

WESTERN AUSTRALIA

**COMPANIES AND SECURITIES
LEGISLATION (MISCELLANEOUS
AMENDMENTS) ACT 1988**

(No. 48 of 1988)

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WESTERN AUSTRALIA

COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS AMENDMENTS) ACT

No. 48 of 1988

AN ACT to amend the *National Companies and Securities Commission (State Provisions) Act 1980*, the *Companies (Administration) Act 1982*, the *Companies (Application of Laws) Act 1981*, the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, the *Securities Industry (Application of Laws) Act 1981*, the *Futures Industry (Application of Laws) Act 1986*, the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*, the *Legal Practitioners Act 1893* and *The Partnership Act 1895*.

[Assented to 1 December 1988]

The Parliament of Western Australia enacts as follows:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1988*.

Commencement

2. This Act shall come into operation on such day as is or days as are respectively fixed by proclamation.

PART 2—NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT 1980

Principal Act

3. In this Part, the *National Companies and Securities Commission (State Provisions) Act 1980** is referred to as the principal Act.

[*Act No. 60 of 1980 as amended by Act No. 10 of 1982.]

Amendment of principal Act

4. The principal Act is amended, in section 3 (1), by deleting the definitions of “investment contract”, “paragraph”, “Schedule”, “section”, “subparagraph” and “subsection” respectively.

Further amendment of principal Act, with reference to hearings, etc.

5. The principal Act is amended—

(a) in section 8 (3), by deleting “answers he will give to the questions asked him” and substituting the following—

“ evidence that the person will give ”;

(b) in section 9 (1)—

(i) by deleting “and” after paragraph (d); and

(ii) by deleting paragraph (e) and substituting the following—

“ (e) except in the case of a hearing before a Division of the Commission—the provisions of section 20 (other than subsections (3A) and (3B)) of the Commission Act apply, so far as they are capable of application, as if the hearing were a meeting of the Commission; and

(f) in the case of a hearing before a Division of the Commission—the provisions of section 20 (other than subsections (3A) and (3B)) of the Commission Act and of section 21 (other than subsections (4A) and (4B)) of that Act apply, so far as they are capable of application, as if the hearing were a meeting of that Division. ”;

(c) after section 12 (1), by inserting the subsection following—

“ (1A) Without limiting the generality of subsection (1), the Commission may, either generally or as otherwise provided by the instrument of delegation, by writing under its common seal, delegate to a member or acting member all or any powers of the Commission under section 7, 8, 9 or 10. ”;

(d) after section 12 (6), by inserting the subsection following—

“ (6A) Any act or thing done in the exercise of a power by a person to whom that power has been delegated by the Commission under subsection (1A) shall be deemed to have been done by the Commission. ”;

(e) in section 12 (7) and (8), and where first occurring in (13), by inserting after the subsection designation “(1)” the following—

“ or (1A) ”;

and

(f) in section 12 (13) (a), by deleting “paragraph (e)” and substituting the following—

“ paragraphs (e) and (f) ”.

**Further amendment of principal Act,
with reference to futures contracts**

6. The principal Act is amended—

- (a) in section 3 (1), by inserting after the definition of “functions” the definition following—

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

- (b) by deleting section 16 (1) and (2) and substituting the subsections following—

“ (1) A person who—

(a) is, or has at any time been—

(i) appointed for the purposes of this Act or any other prescribed Act or law;

(ii) engaged as a member of the staff of the Commission; or

(iii) authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission; and

(b) has, by reason that the person is, or has at any time been, so appointed, engaged or authorized, information that is not generally available but, if it were, would be likely materially to affect—

(i) the price of securities; or

(ii) the price for dealing in a futures contract,

shall not—

(c) in a case where paragraph (b) (i) applies—deal in, or cause or procure any other person to deal in, those securities;

or

- (d) in a case where paragraph (b) (ii) applies—deal in, or cause or procure any other person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

Penalty: \$20 000 or imprisonment for 5 years.

