

CORPORATIONS AGREEMENT 2002

© Commonwealth of Australia 2002

ISBN 0 642 74171 9

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without prior written permission from the Commonwealth available from the Department of Communications, Information Technology and the Arts. Requests and inquiries concerning reproduction and rights should be addressed to:

The Commonwealth Copyright Administration
Intellectual Property Branch
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Or posted at:

<http://www.dcita.gov.au/cca>

The States and Territories have had input into this publication and therefore are not required to seek permission to reproduce any part of this document.

Printed by

CORPORATIONS AGREEMENT 2002

TABLE OF PROVISIONS

PREAMBLE

PART 1 — PRELIMINARY

- 101. Citation
- 102. Definitions

PART 2 — EFFECT AND OPERATION OF AGREEMENT

- 201. Commencement
- 202. Amendment of Agreement
- 203. Obligations

PART 3 — PRINCIPAL RESPONSIBILITIES

- 301. Principal responsibilities
- 302. The Commission
- 303. Commission's functions and powers

PART 4 — MINISTERIAL COUNCIL

- 401. Continuation of Ministerial Council
- 402. Membership
- 403. Acting members
- 404. Representation by officers
- 405. Observer status
- 406. Functions
- 407. Meetings
- 408. Quorum
- 409. Chairperson
- 410. Voting
- 411. Voting out of meetings
- 412. Reserving a vote before or at a meeting
- 413. Secretariat
- 414. Procedure generally

PART 5 — LEGISLATION

DIVISION 1 — THE NATIONAL LAW

- 501. Purpose of this Part
- 502. Basic nature of the legislative scheme
- 503. Extent of the legislative scheme
- 504. Alternative systems
- 505. Use of referred power

DIVISION 2 — ALTERATION OF THE NATIONAL LAW

- 506. Commonwealth legislation relating to the national law
- 507. Provisions relating to approval of Commonwealth legislation
- 508. Further consideration of Commonwealth legislation that does not require approval
- 509. Exposure of Commonwealth draft Bills
- 510. Introduction and passage of Commonwealth Bills
- 511. Exposure of Commonwealth draft regulations
- 512. Concurrent State and Territory legislation
- 513. Operation of existing inconsistent State and Territory legislation
- 514. Operation of future inconsistent State and Territory legislation
- 515. Additional mechanism
- 516. Commonwealth to notify Ministerial Council of other legislation
- 517. Alterations to legislation
- 518. Exceptions

DIVISION 3 — ALTERATION OF STATE REFERRAL LEGISLATION

- 519. Amendment of State referral legislation
- 520. Partial termination of referral

DIVISION 4 — MISCELLANEOUS

- 521. Concurrent jurisdiction
- 522. Extension of prohibition on introduction or making of legislation
- 523. Meaning of amendment

PART 6 — ADMINISTRATION

- 601. The Commission
- 602. Regional administration
- 603. Levels of service
- 604. Regional Liaison Committees
- 605. Corporations and Markets Advisory Committee
- 606. Takeovers Panel
- 607. Integrated offices
- 608. National database
- 609. Access by State and Territory Ministers to information
- 610. Access by Commission to information

PART 7 — FINANCE

- 701. Funding
- 702. Distribution
- 703. Grants Commission assessments
- 704. Nature of annual distributions

PART 8 — INVESTIGATIONS AND PROSECUTIONS

- 801. National law offences
- 802. National scheme rights and liabilities
- 803. Co-operative scheme rights and liabilities
- 804. Ancillary provision in relation to national scheme and co-operative scheme rights and liabilities

PART 9 — CEASING TO BE A PARTY

- 901. Withdrawal and cessation
- 902. Agreement continues with remaining parties

PART 10 — MISCELLANEOUS

- 1001. Business names
 - 1002. Ministerial power to direct conduct of investigations
 - 1003. Archives
 - 1004. Stamp duties
 - 1005. Reconsideration of the constitutional basis of the scheme
 - 1006. Former Agreement
-

CORPORATIONS AGREEMENT 2002

An agreement made on 6 December 2002 between the following parties:

THE COMMONWEALTH OF AUSTRALIA ('the Commonwealth')
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA
THE STATE OF SOUTH AUSTRALIA
THE STATE OF TASMANIA
THE NORTHERN TERRITORY OF AUSTRALIA ('the Northern Territory').

