corporate;
- (c) that a person may have contravened a provision of Division 3A of Part IV of the *Companies Act 1961* in relation to shares in a body corporate;
- (d) that an acquisition of shares in a body corporate may have occurred in circumstances referred to in sub-section 60 (7) of the *Companies (Acquisition of Shares) (Western Australia) Code*; or
- (e) that a person may have engaged in conduct that has had a result referred to in sub-section 60 (7A) of the *Companies (Acquisition of Shares) (Western Australia) Code*,

the Commission—

(f) may require—

- (i) in a case to which paragraph (a), (b), (c) or (d) applies—a director, secretary or executive officer of the body corporate referred to in that paragraph; or
- (ii) in a case to which paragraph (e) applies—a director, secretary or executive officer of a body corporate in relation to shares in which, or affairs of which, that conduct was engaged in,

to disclose to the Commission any information of which he is aware, being information that might have affected any dealing that has taken place, or that might affect any dealing that may take place, in securities of, or made available by, the body corporate of which he is the director, secretary or executive officer, as the case may be; and

(g) may require a person whom the Commission believes on reasonable grounds to be capable of giving information concerning—

- (i) any dealing in relevant securities;
- (ii) any advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning relevant securities;
- (iii) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's representative or an investment representative concerning relevant securities;
- (iv) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) a dealer or an investment adviser and has dealt in, or given advice concerning, as the case may be, relevant securities; or
- (v) the financial position of any business carried on by a nominee controlled by a person referred to in sub-paragraph (iii) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that sub-paragraph; or
- (vi) an audit of, or any report of an auditor concerning, any accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,

to disclose to the Commission the information that the person has in relation to the matters concerning which the Commission believes that the person is capable of giving information.

(3B) For the purposes of paragraph (3A) (g), "relevant securities" means—

- (a) in a case to which paragraph (3A) (a), (b), (c) or (d) applies—securities of, or made available by, the body corporate referred to in that paragraph; and
- (b) in a case to which paragraph (3A) (e) applies—securities of, or made available by, the body corporate in relation to shares in which, or affairs of which, the conduct referred to in that paragraph was engaged in.

(3C) A person is not excused from disclosing information to the Commission pursuant to a requirement made of him under sub-section (3A) on the ground that the disclosure of the information might tend to incriminate him but, where the person claims before disclosing the 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.

(3D) Where, pursuant to paragraph (3A) (f) or (g), the Commission requires a person to disclose information to the Commission, the Commission shall give, or cause to be given, to the person, at the time when the requirement is made, a notice in the prescribed form setting out the terms of sub-section (3C).

(4) A person shall not, without reasonable excuse, fail to comply with a requirement of the Commission under sub-section (1), (2), (3) or (3A).

Penalty: \$5,000 or imprisonment for 1 year, or both.

(5) A person shall not, in purported compliance with a requirement of the Commission under sub-section (1), (2), (3) or (3A), disclose information, or make a statement, that is false or misleading in a material particular.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(6) It is a defence to a prosecution for an offence against sub-section (5) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

(7) In this section, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to furnishing the document.

13. Where the Commission has reason to suspect that a person has committed an offence under a provision of this Code or has been guilty of fraud or of an offence against any other law with respect to dealing in securities, the Commission may make such investigation as the Commission thinks expedient for the due administration of this Code.

Investigation
of certain
matters.

14. (1) Where—

- (a) on the application of the Commission, it appears to the Court that a person has committed an offence under this Code, or under any other law in force in Western Australia relating to trading or dealing in securities, or has contravened the conditions or restrictions of a licence or the business rules or listing rules of a stock exchange or is about to do an act with respect to trading or dealing in securities that, if done, would be such an offence or contravention; or

Power of
Court to make
certain orders.

- (b) on the application of a stock exchange, it appears to the Court that a person has contravened the business rules or listing rules of the stock exchange,

the Court may, without prejudice to any orders it would be entitled to make otherwise than pursuant to this section, make one or more of the following orders, namely:

- (c) in the case of persistent or continuing breaches of this Code, or of any other law in force in Western Australia relating to trading or dealing in securities, of the conditions or restrictions of a licence, or of the business rules or listing rules of a stock exchange—an order restraining a person from carrying on a business of dealing in securities, acting as an investment adviser or as a dealer's representative or investment representative, or from holding himself out as so carrying on business or so acting;
- (d) an order restraining a person from acquiring, disposing of or otherwise dealing with any securities that are specified in the order;
- (e) an order appointing a receiver of the property of a dealer or of property that is held by a dealer for or on behalf of another person, whether on trust or otherwise;
- (f) an order declaring a contract relating to securities to be void or voidable;
- (g) for the purpose of securing compliance with any other order under this section, an order directing a person to do or refrain from doing a specified act;
- (h) any ancillary order deemed to be desirable in consequence of the making of an order under any of the preceding provisions of this sub-section.

(2) The Court shall, before making an order under sub-section (1), satisfy itself, so far as it can reasonably do so, that the order would not unfairly prejudice a person.

(3) 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.

(4) A person appointed by order of the Court under sub-section (1) as a receiver of the property of a dealer—

- (a) may require the dealer to deliver to the receiver any property of which he has been appointed receiver or to give to the receiver all information concerning that property that may reasonably be required;

- (b) may acquire and take possession of any property of which he has been appointed receiver;
- (c) may deal with any property that he has acquired or of which he has taken possession in any manner in which the dealer might lawfully have dealt with the property; and
- (d) has such other powers in respect of the property as the Court specifies in the order.

(5) In paragraph (1) (e) and sub-section (4), "property", in relation to a dealer, includes money, securities and documents of title to securities or other property entrusted to or received on behalf of any other person by the dealer or another person in the course of or in connection with a business of dealing in securities carried on by the dealer.

(6) A person shall not, without reasonable excuse, contravene or fail to comply with—

- (a) an order under sub-section (1) that is applicable to him; or
- (b) a requirement of a receiver appointed by order of the Court under sub-section (1).

Penalty: \$10,000 or imprisonment for 2 years, or both.

(7) Sub-section (6) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

(8) The Court may rescind, vary or discharge an order made by it under this section or suspend the operation of such an order.

DIVISION 2—INVESTIGATION

15. (1) In this Division, unless the contrary intention appears— Interpretation.

"direction" means a direction given to the Commission in the exercise of a power under sub-section 16 (1), (2) or (3) in relation to the carrying out of an investigation into matters relating to dealing in securities;

"inspector" means an inspector appointed under this Division;

"prescribed direction" means a direction given in the exercise of a power under sub-section 16 (1) or (2) otherwise than in response to a request made by the Commission under sub-section 16 (4), not being a direction that has been approved by the Ministerial Council under sub-section 16 (6);

“prescribed person” means a person suspected or believed by an inspector, on reasonable grounds, to be capable of giving information concerning any matter being, or to be, investigated by the inspector pursuant to this Division;

“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 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 sub-section 16 (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 16 (6)—the Ministerial Council.

(2) Where 2 or more inspectors have been appointed under this Division to investigate particular matters relating to dealing in securities, each of those inspectors may exercise his powers or perform his functions under this Division independently of the other inspector or inspectors.

(3) In relation to an investigation carried out by the Commission into matters relating to dealing in securities—

- (a) a reference in section 19, 21, 32 or 35 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 34 to an inspector shall be read as a reference to the Commission.

(4) The reference in sub-section (3) 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.

(5) In relation to an investigation carried out pursuant to a prescribed direction into matters relating to dealing in securities, a reference in section 21, 30 (other than sub-section (4)) or 35 to the Commission shall be read as a reference to the relevant authority.

16. (1) Where it appears to the Minister that it is in the public interest in respect of Western Australia that an investigation be carried out into any matters relating to dealing in securities, the Minister may, by instrument in writing, direct the Commission to arrange for an investigation into those matters. Investigations.

(2) Where it appears to the Commonwealth Minister that it is in the national interest that an investigation be carried out into any matters relating to dealing in securities, the Commonwealth Minister may, by instrument in writing, direct the Commission to arrange for an investigation into those matters.

(3) The Ministerial Council may, by instrument in writing, direct the Commission to arrange for an investigation into any matters relating to dealing in securities.

(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 any matters relating to dealing in securities.

(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 any matters relating to dealing in securities.

(6) Where a direction is given by the Minister or the Commonwealth Minister under sub-section (1) or (2), the Ministerial Council may approve the direction.

17. (1) An instrument containing a prescribed direction— Conduct of investigations.
(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

- (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 requirement 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 16 (1), (2) or (3) to arrange for an investigation into matters relating to securities, the Commission shall cause to be published in the *Gazette* and *Government Gazette* a notice stating that the direction has been given and specifying the matters 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* and *Government Gazette*.

(9) A certificate signed by a member of the Commission, by a delegate of the Commission or by a person authorized by a delegate of the Commission to sign the certificate stating that—

- (a) an investigation into a matter specified in the certificate, being a matter relating to dealing in securities, 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 dealing in securities, 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.

18. (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 Division, the Commission is carrying out an investigation into any matters, the Commission may exercise, in relation to those matters, the powers that it would have if it were carrying out an investigation into those matters under this Division.

Powers of
Commission
and inspectors
appointed
under
corresponding
laws.

(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 Division, a person has been appointed as an inspector to carry out an investigation into any matters, that person may exercise, in relation to those matters, the powers of an inspector under this Division that he would have if he had been appointed as an inspector under this Division to investigate those matters.

Powers of
inspectors.

19. (1) An inspector may, by notice containing the prescribed matters given in the prescribed manner, require a prescribed person—

- (a) to produce to the inspector such books relating to a matter to which his investigation relates as are in the custody or under the control of that person;
- (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 person.

(1A) A notice given pursuant to paragraph (1) (c) shall set out the provisions of sub-sections (8) and (9).

(2) An examination under this section shall, for the purposes of Chapter XVI of *The Criminal Code*, be deemed to be a judicial proceeding.

(3) Where books are produced to an inspector under this section, the inspector may take possession of the books for such period as he considers necessary for the purposes of his investigation, and during that period he shall permit a person who would be entitled to inspect any 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.

(4) A prescribed person shall not, without reasonable excuse, refuse or fail to comply with a requirement made under sub-section (1).

Penalty: \$10,000 or imprisonment for 2 years, or both.

(5) A prescribed person shall not, in purported compliance with a requirement made under sub-section (1), furnish information that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(6) A prescribed person shall not, when appearing before an inspector for examination pursuant to a requirement made under sub-section (1), make a statement that is false or misleading in a material particular.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(7) A prescribed person shall not, when appearing before an inspector for examination pursuant to a requirement made under sub-section (1), refuse or fail to take an oath or make an affirmation.

Penalty: \$1,000 or imprisonment for 3 months, or both.

(8) A duly qualified legal practitioner acting for a prescribed person—

(a) may attend an examination of that person; and

(b) may, to the extent that the inspector permits—

(i) address the inspector; and

(ii) examine that person,

in relation to matters in respect of which the inspector has questioned that person.

(9) A prescribed person 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 that 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.

(10) A person who complies with a requirement of an inspector under sub-section (1) does not incur a liability to any person by reason only of that compliance.

(11) A person who is required to attend for examination under this section is entitled to such allowances and expenses as are prescribed.

(12) The Commission may, in its discretion, pay, on account of the costs and expenses incurred by a person in complying with a requirement under sub-section (1), such amount as it thinks reasonable.

(13) Where an inspector is satisfied that a prescribed person has failed, without reasonable excuse, to comply with a requirement of the inspector, the inspector may, by writing signed by him, certify the failure to the Court.

(14) Where an inspector gives a certificate under sub-section (13), the Court may inquire into the case and—

(a) order the prescribed person 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 prescribed person 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).

(15) The powers of the Court under this section may be exercised in relation to a person notwithstanding that the person has been convicted of an offence in relation to the matter in respect of which the powers are to be exercised.

Investigation
deemed to be
a proceeding.

20. An investigation under this Division shall, for the purposes of sections 89 to 96 of the *Evidence Act* 1906, be deemed to be a proceeding.

Record of
examination.

21. (1) An inspector may cause to be made a record of the questions asked and the answers given at an examination under this Division.

(2) Where a record of the questions asked and the answers given at an examination under this Division 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 Division 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.

(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 Division 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 Division.

(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 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.

(8) The Commission may if it thinks fit give a copy of a written record made of an examination under this Division 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.

22. When a final report is made in respect of an investigation under this Division, any record made of questions asked and answers given at an examination relating to the investigation shall be furnished with the report.

Record to accompany report.

23. (1) Except as provided by sub-section (2), any questions asked and answers given at an examination of a person under this Division are admissible in evidence in any criminal or civil proceedings against the person.

Admissibility of record of examination in evidence in proceedings against person examined.

(2) Evidence of an answer given by a person at an examination under this Division 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 19 (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; or
- (c) the answer is qualified or explained by some other answer given at the examination and evidence of the other answer is not tendered in the proceedings,

and the person objects to the admission of the answer in 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.

24. 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 Division 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 Western Australia 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 a person as a witness in the proceedings and the tendering party does not call the person as a witness in the proceedings.

Weight of
evidence.

25. In ascertaining the weight (if any) to be attached to evidence of questions and answers admitted under section 24 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—

- (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.

Credibility of
person who
answered
questions.

26. (1) Where evidence of questions and answers is admitted under section 24 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.

(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.

27. (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 Division 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 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 the copy of a 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 Division 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.

28. (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 Division 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 a prescribed person, 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.

29. (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 matters 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 matters 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 matters that it has investigated, together with the facts upon which its opinion is based.

30. (1) Subject to sub-section (2), where, in the opinion of the Commission, the whole or any part of a report made under this Division ought to be given to a person by reason that it relates to the affairs of that person to a material extent, the Commission shall, unless in its opinion there is good reason for not divulging the contents of the report or of that part of the report, give to that person a copy of the report or of that part of the report, as the case requires.

(2) Subject to sub-section (3), the Commission shall not give a copy of a report or of a part of a report under this Division to a person 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 copy of the report or of that part of the report to that person.

(3) A court before which legal proceedings are brought against a person for or in respect of matters dealt with in a report under this Division may order that a copy of the report or of a part of the report be given to that person.

(4) Subject to sub-section (5)—

- (a) the Ministerial Council 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 Commission; and
- (b) the 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 State.

(5) Where—

- (a) the Ministerial Council or the Minister would, but for this sub-section, have power to publish a report;
- (b) the Ministerial Council or the Minister, as the case may be, receives—
 - (i) a certificate of the Attorney-General stating that the publication of the report would be prejudicial to the administration of justice in the 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 another State or of the Northern Territory stating that the publication of the report would be prejudicial to the administration of justice in that State or Territory; and

- (c) the Ministerial Council or the 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 or the Minister, as the case may be, shall not cause or permit that report to be published in whole or in part.

(6) If from a report under this Division or from the record of an examination under this Division 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.

(7) 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 (6), 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.

(8) Where a person to whom a notice has been given under sub-section (7) 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.

(9) If from a report under this Division, or from the record of an examination under this Division, the Commission is of the opinion that proceedings ought in the public interest to be brought by a person for the recovery of damages in respect of fraud, negligence, default, breach of duty, breach of trust or other misconduct in connection with the matters to which the investigation relates or for the recovery of property of that person, the Commission may cause proceedings to be brought accordingly in the name of that person.

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

Commission's
powers in
respect of
books.

31. (1) An inspector may, when making a report under this Division, give to the Commission books of which he has taken possession under section 19 and the Commission—

- (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 section 19, 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).

32. Where in the exercise of his powers under section 19 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 the 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.

Privileged
communications

Penalty: \$1,000 or imprisonment for 3 months, or both.

33. (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.

Expenses of
investigation.

(2) For the purposes of this section, the expenses of and incidental to an investigation under this Division include—

- (a) the expenses incurred in any proceedings brought in the name of a person under sub-section 30 (9); 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 16 (6)—the expenses (if any) incurred before the direction is so approved.

(3) Where an investigation has been carried out under this Division and proceedings are instituted under sub-section 30 (9) 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 or incidental to an investigation under this Division should be paid by a person to whose affairs the investigation relates, the Commission may by order in writing direct that person to pay a specified amount, being the whole or part of the expenses, within the time and in the manner specified.

(5) Where a person 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, 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.

Concealing,
&c., of books
relating to
securities.

34. (1) A person who—

- (a) conceals, destroys, mutilates or alters a book relating to a matter that is the subject of investigation by an inspector under this Division;
- (b) where such a book is in Western Australia—sends the book out of Western Australia; or

(c) where such a book is outside Western Australia 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 Division or to delay or obstruct the carrying out of an investigation under this Division.

35. (1) Where an investigation is being made under this Division and it appears to the Commission that facts concerning securities to which the investigation relates cannot be ascertained because a prescribed person has failed or refused to comply with a requirement of an inspector, the Commission may, by instrument in writing published in the *Gazette*, make one or more of the following orders:

Power of
Commission to
make certain
orders.