(2) Where a person to whom subsection (1) applies has information as mentioned in that subsection and, in contravention of that subsection—

- (a) deals in, or causes or procures another person to deal in, securities; or
- (b) deals in, or causes or procures another person to deal in, a futures contract,

the first-mentioned person is liable to compensate any other party to the transaction for any loss sustained by that party by reason of—

- (c) any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time when the first-mentioned transaction took place if the information had been generally available; or
- (d) any difference between the price at which that dealing in that futures contract took place and the price at which it would be likely to have taken place if the information had been generally available,

as the case may be. ”;

- (c) by deleting section 16 (5) and substituting the subsection following—

“ (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of—

- (a) the transaction in which securities were dealt in and in which the loss occurred; or
- (b) the dealing in a futures contract, being the dealing in which the loss occurred,

as the case requires. ”;

(d) after section 16 (7), by adding the subsection following—

“ (8) An expression (other than a reference to a futures contract) used—

(a) in subsection (1) (b) (ii), (1) (d), (2) (b) or (d) or (5) (b); and

(b) in the *Futures Industry (Western Australia) Code*,

has the same meaning in that subsection as in that Code. ”;

(e) after section 17 (1) (c), by inserting the paragraphs following—

“ (ca) a futures contract in which the person has a relevant interest;

(cb) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest; ”;

(f) in section 17 (2), by deleting “or particular securities” and substituting the following—

“ , particular securities, or a particular futures contract, ”;

and

(g) in section 17 (3), by deleting “securities” and substituting the following—

“ securities, or in a futures contract, whether a futures contract is of the same kind as another futures contract ”.

PART 3—COMPANIES (ADMINISTRATION) ACT 1982

Principal Act

7. In this Part, the *Companies (Administration) Act 1982** is referred to as the principal Act.

[*Act No. 9 of 1982 as amended by Act No. 98 of 1985.]

Amendment of principal Act

8. Section 3 of the principal Act is amended—

- (a) by deleting the definitions of “paragraph”, “section” and “subsection” respectively; and
- (b) by inserting after the definition of “functions” the definition following—

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

**Further amendment of principal Act,
with reference to secrecy, etc.**

9. The principal Act is amended by adding after section 16 the section following—

Secrecy

- “ 17. (1) Subject to this section, a person who is, or has at any time been—
- (a) the Commissioner;
 - (b) a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commissioner; or
 - (c) authorized to perform or exercise any function or power of the Commissioner under this or any other Act or any such function or power on behalf of the Commissioner,

shall not, except to the extent necessary to perform the official duties of that person, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by that person by reason of that person being or having been so appointed or authorized, or make use of any such information, for any purpose other than the performance of those official duties or the performance or exercise of that function or power.

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

(2) Nothing in subsection (1) precludes a person from—

- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any prescribed Act or prescribed enactment of a Territory;
- (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of that person in the performance of the official duties of that person or in the performance of a function or the exercise of a power referred to in that subsection;
- (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Commissioner, it is in the public interest that the document be produced or the information be divulged or communicated; or
- (d) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth or of another State or an enactment of a Territory, to be produced, divulged or communicated, as the case may be.

(3) This section does not apply in circumstances where section 15 of the *National Companies and Securities Commission (State Provisions) Act 1980* applies. ”.

**Further amendment of principal Act,
with reference to dealings in securities**

10. The principal Act is amended by adding after section 17 the section following—

Restriction on dealings in securities

“ 18. (1) A person who—

(a) is, or has at any time been—

(i) the Commissioner;

(ii) a person appointed for the purposes of this Act or any other Act that confers functions or powers on the Commissioner; or

- (iii) authorized to perform or exercise any function or power of the Commission or the Commissioner under this or any other Act or any such function or power on behalf of the Commission or the Commissioner;

and

- (b) has, by reason that the person is, or has at any time been, the Commissioner or so appointed or authorized, information that is not generally available but, if it were, would be likely materially to affect—
 - (i) the price of securities; or
 - (ii) the price for dealing in a futures contract,

shall not—

- (c) in a case where paragraph (b) (i) applies—deal in, or cause or procure any other person to deal in, those securities;

or

- (d) in a case where paragraph (b) (ii) applies—deal in, or cause or procure any other person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

Penalty: \$20 000 or imprisonment for 5 years.

(2) Where a person to whom subsection (1) applies has information as mentioned in that subsection and, in contravention of that subsection—

- (a) deals in, or causes or procures another person to deal in, securities; or
- (b) deals in, or causes or procures another person to deal in, a futures contract,

the first-mentioned person is liable to compensate any other party to the transaction for any loss sustained by that party by reason of—

- (c) any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a

transaction at the time when the first-mentioned transaction took place if the information had been generally available; or

- (d) any difference between the price at which that dealing in that futures contract took place and the price at which it would be likely to have taken place if the information had been generally available,

as the case may be.

