

Companies and Securities Legislation (Miscellaneous Amendments) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 18 March 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

to amend the *National Companies and Securities Commission (State Provisions) Act 1981*, the *Securities Industry (Application of Laws) Act 1981*, the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* and the *Futures Industry (Application of Laws) Act 1986* and for other purposes.

Companies and Securities Legislation (Miscellaneous Amendments) Act 1987

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

Purpose.

- 5 1. The purpose of this Act is to make amendments to the *National Companies and Securities Commission (State Provisions) Act 1981* and to other legislation giving effect to the co-operative companies and securities scheme consequential on certain amendments to the *National Companies and Securities Commission Act 1979* of the Commonwealth and other Commonwealth legislation under the scheme.

10 **Commencement.**

2. (1) Parts 1 and 5 and sections 3 and 7 come into operation on the day on which this Act receives the Royal Assent.

(2) Section 4 (1) shall be deemed to have come into operation on the day on which Part VI (other than section 162) of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* of the Commonwealth came into operation.

(3) Section 4 (2) comes into operation, or shall be deemed to have come into operation, as the case requires, on the day on which section 162 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* of the Commonwealth comes, or came, into operation.

(4) Section 5 shall be deemed to have come into operation on the day on which the *Futures Industry (Application of Laws) Act 1986* came into operation.

(5) Section 6 comes into operation, or shall be deemed to have come into operation, as the case requires, on the day on which section 165 (1) of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* of the Commonwealth comes into operation.

(6) Section 8 shall be deemed to have come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* came into operation.

PART 2—AMENDMENT OF NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT 1981

Principal Act.

3. In this Part, the *National Companies and Securities (State Provisions) Act 1981* is called the Principal Act.

No. 9572 as amended by No 9699

Amendment of Principal Act.

4. (1) The Principal Act is amended as follows:

(a) In section 3 (1), omit the definition of “investment contract”;

(b) In section 8 (3)—

(i) for “answers” substitute “evidence”; and

(ii) omit “to the questions asked him”;

(c) In section 9 (1) (d), omit “and”;

(d) For section 9 (1) (e) substitute—

“(e) except in the case of a hearing before a Division of the Commission—the provisions of section 20 (other than section 20 (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 section 20 (3A) and (3B)) of the Commission Act and of section 21 (other than section 21 (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.”.

(2) The Principal Act is amended as follows:

(a) After section 12 (1) insert—

5 “(1A) Without limiting the generality of sub-section (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
10 all or any powers of the Commission under section 7, 8, 9 or 10.”;

(b) After section 12 (6) insert—

15 “(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 sub-section (1A) shall be deemed to have been done by the Commission.”;

(c) In section 12 (7), (8) and (13), after “(1)” (wherever occurring) insert “or (1A)”;

(d) In section 12 (13) (a), for “section 9 (1) (e)” substitute “section 9 (1) (e) and (f)”.

20 Further amendment of Principal Act.

5. (1) In section 3 (1) of the Principal Act, after the definition of “functions” insert—

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

(2) In section 16 of the Principal Act, for sub-sections (1) and (2) substitute—

“(1) A person who—

30 (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

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

40 (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.

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

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

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- (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—

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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—

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as the case may be.”.

(3) In section 16 of the Principal Act—

(a) for sub-section (5) substitute—

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

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- (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—

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as the case requires.”; and

(b) after sub-section (7) insert—

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

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- (a) in a provision of sub-section (1) (b) (ii), (1) (d),(2) (b) or (5) (b); and

(b) in a provision of the *Futures Industry (Victoria) Code*—

has the same meaning in that provision as in that Code.”.

(4) In section 17 of the Principal Act—

(a) after sub-section (1) (c) insert—

“(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;”;

(b) in sub-section (2), for “or particular securities” substitute “, particular securities, or a particular futures contract;”;

(c) in sub-section (3), after “securities” insert “, or in a futures contract, whether a futures contract is of the same kind as another futures contract”.

PART 3—AMENDMENT OF *SECURITIES INDUSTRY (APPLICATION OF LAWS) ACT 1981*

Prescribed interests.

6. In section 15A (1) of the *Securities Industry (Application of Laws) Act 1981*—

(a) omit “paragraph (g) of”; and

(b) for “that paragraph” substitute “that interpretation”.

No. 9562 as amended by Nos. 9698, 9699, 9902 and 107/1986 and S.R. Nos. 416/1981 (as amended by S.R. No. 17/1982), 175/1982, 201/1983, 423/1983, 130/1984, 75/1986 and 160/1986.

PART 4—AMENDMENT OF *COMPANIES (ACQUISITION OF SHARES) (APPLICATION OF LAWS) ACT 1981*

Form for penalty notice.

7. In section 16A of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, for sub-section (3) substitute—

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

No. 9564 as amended by Nos. 9699 and 107/1986 and S.R. Nos. 417/1981, 203/1982, 421/1983, 74/1986, 155/1986 and 159/1986.

Correction of cross-reference.

8. In clause 5 of Schedule 1 to the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* for “section 5 of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*” substitute “section 7 of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*”.

PART 5—AMENDMENT OF FUTURES INDUSTRY (APPLICATION OF LAWS) ACT 1986

New section 14A inserted in Futures Industry (Application of Laws) Act.

No. 56/1986

9. After section 14 of the *Futures Industry (Application of Laws) Act 1986* insert—

Regulations for penalty notices.

“14A. (1) The Governor in Council may make regulations that—

- (a) prescribe offences against the *Futures Industry (Victoria) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds six months or a pecuniary penalty that exceeds \$2500), or offences against the *Futures Industry (Victoria) Regulations*, for the purposes of section 149 of the *Futures Industry (Victoria) Code*; and
- (b) in relation to each offence that is prescribed pursuant to this sub-section—
 - (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 (Victoria) 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 (Victoria) Code* in relation to the offence.

(2) In sub-section (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 (Victoria) Code*.

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

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

5 (5) Except as provided in sub-section (4), regulations under this section shall be read and construed as one with the Futures Industry (Victoria) Regulations.”.

Amendment of Schedule 1.

10 **10.** In clause 18 of Schedule 1 to the *Futures Industry (Application of Laws) Act* 1986, after paragraph (b) insert—

“(c) for sub-section (7) there were substituted the following sub-section:

‘(7) In this section—

“authority” includes a person;

15 “prescribed” means prescribed by the *Futures Industry (Application of Laws) Act* 1986 or by the Futures Industry (Victoria) Regulations.’ ”.

Amendment of Magistrates (Summary Proceedings) Act.

20 **11.** The *Magistrates (Summary Proceedings) Act* 1975 is amended as follows:

No. 8731.
Reprinted to
No. 37/1986 and
amended by
Nos. 102/1986,
107/1986 and
127/1986.

(a) In section 89s, after “ *Companies (Acquisition of Shares) (Victoria) Code*” (where twice occurring) insert “or section 149 of the *Futures Industry (Victoria) Code*”;

25 (b) In section 89t, after “ *Companies (Acquisition of Shares) (Victoria) Code*” insert “or the *Futures Industry (Victoria) Code*”;

(c) In section 89v, after “ *Companies (Acquisition of Shares) (Victoria) Code*” (where twice occurring) insert “or section 150 of the *Futures Industry (Victoria) Code*”;

30 (d) In Schedule Two, after paragraph (m) insert—

35 “(n) Offences against the *Futures Industry (Victoria) Code*, other than offences punishable by a fine exceeding \$2500 or by imprisonment for a term exceeding six months or both or offences against the Futures Industry (Victoria) Regulations.”.