- (a) an order restraining a specified person from disposing of any interest in specified securities;
- (b) an order restraining a specified person from acquiring any interest in specified securities;
- (c) an order restraining the exercise of voting or other rights attached to specified securities;
- (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 a body corporate not to make payment, except in the course of winding up, of a sum due from the body corporate in respect of specified securities;
- (f) an order directing a body corporate not to register the transfer or transmission of specified securities;
- (g) an order directing a body corporate not to issue shares to a person who holds shares in the body corporate, being shares that were proposed to be issued to the person by reason of his holding shares in the body corporate or pursuant to an offer or invitation made or issued to him by reason of his holding shares in the body corporate.

(2) The Commission may, by instrument in writing published in the *Gazette*, vary or revoke an order made under sub-section (1).

(3) A copy of an order under sub-section (1) and of any order by which it is revoked or varied shall be served—

- (a) on any person to whom the order is directed; and

(b) where it relates to specified securities—

- (i) on the body corporate by which the securities were issued or made available;
- (ii) where the securities are rights or options, on the body corporate against which the right or option is, or would be, enforceable; or
- (iii) on the body corporate that will issue or make available the securities.

(4) 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.

(5) A person who contravenes or fails to comply with an order under sub-section (1) is guilty of an offence.

(6) Where an offence under sub-section (5) is committed by a body corporate, each officer of the body corporate who is in default is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Certain powers
not to be
delegated.

36. The Commission shall not delegate to any person its power under this Division 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 to make orders under section 35.

PART III—STOCK EXCHANGES

Establishment,
&c., of stock
markets.

37. (1) A person shall not establish, maintain or provide, or assist in establishing, maintaining or providing, or hold himself out as maintaining or providing, a stock market that is not the stock market of a stock exchange.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) A person who, being the holder of a licence under a law relating to the licensing of auctioneers, conducts an auction of forfeited shares at a place at which, or by a facility by means of which, a stock exchange maintains or provides a stock market, shall not be taken to contravene this section by reason of his conducting that auction.

Power of
Ministerial
Council to
approve stock
exchange.

38. (1) A body corporate that proposes to establish, maintain or provide a stock market may lodge with the Commission an application in the prescribed form for approval by the Ministerial Council as a stock exchange.

(2) The Ministerial Council may, by instrument in writing, approve as a stock exchange a body corporate that makes an application under sub-section (1) if it is satisfied—

- (a) that the business rules of the body corporate make satisfactory provision—
 - (i) for the exclusion from membership of persons who are not of good character and high business integrity;
 - (ii) for the expulsion, suspension or disciplining of members for conduct inconsistent with just and equitable principles in the transaction of business or for a contravention of or failure to comply with the business rules of the proposed stock exchange or the provisions of this Code;
 - (iii) with respect to the conditions under which securities may be listed for trading in the stock market of the proposed stock exchange;
 - (iv) with respect to the conditions governing dealings in securities by members;
 - (v) with respect to the class or classes of securities that may be dealt with by members; and
 - (vi) generally for the carrying on of the business of the proposed stock exchange with due regard to the interests of the public;
- (b) that the body corporate has made or adopted listing rules and, where the listing rules are adopted, has made provision to the effect that an amendment to the rules so adopted made by another person is of no effect until the body corporate adopts the amendment;
- (c) that the listing rules made or adopted by the body corporate make satisfactory provision—
 - (i) with respect to conditions under which securities may be traded on the stock market of the proposed stock exchange; and
 - (ii) generally for the protection of the interests of the public; and
- (d) that the interests of the public will be served by the granting of its approval.

39. (1) Where—

- (a) an amendment is made, by way of rescission, alteration or addition, to the business rules of a stock exchange; or

Commission
to be notified
of amendments
to rules.

(b) an amendment, by way of rescission, alteration or addition, to the listing rules of a stock exchange is made or adopted by the stock exchange, the stock exchange shall, forthwith after the making or adoption of the amendment, give written notice of the amendment to the Commission.

(2) A notice under sub-section (1) shall—

- (a) set out the text of the amendment;
- (b) specify the date on which the amendment was made or adopted; and
- (c) contain an explanation of the purpose of the amendment.

(3) If the notice required to be given by sub-section (1) is not given within 21 days after the amendment is made or adopted, the amendment ceases to have effect.

(4) Where the Commission receives a notice under this section, the Commission shall forthwith send a copy of the notice to each member of the Ministerial Council.

(5) The Ministerial Council may, within 28 days after the receipt by the Commission of a notice under this section, disallow the whole or a specified part of the amendment to which the notice relates.

(6) Where the Ministerial Council disallows the whole or a part of an amendment to which a notice under this section relates, the Commission shall forthwith give notice of the disallowance to the stock exchange and, upon receipt by the stock exchange of the notice of disallowance, the amendment, to the extent of the disallowance, ceases to have effect.

Power of
Commission to
prohibit trading
in particular
securities.

40. (1) Where the Commission forms the opinion that it is necessary to prohibit trading in particular securities of, or made available by, a body corporate on the stock market of a stock exchange in order to protect persons buying or selling the securities or in the interests of the public, the Commission may give notice in writing to the stock exchange stating that it has formed that opinion and setting out the reasons for the formation of that opinion.

(2) If, after the receipt of the notice, the stock exchange does not take action to prevent trading in the securities to which the notice relates on the stock market of the stock exchange and the Commission is still of the opinion that it is necessary to prohibit trading in those securities on that stock market, the Commission may, by notice in writing to the stock exchange, prohibit trading in those securities on that stock market during such period, not exceeding 21 days, as is specified in the notice.

(3) Where the Commission gives a notice to a stock exchange under sub-section (2) in relation to trading in securities of, or made available by, a body corporate, the Commission shall—

- (a) at the same time send a copy of the notice to the body corporate together with a statement setting out the reasons for the giving of the notice; and
- (b) as soon as practicable furnish to the Ministerial Council a written report setting out the reasons for the giving of the notice and send a copy of the report to the stock exchange.

(4) Where the Commission gives a notice to a stock exchange under sub-section (2) in relation to trading in securities of, or made available by, a body corporate, the body corporate may request the Commission in writing to refer the matter to the Ministerial Council.

(5) Where such a request is made, the Commission shall forthwith refer the matter to the Ministerial Council, which may, if it thinks fit, direct the Commission to revoke the notice and, if such a direction is given, the Commission shall forthwith revoke the notice.

(6) A stock exchange shall not permit trading in securities on the stock market of the stock exchange in contravention of a notice under sub-section (2).

Penalty: \$1,000 for each day on which the stock exchange contravenes this sub-section.

41. (1) A stock exchange shall provide such assistance to the Commission, or to a person acting on behalf of, or with the authority of, the Commission, as the Commission reasonably requires for the performance of its functions and duties.

Stock
exchanges to
provide
assistance to
Commission.

(2) Where a stock exchange reprimands, fines, suspends, expels or otherwise takes disciplinary action against a member of the stock exchange, it shall forthwith give to the Commission in writing particulars of the name of the member, the reason for and nature of the action taken, the amount of the fine (if any) and the period of the suspension (if any).

(3) A person authorized by the Commission is entitled at all reasonable times to full and free access for any of the purposes of this Code to the trading floor of a stock market of a stock exchange.

(4) A person who refuses or fails, without lawful excuse, to allow a person authorized by the Commission access in accordance with sub-section (3) to the trading floor of a stock market of a stock exchange is guilty of an offence.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(5) In this section, "trading floor", in relation to a stock market of a stock exchange, means any place or facility maintained or provided by the stock exchange for the sale, purchase or exchange of securities by members of the stock exchange, or by members and other persons.

Power of Court to order observance or enforcement of business rules or listing rules of stock exchange.

42. (1) Where any person who is under an obligation to comply with, observe, enforce or give effect to the business rules or listing rules of a stock exchange fails to comply with, observe, enforce or give effect to any of those business rules or listing rules, as the case may be, the Court may, on the application of the Commission, the stock exchange or a person aggrieved by the failure and after giving to the person against whom the order is sought an opportunity of being heard, make an order giving directions to the last-mentioned person concerning the compliance with, observance or enforcement of, or the giving effect to, those business rules or listing rules.

(2) Where securities of, or made available by, a body corporate are listed for quotation on the stock market of a stock exchange, that body corporate shall, for the purposes of sub-section (1), be deemed to be under an obligation to comply with, observe and give effect to the listing rules of that stock exchange.

PART IV—LICENCES

Dealers licence.

43. (1) A person shall not carry on a business of dealing in securities (whether or not that business is part of, or is carried on in conjunction with, any other business) or hold himself out as carrying on such a business unless he is the holder of a dealers licence or is a recognized dealer.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) Sub-section (1) does not apply to or in relation to an exempt dealer.

Dealer's representatives.

44. A person who is employed by, or acts for or by arrangement with, a dealer (not being an exempt dealer) shall not do an act on behalf of the dealer in relation to a business of dealing in securities carried on by the dealer or in connection with a business carried on by the dealer of advising other persons concerning securities or a business carried on by the dealer in the course of which the dealer issues or publishes analyses or reports concerning securities (other than an act in the course of work of a kind ordinarily performed by accountants, clerks or cashiers) unless the first-mentioned person—

- (a) is the holder of a dealers licence;
- (b) is a recognized dealer;

- (c) is the holder of a dealer's representatives licence in which the dealer is named as a dealer on whose behalf the first-mentioned person may act; or
- (d) is a recognized dealer's representative by virtue of his being the holder of a licence under the provisions of the law of a participating State or participating Territory that correspond with this Part, being a licence in which the dealer is named as a dealer on whose behalf the first-mentioned person may act.

Penalty: \$2,500 or imprisonment for 6 months, or both.

45. (1) A person shall not act as, or hold himself out to be, an investment adviser unless he is the holder of an investment advisers licence or is a recognized investment adviser.

Investment
advisers.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) Sub-section (1) does not apply to or in relation to the holder of a dealers licence, an exempt dealer or a recognized dealer.

46. A person who is employed by, or acts for or by arrangement with, an investment adviser (not being an exempt dealer) in connection with a business carried on by the investment adviser of advising other persons concerning securities, or a business carried on by the investment adviser whether alone or together with another person or other persons in the course of which the investment adviser issues or publishes analyses or reports concerning securities, shall not do an act on behalf of the investment adviser in connection with that business (other than an act in the course of work of a kind ordinarily performed by accountants, clerks or cashiers) unless the first-mentioned person—

Investment
representatives.

- (a) is the holder of a dealers licence or an investment advisers licence;
- (b) is a recognized dealer or recognized investment adviser;
- (c) where the investment adviser is a dealer—is the holder of a dealer's representatives licence in which the investment adviser is named as a dealer on whose behalf the first-mentioned person may act;
- (d) is the holder of an investment representatives licence in which the investment adviser is named as an investment adviser on whose behalf the first-mentioned person may act;
- (e) where the investment adviser is a recognized dealer—is a recognized dealer's representative by virtue of his being the holder of a licence under the provisions of the law of a participating State or participating Territory

that correspond with this Part, being a licence in which the investment adviser is named as a dealer on whose behalf the first-mentioned person may act; or

- (f) is a recognized investment representative by virtue of his being the holder of a licence under the provisions of the law of a participating State or participating Territory that correspond with this Part, being a licence in which the investment adviser is named as an investment adviser on whose behalf the first-mentioned person may act.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Application for
grant of
licence.

47. (1) A person may apply to the Commission for a dealers licence or an investment advisers licence.

(2) A natural person may apply to the Commission for a dealer's representatives licence in which the holder of a dealers licence is, or 2 or more such holders are, named as a dealer or as dealers on whose behalf the person may act.

(3) A natural person may apply to the Commission for an investment representatives licence in which the holder of an investment advisers licence is, or 2 or more such holders are, named as an investment adviser or as investment advisers on whose behalf the person may act.

(4) An application for the grant of a licence shall be made in the prescribed form and manner.

(5) The Commission may require an applicant to supply the Commission with such further information as the Commission considers necessary in relation to the application.

Grant of
dealers licence
or investment
advisers licence.

48. Subject to section 62 and the regulations, where an application is duly made for a grant of a dealers licence or an investment advisers licence, the Commission shall grant the application if—

- (a) in the case of an applicant who is a natural person—
- (i) the applicant is not an undischarged bankrupt;
 - (ii) the applicant has not been convicted, either within Western Australia or elsewhere, within the period of 10 years immediately preceding the date on which the application was made, of an offence involving fraud or dishonesty punishable on conviction with imprisonment for 3 months or more;
 - (iii) the Commission is satisfied as to the educational qualifications or experience of the applicant having regard to the nature of the duties of a holder of a dealers licence or an investment advisers licence, as the case may be;

- (iv) the Commission does not have any reason to believe that the applicant is not of good fame and character; and
 - (v) the Commission does not have any reason to believe that the applicant will not perform the duties of a holder of a dealers licence or of an investment advisers licence, as the case may be, efficiently, honestly and fairly; or
- (b) in the case of an applicant that is a body corporate—
- (i) the body corporate is not under official management, or in the course of being wound up, under the *Companies Act* 1961 or under the corresponding law of a State other than Western Australia or of a Territory;
 - (ii) the body corporate is not a body corporate in respect of the property, or part of the property, of which a receiver, or a receiver and manager, has been appointed under the *Companies Act* 1961 or under the corresponding law of a State other than Western Australia or of a Territory;
 - (iii) the body corporate has not, whether within or outside Western Australia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation;
 - (iv) the Commission is satisfied as to the educational qualifications or experience of the officers of the applicant who are to perform duties in connection with the holding of the dealers licence or investment advisers licence, as the case may be; and
 - (v) the Commission does not have any reason to believe that the applicant will not perform the duties of a holder of a dealers licence or an investment advisers licence, as the case may be, efficiently, honestly and fairly,

but otherwise the Commission shall refuse the application.

49. (1) Subject to section 62 and the regulations, where an application is duly made for the grant of a dealer's representatives licence or an investment representatives licence, the Commission shall grant the application if it does not have any reason to believe that the applicant will not perform the duties of the holder of a dealer's representatives licence or of an investment representatives licence, as the case may be, efficiently, honestly and fairly, but otherwise the Commission shall refuse the application.

Grant of
representatives
licence.

(2) A dealer's representatives licence shall specify the person, being the holder of a dealers licence, or 2 or more such persons, on whose behalf the holder of the dealer's representatives licence may act.

(3) An investment representatives licence shall specify the person, being the holder of an investment advisers licence, or 2 or more such persons, on whose behalf the holder of the investment representatives licence may act.

(4) Where—

- (a) an applicant for a dealer's representatives licence proposes to act on behalf of 2 or more persons who together constitute a dealer, being persons each of whom is the holder of a dealers licence; or
- (b) an applicant for an investment representatives licence proposes to act on behalf of 2 or more persons who together constitute an investment adviser, being persons each of whom is the holder of an investment advisers licence,

the application may specify those persons by reference to the name or style under which the business of those persons is carried on and, where those persons are so specified in the application, they shall be specified by reference to that name or style in a dealer's representatives licence or an investment representatives licence, as the case may be, granted to the applicant.

Change of
principals of
representative.

50. (1) The holder of a representatives licence may apply to the Commission in the prescribed form and manner for the licence to be varied by the inclusion of a name or names in, or the deletion of a name or names from, or both the inclusion of a name or names in and the deletion of a name or names from, the name or names specified in the licence as the name of the holder of a dealers licence or investment advisers licence or the names of the holders of the dealers licences or investment advisers licences, as the case may be, on whose behalf he may act.

(2) Where an application is duly made under sub-section (1)—

- (a) if the applicant seeks the inclusion of a name or names in the licence as the name of the holder of a dealers licence or investment advisers licence or the names of the holders of the dealers licences or investment advisers licences, as the case may be, on whose behalf the applicant may act (whether or not the applicant also seeks the deletion of a name or names from the licence)—
 - (i) if the Commission is of the opinion that the applicant is a fit and proper person to act on behalf of the holder of that dealers licence or investment advisers licence or the holders of those dealers

licences or investment advisers licences—the Commission shall vary the licence by including that name or those names; or

(ii) if the Commission is not of that opinion—the Commission shall refuse so to vary the licence; and

- (b) if the applicant seeks the deletion from the licence of a name or names specified in the licence as the name of the holder of a dealers licence or investment advisers licence or the names of holders of dealers licences or investment advisers licences, as the case may be, on whose behalf the applicant may act (whether or not the applicant also seeks the inclusion of a name or names in the licence)—the Commission shall vary the licence by deleting that name or those names.

51. (1) A licence is subject to—

- (a) such conditions and restrictions as are prescribed; and
(b) subject to section 62, such conditions and restrictions as the Commission imposes when granting the licence or at any time when the licence is in force.