(3) The amount of compensation for which a person is liable under subsection (2) 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
- (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 subsection (2) or under any other Act, or an Act of another State or a Commonwealth Act or enactment of a Territory, by reason of the same act or transaction—the amount of that loss 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 subsection (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 compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of—

- (a) the transaction in which securities were dealt in and in which the loss occurred; or
- (b) the dealing in a futures contract, being the dealing in which the loss occurred,

as the case requires.

(6) The Commissioner may, if the Commissioner considers it to be in the public interest to do so, bring an action in the name of and for the benefit of a person for recovery of compensation for a loss referred to in subsection (2).

(7) Nothing in subsection (2) affects any liability that a person may incur under any other law.

(8) An expression (other than a reference to a futures contract) used—

(a) in subsection (1) (b) (ii), (1) (d), (2) (b) or (d) or (5) (b);
and

(b) in the *Futures Industry (Western Australia) Code*,

has the same meaning in that subsection as in that Code.

(9) This section does not apply in circumstances where section 16 of the *National Companies and Securities Commission (State Provisions) Act 1980* applies. ”.

**Further amendment of principal Act,
with reference to notification of interests**

11. The principal Act is amended by adding after section 18 the section following—

Notification of interests

“ 19. (1) A person who is—

(a) the Commissioner;

(b) a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commissioner; or

(c) authorized to perform or exercise any function or power—

(i) of the Commissioner conferred on the Commissioner by an Act; or

(ii) on behalf of the Commission or the Commissioner,

and who, in the course of the official duties of that person or the performance or exercise of the function or power, is required to consider any matter relating to—

(d) a body corporate in securities of which the person has a relevant interest;

(e) securities in which the person has a relevant interest;

- (f) securities of the same class as securities in which the person has a relevant interest;
- (g) a futures contract in which the person has a relevant interest;
- (h) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest;
- (j) a person or body—
 - (i) by whom or by which that person is employed or has been employed at any time during the immediately preceding 3 years; or
 - (ii) with whom or with which that person is associated; or
- (k) a body corporate that is related to a body corporate by which that person is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith in writing so inform the Commissioner or, if that person is the Commissioner, the Minister.

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

(2) It is a defence to a prosecution for an offence against this section in respect of a failure by a person to inform the Commissioner or the Minister that the person is required to consider a matter relating to a particular body corporate, a particular person, particular securities or a particular futures contract, if the person establishes that, at the time when the person was required to consider the matter, the person was not aware of a fact or matter the existence of which obliged the person to inform the Commissioner or the Minister that the person was required to consider the first-mentioned matter.

(3) The questions whether a person has a relevant interest in securities or in a futures contract, whether a futures contract is of the same kind as another futures contract, whether a person is associated with a person or body or whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under and for the purposes of section 49 (4) of the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being. ”.

**Further amendment of principal Act,
with reference to regulations**

12. The principal Act is amended by adding after section 19 the section following—

Regulations

“ 20. The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act. ”.

PART 4—COMPANIES (APPLICATION OF LAWS) ACT 1981

Principal Act

13. In this Part, the *Companies (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 119 of 1981 as amended by Act No. 10 of 1982 and the following regulations—

Companies (Application of Laws—Regulations) Regulations 1982.
Published in the Government Gazette of 25 June 1982 at
pp. 2080-1.

Companies (Application of Laws) Regulations 1982. Published in
the Government Gazette of 25 June 1982 at p. 2082.

Companies (Application of Laws—Fees) Regulations 1982.
Published in the Government Gazette of 25 June 1982 at
p. 2083.

Companies (Application of Laws) (No. 2) Regulations 1982.
Published in the Government Gazette of 12 November 1982 at
p. 4452.

Companies (Application of Laws) Regulations 1983. Published in
the Government Gazette of 30 December 1983 at pp. 5024-6.

Companies (Application of Laws) Regulations 1984. Published in
the Government Gazette of 25 May 1984 at p. 1375.

Companies (Application of Laws) Regulations 1986. Published in
the Government Gazette of 27 March 1986 at pp. 1341-3.

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Companies (Application of Laws—Regulations) Regulations 1986. Published in the Government Gazette of 27 March 1986 at p. 1343.

Companies (Application of Laws) (No. 2) Regulations 1986. Published in the Government Gazette of 27 June 1986 at p. 2163.