WHEREAS:

- (1) representatives of the Commonwealth, the States and the Northern Territory met at Alice Springs on 28–29 June 1990 to consider future corporate regulation in Australia; and
- (2) those representatives agreed that draft heads of agreement formulated at that meeting ('Heads of Agreement') should be submitted to their respective Governments; and
- (3) the Heads of Agreement, as subsequently amended, were endorsed by the Governments of the Commonwealth, the States and the Northern Territory; and
- (4) under the Heads of Agreement it was agreed (among other things) that:
 - (a) the Australian Securities Commission should be the sole administering authority for companies and securities regulation in Australia; and
 - (b) the provisions of the *Corporations Act 1989* of the Commonwealth, amended to give effect to the Heads of Agreement, should apply as law for the Capital Territory by law of the Commonwealth and as law for each State and the Northern Territory by law of the State or Territory; and
- (5) the Parliaments of the Commonwealth, the States and the Northern Territory subsequently enacted legislation pursuant to the Heads of Agreement; and
- (6) the Governments of the Commonwealth, the States and the Northern Territory entered into an agreement on 23 September 1997, entitled the Corporations Agreement, to supplement that legislation; and
- (7) in light of certain decisions of the High Court, the parties have entered into this Agreement to facilitate the establishment of a replacement legislative

foundation for Australia's national scheme of corporate regulation relying in part on State referrals in accordance with paragraph 51(xxxvii) of the Constitution; and

- (8) the parties consider that it is appropriate, in view of the fact that the Legislative Assembly of the Northern Territory has legislative power in relation to corporate regulation and the role of the Northern Territory under the original Corporations Agreement, to include the Northern Territory as a party to this agreement, although it will not make a referral in accordance with paragraph 51(xxxvii) of the Constitution.

IT IS HEREBY AGREED:

PART 1 — PRELIMINARY

CITATION

101. This Agreement may be referred to as the Corporations Agreement 2002.

DEFINITIONS

102. (1) In this Agreement, unless the contrary intention appears:

'CAC' means a Corporate Affairs Commission, Commissioner for Corporate Affairs or other authority having the responsibility of administering co-operative scheme laws;

'Commission' means the Australian Securities and Investments Commission;

'Commonwealth Minister' means the member of the Ministerial Council who represents the Commonwealth, and includes a Minister who is acting as a member of the Council in place of that member;

'Consumer Price Index' means the All Groups Consumer Price Index (being the weighted average of the eight capital cities) published by the Australian Statistician;

'co-operative scheme law' means:

- (a) an Act of the Commonwealth that is a Co-operative Scheme Act for the purposes of Part 12 of the *Corporations Act 1989* of the Commonwealth as in force on 31 December 2000; or

- (b) a law of a State or the Northern Territory that is a co-operative scheme law of that State or Territory for the purposes of a national scheme law of that State or Territory;

‘Corporations Agreement’ means the agreement of that title dated 23 September 1997 between the Governments of the Commonwealth, the States and the Northern Territory;

‘enact’ legislation includes make or approve subordinate legislation;

‘financial year’ means a year commencing on 1 July;

‘Heads of Agreement’ means the document referred to in the preamble to this Agreement, a copy of which was tabled in the Senate of the Parliament of the Commonwealth on 11 December 1990;

‘Minister’ means a Minister of State for the Commonwealth or a Minister of the Crown (including a Parliamentary Secretary) for a State or Territory;

‘Ministerial Council’ means the Ministerial Council for Corporations established by the Corporations Agreement and continued by this Agreement;

‘national law’ means:

- (a) the *Corporations Act 2001*;
- (b) the *Australian Securities and Investments Commission Act 2001*; and
- (c) the *Corporations (Futures Organisations Levies) Act 2001*, *Corporations (Securities Exchanges Levies) Act 2001*, *Corporations (National Guarantee Fund Levies) Act 2001*, *Corporations (Fees) Act 2001*;

as enacted by the Commonwealth Parliament and amended from time to time;