Conditions to which licence is subject.

(2) Without limiting the generality of sub-section (1), conditions and restrictions referred to in paragraph (1) (a) or (b)—

- (a) may include conditions and restrictions relating to the limitation of the liability that may be incurred by the holder of a dealers licence in connection with a business of dealing in securities;
(b) may include conditions and restrictions relating to the incurring and disclosure of liabilities arising otherwise than in connection with a business of dealing in securities;
(c) may include conditions and restrictions relating to the financial position of the holder of a dealers licence, whether in relation to the business of dealing in securities carried on by him or otherwise; and
(d) may include a condition requiring the holder of a dealers licence or of an investment advisers licence to lodge and maintain with the local authority a security approved by the Commission for such amount not exceeding \$20,000 as is, from time to time, determined by the Commission in relation to the holder of that licence.

(3) Without limiting the generality of paragraph (2) (c), the conditions referred to in that paragraph—

- (a) may include a condition that the assets of the holder of a dealers licence include, or do not include, assets of a particular kind or kinds; and

- (b) may include a condition that the sum of the values of the assets of a particular kind or kinds included in the assets of the holder of a dealers licence be not less than, or not greater than, an amount ascertained in accordance with the condition.

(4) A condition referred to in paragraph (3) (b) may provide for the values of assets of a dealer for the purposes of the application of that condition to be ascertained in a manner specified in, or determined in accordance with, the condition.

(5) The provision that may be made in a condition referred to in paragraph (3) (b) for ascertaining the amount referred to in that paragraph may be, but is not limited to, a provision that that amount shall be—

- (a) a specified percentage of the sum of the values of all the assets of the holder of the dealers licence;
- (b) a specified percentage of the sum of the values of all the assets of the holder of the dealers licence that are included in a specified class or classes of those assets;
- (c) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence; or
- (d) a specified percentage of the sum of the amounts of all the liabilities of the holder of the dealers licence that are included in a specified class or classes of those liabilities.

(6) A reference in this section to the assets of the holder of a dealers licence shall be construed as a reference to all the assets of the holder of the licence, whether or not the assets are used in, or in connection with, the business of dealing in securities carried on by him.

(7) Subject to section 62, the Commission may, at any time, revoke or vary conditions or restrictions imposed by the Commission under paragraph (1) (b).

(8) Where the Commission imposes, or varies or revokes, conditions or restrictions under this section in relation to a licence granted to a member of a stock exchange, the Commission shall inform the stock exchange and, if the member is a partner in a member firm, the member firm.

(9) Where a security is lodged with the local authority pursuant to a condition to which a licence is subject in accordance with paragraph (2) (d), the security may be applied by the local authority in such circumstances, for such purposes and in such manner as is prescribed.

(10) In this section, "local authority" means the Commissioner for Corporate Affairs for Western Australia.

52. (1) If an event occurs that constitutes a contravention of, or a failure to comply with, a condition or restriction applicable in respect of a licence, the holder of the licence shall, not later than the day after the day on which the event occurred, give notice in writing to the Commission setting out particulars of the event.

Holder of licence to notify Commission of breach of condition or restriction applicable to licence.

Penalty—

(a) in the case of the holder of a dealers licence or of an investment advisers licence—\$5,000 or imprisonment for 1 year, or both; or

(b) in the case of the holder of a representatives licence—\$2,500 or imprisonment for 6 months, or both.

(2) In this section, “event” includes any happening, circumstance or state of affairs.

(3) In a prosecution of a person for failing to give a notice to the Commission under this section, it is a defence if the defendant establishes that—

(a) at the time when he was required to give the notice he was not aware of a fact or occurrence that gave rise to the requirement; and

(b) he did not become aware of that fact or occurrence before the date of the information or, if he became so aware before that date, he gave the notice as soon as reasonably practicable after the day on which he became so aware.

53. (1) The holder of a dealers licence shall furnish to the Commission such information in writing or statements in respect of the business of dealing in securities carried on by him as the Commission from time to time directs.

Furnishing of information and statements to Commission.

Penalty: \$1,000.

(2) A direction under this section may require the holder of a dealers licence to cause a statement referred to in the direction to be audited by a registered company auditor before it is furnished to the Commission.

(3) Where the Commission has directed the holder of a dealers licence under this section to furnish information or a statement within a particular period, the Commission may extend, or further extend, the period for the furnishing of the information or statement.

54. (1) The Commission shall keep a Register of Licence Holders for the purposes of this Code.

Register of licence holders.

(2) The Commission shall enter in the Register of Licence Holders—

- (a) in relation to the holder of a dealers licence or an investment advisers licence—
 - (i) the name of the holder of the licence;
 - (ii) where the holder is a body corporate—the names of the directors and secretary of the body corporate;
 - (iii) the date on which the licence was granted;
 - (iv) the address of the principal place of business at which the holder of the licence carries on the business to which the licence relates and the addresses of other places (if any) at which that business is carried on; and
 - (v) where such a business is carried on under a name or style other than the name of the holder of the licence—the name or style under which the business is carried on;
- (b) in relation to the holder of a representatives licence—
 - (i) the name of the holder of the licence;
 - (ii) the date on which the licence was granted;
 - (iii) the name of, and the address of the principal place of business of, each dealer or investment adviser specified in the licence as a person on whose behalf the holder of the licence may act; and
 - (iv) where the business of any such dealer or investment adviser is carried on under a name or style other than the name of the dealer or investment adviser—the name or style under which the business is carried on; and
- (c) in relation to the holder of any licence—
 - (i) particulars of any suspension of the licence; and
 - (ii) such other matters as are prescribed.

(3) Where a person ceases to be the holder of a licence, the Commission shall remove from the Register of Licence Holders the name of the person and any other particulars entered in the Register in relation to the person.

(4) A person may inspect and make copies of, or take extracts from, the Register of Licence Holders.

(5) The Commission may enter in the Register of Licence Holders particulars of recognized licensees, being particulars of—

- (a) the name of the recognized licensee;

- (b) the date (if known) on which the recognized licensee became a recognized licensee; and
- (c) such other matters as are prescribed.

(6) Where the Commission becomes aware that a person whose name is entered in the Register of Licence Holders as a recognized licensee has ceased to be a recognized licensee, the Commission shall remove from the Register the name of the person and any other particulars entered in the Register in relation to the person.

(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.

55. Where—

- (a) the holder of a dealers licence ceases to carry on the business to which the licence relates;
- (b) the holder of an investment advisers licence ceases to act as, or hold himself out to be, an investment adviser;
- (c) the holder of a representatives licence ceases to be employed or act in connection with the business carried on by a dealer or an investment adviser specified in the licence as a person on whose behalf the holder of the licence may act and the licence has not been varied in the relevant respects under section 50; or
- (d) a change occurs in any matter particulars of which are required by paragraph 54 (2) (a) or (b) to be entered in the Register of Licence Holders in relation to the holder of a licence,

Notification of
change in
particulars

the holder of the licence shall, not later than 21 days after the occurrence of the event concerned, give to the Commission, in the prescribed form, particulars in writing of that event.

56. (1) A person who is or has been the holder of a dealers licence or an investment advisers licence shall lodge with the Commission, in respect of each year or part of a year during which the licence is or was in force, a statement in the prescribed form and containing such information as is prescribed.

Annual
statement to
be lodged with
Commission.

(2) A person who is the holder of a representatives licence on the prescribed date in a year shall lodge with the Commission in respect of the period of 12 months that ended on that date, or the part of that period of 12 months during which the licence was in force, a statement in the prescribed form and containing such information as is prescribed.

Time for
lodging annual
statement.

57. The statement referred to in section 56 shall be lodged by the person—

- (a) where the licence is a dealers licence—during the period within which a profit and loss account and balance sheet referred to in section 78 is required to be lodged with the Commission;
- (b) where the licence is an investment advisers licence—within the period of one month immediately before the anniversary of the date on which the licence was granted; and
- (c) where the licence is a representatives licence—within the prescribed period after the date prescribed for the purposes of sub-section 56 (2).

Commission
may extend
period for
lodging
statement.

58. (1) The Commission may, in its discretion, extend, or further extend, the period for lodging a statement under section 56.

(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.

Revocation
and suspension
of licences.

59. (1) Where—

- (a) the holder of a licence, being a natural person—
 - (i) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration or any part of his property for their benefit;
 - (ii) is convicted of an offence involving fraud or dishonesty punishable by imprisonment for a period of or exceeding 3 months; or
 - (iii) becomes incapable through mental infirmity of managing his affairs;
- (b) the holder of a licence, being a body corporate—
 - (i) is commenced to be wound up, is under official management or has ceased to carry on business;
 - (ii) is a body corporate in respect of the property of which a receiver, or a receiver and manager, has been appointed whether by the Court or otherwise; or
 - (iii) has entered into a compromise or scheme of arrangement with its creditors;
- (c) the holder of a licence fails to comply with the provisions of section 56, 57 or 78; or
- (d) the holder of a licence requests the Commission to revoke the licence,

the Commission may revoke the licence.

(2) Where a director or secretary of, or a person concerned in the management of, a body corporate that is the holder of a dealers licence or an investment advisers licence contravenes or fails to comply with this Code by reason that he does not hold a licence or a licence held by such a director, secretary or person is suspended, the Commission may revoke the licence held by the body corporate.

(3) If, in a case to which paragraph (1) (a) or (b) or sub-section (2) applies, the Commission considers it desirable to do so, the Commission may, instead of revoking a licence, suspend the licence for a specified period and may at any time remove such a suspension.

(4) Where a dealers licence or an investment advisers licence is revoked or suspended, the holder of a representatives licence in which a person who is or was the holder of the dealers licence or investment advisers licence is specified as a person on whose behalf the holder of the representatives licence may act shall not, where the first-mentioned licence is revoked, act on behalf of that person or shall not, where the first-mentioned licence is suspended, so act during the period of the suspension.

Penalty: \$2,500 or imprisonment for 6 months, or both.

60. (1) Subject to section 62, if—

(a) the holder of a licence contravenes or fails to comply with a condition or restriction applicable in respect of the licence; or

(b) the Commission is satisfied that—

(i) the holder of a licence is not a fit and proper person to hold the licence; or

(ii) where the holder of a licence is a body corporate—

(A) a director or secretary of the body corporate or a person concerned with the management of the body corporate is not a fit and proper person to be a director or secretary of, or a person concerned with the management of, the body corporate; or

(B) a person who has a controlling interest in the body corporate or a person who is associated with a person who has such a controlling interest would not be a fit and proper person to be a director of the body corporate,

the Commission may revoke the licence.

(2) If in a case to which paragraph (1) (a) applies the Commission considers it desirable to do so, the Commission may, instead of revoking a licence, suspend the licence for a specified period and may at any time remove such a suspension.

(3) Where the Commission revokes a licence under sub-section (1), it may make application to the Court for an order disqualifying

Further provisions relating to revocation and suspension of licences.

the person who was the holder of the licence from holding a licence either permanently or during such period as the Court specifies in the order.

(4) Where an application is made under sub-section (3), the Court may make such order as it thinks fit or refuse to make an order and, where it makes an order, may at any time revoke or vary the order.

(5) A person disqualified or deemed to be disqualified, either permanently or for a period, from holding a licence—

- (a) by reason of an order of a court under section 47 of the *Securities Industry Act 1975* or under a corresponding previous enactment; or
- (b) under the corresponding law of a State other than Western Australia or of a Territory by reason of an order of a court under that corresponding law or by reason of the operation of a provision of that corresponding law,

shall, while he is so disqualified or deemed to be disqualified, be deemed to be disqualified from holding a licence under this Code.

Holder of
licence to be
deemed not to
be holder while
licence
suspended.

61. The holder of a licence shall, for the purposes of sections 43, 44, 45 and 46, be deemed not to be the holder of the licence during any period during which the licence is suspended.

Opportunity
for hearing.

62. (1) The Commission shall not—

- (a) refuse to grant a licence otherwise than under sub-section (2);
- (b) revoke or suspend a licence otherwise than under section 59; or
- (c) impose conditions or restrictions in respect of a licence or vary conditions or restrictions applicable in respect of a licence,

unless the Commission has afforded the applicant or holder of the licence an opportunity to appear at a hearing before the Commission (being a hearing that takes place in private) and make submissions and give evidence to the Commission in relation to the matter.

(2) The Commission shall not grant a licence to a person during a period during which that person is, by reason of an order in force under sub-section 60 (4), disqualified from holding a licence or is, by reason of sub-section 60 (5), deemed to be disqualified from holding a licence.

PART V—CONDUCT OF SECURITIES BUSINESS

63. (1) A person who is the holder of a licence shall not represent or imply, or knowingly permit to be represented or implied, in any manner to a person that the abilities or qualifications of the holder of the licence have in any respect been approved by the Commission.

Certain
representation
prohibited.

(2) A statement that a person is the holder of a licence is not a contravention of this section.

64. (1) A dealer (not being an exempt dealer) shall, in respect of a transaction of sale or purchase of securities, forthwith give a contract note that complies with sub-section (2) to—

Issue of
contract notes.

- (a) where the transaction took place in the ordinary course of business at a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction;
- (b) where the transaction did not take place in the ordinary course of business at a stock market and the dealer entered into the transaction otherwise than as principal—the person for whom the dealer entered into the transaction and the person with whom the dealer entered into the transaction; and
- (c) where the transaction did not take place in the ordinary course of business at a stock market and the dealer entered into the transaction as principal—the person with whom the dealer entered into the transaction.

(2) A contract note given by a dealer under sub-section (1) shall include—

- (a) the name or style under which the dealer carries on his business as a dealer and the address of the principal place at which he so carries on business;
- (b) where the dealer is dealing as principal with a person who is not the holder of a dealers licence, a statement that he is so acting;
- (c) the name of the person to whom the dealer gives the contract note;
- (d) the day on which the transaction took place and, if the transaction did not take place in the ordinary course of business at a stock market, a statement to that effect;
- (e) the number, or amount and description, of the securities that are the subject of the contract;
- (f) the price per unit of the securities;
- (g) the amount of the consideration;

(h) a statement—

- (i) where he is a member of a stock exchange, or of a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory—specifying that stock exchange or each of those stock exchanges;
 - (ii) where he is a member of a stock exchange, or of a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory—specifying the amount of commission charged;
 - (iii) where he is not a member of a stock exchange, or of a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory—specifying the amount and rate of commission charged; and
 - (iv) where he is a member of a stock exchange, or of a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory, and the rate of commission charged is not the rate fixed by the relevant stock exchange—specifying the rate of commission charged;
- (j) the amounts of all stamp duties or other duties and taxes payable in connection with the contract; and
- (k) if an amount is to be added to or deducted from the settlement amount in respect of the right to a benefit purchased or sold together with the securities, the first-mentioned amount and the nature of the benefit.

(3) A dealer shall not include in a contract note given under sub-section (1), as the name of the person with or for whom he has entered into the transaction, a name that he knows, or could reasonably be expected to know, is not the name by which that person is ordinarily known.

(4) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or
- (c) where he carries on business as a dealer in partnership—dealing in securities on behalf of a body corporate in which his interest and the interests of his partners together constitute a controlling interest.

(5) For the purposes of this section—

- (a) a dealer who is a member of a stock exchange or is a member of a body corporate that is a stock exchange for the purposes of the corresponding law of a State other than Western Australia or of a Territory shall not be taken to have entered into a transaction as principal by reason only that the transaction was entered into with another dealer who is a member of a stock exchange or is a member of a body corporate that is a stock exchange for the purposes of such a corresponding law; and
- (b) a transaction takes place in the ordinary course of business at a stock market if it takes place in prescribed circumstances or is a transaction that is a prescribed transaction for the purposes of this section.

(6) Notwithstanding the provisions of section 6, a person is not associated with another person for the purposes of this section by reason only that he is—

- (a) a partner of the other person otherwise than by reason that he carries on a business of dealing in securities in partnership with the other person; or
- (b) a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities.

65. (1) Where a person who is a dealer (not being an exempt dealer), investment adviser, dealer's representative or investment representative sends circulars or other similar written communications in which he makes a recommendation, whether expressly or by implication, with respect to securities or a class of securities, the first-mentioned person shall cause to be included in each circular or other communication, in type not less legible than that used in the remainder of the circular or other communication, a concise statement of the nature of any relevant interest in, or any interest in the acquisition or disposal of, those securities or securities included in that class that the first-mentioned person or a person associated with him has at the date on which the first-mentioned person last sends the circular or other communication.

Certain persons
to disclose
certain interests
in securities.

(2) It is a defence to a prosecution for an offence against subsection (1) in relation to a failure to include in a circular or other communication a statement of the nature of a relevant interest in, or an interest in the acquisition or disposal of, securities or securities included in a class of securities, being a relevant interest or an interest of the defendant or of a person associated with the defendant, if the defendant establishes that, at the time at which the

circular or other communication was sent, he was not aware and could not reasonably be expected to have been aware—

- (a) that he had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class; or
- (b) that the person associated with him had a relevant interest in, or an interest in the acquisition or disposal of, those securities or securities included in that class,

as the case may be.