Companies (Application of Laws) (No. 3) Regulations 1986. Published in the Government Gazette of 27 June 1986 at pp. 2163-4.

Companies (Application of Laws—Regulations) (No. 2) Regulations 1986. Published in the Government Gazette of 18 July 1986 at p. 2399.

Companies (Application of Laws) Regulations 1987. Published in the Government Gazette of 26 June 1987 at p. 2449. (Erratum published in Government Gazette of 3 July 1987 at p. 2559).

Companies (Application of Laws) (No. 2) Regulations 1987. Published in the Government Gazette of 24 December 1987 at pp. 4532-3.]

Amendment of principal Act

14. The principal Act is amended—

(a) in section 4 (1), by deleting the definitions of “paragraph”, “Schedule”, “section”, and “subsection” respectively;

(b) in section 18 (2), by deleting “section 17” and substituting the following—

“ subsection (1) ”; and

(c) in Schedule 1, in clause 31, by deleting “section 16 (2)” and substituting the following—

“ section 16 (5) ”.

**Further amendment of principal Act,
with reference to penalty notices**

15. (1) The principal Act is amended by inserting after section 16 the section following—

Regulations for penalty notices

“ 16A. (1) The Governor may make regulations that—

- (a) prescribe offences against the *Companies (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500), or offences against the *Companies (Western Australia) Regulations*, for the purposes of section 570A of the *Companies (Western Australia) Code*; and
- (b) in relation to each offence that is prescribed pursuant to this subsection—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 570A of the *Companies (Western Australia) Code* in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 570A of the *Companies (Western Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 570 of the *Companies (Western Australia) Code*.

(3) The particulars of an offence required to be prescribed by subsection (1) (b) (i) may be prescribed by being set out in the form prescribed by the *Companies (Western Australia) Regulations* for the purposes of section 570A of the *Companies (Western Australia) Code* in relation to the offence.

(4) A provision of the *Companies (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Companies (Western Australia) Regulations*. ”.

(2) The principal Act is amended in Schedule 1, in clause 73A—

(a) after paragraph (b), by deleting “and”;

(b) in paragraph (c), by deleting the full stop and substituting the following—

“ ; and ”; and

(c) by adding the paragraph following—

“ (d) for subsection (8) there were substituted the following subsection—

“ (8) In this section—

“authority” includes a person;

“prescribed” means prescribed by the *Companies (Application of Laws) Act 1981* or by the *Companies (Western Australia) Regulations*. ” ”.

PART 5—COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981

Principal Act

16. In this Part, the *Companies (Acquisition of Shares) (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 30 of 1981 as amended by Act No. 10 of 1982 and the following regulations—

Companies (Acquisition of Shares) (Application of Laws) Regulations 1981. Published in the Government Gazette of 25 September 1981 at p. 4080.

Companies (Acquisition of Shares) (Application of Laws—Regulations) Regulations 1982. Published in the Government Gazette of 25 June 1982 at p. 2085.

Companies (Acquisition of Shares) (Application of Laws) Regulations 1983. Published in the Government Gazette of 30 December 1983 at p. 5026.

Companies (Acquisition of Shares) (Application of Laws) Regulations 1986. Published in the Government Gazette of 27 March 1986 at p. 1344.

Companies (Acquisition of Shares) (Application of Laws) (No. 2) Regulations 1986. Published in the Government Gazette of 27 June 1986 at pp. 2162-3.

Companies (Acquisition of Shares) (Application of Laws) (No. 3) Regulations 1986. Published in the Government Gazette of 5 September 1986 at pp. 3269-70.]

Amendment of principal Act

17. Section 3 (1) of the principal Act is amended by deleting the definitions of “paragraph”, “Schedule”, “section”, and “subsection” respectively.

Further amendment of principal Act, with reference to penalty notices

18. (1) The principal Act is amended by inserting after section 16 the section following—

Regulations for penalty notices

“ **16A.** (1) The Governor may make regulations that—

- (a) prescribe offences against the *Companies (Acquisition of Shares) (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500) or offences against the *Companies (Acquisition of Shares) (Western Australia) Regulations*, for the purposes of section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code*; and
- (b) in relation to each offence that is prescribed pursuant to this subsection—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code* in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is

payable in respect of the offence pursuant to a notice served on the person under section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 49 or 53 of the *Companies (Acquisition of Shares) (Western Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i), are to be set out in the form prescribed by the *Companies (Western Australia) Regulations* for the purposes of section 570A of the *Companies (Western Australia) Code*.