‘national scheme law’ means an Act or law of the Commonwealth or another jurisdiction that was a national scheme law for the purposes of the *Australian Securities and Investments Commission Act 1989* as in force on 1 July 2000;

‘Parliament’ includes the Legislative Assembly of the Northern Territory;

‘party’ means a party to this Agreement;

‘Regional Commissioner’ means a Regional Commissioner employed under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

‘referring State’ means a State which:

- (a) in accordance with paragraph 51(xxxvii) of the Constitution, has referred matters to the Commonwealth Parliament sufficient to enable the following legislation to extend to that State of its own force:
 - (i) the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* as first enacted by the Commonwealth Parliament; and
 - (ii) express amendments to those Acts, that are amendments with respect to the formation of corporations, corporate regulation or the regulation of financial products or services; and
- (b) has not withdrawn, in whole or in part, any of the matters so referred other than where all States have terminated the reference referred to in paragraph (a)(ii) on the same day after having given at least 6 months notice.

‘State’ means a State of the Commonwealth;

‘State Minister’ means a member of the Ministerial Council who represents a State, and includes a Minister who is acting as a member of the Council in place of that member;

‘Territory’ means the Northern Territory;

‘Territory Minister’ means the member of the Ministerial Council who represents the Northern Territory, and includes a Minister who is acting as a member of the Council in place of that member.

- (2) In this Agreement, unless the contrary intention appears, words and expressions have the same meanings as in the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) In this Agreement, a reference to an Act (whether of the Commonwealth or a State or Territory) includes a reference to:
 - (a) that Act as amended and in force for the time being; and
 - (b) an Act passed in substitution for that Act.

PART 2 — EFFECT AND OPERATION OF AGREEMENT

COMMENCEMENT

201. This Agreement comes into operation when it has been executed by or on behalf of all of the parties named above.

AMENDMENT OF AGREEMENT

202. This Agreement may be amended only by the unanimous decision of all the parties to it.

OBLIGATIONS

203. Where this Agreement is expressed to impose an obligation on an officer or authority of a party, or an employee of such an officer or authority, it is the responsibility of the party to take such steps as are appropriate to ensure that the officer or authority complies with the obligation.

PART 3 — PRINCIPAL RESPONSIBILITIES

PRINCIPAL RESPONSIBILITIES

301. (1) The Commission will have sole responsibility for the general administration of the national law.
- (2) This clause has effect subject to the national law and to this Agreement.

THE COMMISSION

302. (1) The Commission will be responsible and accountable to the relevant Commonwealth Minister and the Commonwealth Parliament, and not to State or Territory Ministers or State or Territory Parliaments.
- (2) The Ministerial Council has no power of control or direction over the Commission.

COMMISSION'S FUNCTIONS AND POWERS

303. (1) The Commission has national law functions and powers, being functions and powers mentioned in section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

- (2) The Commission has functions and powers not mentioned in subclause (1), being functions and powers mentioned in section 12A of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) This Agreement applies only in respect of the national law functions and powers of the Commission mentioned in subclause (1).

PART 4 — MINISTERIAL COUNCIL

CONTINUATION OF MINISTERIAL COUNCIL

401. The Council of Commonwealth, State and Territory Ministers established by the Corporations Agreement, and known as the Ministerial Council for Corporations, continues under this Agreement.

MEMBERSHIP

402. The Ministerial Council consists of one member, who is a Minister, representing each party to this Agreement.

ACTING MEMBERS

403. (1) A Minister who is acting for a Minister who is a member of the Ministerial Council may act as a member of the Council in place of the member.
- (2) A member of the Ministerial Council may appoint a Minister (being a Minister in the government in which the member is a Minister) to act as a member of the Ministerial Council in place of the member. Such an appointment may be limited to a particular meeting or particular meetings or to a particular period or particular periods, and may be revoked at any time.
 - (3) References in this Agreement (other than in this clause) to a member of the Ministerial Council extend to an acting member.
 - (4) Without limitation, an acting member may in that capacity:
 - (a) attend and participate in meetings of the Ministerial Council in place of the member concerned (including meetings referred to in clause 407(2)); and
 - (b) exercise the voting rights of the member concerned (including voting rights under clause 411 or 412).