(3) For the purposes of sub-sections (1) and (2)—

- (a) an interest of a person in the disposal of securities includes any financial benefit or advantage that will, or is likely to, accrue directly or indirectly to the person upon or arising out of the disposal of the securities;
- (b) without limiting the generality of the foregoing, a person who has entered into an underwriting agreement in respect of securities shall be deemed to have an interest in the acquisition or disposal of those securities; and
- (c) notwithstanding the provisions of section 6, a person is not associated with another person in relation to the sending of a circular or other communication or the making of a recommendation by reason only that he is—
 - (i) a partner of the other person otherwise than by reason that he carries on a business of dealing in securities in partnership with the other person; or
 - (ii) a director of a body corporate of which the other person is also a director, whether or not the body corporate carries on a business of dealing in securities,

unless the person and the other person are acting jointly, or otherwise acting together or under or in accordance with an arrangement made between them, in relation to the sending of the circular or communication or the making of the recommendation.

(4) Where—

- (a) a person has subscribed for or purchased securities for the purpose of offering all or any of them to the public for purchase; and
 - (b) the person offers any of those securities for purchase,
- the person shall not make a recommendation, whether orally or in writing and whether expressly or by implication, with respect to the securities offered for purchase unless he has informed each person to whom the recommendation is made that he acquired the securities for that purpose.

(5) Where—

- (a) securities have been offered for subscription or purchase; and
- (b) a person has subscribed for or purchased, or is or will or may be required to subscribe for or purchase, any of those securities under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased,

the person shall not, during the period of 90 days after the close of the offer, make an offer to sell those securities (otherwise than in the ordinary course of trading on a stock market) or make a recommendation with respect to those securities unless the offer or recommendation contains or is accompanied by a statement to the effect that the offer or recommendation relates to securities that he has acquired, or is or will or may be required to acquire, under an underwriting agreement by reason that some or all of the securities have not been subscribed for or purchased.

(6) A person who is a dealer (other than an exempt dealer), investment adviser, dealer's representative or investment representative shall not send to a person a circular or other communication or written offer or recommendation to which sub-section (1), (4) or (5) applies unless the circular or other communication or the offer or recommendation—

- (a) if the first-mentioned person is a natural person who does not carry on business in partnership—is signed by that person;
- (b) if the first-mentioned person is a natural person who carries on business in partnership—is signed by a partner in the partnership in his own name or in the name of the partnership; or
- (c) if the first-mentioned person is a body corporate—is signed by a director, executive officer or secretary of the body corporate.

(7) When a person who is a dealer (other than an exempt dealer), investment adviser, dealer's representative or investment representative sends to a person a circular or other communication or a written offer or recommendation to which sub-section (1), (4) or (5) applies, the first-mentioned person shall—

- (a) if he is a member, or an employee of a member or of a member firm, of a stock exchange or of a body corporate that is a stock exchange for the purposes of the corresponding law of a participating State or of a participating Territory—thereupon serve a copy of the circular or other communication or of the offer or recommendation on that stock exchange or body corporate, as the case may be; or

- (b) in any other case—thereupon lodge a copy of the circular or other communication or of the offer or recommendation with the Commission.

(8) A stock exchange or other body corporate on which a copy of a circular or other communication or of a written offer or recommendation is served under sub-section (7) shall preserve that copy for the period of 7 years next after the day on which the stock exchange or other body corporate receives the copy.

(9) A copy of a circular or other communication or of a written offer or recommendation served by a person on a stock exchange or other body corporate or lodged with the Commission in accordance with sub-section (7) shall be a copy that is signed—

- (a) if that person is a natural person who does not carry on business in partnership—by that person;
- (b) if that person is a natural person who carries on business in partnership—by a partner in the partnership in his own name; or
- (c) if that person is a body corporate—by a director, executive officer or secretary of the body corporate.

(10) A reference in this section to an offer of securities shall be construed as including a reference to a statement, however expressed, that is not an offer but expressly or impliedly invites a person to whom it is made to offer to acquire securities.

(11) For the purposes of this section, a circular or other communication or a written offer or recommendation sent to a person shall—

- (a) if it is signed by a person in partnership—be deemed to have been sent by each of the partners in the partnership; or
- (b) if it is signed by a director, executive officer or secretary of a body corporate—be deemed to have been sent by the body corporate.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Dealings as
principal.

66. (1) Subject to sub-section (5), a dealer shall not, as principal, deal in any securities with a person who is not a dealer unless he first informs the person with whom he is dealing that he is acting in the transaction as principal and not as agent.

(2) A reference in this section to a dealer dealing, or entering into a transaction, as principal includes a reference to a person—

- (a) dealing or entering into a transaction on behalf of a person associated with him;
- (b) dealing in securities on behalf of a body corporate in which he has a controlling interest; or

- (c) where he carries on business as a dealer in partnership—dealing in securities on behalf of a body corporate in which his interest and the interests of his partners together constitute a controlling interest.

(3) A dealer who, as principal, enters into a transaction of sale or purchase of securities with a person who is not a dealer shall state in the contract note that he is acting in the transaction as principal and not as agent.

(4) Subject to sub-sections (5) and (6), a dealer who, as principal (otherwise than by reason only that he is dealing or entering into a transaction on behalf of a person associated with him), enters into a transaction of sale or purchase of securities with a person who is not a dealer shall not charge that person brokerage, commission or any other fee in respect of the transaction.

(5) Sub-sections (1) and (4) do not apply in relation to a transaction entered into by a dealer who is a member of a stock exchange and specializes in transactions relating to odd lots of securities, being a transaction of sale or purchase of an odd lot of securities.

(6) Sub-section (4) does not apply to a dealer who, as principal, enters into a transaction of sale or purchase of securities under an approved deed within the meaning of Division 5 of Part IV of the *Companies Act* 1961 with a person who is not a dealer and charges brokerage, commission or another fee in respect of the transaction in accordance with the provisions of the approved deed.

(7) Where a dealer fails to comply with sub-section (1), (3) or (4) in respect of a contract for the sale of securities by him, the purchaser of the securities may, if he has not disposed of them, rescind the contract by a notice of rescission in writing given to the dealer not later than 14 days after the receipt of the contract note and, where a dealer fails to comply with sub-section (1), (3) or (4) in respect of a contract for the purchase of securities by him, the vendor of the securities may, in like manner, rescind the contract.

(8) Nothing in sub-section (7) affects any right that a person has apart from that sub-section.

Penalty: \$2,500 or imprisonment for 6 months, or both.

67. Where a person (in this section referred to as the "client") deposits moneys with, or lends moneys to, a dealer, the dealer shall—

Use by dealer
of clients'
moneys.

- (a) deposit the moneys in an account in a bank, being an account that does not contain any moneys other than moneys deposited with or lent to the dealer, not later

than the next day after the moneys are received by the dealer on which the bank is open for business;

- (b) furnish to the client a document, in the prescribed form, setting out the terms and conditions on which the deposit or loan is made and accepted (including the purpose for which and the manner in which the moneys are to be used by the dealer);
- (c) retain the moneys in the bank account referred to in paragraph (a) until the client has given to him a written statement acknowledging that the client has received the document referred to in paragraph (b); and
- (d) use the moneys only—
 - (i) for the purpose and in the manner set out in the document referred to in paragraph (b); or
 - (ii) for another purpose or in another manner agreed to by the client in writing after the document referred to in paragraph (b) was furnished to the client.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Short selling.

68. (1) Subject to this section and the regulations, a person shall not sell securities to a purchaser unless, at the time when he sells them—

- (a) he has or, where he is selling as agent, his principal has; or
- (b) he believes on reasonable grounds that he has, or where he is selling as agent, his principal has,

a presently exercisable and unconditional right to vest the securities in the purchaser.

Penalty: For a first offence, \$2,500 or imprisonment for 6 months, or both; for a second or subsequent offence, \$10,000 or imprisonment for 2 years, or both.

(2) For the purposes of sub-section (1)—

- (a) a person who, at a particular time, has a presently exercisable and unconditional right to have securities vested in him or in accordance with his directions shall be deemed to have at that time a presently exercisable and unconditional right to vest the securities in another person; and
- (b) a right of a person to vest securities in another person shall not be deemed not to be unconditional by reason only of the fact that the securities are charged or pledged in favour of another person to secure the repayment of money.

(3) Sub-section (1) does not apply in relation to—

(a) a sale of securities by the holder of a dealers licence or a recognized dealer who is a member of a stock exchange and specializes in transactions relating to odd lots of securities, being a sale made by him as principal solely for the purpose of—

(i) accepting an offer to purchase an odd lot of securities;
or

(ii) disposing of a parcel of securities that is less than one marketable parcel of securities by means of the sale of one marketable parcel of those securities;

(b) a sale of securities as part of an arbitrage transaction;

(c) a sale of securities by a person who before the time of sale has entered into a contract to purchase those securities and who has a right to have those securities vested in him that is conditional only upon all or any of the following:

(i) payment of the consideration in respect of the purchase;

(ii) the receipt by him of a proper instrument of transfer in respect of the securities;

(iii) the receipt by him of the documents that are, or are documents of title to, the securities; or

(d) a sale of securities where—

(i) the person who sold the securities is not associated with the body corporate that issued or made available the securities;

(ii) arrangements are made before the time of the sale that will enable delivery of securities of the class sold to be made to the purchaser within 3 business days after the date of the transaction effecting the sale; and

(iii) if the sale is effected on the stock market of a stock exchange—

(A) the price per unit in respect of the sale is not below the price at which the immediately preceding ordinary sale was effected; and

(B) the price per unit is above the price at which the immediately preceding ordinary sale was effected unless the price at which the immediately preceding ordinary sale was effected was higher than the next preceding different price at which an ordinary sale had been effected,

and the stock exchange is immediately informed that the sale has been made short in accordance with this sub-paragraph.

(4) A person who requests a holder of a dealers licence or a recognized dealer to effect a sale of securities to which sub-section (1) would apply but for paragraph (3) (b) or (d) shall, at the time of making the request, inform the holder of the licence or recognized dealer that the sale is a short sale.

(5) A person who, on a stock market of a stock exchange, effects, whether as principal or agent, a sale of securities to which sub-section (1) would apply but for paragraph (3) (d) shall cause to be endorsed on any document evidencing the sale that is given to the person who, whether as principal or agent, purchases the securities a statement that the sale was a short sale.

(6) For the purposes of this section, if a person—

- (a) purports to sell securities;
- (b) offers to sell securities;
- (c) holds himself out as entitled to sell securities; or
- (d) instructs a dealer to sell securities,

he shall be deemed to sell the securities.

PART VI—ACCOUNTS AND AUDIT

Interpretation.

69. In this Part, unless the contrary intention appears, a reference to a book, security, trust account or business of or in relation to a dealer who carries on business in partnership shall be read as a reference to such a book, security, trust account or business of or in relation to the partnership.

Application of Part.

70. This Part applies to and in relation to the holder of a dealers licence and to the business of dealing in securities carried on by the holder of a dealers licence, whether in Western Australia or elsewhere, but does not apply to or in relation to a recognized dealer or to the business carried on by a recognized dealer.

Accounts to be kept by dealers.

71. (1) A dealer shall—

- (a) keep such accounting records as correctly record and explain the transactions and financial position of the business of dealing in securities carried on by him;

- (b) keep his accounting records in such a manner as will enable true and fair profit and loss accounts and balance sheets to be prepared from time to time; and
- (c) keep his accounting records in such a manner as will enable profit and loss accounts and balance sheets of the business of dealing in securities carried on by him to be conveniently and properly audited.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(2) A dealer shall be deemed not to have complied with sub-section (1) in relation to records unless those records—

- (a) are kept in writing in the English language or in such a manner as will enable them to be readily accessible and readily converted into writing in the English language;
- (b) are kept in sufficient detail to show particulars of—
 - (i) all moneys received or paid by the dealer, including moneys paid to, or disbursed from, a trust account;
 - (ii) all purchases and sales of securities made by the dealer, the charges and credits arising from them, and the names of the buyer and seller, respectively, of each of those securities;
 - (iii) all income received from commissions, interest, and other sources, and all expenses, commissions, and interest paid, by the dealer;
 - (iv) all the assets and liabilities (including contingent liabilities) of the dealer;
 - (v) all securities that are the property of the dealer, showing by whom the securities, or the documents of title to the securities, are held and, where they are held by some other person, whether or not they are held as security against loans or advances;
 - (vi) all securities that are not the property of the dealer and for which the dealer or any nominee controlled by the dealer is accountable, showing by whom, and for whom, the securities or the documents of title to the securities are held and the extent to which they are either held for safe custody or deposited with a third party as security for loans or advances made to the dealer;
 - (vii) all purchases and sales of options made by the dealer and all fees (being option moneys) arising from them;
 - (viii) all arbitrage transactions entered into by the dealer; and

- (ix) all underwriting transactions entered into by the dealer;
 - (c) are kept in sufficient detail to show separately particulars of every transaction by the dealer;
 - (d) specify the day on which or the period during which each transaction by the dealer took place; and
 - (e) contain copies of acknowledgements of the receipt of securities or of documents of title to securities received by the dealer from clients for sale or safe custody clearly showing the name or names in which the particular securities are registered.
- (3) Without affecting the operation of sub-section (2), a dealer shall keep records in sufficient detail to show separately particulars of all transactions by the dealer with, or for the account of—
- (a) clients of the dealer, excluding, where the dealer carries on business in partnership, the partners of the firm;
 - (b) the dealer himself, or, where the dealer carries on business in partnership, the partners of the firm;
 - (c) other dealers carrying on business in Western Australia;
 - (d) dealers outside Western Australia; and
 - (e) employees of the dealer.
- (4) An entry in the accounting and other records of a dealer required to be kept in accordance with this section, and any matter recorded by a stock exchange in relation to a member pursuant to sub-section 136 (3), shall be deemed to have been made by, or with the authority of, the dealer or member.
- (5) Where a record required by this section to be kept is not kept in writing in the English language, the dealer shall, if required to convert the record into writing in the English language by a person who is entitled to examine the record, comply with the requirement within a reasonable time.
- (6) Notwithstanding any other provision of this section, a dealer shall not be deemed to have failed to keep a record referred to in sub-section (1) by reason only that the record is kept as a part of, or in conjunction with, the records relating to any business other than dealing in securities that is carried on by him.
- (7) If accounting or other records are kept by a dealer at a place outside Western Australia, the dealer shall cause to be sent to and kept at a place in Western Australia such particulars with respect to the business dealt with in those records as will enable true and fair profit and loss accounts and balance sheets to be prepared.

72. (1) Where a dealer receives for safe custody documents that are, or are documents of title to, securities, being documents that are the property of another person (in this sub-section referred to as the "client") and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall forthwith—

Security documents in custody of dealer.

- (a) if the documents are not registered in the name of the client by the body corporate by which the securities were issued or made available and the client does not make a request as mentioned in paragraph (b) or (c)—cause them to be so registered;
- (b) if the client requests that the documents be registered by the body corporate by which the securities were issued or made available in the name of a nominee controlled by the dealer—cause them to be so registered; or
- (c) if the client requests that the documents be deposited in safe custody with the dealer's bankers—cause them to be so deposited.

(2) A dealer shall not deposit as security for a loan or advance made to the dealer documents that are, or are documents of title to, securities, being documents that are the property of another person (in this sub-section referred to as the "client") and for which the dealer or a nominee controlled by the dealer is accountable, unless an amount is owed to the dealer by the client in connection with a transaction entered into on behalf of the client, and the dealer—

- (a) gives a written notice to the client identifying the documents and stating that he intends to deposit them as security for a loan or advance made to the dealer; and
- (b) deposits the documents as security for a loan or advance made to the dealer that does not exceed the amount owed to the dealer on the day of the deposit by the client in connection with a transaction entered into on his behalf by the dealer.

(3) Where—

- (a) a dealer has given a notice to a person as mentioned in sub-section (2) and has deposited the documents referred to in the notice as security for a loan or advance; and
- (b) the person has paid the amount owed by him to the dealer,

the dealer shall withdraw the documents from deposit forthwith after he receives the amount so owed to him.

(4) Where a dealer deposits as security for a loan or advance made to the dealer documents that are, or are documents of title to, securities, being documents that are the property of another person

and for which the dealer or a nominee controlled by the dealer is accountable, the dealer shall, at the expiration of 3 months after the day on which the documents are deposited, and at the expiration of each subsequent period of 3 months, if the documents are still maintained on deposit, send to the other person written notice to that effect.

Penalty: \$10,000 or imprisonment for 2 years, or both.

Dealers' trust
accounts.