(4) A provision of the *Companies (Acquisition of Shares) (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Companies (Acquisition of Shares) (Western Australia) Regulations*. ”.

(2) The principal Act is amended, in Schedule 1, by inserting after clause 5 the clause following—

“ 5A. After section 53 of the Commonwealth Act there were inserted the following section—

Penalty notices

“ 53A. (1) Where the Commission has reason to believe that a person has, whether before or after the commencement of section 18 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1988*, committed a prescribed offence, the Commission may, subject to sub-section (2), serve on the person a notice in the prescribed form—

- (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
- (b) setting out the prescribed penalty in respect of the prescribed offence;
and
- (c) stating—
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing—
 - (A) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the prescribed penalty;

- (B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and
- (C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or
- (ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
- (A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and
- (B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.
- (2) Sub-section (1) does not empower the Commission—
- (a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or
- (b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 34 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*.
- (3) A notice under sub-section (1) may be served on a natural person either personally or by post.
- (4) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing—
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence;
- (b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing—no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 571 of the *Companies (Western Australia) Code* applies (subject to section 53 (5) of the *Companies (Acquisition of Shares) (Western Australia) Code*) in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;

- (c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing—proceedings may be instituted against the person in respect of the prescribed offence; or
- (d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing—the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (5) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing—
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice—no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice—proceedings may be instituted against the person in respect of the prescribed offence.
- (6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (7) Except as provided by paragraphs (4) (a) and (b) and (5) (a), this section does not affect the operation of any provision of this Code, of the regulations, of the rules or of any other Code or any Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.
- (8) In this section—
- “authority” includes a person;
- “prescribed” means prescribed under the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* or by the *Companies (Acquisition of Shares) (Western Australia) Regulations*. ”.

PART 6—SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT 1981

Principal Act

19. In this Part, the *Securities Industry (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 31 of 1981 as amended by Act No. 10 of 1982 and the following regulations—

Securities Industry (Application of Laws) Regulations 1981.
Published in the Government Gazette on 25 September 1981
at p. 4080.

1988] *Companies and Securities Legislation (Miscellaneous [No. 48
Amendments) Act*

*Securities Industry (Application of Laws) Regulations 1982.
Published in the Government Gazette of 4 June 1982 at
p. 1767.*

*Securities Industry (Application of Laws—Regulations)
Regulations 1982. Published in the Government Gazette of
25 June 1982 at p. 2085.*

*Securities Industry (Application of Laws) Regulations 1983.
Published in the Government Gazette of 30 December 1983 at
p. 5027.*

*Securities Industry (Application of Laws) Regulations 1984.
Published in the Government Gazette of 25 May 1984 at
p. 1374.*

*Securities Industry (Application of Laws) Regulations 1986.
Published in the Government Gazette of 27 March 1986 at
pp. 1345-6.*

*Securities Industry (Application of Laws) (No. 2) Regulations
1986. Published in the Government Gazette of 5 September
1986 at p. 3270.*

*Securities Industry (Application of Laws) Regulations 1987.
Published in the Government Gazette of 27 March 1987 at
p.1028.*

*Securities Industry (Application of Laws) (No. 2) Regulations
1987. Published in the Government Gazette of 26 June 1987 at
pp. 2449-50.]*

Amendment of principal Act

20. Section 4 (1) of the principal Act is amended by deleting the definitions of “paragraph”, “Schedule”, “section”, and “subsection” respectively.

**Further amendment of principal Act,
with reference to prescribed interests**

21. Section 15A of the principal Act is amended—

- (a) by deleting “paragraph (g) of”; and
- (b) by deleting “that paragraph” and substituting the following—
“ that interpretation ”.

**Further amendment of principal Act,
with reference to penalty notices**

22. (1) The principal Act is amended by inserting after section 15A the section following—

Regulations for penalty notices

“ 15B. (1) The Governor may make regulations that—

- (a) prescribe offences against the *Securities Industry (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500), or offences against the *Securities Industry (Western Australia) Regulations*, for the purposes of section 141A of the *Securities Industry (Western Australia) Code*; and
- (b) in relation to each offence that is prescribed pursuant to this subsection—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 141 of the *Securities Industry (Western Australia) Code*.