REPRESENTATION BY OFFICERS

404. (1) A member of the Ministerial Council may appoint an officer to attend and participate in a meeting of the Council in the absence of the member or of a Minister who is acting in place of the member.
- (2) Such an appointment must be notified in writing to the Chairperson or Secretary at or before the meeting.
- (3) An officer is not to be counted in determining the quorum at the meeting and cannot cast a vote on any matter before the Ministerial Council.

OBSERVER STATUS

405. (1) The Ministerial Council may, by unanimous resolution, and on such terms as it thinks fit, confer non-voting observer status on a representative of a government that is not a party to this Agreement.
- (2) The representative's observer status ceases when a member of the Ministerial Council notifies the Chairperson or Secretary in writing that the member does not support continuation of that status.
- (3) The Secretary will notify the other members of the Ministerial Council in writing of the receipt and contents of a notification under subclause (2).

FUNCTIONS

406. The Ministerial Council has the functions conferred on it by this Agreement, in particular Part 5.

MEETINGS

407. (1) Meetings of the Ministerial Council are to be held at such times and at such places as are from time to time decided by the Council, but the Council is to meet at least 3 times each calendar year unless it decides to meet less frequently, either generally or in any particular year.
- (2) A meeting of the Ministerial Council may be held, if all members so agree, wholly or partly by means of telephone, television or some other mode of communication approved for the purposes of this subclause by the Council.
- (3) Clause 403 extends to meetings referred to in subclause (2) of this clause, and references in clause 403 to attending a meeting of the Ministerial Council extend to joining in the meeting in whatever way the meeting is held.

QUORUM

408. The quorum for a meeting of the Ministerial Council is a majority of the members for the time being, one of whom must be the Commonwealth Minister.

CHAIRPERSON

409. The Commonwealth Minister is the Chairperson of the Ministerial Council.

VOTING

410. Except as provided in subclauses 507(2), 508(2), 509(3) and 511(4):

- (a) a resolution will be carried by the Ministerial Council if a majority of the votes cast on the resolution are in favour of it; and
- (b) each member has one vote; and
- (c) the Chairperson does not have a casting vote.

VOTING OUT OF MEETINGS

411. (1) Except for matters under clause 508, all or any members of the Ministerial Council may vote on a matter referred to all members of the Council, even though the Council is not in session, and whether or not the matter has been considered at a meeting of the Council.
- (2) When a vote is cast by a member of the Ministerial Council outside a meeting of the Council:
- (a) the vote should be cast at the earliest opportunity; and
 - (b) the vote may be cast by communicating by facsimile transmission, or by any other mode of communication approved by the Council, to the Secretary of the Council or other recipient approved by the Council.
- (3) Nothing in this clause affects or is affected by clause 412.

RESERVING A VOTE BEFORE OR AT A MEETING

412. (1) A member of the Ministerial Council not attending a meeting of the Council may reserve a vote by informing the Secretary of the Council in writing, before the date of the meeting, that the member wishes to reserve a vote.

- (2) If a matter is considered at a meeting of the Ministerial Council and a vote is taken:
 - (a) a member may reserve a vote until the member has taken further advice in respect of the matter; or
 - (b) an officer attending the meeting in the absence of the member may, on behalf of the member, reserve a vote.
- (3) When a vote is reserved under this clause by or on behalf of a member:
 - (a) the member may cast a vote after the meeting; and
 - (b) the vote should be cast at the earliest opportunity, but in any event within 21 days after the meeting or such other period as the Council may from time to time determine either generally or in any particular case; and
 - (c) the vote may be cast by communicating by facsimile transmission, or by any other mode of communication approved by the Council, to the Secretary of the Council or other recipient approved by the Council.
- (4) This clause does not apply to a Council meeting convened in accordance with clause 508.