73. (1) A dealer shall open and maintain with a bank or banks in Western Australia an account or accounts designated as a trust account or as trust accounts.

(2) A dealer shall pay into such an account all moneys held by him in trust for a client not later than the next day on which the bank is open for business following the day on which they are received by the dealer.

(3) Notwithstanding sub-section (1), where moneys that are required by this section to be paid into a trust account are received by a dealer in a place outside Western Australia, the dealer may pay those moneys into a trust account maintained by the dealer in that place.

(4) For the purposes of sub-section (2), all moneys received by a dealer from a client other than—

- (a) moneys received in respect of brokerage and other proper charges;
- (b) moneys received in payment or part payment for securities delivered to the dealer before the moneys are received; or
- (c) moneys to which section 67 applies,

shall be deemed to be held in trust for that client.

(5) Sub-section (2) does not apply to or in relation to a cheque, bank cheque, bank draft, money order or postal order made payable to or to the order of a specified person or bearer (not being a cheque, bank cheque, bank draft, money order or postal order in which the payee is the dealer, a partner of the dealer or the firm in which the dealer is a partner) received from or on behalf of a client with instructions, express or implied, that the cheque, bank cheque, bank draft, money order or postal order is to be delivered to the person to whom it is payable.

(6) A person who contravenes or fails to comply with a provision of this section that is applicable to him is guilty of an offence.

Penalty: \$5,000 or imprisonment for one year, or both.

(7) A person who, with intent to defraud, contravenes or fails to comply with a provision of this section that is applicable to him is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

74. (1) A dealer who withdraws moneys from a trust account except for the purpose of—

Purposes for which money may be withdrawn from a trust account.

- (a) making a payment to, or in accordance with the written directions of, a person entitled to the moneys;
- (b) making a payment to a stock exchange in accordance with the provisions of section 95;
- (c) defraying brokerage and other proper charges;
- (d) paying to the dealer moneys to which he is entitled, being moneys that were paid into a trust account but were not required to be so paid; or
- (e) making a payment that is otherwise authorized by law,

is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) A dealer who, with intent to defraud, withdraws moneys from a trust account is guilty of an offence.

Penalty: \$10,000 or imprisonment for 2 years, or both.

(3) Except as otherwise provided in this Part, moneys held in a trust account are not available for payment of the debts of a dealer or liable to be paid or taken in execution under the order or process of a court.

(4) Nothing in this Part takes away or affects a lawful claim or lien that a person has against or on any moneys held in a trust account or against or on any moneys received for the purchase of securities or from the sale of securities before those moneys are paid into a trust account.

(5) A dealer is not guilty of an offence against sub-section (1) by reason only that he withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid, and has not been refused payment, by the banker on which it is drawn.

(6) Where a dealer withdraws from a trust account an amount that is the whole or any part of the amount of a cheque that has been paid into the account but that has not been paid by the banker on which it is drawn and the banker later refuses payment of the cheque, the dealer shall forthwith pay into the trust account by cash or bank cheque an amount equal to the first-mentioned amount.

(7) Where a dealer fails to comply with sub-section (6)—

- (a) he is guilty of an offence; and
- (b) where the dealer is a member of a stock exchange the failure shall, for the purposes of Part IX, be deemed to be a defalcation by the dealer.

Penalty: \$2,500 or imprisonment for 6 months, or both.

Appointment
of auditor by
dealer.

75. (1) Within one month after a person becomes the holder of a dealers licence he shall appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, as auditor or auditors to audit his accounts.

(2) A person shall not—

- (a) consent to be appointed as auditor of a dealer;
- (b) act as auditor of a dealer; or
- (c) prepare a report required by this Code or Part III of the *Securities Industry (Application of Laws) Act 1981* to be prepared by an auditor of a dealer,

if the person—

- (d) is not a registered company auditor;
- (e) is indebted in an amount exceeding \$2,000 to the dealer; or
- (f) is a partner or employee of the dealer.

(3) A firm shall not—

- (a) consent to be appointed as auditor of a dealer;
- (b) act as auditor of a dealer; or
- (c) prepare a report required by this Code or Part III of the *Securities Industry (Application of Laws) Act 1981* to be prepared by an auditor of a dealer,

unless—

- (d) at least one member of the firm is ordinarily resident in Australia;
- (e) all the members of the firm ordinarily so resident are registered company auditors;
- (f) no member of the firm is indebted in an amount exceeding \$2,000 to the dealer; and
- (g) no member of the firm is a partner or employee of the dealer.

(4) The appointment of a firm as auditor of a dealer shall be taken to be the appointment of all persons who are members of the firm, whether resident in Australia or not, at the date of the appointment.

(5) Where a firm has been appointed as auditor of a dealer and the members constituting the firm change by reason of the death, retirement or withdrawal of a member or by reason of the admission of a new member, the firm as newly constituted shall, if it is not disqualified from acting as auditor of the dealer by virtue of sub-section (3), be deemed to be appointed under sub-section (1) as auditor of the dealer and that appointment shall be taken to be an appointment of all persons who are members of the firm as newly constituted.

(6) If, in contravention of this section, a firm consents to be appointed or acts as auditor of a dealer or prepares a report required by this Code or Part III of the *Securities Industry (Application of Laws) Act 1981* to be prepared by an auditor of a dealer, each member of the firm is guilty of an offence.

(7) A person shall not—

- (a) if he has been appointed auditor of a dealer—wilfully disqualify himself while the appointment continues from acting as auditor of the dealer; or
- (b) if he is a member of a firm that has been appointed auditor of a dealer—wilfully disqualify the firm while the appointment continues from acting as auditor of the dealer.

(8) An auditor of a dealer shall hold office until death, until removal or resignation from office in accordance with section 76 or until ceasing to be capable of acting as auditor by reason of sub-section (2) or (3).

(9) Within 14 days after a vacancy occurs in the office of an auditor of a dealer, if there is no surviving or continuing auditor of the dealer, the dealer shall appoint a person or persons, a firm or firms, or a person or persons and a firm or firms, to fill the vacancy.

(10) While a vacancy in the office of an auditor continues, the surviving or continuing auditor or auditors (if any) may act.

(11) A dealer shall not appoint a person or firm as auditor of the dealer unless that person or firm has, before the appointment, consented by notice in writing given to the dealer to act as auditor and has not withdrawn his or its consent by notice in writing given to the dealer.

(12) A report or notice made or given by a firm appointed as auditor of a dealer for the purposes of this Part shall be signed in the firm name and in his own name by a member of the firm who is a registered company auditor.

(13) Where a person or firm is appointed as an auditor under sub-section (1) (not being an appointment that is deemed to be made by virtue of sub-section (5)) or under sub-section (9), the dealer shall within 14 days after the appointment lodge with the Commission a notice in writing stating that he has made the appointment and specifying the name of the person or firm.

Removal and
resignation of
auditors.

76. (1) A dealer may, if he has received the consent of the Commission, remove an auditor of the dealer from office.

(2) An auditor of a dealer may, by notice in writing given to the dealer, resign as auditor of the dealer if—

- (a) he has, by notice in writing given to the Commission, applied for consent to his resignation and, at or about the same time as he gave notice to the Commission, notified the dealer in writing of his application to the Commission; and
- (b) he has received the consent of the Commission.

(3) The Commission shall, as soon as practicable after receiving a notice from an auditor under sub-section (2), notify the auditor and the dealer whether it consents to the resignation of the auditor.

(4) A statement made by an auditor in an application to the Commission under sub-section (2) 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 other than proceedings for an offence against section 135; and
- (b) may not be made the ground of a prosecution (other than a prosecution for an offence against section 135), action or suit against the auditor,

and a certificate of the Commission that the statement was made in the application or in answer to an inquiry by the Commission is conclusive evidence that the statement was so made.

(5) Subject to sub-section (6) and to any order of the Court under sub-section (8), 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 consents to the resignation; or
- (c) on the date (if any) fixed by the Commission for the purpose,

whichever last occurs.

(6) 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 75 (3) (d), of acting as auditor of a dealer, the member so retiring or withdrawing shall, if not disqualified from acting as auditor of the dealer, be deemed to be the auditor of the dealer until he obtains the consent of the Commission to his retirement or withdrawal.

(7) Within 14 days after the receipt of a notice of resignation from an auditor of a dealer or, where an auditor of a dealer is removed from office, within 14 days after the removal, the dealer shall lodge a notice of the resignation or removal in accordance with the prescribed form with the Commission.

(8) A person aggrieved by the refusal of consent by the Commission to the removal or resignation of an auditor of a dealer may, within one month after the date of refusal, appeal to the Court from the refusal and thereupon the Court may confirm or reverse the refusal and may make such further order in the matter as to it seems proper.

77. The reasonable fees and expenses of an auditor of a dealer are payable by the dealer.

Fees and
expenses of
auditors.

78. (1) In this section—

Dealers'
accounts.

“financial year”, in relation to a dealer, means—

- (a) where the dealer is not a body corporate—the year ending on 30 June; and
- (b) where the dealer is a body corporate—the financial year of the body corporate within the meaning of the *Companies Act* 1961;

“prescribed day”, in relation to a financial year of a dealer, means—

- (a) where the dealer is not a body corporate—the day that is 2 months after the end of that financial year; or
- (b) where the dealer is a body corporate—the day that is 3 months after the end of that financial year, or where, in either case, an extension of time is approved pursuant to sub-section (3), the day on which the extended time expires.

(2) A dealer shall, in respect of each financial year, other than a financial year that ended before the date of commencement of the *Securities Industry (Application of Laws) Act* 1981 or ended on or after that date but before the date on which the dealer commenced to carry on business as a dealer, 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 are prescribed and lodge them with the Commission

before the prescribed day for that financial year, together with an auditor's report containing the prescribed information and matters.

(3) The Commission may, on application made by a dealer and his auditor before the expiration of the period of 2 months or, as the case requires, the period of 3 months referred to in the definition of "prescribed day" in sub-section (1) or, if that period has been extended pursuant to an approval or approvals previously given under this sub-section, 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.

(4) Where an approval under sub-section (3) in relation to a dealer is given subject to conditions, the dealer shall comply with those conditions.

Auditor to
report to
Commission in
certain cases.

79. (1) Where an auditor, in the performance of his duties as auditor of a dealer, becomes aware of a prescribed matter he shall, within 7 days after becoming aware of that matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer and to each stock exchange of which the dealer is a member.

(2) In this section, "prescribed matter" means a matter that, in the opinion of the auditor—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer;
- (b) constitutes or may constitute a breach of section 71, 72, 73 or 74 or Part VIII; or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Code.

Certain matters
to be reported
to Commission.

80. (1) Where, in relation to a dealer who is a member of a stock exchange, the stock exchange becomes aware of a prescribed matter, the stock exchange shall, as soon as practicable after becoming aware of the matter, lodge with the Commission a written report on the matter and send a copy of the report to the dealer.

(2) In this section, "prescribed matter", in relation to a dealer, means a matter that, in the opinion of the stock exchange concerned—

- (a) has adversely affected, is adversely affecting or may adversely affect the ability of the dealer to meet his obligations as a dealer;

- (b) constitutes or may constitute a breach of section 71, 72, 73 or 74 or Part VIII; or
- (c) constitutes or may constitute a breach of a condition of a licence issued to the dealer under this Code.

81. (1) An auditor is not, in the absence of malice on his part, liable to an action for defamation in respect of a statement, whether oral or written, made or issued by him in the course of his duties as an auditor. Defamation.

(2) A person is not, in the absence of malice on his part, liable to an action for defamation in respect of the publication of a document prepared by an auditor in the course of his duties as an auditor and required by or under this Code or the corresponding law of a State other than Western Australia or of a Territory to be lodged with the Commission, whether or not the document has been so lodged.

(3) Nothing in this section limits or affects any other right, privilege or immunity that an auditor or other person has as defendant in an action for defamation.

82. Nothing in this Part prevents a stock exchange imposing on members of that stock exchange any obligations or requirements (not being obligations or requirements inconsistent with this Code) that the stock exchange thinks fit with respect to— Right of stock exchange to impose obligations, &c., on members not affected by this Part.

- (a) the audit of accounts (including the audit of accounts by an auditor appointed by the stock exchange);
- (b) the information to be furnished in reports from auditors; or
- (c) the keeping of books.

83. Where the Commission shows to the satisfaction of the Court— Power of Court to restrain dealings with dealer's bank accounts.

- (a) that there are reasonable grounds for believing that there is a deficiency in a trust account, whether kept within or outside Western Australia, of a person who is or has been a dealer or in an account kept pursuant to paragraph 67 (a), whether within or outside Western Australia, by a person who is or has been a dealer;
- (b) that there has been undue delay, or unreasonable refusal, on the part of a person who is or has been a dealer, in paying, applying or accounting for trust moneys as required by this Code or by the corresponding law of a State other than Western Australia or of a Territory;

- (c) that a person who is or has been a dealer has not paid moneys into a trust account as provided by section 73 or into an account as provided by paragraph 67 (a) or by a provision of the law of a State other than Western Australia or of a Territory that corresponds with either of those sections; or
- (d) where a business of dealing in securities is carried on, was carried on or was last carried on, as the case may be, by a person otherwise than in partnership—
 - (i) that the dealer's licence of that person under Part IV or under the provisions of the law of a State other than Western Australia or of a Territory that correspond with that Part has been revoked or suspended;
 - (ii) that that person is incapable, by reason of physical or mental infirmity, of managing his affairs;
 - (iii) that that person has ceased to carry on a business of dealing in securities; or
 - (iv) that that person has died,

the Court may make an order restraining dealings in respect of all or any of the bank accounts of that person, subject to such terms and conditions as the Court imposes.

Duty of
banker to
make full
disclosure.

84. Where an order made under section 83 is directed to a banker, the banker shall—

- (a) disclose to the Commission every account kept at the bank in the name of the person to whom the order relates, and any account that the banker reasonably suspects is held or kept at the bank for the benefit of that person; and
- (b) permit the Commission to make a copy of, or to take an extract from, any account of the person to whom the order relates or any of the banker's books relating to that person.

Power of
Court to make
further orders
and give
directions.

85. Where an order is made under section 83, the Court may, on the application of the Commission or of a person affected by the order, make further orders—

- (a) dealing with such ancillary matters as the Court considers necessary or desirable;
- (b) directing that all or any of the moneys in an account affected by an order so made be paid by the bank to the Commission or a person nominated by the Commission, on such terms and conditions as the Court thinks fit; and
- (c) discharging or varying the order.

86. (1) An order made under section 85 may include directions to the person to whom the moneys are paid directing that that person—

Power of Court to make order relating to payment of moneys.

- (a) shall cause the moneys to be paid into a separate trust account;
- (b) is authorized to prepare a scheme for distributing the moneys to persons who claim, during a period of 6 months after the Commission or that other person receives the moneys, to be entitled to the moneys and satisfy the Commission or that other person that they are so entitled; or
- (c) where the moneys received are insufficient to pay all proved claims, may, notwithstanding any rule of law or equity to the contrary, apportion the moneys among the claimants in proportion to their proved claims and show in the scheme how the moneys are so apportioned.

(2) Where a person prepares a scheme for a distribution of moneys pursuant to sub-section (1), he shall apply to the Court for approval of the scheme and for directions in respect of it.

(3) The Court may give such directions as to the moneys held in a separate trust account pursuant to sub-section (1), as to the persons to whom and in what amounts the whole or any portion of those moneys shall be paid, and as to the payment of the balance of the moneys (if any) remaining in the account, as the Court thinks fit.

PART VII—REGISTERS OF INTERESTS IN SECURITIES

87. (1) In this Part, “financial journalist” means a person who, not being the holder of a licence, in the course of his business or employment contributes advice, or prepares analyses or reports, concerning securities for publication in a newspaper or periodical.

Interpretation.

(2) In this Part, a reference to securities is a reference to securities that are securities of a body corporate that is a public company under the law in force in a State or Territory or securities that are quoted or dealt in at a stock market in a State or Territory.

(3) A reference in this Part to the Register, in relation to a person to whom this Part applies, is a reference to the Register required to be maintained by him under sub-section 89 (1).

(4) If—

- (a) there is in force a certificate in writing issued by or on behalf of a stock exchange certifying that a member of that stock exchange is recognized by the stock exchange as specializing in transactions relating to odd lots of securities; and

(b) the member concerned enters into a transaction in relation to an odd lot of securities,
this Part does not apply in relation to any relevant interest in securities acquired by him as a result of that transaction or in relation to any change in his relevant interest in any securities effected by that transaction.

Application
of Part.

88. (1) This Part applies to and in relation to a person who is the holder of a licence or a financial journalist.

(2) A financial journalist who maintains a register under the provisions of a law of a participating State or participating Territory that correspond with this Part is not required to maintain a Register under this Part.

Register to
be maintained.