(3) The particulars of an offence required to be prescribed by subsection (1) (b) (i) may be prescribed by being set out in the form prescribed by the *Securities Industry (Western Australia) Regulations* for the purposes of section 141A of the *Securities Industry (Western Australia) Code* in relation to the offence.

(4) A provision of the *Securities Industry (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Securities Industry (Western Australia) Regulations*. ”.

(2) The principal Act is amended in Schedule 1, in clause 20A—

(a) after paragraph (b), by deleting “and”;

(b) in paragraph (c), by deleting the full stop and substituting the following—

“ ; and ”;

and

(c) by adding the paragraph following—

“ (d) for subsection (8) there were substituted the following subsection—

“ (8) In this section—

“authority” includes a person;

“prescribed” means prescribed by the *Securities Industry (Application of Laws) Act 1981* or by the *Securities Industry (Western Australia) Regulations*. ”. ”.

PART 7—FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986

Principal Act

23. In this Part, the *Futures Industry (Application of Laws) Act 1986** is referred to as the principal Act.

[*Act No. 44 of 1986 as amended by the following regulations—

Futures Industry (Application of Laws) Regulations 1987.
Published in the Government Gazette of 15 January 1988 at
p. 70.]

**Amendment of principal Act,
with reference to penalty notices**

24. (1) The principal Act is amended by inserting after section 14 the section following—

Regulations for penalty notices

“ 15. (1) The Governor may make regulations that—

- (a) prescribe offences against the *Futures Industry (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500), or offences against the *Futures Industry (Western Australia) Regulations*, for the purposes of section 149 of the *Futures Industry (Western Australia) Code*; and
- (b) in relation to each offence that is prescribed pursuant to this subsection—
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 149 of the *Futures Industry (Western Australia) Code* in relation to the offence; and
 - (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 149 of the *Futures Industry (Western Australia) Code* in relation to the offence.

(2) In subsection (1), a reference to a penalty applicable to an offence is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 148 of the *Futures Industry (Western Australia) Code*.

(3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1) (b) (i) are to be set out in the form prescribed by the *Futures Industry (Western Australia) Regulations* for the purposes of section 149 of the *Futures Industry (Western Australia) Code* in relation to the offence.

(4) A provision of the *Futures Industry (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.

(5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Futures Industry (Western Australia) Regulations*. ”.

(2) The principal Act is amended in Schedule 1, in clause 22—

(a) after paragraph (b), by adding “and”; and

(b) by adding the paragraph following—

“ (c) for subsection (7) there were substituted the following subsection—

“ (7) In this section—

“authority” includes a person;

“prescribed” means prescribed by the *Futures Industry (Application of Laws) Act 1986* or by the *Futures Industry (Western Australia) Regulations*. ”; ”.

PART 8—COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) ACT 1981

Principal Act

25. In this Part, the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981** is referred to as the principal Act.

[*Act No. 32 of 1981 as amended by Act No. 10 of 1982 and the following regulations—

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Regulations 1986. Published in the Government Gazette of 27 March 1986 at p. 1346-7.

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Regulations 1987. Published in the Government Gazette of 27 March 1987 at p. 1028.]

Amendment of principal Act

26. Section 13 of the principal Act is amended by deleting “sections 41 and 42 of the *Interpretation Act 1918*, a relevant Code shall be deemed to be an Act” and substituting the following—

“ the *Interpretation Act 1984* a relevant Code shall be deemed to be a written law ”.

PART 9—*LEGAL PRACTITIONERS ACT 1893*

Principal Act

27. In this Part, the *Legal Practitioners Act 1893** is referred to as the principal Act.

[*57 *Vict., No. 12* reprinted as approved 12 January 1981 and amended by Acts Nos. 90 of 1981, 10 of 1982, 47 of 1984 and 65 and 77 of 1987.]

Amendment of principal Act

28. Section 40 (2) of the principal Act is amended by deleting “subsection (4) of section 27” and substituting the following—

“ subsection (1) of section 30D ”.

PART 10—*THE PARTNERSHIP ACT 1895*

Principal Act

29. In this Part, *The Partnership Act 1895** is referred to as the principal Act.

[*59 *Vict., No. 23* reprinted as at 26 July 1985.]

Amendment of principal Act

30. Section 11 of the principal Act is amended by inserting after “not” the following—

“ , except where section 33 (4) of the *Companies (Western Australia) Code* or a provision of a law of a State or Territory that corresponds with that subsection applies, ”.