89. (1) A person to whom this Part applies shall maintain a Register, in accordance with the prescribed form or in the prescribed manner, for the purposes of this Part and shall keep the Register at a place in Western Australia or in a participating State or participating Territory.

(2) Where—

(a) a person is at the commencement of the *Securities Industry (Application of Laws) Act 1981*, or becomes after that commencement, a person to whom this Part applies; and

(b) the person is aware at that commencement or when he becomes such a person, as the case may be, that he has a relevant interest in securities,

he shall, within 7 days after the date of commencement of the *Securities Industry (Application of Laws) Act 1981* or the day on which he becomes such a person, as the case may be, if he has not already done so, cause to be entered, as prescribed, in the Register particulars of those securities and of the nature of his relevant interest in those securities.

(3) Where a person to whom this Part applies becomes aware that he has a relevant interest in securities he shall, within 7 days after the day on which he becomes so aware, cause to be entered, as prescribed, in the Register particulars of those securities and of the nature of his relevant interest in those securities.

(4) Where there is a change in the relevant interest of a person to whom this Part applies in securities, he shall, within 7 days after the day on which he becomes aware of the change, cause particulars of the change to be entered in the Register.

(5) For the purposes of this section, where a person to whom this Part applies commences or ceases to have a relevant interest in securities, there shall be deemed to be a change in the relevant interest of that person in those securities.

(6) Where a person to whom this Part applies is required by this section to enter in the Register particulars of any securities and of the nature of his relevant interest in those securities, or particulars of a change in his relevant interest in any securities, the particulars to be so entered shall include—

- (a) the date on which he commenced or ceased to have the relevant interest or on which the change occurred;
- (b) the number of securities to which the relevant interest relates or related;
- (c) if the relevant interest was acquired or disposed of or the change occurred for valuable consideration—the amount of the consideration and, if the consideration did not consist wholly of money, the nature of the part of the consideration that did not consist of money; and
- (d) if the securities are not registered in the name of the first-mentioned person—the name of the person who is registered as the holder of the securities or, if any other person is entitled to become registered as the holder of the securities, the name of that other person.

Penalty: \$2,500 or imprisonment for 6 months, or both.

90. (1) An applicant for a licence shall, as part of his application for the grant of the licence, give notice in writing to the Commission of the place at which he intends to keep the Register in accordance with sub-section 89 (1). Place where Register kept.

(2) A financial journalist shall, within 14 days after he commences to maintain the Register, give notice in writing to the Commission stating—

- (a) the place at which he keeps the Register;
- (b) the name and business address of his employer (if any); and
- (c) the newspapers and periodicals to which he contributes.

(3) Where there is a change in the place at which the holder of a licence or a financial journalist keeps the Register, he shall immediately give notice in writing to the Commission of the new place at which the Register is kept.

91. (1) It is a defence to a prosecution for failing to comply with section 89 or 90 if the defendant establishes that his failure Defences.

was due to his not being aware of a fact or occurrence the existence of which was necessary to constitute the offence and that—

- (a) he was not so aware on the date of the information;
- (b) he became so aware less than 14 days before the date of the information; or
- (c) he became so aware not less than 14 days before the date of the information and complied with the relevant section within 14 days after becoming so aware.

(2) For the purposes of this Part, 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 relating to securities, being 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 in the relevant securities, was aware at that time.

Power of Commission to require production of Register.

92. (1) The Commission may require a person to whom this Part applies to produce the Register required to be kept pursuant to section 89 for inspection by a person authorized by the Commission at such place within Western Australia as the Commission specifies and within such period as the Commission specifies (being, in the case where the Register is kept at a place outside Western Australia, a period of not less than 7 days), and the authorized person may make a copy of, or take extracts from, the Register.

(2) A person to whom this Part applies shall comply with any requirement made of him under sub-section (1).

Power of Commission to require certain information to be supplied to Commission.

93. (1) The Commission may, by notice in writing, require the proprietor or publisher of a newspaper or periodical to supply the Commission with—

- (a) the name and address of the person who contributed or prepared any article, analysis or report specified in the notice; or
- (b) the names and addresses of all persons who, during a period specified in the notice, contributed or prepared any article, analysis or report,

being an article, an analysis or a report, concerning securities that was published in a newspaper owned or published by that proprietor or publisher.

(2) A proprietor or publisher of a newspaper or periodical shall not wilfully fail to comply with a notice under sub-section (1).

Power of Commission to supply copy of Register.

94. The Commission may supply a copy of a Register or an extract from a Register to any person who, in the opinion of the Commission, should in the public interest be informed of the matters disclosed in the Register or extract.

PART VIII—DEPOSITS WITH STOCK EXCHANGES

95. (1) Each sole trader and each member firm shall lodge and maintain a deposit as required by this Part with the stock exchange of which the sole trader is a member or by which the firm is recognized.

Deposits to be lodged by sole traders and member firms.

(2) A deposit referred to in sub-section (1) is payable out of moneys in a trust account kept by the sole trader or member firm.

(3) An amount paid from a trust account as, or as part of, a deposit lodged with a stock exchange under this Part continues to be money in that trust account notwithstanding that it is so lodged.

(4) Where a sole trader or member firm fails to comply with sub-section (1), the sole trader or each partner in the member firm (as the case may be) is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(5) It is a defence to a prosecution for a failure to comply with sub-section (1) if the defendant establishes that the failure was attributable to the making of a payment out of the trust account kept by the sole trader or member firm, being a payment that the sole trader or member firm was authorized by paragraph 74 (1) (a), (c), (d) or (e) to make out of that trust account and would not have been able to make if the sole trader or member firm had complied with his or its obligations under that sub-section.

96. (1) The deposit required to be lodged and maintained by a sole trader or member firm under section 95 is an amount equal to two-thirds (or, where a lesser proportion is prescribed, that proportion) of the lowest balance in the trust account maintained by the sole trader or member firm during the period of 3 months ending on the quarter day last past.

Deposit to be proportion of certain balances.

(2) Where a sole trader or member firm maintains 2 or more trust accounts, the amount of the deposit required to be lodged and maintained by the sole trader or member firm under section 95 shall be determined as if a reference in sub-section (1) to the balance in the trust account at any time were a reference to the aggregate of the balances at that time in the trust accounts maintained by that sole trader or member firm.

(3) Nothing in this Part requires the lodging or maintaining of a deposit where, but for this sub-section, the amount of the deposit would be less than \$3,000.

(4) Where, by reason of this Part, a sole trader or a member firm is required to increase an amount of money lodged with a stock exchange, the additional amount shall be lodged by that sole trader

or member firm not later than 5 trading days of that stock exchange after the relevant quarter day.

(5) For the purposes of sub-section (4)—

“trading day”, in relation to a stock exchange, means a day on which the stock market of that stock exchange is open for the sale, purchase or exchange of securities;

“relevant quarter day” means the quarter day that is the last day of the period by reference to which the amount required to be lodged is calculated.

Deposits to be
invested by
stock exchange.

97. (1) Where a stock exchange receives a deposit from a sole trader or member firm under section 95, the stock exchange holds the deposit upon trust for the sole trader or member firm and shall invest the deposit—

(a) on interest-bearing term deposit in a bank; or

(b) on deposit with a corporation that is declared, pursuant to paragraph 38 (7) (b) of the *Companies Act* 1961 to be an authorized dealer in the short term money market.

(2) In sub-section (1), “bank” means—

(a) a bank as defined in section 5 of the *Banking Act* 1959;

(b) the Primary Industry Bank of Australia; or

(c) a bank constituted under a law of a State or Territory.

(3) A stock exchange shall pay moneys received by way of interest in respect of amounts invested under sub-section (1) into the fidelity fund established by it pursuant to Part IX.

(4) A stock exchange shall, on demand being made by a sole trader or member firm who has lodged a deposit with the stock exchange, pay to the sole trader or member firm an amount deposited with the stock exchange under section 95.

(5) Nothing in sub-section (4) affects the obligations of a sole trader or member firm under section 95.

(6) A sole trader or member firm shall pay an amount received from a stock exchange under sub-section (4) into a trust account maintained by the sole trader or member firm under section 73.

(7) Where a sole trader or member firm fails to comply with sub-section (6), the sole trader or each partner in the member firm (as the case may be) is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year.

(8) The fidelity fund of a stock exchange shall guarantee the repayment by the stock exchange of the amount of a deposit received from a sole trader or member firm.

98. (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.

Accounts of
deposits.

(2) A stock exchange shall appoint a registered company auditor to audit its accounts relating to deposits.

(3) An auditor appointed by a stock exchange shall audit the accounts relating to deposits received by the stock exchange and each balance sheet 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.

(4) 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 14 days after the report was so laid before the committee.

99. Nothing done under this Part affects—

- (a) a claim or lien that a sole trader or member firm has on or in relation to a deposit; or
- (b) the rights or remedies of a person other than a sole trader or member firm.

Claims, &c.,
not affected by
this Part.

PART IX—FIDELITY FUNDS

100. (1) A stock exchange shall establish and keep a fidelity fund, which shall be administered by the committee on behalf of the stock exchange.

Establishment
of fidelity funds.

(2) The assets of a fidelity fund of a stock exchange are the property of the stock exchange, but shall be kept separately from all other property and shall be held in trust for the purposes set out in this Part.

101. The fidelity fund of a stock exchange shall consist of—

- (a) an amount of not less than \$100,000, to be paid to the credit of the fund by the stock exchange on the establishment of the fund;
- (b) moneys paid to the stock exchange by sole traders or member firms in accordance with the provisions of this Part;
- (c) the interest on moneys invested by the stock exchange under Part VIII;
- (d) the interest and profits from time to time accruing from the investment of the fidelity fund;
- (e) moneys paid into the fidelity fund by the stock exchange;

Moneys
constituting
fidelity fund.

- (f) moneys recovered by or on behalf of the stock exchange in the exercise of a right of action conferred by this Part;
- (g) moneys paid by an insurer pursuant to a contract of insurance or indemnity entered into by the stock exchange under section 121; and
- (h) all other moneys lawfully paid into the fund.

Fund to be kept in separate bank account.

102. The moneys in a fidelity fund shall, until they are invested or applied in accordance with this Part, be kept in a separate account in a bank in Western Australia.

Payments out of fund.

103. Subject to this Part, there shall be paid out of the fidelity fund of a stock exchange in such order as the committee of the stock exchange deems proper—

- (a) the amount of all claims, including costs, allowed by the committee or established against the stock exchange under this Part;
- (b) all legal and other expenses incurred in investigating or defending claims made under this Part or incurred in relation to the fund or in the exercise by the stock exchange or the committee of the rights, powers and authorities vested in it by this Part in relation to the fund;
- (c) all premiums payable in respect of contracts of insurance or indemnity entered into by the stock exchange under section 121;
- (d) the expenses incurred in the administration of the fund, including the salaries and wages of persons employed by the stock exchange or the committee in relation to the fund; and
- (e) all other moneys payable out of the fund in accordance with the provisions of this Code.

Accounts of fund.

104. (1) A stock exchange shall establish and keep proper accounts of its fidelity fund and shall, before 31 August in each year, cause a balance sheet in respect of those accounts to be made out as at the preceding 30 June.

(2) A stock exchange shall appoint a registered company auditor to audit the accounts of the fidelity fund.

(3) The auditor appointed by a stock exchange shall audit the accounts of the fidelity fund and shall audit each balance sheet and 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.

(4) 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 14 days after the report was so laid before the committee.

105. (1) The committee of a stock exchange may, by resolution, appoint a management sub-committee of not less than 3 and not more than 5 persons, being members of the stock exchange, at least one of whom is also a member of the committee. Management
sub-committee.

(2) The committee of a stock exchange may, by resolution, delegate to a sub-committee appointed by it under this section all or any of its powers, authorities and discretions under a provision of this Part (other than this section, section 108, sub-section 111 (6), (7) or (8) or section 113).

(3) A power, authority or discretion delegated under sub-section (2) may be exercised by members forming a majority of the sub-committee as if that power, authority or discretion had been conferred by this Part on a majority of the members of the sub-committee.

(4) A delegation by the committee of a stock exchange under this section may at any time, by resolution of the committee, be varied or revoked.

(5) The committee of a stock exchange may at any time, by resolution, remove a member of a sub-committee appointed by it under this section and may, by resolution, fill a vacancy arising in the membership of the sub-committee.

106. (1) A person shall not be admitted to membership of a stock exchange or to a partnership in a member firm recognized by a stock exchange unless he has paid to the stock exchange, as a contribution to its fidelity fund, such amount, being not less than \$500, as is determined by the stock exchange. Contributions
to fund.

(2) A person who is a member of a stock exchange shall, on or before 31 March in each year, pay to the stock exchange as a contribution to its fidelity fund, such amount, being not less than \$100, as is determined by the stock exchange.

107. (1) Where the amount in a fidelity fund of a stock exchange exceeds \$2,000,000 or such lesser amount as is prescribed— Provisions
where fund
exceeds
\$2,000,000.

(a) a person—

(i) who is a member of the stock exchange;

(ii) who has made 20 or more annual contributions to the fund (whether under this Part or Part IX of the

Securities Industry Act 1975 or under a corresponding previous enactment); and

- (iii) in respect of whom a payment from the fund has not been made or, if such a payment has been made, has been repaid to the fund,
is not, subject to this section, required to make further annual contributions to the fund;
- (b) on the retirement from business of any such person, the committee may, in its discretion, pay to him the total amount of the annual contributions made by him to the fund or such proportion of those contributions as is for the time being determined by the committee either generally or in relation to the particular person, either with or without simple interest at a rate not exceeding 3% per annum; and
- (c) on the death of any such person without any payment having been made to him under paragraph (b), the committee may, in its discretion, make such a payment either to his personal representative or to any person who was wholly or partly dependent on him at the time of his death.

(2) A determination of the committee under paragraph (1) (b) shall be in writing and may be in respect of any person or any class of persons.

(3) The stock exchange may, by notice in writing published in the *Gazette*—

- (a) suspend the operation of paragraph (1) (b) or (c); or
- (b) revoke any such suspension,

but, where the operation of one of those paragraphs is for the time being suspended, the stock exchange shall not suspend the operation of the other of those paragraphs.

(4) Where the amount in a fidelity fund is, by reason of payments made out of the fund, less than \$1,000,000 or such lesser amount as is prescribed, the stock exchange may determine that a person who by reason of sub-section (1) is not required to make annual contributions to the fund shall again be required, to such extent as it thinks fit, to make annual contributions under section 106.

(5) A person to whom a determination under sub-section (4) applies is liable to make contributions in accordance with the determination.

(6) Subject to sub-sections (1) and (4) the Governor—

- (a) may by Order in Council prescribe amounts for the purposes of those sub-sections; and
- (b) may, by like Order, vary or revoke any Order made under this sub-section.

(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 sub-section (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 thereof were contained in an Order in Council made under sub-section (6); and
- (b) shall continue to be given such effect until an Order in Council is made under that sub-section.

108. (1) If at any time the amount of a fidelity fund is insufficient to pay all amounts that, at that time, are required to be paid under section 103, the stock exchange may impose on each person who is liable to contribute to the fund a levy of such amount as it thinks fit for payment into the fund.

Levy in addition to annual contributions.

(2) The amount of such a levy shall be paid within the time and in the manner specified by the stock exchange either generally or in relation to a particular case.

(3) A person is not required to pay by way of levy under this section more than \$5,000 in the aggregate or more than \$1,000 in any period of 12 months.

109. (1) A stock exchange may, from its general funds, give or advance, on such terms as the committee thinks fit, any sums of money to its fidelity fund.

Power of stock exchange to make advances to fund.

(2) Moneys that are advanced under sub-section (1) may at any time be repaid from the fidelity fund to the general funds of the stock exchange.

110. Moneys in a fidelity fund that are not immediately required for its purposes may be invested by the stock exchange in any manner in which trustees are for the time being authorized by law to

Investment of fund.

invest trust funds or on deposit with a corporation that is declared, pursuant to paragraph 38 (7) (b) of the *Companies Act* 1961, to be an authorized dealer in the short term money market.

Application of
fund.

111. (1) Subject to this Part, a fidelity fund of a stock exchange shall be held and applied for the purpose of compensating persons who suffer pecuniary loss—

(a) by reason of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by a member of the stock exchange who, when the loss is suffered, is a sole trader, or by an employee or servant of such a member, in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with that member's business of dealing in securities, was or were entrusted to or received by the member or an employee or servant of the member (whether before or after the commencement of the *Securities Industry (Application of Laws) Act* 1981)—

(i) for or on behalf of another person; or

(ii) by reason that the member was a trustee of the money, securities, documents of title or other property; or

(b) by reason of a defalcation, or fraudulent misuse of securities or documents of title to securities or of other property, by a person who, when the loss is suffered, is a partner in a member firm, or by an employee or servant of such a firm, in respect of money, securities, documents of title to securities or other property that, in the course of or in connection with the firm's business of dealing in securities, was or were entrusted to or received by a partner in the firm or an employee or servant of the firm (whether before or after the commencement of the *Securities Industry (Application of Laws) Act* 1981)—

(i) for or on behalf of another person; or

(ii) by reason that the firm, or a partner in the firm, was a trustee of the money, securities, documents of title or other property.

(2) Where a right to compensation does not arise under sub-section (1), a fidelity fund may, subject to this Part, be applied for the purpose of paying to an official receiver or trustee within the meaning of the *Bankruptcy Act* 1966 an amount not greater than the amount that he certifies is required to make up or reduce the total deficiency arising by reason of the available assets of a bankrupt, being a member of a stock exchange who is a sole trader or being a partner in a member firm recognized by a stock exchange.

being insufficient to satisfy the debts arising from dealings in securities that have been proved in the bankruptcy by creditors of the bankrupt.

(3) Sub-section (2) applies in the case of a member of a stock exchange, or a partner in a member firm recognized by a stock exchange, who has made a composition with his creditors, or has executed a deed of assignment or a deed of arrangement, under Part X of the *Bankruptcy Act* 1966 in like manner as that sub-section applies in the case of such a member or partner who has become bankrupt and, for the purposes of that sub-section as so applying by virtue of this sub-section—

- (a) the reference in that sub-section to a trustee shall be construed as a reference to a controlling trustee within the meaning of Part X of the *Bankruptcy Act* 1966;
- (b) the reference to debts proved in the bankruptcy shall be construed as a reference to provable debts in relation to the composition or deed within the meaning of that Part; and
- (c) references to the bankrupt shall be construed as references to the person who made the composition or executed the deed.

(4) Except as otherwise provided in the following provisions of this section, the amount or the sum of the amounts that may be paid under this Part—

- (a) for the purpose of compensating pecuniary loss as referred to in sub-section (1); or
- (b) for the purpose of making payments under sub-section (2),

shall not exceed in respect of a member of a stock exchange who is a sole trader or in respect of a member firm recognized by a stock exchange the sum of \$500,000.

(5) For the purposes of calculating the sum referred to in sub-section (4), an amount that is paid from a fidelity fund shall, to the extent to which that amount is repaid to the fund, be disregarded.

(6) If a stock exchange considers, having regard to the ascertained or contingent liabilities of the fidelity fund, that the assets of the fund so permit, the stock exchange may, by notice published in the *Gazette*, increase the total amount that may be applied from the fund pursuant to sub-section (4), and from the date of the publication of the notice until the notice is revoked or varied the amount specified in the notice is the total amount that may be applied as provided by this section.

(7) A notice under sub-section (6) may be revoked or varied by the stock exchange by notice published in the *Gazette*, and a notice that is so varied has effect accordingly.

(8) If a stock exchange, having regard to the ascertained or contingent liabilities of the fidelity fund, considers that the assets of the fund so permit, the stock exchange may apply out of the fund such sums in excess of the amount limited by or under this section as the stock exchange, in its discretion, thinks fit in or towards the compensation of persons who have suffered pecuniary loss as referred to in sub-section (1) or making a payment under sub-section (2).

(9) Where—

- (a) any money, securities, documents of title to securities or other property has or have been entrusted to or received by, a person who has at any time been, but has ceased to be, a member of a stock exchange (in this sub-section referred to as a “former member”) or entrusted to, or received by, an employee or servant of such a person;
- (b) by reason of a defalcation, or the fraudulent misuse of the securities, documents of title or other property by the former member or by an employee or servant of the former member, the person by or from whom the securities, documents of title or other property was or were so entrusted or received suffered pecuniary loss; and
- (c) at the time the money, securities, documents of title or other property was or were so entrusted or received, the person suffering the pecuniary loss had reasonable grounds for believing and did believe that the former member was at that time a member of the stock exchange concerned,

a reference in this section to a member of a stock exchange shall be read as a reference to that former member.

Claims against
the fund.

112. (1) Subject to this Part, a person who suffers pecuniary loss as referred to in sub-section 111 (1) is entitled to claim compensation from the fidelity fund of the relevant stock exchange and to take proceedings in the Court as provided in this Part against the stock exchange to establish that claim.

(2) A person does not have a claim against a fidelity fund of a stock exchange in respect of—

- (a) pecuniary loss suffered before the commencement of Part VIII of the *Securities Industry Act 1970*; or
- (b) pecuniary loss in respect of money or other property suffered after the money or property had, in due course of the administration of a trust, ceased to be under the

sole control of a member of the stock exchange or of a partner or partners in a member firm recognized by the stock exchange.

(3) Subject to this Part, the amount that a claimant is entitled to claim as compensation from a fidelity fund of a stock exchange is the amount of the actual pecuniary loss suffered by him (including the reasonable costs of, and disbursements incidental to, the making and proof of his claim) less the amount or value of all moneys or other benefits received or receivable by him from a source other than the fund in reduction of the loss.

(4) In addition to any compensation that is payable under this Part, interest is payable out of the fidelity fund on the amount of the compensation, less any amount attributable to costs and disbursements, at the rate of 5% per annum (or, if another rate is prescribed, that other rate) calculated from and including the day on which the pecuniary loss was suffered until the day on which the claim is satisfied.

113. (1) Where all persons who have submitted claims pursuant to section 112 have been fully compensated in accordance with the provisions of this Part for pecuniary loss as referred to in sub-section 111 (1) suffered in relation to money or other property entrusted to or received by a partner in a member firm recognized by a stock exchange, any other partner in that firm who has made payment to a person in compensation for loss suffered by him in relation to that money or property shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of that person against the fidelity fund if the committee, having regard to all the circumstances, determines that the partner was in no way a party to the loss and acted honestly and reasonably in the matter.

Rights of
innocent
partner in
relation to
fund.

(2) If a partner in a member firm feels aggrieved by the determination of a committee under sub-section (1), he may, within 28 days after receipt of notice of the determination, appeal to the Court against the determination by lodging a notice of appeal in the prescribed form.

(3) The appellant shall, on the day on which he lodges notice of appeal with the Court, lodge a copy of the notice with the stock exchange.

(4) The Court shall inquire into and decide upon the appeal and, for that purpose, may do all such matters and things, and may do those matters and things in the same manner and to the same extent, as it is empowered to do in the exercise of its ordinary jurisdiction and if the Court is of opinion having regard to all the circumstances that the appellant was not a party to the defalcation or fraudulent misuse of securities or documents of title to the

securities or of other property from which the pecuniary loss arose and that he acted honestly and reasonably in the matter, it may order that the appellant shall, to the extent of any payment made by him, be subrogated to the rights and remedies, in relation to the fidelity fund of the relevant stock exchange, of the person to whom he made such a payment.

Notice calling
for claims
against fund.

114. (1) A stock exchange may cause to be published in a daily newspaper circulating generally in Western Australia (and if, in any State other than Western Australia or in any Territory, that newspaper does not circulate generally, in a newspaper that does so circulate in that other State or Territory), a notice in the prescribed form specifying a date, not being earlier than 3 months after the publication of the notice, on or before which claims for compensation from the fidelity fund, in relation to the person specified in the notice, may be made.

(2) A claim for compensation from a fidelity fund of a stock exchange in respect of a pecuniary loss shall be made in writing to the stock exchange—

- (a) where a notice under sub-section (1) has been published, on or before the date specified in the notice; or
- (b) where no such notice has been published, within 6 months after the claimant became aware of the pecuniary loss,

and a claim that is not so made is barred unless the stock exchange otherwise determines.

(3) It is defence to an action for damages against a stock exchange, a member of a committee of a stock exchange or a member or employee of a stock exchange in respect of the publication of a notice under sub-section (1) if the defendant establishes that the notice was published in good faith for the purposes of this section.

Power of
committee to
settle claims.

115. (1) Subject to this Part, a committee may allow and settle a proper claim for compensation from a fidelity fund of a stock exchange at any time after the occurrence of the pecuniary loss in respect of which the claim arose.

(2) Subject to sub-section (3), a person shall not commence proceedings under this Part against a stock exchange without leave of the committee unless—

- (a) the committee has disallowed his claim; and
- (b) the claimant has exhausted all relevant rights of action and other legal remedies for the recovery of the money, securities, documents of title to securities or other property in respect of which the pecuniary loss occurred, being rights and remedies that are available against the

member of the stock exchange in relation to whom the claim arose and all other persons who are liable in respect of the loss suffered by the claimant.

(3) A person who has been refused leave by the committee of a stock exchange under sub-section (2) may apply to the Court for leave to commence proceedings against the stock exchange and the Court may make such order in the matter as it thinks fit.

(4) A committee, after disallowing, whether wholly or partly, a claim for compensation from a fidelity fund of a stock exchange, shall serve notice of the disallowance in the prescribed form on the claimant or his solicitor.

(5) Proceedings against a stock exchange in respect of a claim that has been disallowed by a committee shall not be commenced after the expiration of 3 months after the service of the notice of disallowance referred to in sub-section (4).

(6) In proceedings brought to establish a claim, evidence of an admission or confession by, or other evidence that would be admissible against, the person against whom a defalcation or fraudulent misuse of property is alleged is admissible to prove the defalcation or fraudulent misuse notwithstanding that the person is not the defendant in or a party to those proceedings, and all defences that would have been available to that person are available to the stock exchange.

(7) The committee or, where proceedings are brought to establish a claim, the Court, if satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim, may allow the claim and act accordingly, notwithstanding that the person against whom the defalcation or fraudulent misuse of property is alleged has not been convicted or prosecuted or that the evidence on which the committee or Court, as the case may be, acts would not be sufficient to establish the guilt of that person on a criminal trial in respect of the defalcation or fraudulent misuse of property.

116. (1) Where in proceedings brought to establish a claim the Court is satisfied that there was a defalcation or fraudulent misuse of property on which to found the claim and that otherwise the claimant has a valid claim, the Court shall, by order—

Form of order
of Court
establishing
claim.

- (a) declare the fact and the date of the defalcation or fraudulent misuse of property and the amount of the claim; and
- (b) direct the committee to allow the claim as so declared and deal with it in accordance with the provisions of this Part.

(2) In any such proceedings all questions of costs are in the discretion of the Court.

Power of committee to require production of securities, &c.

117. The committee of a stock exchange may at any time require a person to produce and deliver any securities, documents or statements of evidence necessary to support a claim made or necessary for the purpose either of exercising its rights against a member of the stock exchange or a partner or the partners in a member firm recognized by the stock exchange or any other person or of enabling criminal proceedings to be taken against a person in respect of a defalcation or fraudulent misuse of property, and in default of delivery of any such securities, documents or statements of evidence by the first-mentioned person, the committee may disallow any claim by him under this Part.

Subrogation of stock exchange to rights, &c., of claimant on payment from fund.

118. On payment out of a fidelity fund of a stock exchange of any moneys in respect of a claim under this Part, the stock exchange shall be deemed to be subrogated to the extent of that payment to all the rights and remedies of the claimant in relation to the loss suffered by him from the defalcation or fraudulent misuse of property.

Payment of claims only from fund.

119. Money or other property belonging to a stock exchange, other than the fidelity fund, is not available for the payment of a claim under this Part, whether the claim is allowed by the committee or is made the subject of an order of the Court.

Provision where fund insufficient to meet claims or where claims exceed total amount payable.

120. (1) Where the amount in a fidelity fund of a stock exchange is insufficient to pay the whole of the amount of all claims against it that have been allowed or in respect of which orders of the Court have been made, the amount in the fund shall, subject to sub-section (2), be apportioned among the claimants in such manner as the committee thinks equitable, and such a claim so far as it then remains unpaid shall be deemed to be charged against future receipts of the fund and paid out of the fund when moneys are available in the fund.

(2) Where the aggregate of all claims that have been allowed or in respect of which orders of the Court have been made in relation to defalcations or fraudulent misuses of property by or in connection with a sole trader or partner in a member firm recognized by a stock exchange exceeds the total amount that may, pursuant to section 111, be paid under this Part in respect of that sole trader or member firm, the total amount shall be apportioned among the claimants in such manner as the committee thinks equitable, and on payment out of the fund of that total amount in accordance with that apportionment all such claims and any orders relating to those claims and all other claims against the fund that may thereafter

arise or be made in respect of defalcations or fraudulent misuses of property by or in connection with that sole trader or member firm are discharged.

121. (1) A stock exchange may, in its discretion, enter into a contract with a person carrying on fidelity insurance business whereby the stock exchange will be insured or indemnified to the extent and in the manner provided by the contract against liability in respect of claims under this Part.

Power of stock exchange to enter into contracts of insurance or indemnity.

(2) Such a contract may be entered into in relation to members of the stock exchange generally, or in relation to particular members named in the contract, or in relation to members generally with the exclusion of particular members named in the contract.

(3) An action does not lie against a stock exchange or against a member or servant of a stock exchange or committee or against a member of a management sub-committee for damage alleged to have been suffered by a member of the stock exchange by reason of the publication in good faith of a statement that a contract entered into under this section does or does not apply with respect to him.

122. A claimant against a fidelity fund of a stock exchange does not have a right of action against a person with whom a contract of insurance or indemnity is made under this Part in respect of such a contract or a right or claim with respect to any moneys paid by the insurer in accordance with such a contract.

Application of insurance moneys.

PART X—TRADING IN SECURITIES

123. (1) A person shall not, whether within or outside Western Australia, effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of raising the price of securities of the body corporate on a stock market in Western Australia, with intent to induce other persons to purchase or subscribe for securities of the body corporate or of a related body corporate.

Stock market manipulation.

(2) A person shall not, whether within or outside Western Australia, effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a body corporate, being transactions that have, or are likely to have, the effect of lowering the price of securities of the body corporate on a stock market in Western Australia, with intent to induce other persons to sell securities of the body corporate or of a related body corporate.

(3) A person shall not, whether within or outside Western Australia, effect, take part in, be concerned in or carry out, either directly or indirectly, 2 or more transactions in securities of a body

corporate, being transactions that have, or are likely to have, the effect of maintaining or stabilizing the price of securities of the body corporate on a stock market in Western Australia, with intent to induce other persons to sell, purchase or subscribe for securities of the body corporate or of a related body corporate.

(4) A reference in this section to a transaction, in relation to securities of a body corporate, includes—

- (a) a reference to the making of an offer to sell or purchase such securities of the body corporate; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase such securities of the body corporate.

False trading
and market
rigging
transactions.

124. (1) A person shall not, whether within or outside Western Australia, create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market in Western Australia or a false or misleading appearance with respect to the market for, or the price of, any such securities.

(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transactions or devices, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.

(3) Without affecting the generality of sub-section (1), a person who—

- (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities;
- (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or
- (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has

made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price,

shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.

(4) In a prosecution of a person for an act referred to in sub-section (3), it is a defence if the defendant establishes that the purpose or purposes for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance of active trading in securities on a stock market.

(5) A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the first-mentioned person in relation to those securities, has an interest in the securities after the purchase or sale.

(6) In a prosecution for an offence against sub-section (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.

(7) The reference in paragraph (3) (a) to a transaction of sale or purchase of securities includes—

- (a) a reference to the making of an offer to sell or purchase securities; and
- (b) a reference to the making of an invitation, however expressed, that expressly or impliedly invites a person to offer to sell or purchase securities.

125. A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilizing the market price of securities if, when he makes the statement or disseminates the information—

False or
misleading
statements, &c.

- (a) he does not care whether the statement or information is true or false; or
- (b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.

Fraudulently inducing persons to deal in securities.

126. A person shall not—

- (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive;
- (b) by any dishonest concealment of material facts; or
- (c) by the reckless making or publishing (dishonestly or otherwise) of any statement, promise or forecast that is misleading, false or deceptive,

induce or attempt to induce another person to deal in securities.

Dissemination of information about illegal transactions.

127. A person shall not circulate or disseminate, or authorize or be concerned in the circulation or dissemination of, any statement or information to the effect that the price of any securities of a body corporate will or is likely to rise or fall or be maintained by reason of any transaction entered into or other act or thing done in relation to securities of that body corporate, or of a body corporate that is related to that body corporate, in contravention of section 123, 124, 125 or 126 if—

- (a) the person, or a person associated with the person, has entered into any such transaction or done any such act or thing; or
- (b) the person has received, or expects to receive, directly or indirectly, any consideration or benefit for circulating or disseminating, or authorizing or being concerned in the circulation or dissemination of, the statement or information.

Prohibition of dealings in securities by insiders.

128. (1) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of that body corporate if by reason of his so being, or having been, connected with that body corporate he is in possession of information that is not generally available but, if it were, would be likely materially to affect the price of those securities.

(2) A person who is, or at any time in the preceding 6 months has been, connected with a body corporate shall not deal in any securities of any body corporate if by reason of his so being, or having been, connected with the first-mentioned body corporate he is in possession of information that—

- (a) is not generally available but, if it were, would be likely materially to affect the price of those securities; and
- (b) relates to any transaction (actual or expected) involving both those bodies corporate or involving one of them and securities of the other.

(3) Where a person is in possession of any such information as is mentioned in sub-section (1) or (2) that if generally available would be likely materially to affect the price of securities but is not

precluded by either of those sub-sections from dealing in those securities, he shall not deal in those securities if—

- (a) he has obtained the information, directly or indirectly, from another person and is aware, or ought reasonably to be aware, of facts or circumstances by virtue of which that other person is then himself precluded by sub-section (1) or (2) from dealing in those securities; and
- (b) when the information was so obtained, he was associated with that other person or had with him an arrangement for the communication of information of a kind to which those sub-sections apply with a view to dealing in securities by himself and that other person or either of them.

(4) A person shall not, at any time when he is precluded by sub-section (1), (2) or (3) from dealing in any securities, cause or procure any other person to deal in those securities.

(5) A person shall not, at any time when he is precluded by sub-section (1), (2) or (3) from dealing in any securities by reason of his being in possession of any information, communicate that information to any other person if—

- (a) trading in those securities is permitted on a stock market, whether within or outside Western Australia; and
- (b) he knows, or ought reasonably to know, that the other person will make use of the information for the purpose of dealing, or causing or procuring another person to deal, in those securities.

(6) Without prejudice to sub-section (3) but subject to sub-section (7), a body corporate shall not deal in any securities at a time when any officer of that body corporate is precluded by sub-section (1), (2) or (3) from dealing in those securities.

(7) A body corporate is not precluded by sub-section (6) from entering into a transaction at any time by reason only of information in the possession of an officer of that body corporate if—

- (a) the decision to enter into the transaction was taken on its behalf by a person other than the officer;
- (b) it had in operation at that time arrangements to ensure that the information was not communicated to that person and that no advice with respect to the transaction was given to him by a person in possession of the information; and

- (c) the information was not so communicated and such advice was not so given.

(8) For the purposes of this section, a person is connected with a body corporate if, being a natural person—

- (a) he is an officer of that body corporate or of a related body corporate;
- (b) he is a substantial shareholder within the meaning of Division 3A of Part IV of the *Companies Act* 1961 in that body corporate or in a related body corporate; or
- (c) he occupies a position that may reasonably be expected to give him access to information of a kind to which sub-sections (1) and (2) apply by virtue of—
 - (i) any professional or business relationship existing between himself (or his employer or a body corporate of which he is an officer) and that body corporate or a related body corporate; or
 - (ii) his being an officer of a substantial shareholder within the meaning of Division 3A of Part IV of the *Companies Act* 1961 in that body corporate or in a related body corporate.

(9) This section does not preclude the holder of a dealers licence from dealing in securities, or rights or interests in securities, of a body corporate, being securities or rights or interests that are permitted by a stock exchange to be traded on the stock market of that stock exchange, if—

- (a) the holder of the licence enters into the transaction concerned as agent for another person pursuant to a specific instruction by that other person to effect that transaction;
- (b) the holder of the licence has not given any advice to the other person in relation to dealing in securities, or rights or interests in securities, of that body corporate that are included in the same class as the first-mentioned securities; and
- (c) the other person is not associated with the holder of the licence.

(10) Where a prosecution is instituted against a person for an offence by reason that the person was in possession of certain information and entered into a transaction in contravention of this section, it is a defence if the person satisfies the court that the other party to the transaction knew, or ought reasonably to have known, of the information before entering into the transaction.

(11) For the purposes of sub-section (8), "officer", in relation to a body corporate, includes—

- (a) a director, secretary or employee of the body corporate;
- (b) a receiver, or a receiver or 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 of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and its creditors.

129. A person who contravenes section 123, 124, 125, 126, 127 or 128 is guilty of an offence. Penalties.

Penalty—

- (a) in the case of a person not being a body corporate—\$20,000 or imprisonment for 5 years, or both; or
- (b) in the case of a person being a body corporate—\$50,000.

130. (1) Where—

*Compensation
for loss, &c.*

- (a) a person who is in possession of any such information as is mentioned in sub-section 128 (1) or (2) in respect of any securities deals in those securities in contravention of sub-section 128 (1), (2) or (3) or causes or procures another person to deal in those securities in contravention of sub-section 128 (4); or
- (b) a person being a body corporate deals in securities in contravention of sub-section 128 (6) at a time when an officer of the body corporate was in possession of any such information as is mentioned in sub-section 128 (1) or (2),

that person is liable (whether he has been convicted of an offence in respect of the contravention or not)—

- (c) to compensate any other party to the transaction who was not in possession of that information for any loss sustained by that party by reason of any difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction at the time when the first-mentioned transaction took place if that information had been generally available; and
- (d) to account to the body corporate that issued or made available those securities for any profit accruing to the first-mentioned person from dealing in those securities.

(2) A person who contravenes section 123, 124, 125, 126 or 127 (whether he has been convicted of an offence in respect of the contravention or not) is liable to pay compensation to any other person who, in a transaction for the sale or purchase of securities entered into with the first-mentioned person or with a person acting for or on behalf of the first-mentioned person, suffers loss by reason of the difference between the price at which the securities were dealt in in that transaction and the price at which they would have been likely to have been dealt in in such a transaction at the time when the first-mentioned transaction took place if the contravention had not occurred.

(3) The amount of compensation for which a person is liable under sub-section (1) or (2) or the amount of the profit for which a person is liable to account under sub-section (1) is—

- (a) in a case to which paragraph (b) does not apply—the amount of the loss sustained by the person claiming the compensation or the amount of the profit referred to in paragraph (1) (d), as the case may be; or
- (b) if the first-mentioned person has been found by a court to be liable to pay an amount or amounts to any other person or persons under this Part or under paragraph 124 (3) (a) of the *Companies Act* 1961 by reason of the same act or transaction—the amount of that loss or profit less the amount or the sum of the amounts that the first-mentioned person has been so found to be liable to pay.

(4) For the purposes of sub-section (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.

(5) An action under this section for recovery of a loss or profit shall not be commenced after the expiration of 2 years after the date of completion of the transaction in which the loss or profit occurred.

(6) The Commission may, if the Commission considers it to be in the public interest to do so, bring an action in the name of and for the benefit of the body corporate or other person for recovery of a loss or profit referred to in sub-section (1) or (2).

(7) Nothing in sub-section (1) or (2) affects any liability that a person may incur under any other law.

(8) For the purposes of paragraph (1) (b), "officer", in relation to a body corporate, includes—

- (a) a director, secretary 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 of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and its creditors.

131. (1) A dealer shall not, except as permitted by sub-section (2), enter into, as principal or on behalf of a person associated with him, a transaction of purchase or sale of securities that are permitted to be traded on the stock market of a stock exchange if a client of the dealer who is not associated with the dealer has instructed the dealer to purchase or sell, respectively, securities of the same class and the dealer has not complied with the instruction.

Dealer to give priority to clients' orders.

Penalty: \$2,500 or imprisonment for 6 months, or both.

(2) Sub-section (1) does not apply in relation to the entering into of a transaction by a dealer as principal or on behalf of a person associated with him if—

- (a) the instructions from the client of the dealer required the purchase or sale of securities on behalf of the client to be effected only on specified conditions relating to the price at which the securities were to be purchased or sold and the dealer has been unable to purchase or sell the securities by reason of those conditions; or
- (b) the transaction is entered into in prescribed circumstances.

132. (1) A person who is a dealer or an investment adviser and an employee of that person shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

Dealings by employees of holders of licences.

(2) A person who is a partner in a partnership that carries on a business of dealing in securities or a business of advising other persons concerning securities and an employee of the partnership shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(3) A person who is a partner in a partnership that carries on a business in the course of which advice is given, or analyses or reports

are issued or published, concerning securities and an employee of the partnership shall not, as principals, jointly purchase or subscribe for, or agree to purchase or subscribe for, any securities.

(4) A person who is a dealer or an investment adviser shall not give credit to an employee of that person or to a person who, to the knowledge of the first-mentioned person, is associated with such employee if—

- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(5) A person who is a partner in a partnership that carries on a business of dealing in securities shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if—

- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(6) A person who is a partner in a partnership that carries on a business in the course of which advice is given, or analyses or reports are issued or published, concerning securities shall not give credit to an employee of the partnership or to a person who, to the knowledge of the first-mentioned person, is associated with such an employee if—

- (a) the credit is given for the purpose of enabling or assisting the person to whom the credit is given to purchase or subscribe for any securities; or
- (b) the person giving the credit knows or has reason to believe that the credit will be used for the purpose of purchasing or subscribing for securities.

(7) A person who is an employee of a sole trader or member firm in connection with a business of dealing in securities carried on by the sole trader or member firm shall not, as principal, purchase or agree to purchase any securities or rights or interests in securities unless the sole trader or member firm acts as the agent of the person in respect of the transaction.

Penalty: \$2,500 or imprisonment for 6 months, or both.

PART XI—MISCELLANEOUS

133. A person who is not—

- (a) a member of a stock exchange; or
- (b) a person who is a member of, or is a partner in a partnership that is recognized as a member firm by, a stock exchange within the meaning of the corresponding law of a participating State or of a participating Territory,

Restrictions
on use of titles
"stockbroker"
and
"sharebroker".

shall not take or use, or by inference adopt, the name or title of stockbroker or sharebroker or take or use or have attached to or exhibited at any place a name, title or description implying or tending to create the belief that he is a stockbroker or a sharebroker.

134. (1) A person aggrieved by the refusal of the Commission to grant a licence or by the revocation of a licence under section 60 or by any other act or decision of the Commission may appeal to the Court, which may confirm the refusal, revocation, act or decision or give such directions in the matter as seem proper or otherwise determine the matter.

Appeal.

(2) This section does not apply to an act or decision of the Commission—

- (a) in respect of which a provision in the nature of an appeal or review is expressly provided in this Code; or
- (b) which is declared by this Code to be conclusive or final or is embodied in a document declared by this Code to be conclusive evidence of an act, matter or thing.

135. (1) A person shall not, in, or in connection with, an application for a licence, make a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omit to state any matter or thing without which the application is misleading in a material respect.

False or
misleading
statements.

(2) A person shall not lodge with the Commission for the purposes of this Code a document that contains a statement that to his knowledge is false or misleading.

Penalty: \$2,500 or imprisonment for 6 months, or both.

136. (1) A person who is required by a provision of this Code to maintain, make or keep a register or any accounting or other record in relation to a business carried on by him shall preserve that register or record for the prescribed period, whether or not he ceases to carry on that business before the expiration of that period.

Preservation
and disposal
of records, &c.

(2) The prescribed period for the purposes of sub-section (1) is—

- (a) in relation to a register or a record other than an accounting record, the period of 5 years next after the day on which the last entry was made in the register or record; or
- (b) in relation to an accounting record, the period of 7 years next after the last day of the accounting period to which the record relates.

(3) Sub-sections (1) and (2) do not apply to or in relation to a contract note or copy of a contract note received or issued by a dealer who is a member of a stock exchange if the matters referred to in sub-section 64 (2) in relation to the contract note are recorded—

- (a) by the stock exchange; or
- (b) subject to such conditions (if any) as the Commission imposes, by the dealer,

in a manner approved by the Commission and the record of those matters is retained for not less than 5 years.

(4) The Commission may, if of the opinion that it is no longer necessary or desirable to retain it, destroy or otherwise dispose of any document that is given to or lodged with the Commission under or for the purposes of this Code and that has been in the possession of the Commission for such period as is prescribed for the purposes of this sub-section, either generally or in relation to a particular document or class of documents.

Concealing,
&c., of books
relating to
securities.

137. (1) A person who—

- (a) conceals, destroys, mutilates or alters a book relating to the business carried on by a dealer or required under this Code to be kept by the holder of a licence or by a financial journalist within the meaning of Part VII;
- (b) where such a book is in Western Australia—sends the book out of Western Australia; or
- (c) where such a book is outside Western Australia but is within Australia—sends the book out of Australia,

is guilty of an offence.

Penalty: \$5,000 or imprisonment for 1 year, or both.

(2) In a prosecution of a person for an offence under sub-section (1), it is a defence if the person proves that he did not act with intent to defraud, to defeat the purposes of this Code or to prevent, delay or obstruct the carrying out of an examination, investigation or audit, or the exercise of a power or authority, under this Code.

138. (1) Where matter that is used or intended to be used in connection with the keeping of a book required to be kept under this Code or a register or any accounting or other record referred to in section 136 is recorded or stored in an illegible form by means of a mechanical device, an electronic device or any other device, a person who wilfully—

Falsification of records.

- (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 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: \$5,000 or imprisonment for 1 year, or both.

(2) In a prosecution of a person for an offence under sub-section (1), it is a defence if the person proves that he acted honestly and that in all the circumstances the act or omission constituting the offence should be excused.

139. A person required by this Code to keep a book or record shall take reasonable precautions for guarding against falsification of the book or record and for facilitating discovery of any falsification.

Precautions against falsification of records.

140. A person shall not, without lawful excuse, obstruct or hinder the Commission or another person in the exercise or performance of any of its or his powers, authorities, duties or functions under this Code.

Obstructing or hindering Commission, &c.

141. (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,

General penalty provisions.

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 the 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;
- (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.

142. (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 have effect:

- (d) the obligation to do that act or thing continues, notwithstanding that that period has expired or that time has passed, until the 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 sub-section (1) or (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 by which he is convicted 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.

Offences by
bodies
corporate.

143. (1) Where a body corporate is guilty of an offence against this Code, any officer of the body corporate who was in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the commission of the offence is also guilty of that offence.

(2) 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 of the body corporate; and
- (e) a trustee or other person administering a compromise or arrangement made between the body corporate and its creditors.

Certain
persons to
assist in
prosecutions

144. (1) Where a prosecution in respect of an offence against this Code has been instituted, or the Commission is of the opinion that a prosecution in respect of an offence against this Code ought to be instituted, against a person (in this section referred to as the "defendant"), the Commission may—

- (a) if the defendant is a natural person—require any person who is or was a partner, servant or agent of the defendant; or
- (b) if the defendant is a body corporate—require any person who is or was an officer or a servant, or an agent, of the defendant,

to assist in the prosecution, and a person who is so required shall give all assistance in connection with the prosecution that that person is reasonably able to give.

(2) The Commission shall not make such a requirement as is mentioned in sub-section (1) of a person who, in the opinion of the Commission, is or is likely to be a defendant in the proceedings or is or has been a duly qualified legal practitioner acting for such a person.

(3) If a person to whom paragraph (1) (a) or (b) relates fails to give assistance as required by sub-section (1), he is guilty of an offence and, without affecting any penalty to which he may be liable for the offence, the Court may, on the application of the Commission, order that person to comply with the requirement within such time, and in such manner, as the Court orders.

(4) In this section, "agent", in relation to the defendant, includes a banker of the defendant and a person engaged as an auditor by the defendant, whether that person is a servant or an officer of the defendant or not.

145. If a person does or omits to do an act or thing in Western Australia and that person, if he had done or had omitted to do that act or thing in a State other than Western Australia or in a Territory, would have been guilty of an offence against the 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.

Reciprocity
in relation to
offences.

146. If a person does or omits to do an act or thing outside Western Australia and that person, if he had done or omitted to do that act or thing in Western Australia, would, by reason of his also having done or omitted to do an act or thing in Western Australia, have been guilty of an offence against this Code, that person is guilty of that offence.

Offences
committed
partly in and
partly out of
Western
Australia.

147. (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,

Power of Court
to prohibit
payment or
transfer of
moneys,
securities or
other property.

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, or 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 any 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 of 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 out of Western Australia, 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 of securities or other property of the relevant person or of any person who is associated with the relevant person from a place in Western Australia to a place outside Western Australia (including the transfer of securities from a register in Western Australia to a register outside Western Australia) 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 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 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.

(2) Where the Court has made an order under sub-section (1), 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 this section may be expressed to operate for a period specified in the order or until the order is rescinded by a further order under this section.

148. (1) The Commission may intervene in any 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 and, subject to this Code, has 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.

149. (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constitutes or would constitute an offence against this Code, the Court may, on the application of—

Injunctions.

- (a) the Commission; or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the person from engaging in the conduct.

(2) 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.

(3) The Court may rescind or vary an injunction granted under sub-section (1) or (2).

(4) 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 that 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.

(5) 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.

(6) References in this section to engaging in conduct include references to doing, or refusing or failing to do, any act or thing.

150.

Rules of Court.

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.

Dealers
trust
accounts.

151A. (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 sub-section (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 sub-section (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 sub-section (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 134 of the *Securities Industry Act* 1975, and in force immediately before the commencement of the *Securities Industry (Application of Laws) Act* 1981, shall be deemed to have been made under sub-section (1) and shall with all necessary adaptations apply accordingly.