SECRETARIAT

413. (1) The secretariat functions for the Ministerial Council will be carried out by the Commonwealth Treasury.
- (2) The Secretary of the Ministerial Council will be the person for the time being designated as such by the Commonwealth Minister.
- (3) Any such designation of a person as Secretary will be communicated by the Commonwealth Minister to the other members of the Ministerial Council as soon as possible.

PROCEDURE GENERALLY

414. Subject to this Agreement, the Ministerial Council may determine its own procedure.

PART 5 — LEGISLATION**DIVISION 1 — THE NATIONAL LAW****PURPOSE OF THIS PART**

501. The purpose of this Part is to preserve and promote the legislative scheme that the parties have enacted for the formation of corporations, corporate regulation and the regulation of financial products and services and other matters. This Part establishes procedures involving both consultation between the parties on legislation covering a wide range of matters and a commitment not to promote certain kinds of legislation without the approval of the Ministerial Council.

BASIC NATURE OF THE LEGISLATIVE SCHEME

502. The legislative scheme agreed to by the parties involves:

- (a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Constitution; and
- (b) the enactment by the Commonwealth Parliament of laws of national application, partly in reliance on State referrals mentioned in paragraph (a), for the formation of corporations, corporate regulation and the regulation of financial products and services; and
- (c) the amendment from time to time of the laws mentioned in paragraph (b) in accordance with this Agreement.

EXTENT OF THE LEGISLATIVE SCHEME

503. (1) Except as provided in subclause (2) or agreed unanimously by resolution of the Ministerial Council, the national law (including regulations under the national law) will not provide for the regulation of State or Territory statutory authorities, corporations established by specific State or Territory enactments, or corporations established under State or Territory statutes (other than State or Territory companies legislation) that authorise the incorporation of particular classes of corporations, including co-operative societies and incorporated associations, but not including building societies, credit unions and friendly societies.
- (2) Except as agreed unanimously by resolution of the Ministerial Council, the national law will apply to authorities and corporations to which subclause (1) applies, both within and outside their respective jurisdictions of establishment or incorporation, only to the same extent (if any) and in

the same way as the provisions of the co-operative scheme laws applied to those authorities and corporations immediately before the Corporations Law came into operation in 1991.

ALTERNATIVE SYSTEMS

504. The parties acknowledge that, while nothing in this Agreement prevents a State or Territory from legislating in relation to the formation and regulation of business entities other than companies, this Agreement is entered into on the basis that the company is, and is expected to continue to be, the primary vehicle for corporate business enterprises.

USE OF REFERRED POWER

505. (1) The Commonwealth will not introduce a Bill that depends, in whole or in part, on a State referral mentioned in paragraph 502(a) for a purpose other than that specified in paragraph 502(b). In particular, the Commonwealth will not introduce a Bill that depends, in whole or in part, on a State referral mentioned in paragraph 502(a) for the purpose of regulating:

- (a) industrial relations; or
- (b) the environment; or
- (c) any other matter declared unanimously by the members of the Ministerial Council representing referring States to be a matter to which this clause applies.

A declaration of a matter for the purposes of paragraph (c) may be revoked by unanimous agreement of the referring States.

- (2) Subject to subclause (3), the Commonwealth will not introduce a Bill that depends in whole or in part on a State referral mentioned in paragraph 502(a) for the purpose of requiring the adoption of a corporate structure by natural persons or unincorporated bodies, or requiring any activities of natural persons or unincorporated bodies to be conducted by employees of a corporation.
- (3) The Commonwealth may introduce a Bill that depends in whole or in part on a State referral mentioned in paragraph 502(a) prohibiting the formation of partnerships or associations that consist of more than 20 members. The Commonwealth may also introduce a Bill if it is for the purpose of the regulation of financial products, financial services, or markets regulated by the national law, or a purpose unanimously agreed by the Council.

DIVISION 2 – ALTERATION OF THE NATIONAL LAW**COMMONWEALTH LEGISLATION RELATING TO THE NATIONAL LAW**

506. (1) The Commonwealth will not introduce a Bill that would repeal or amend the national law, or make a regulation under the national law unless, before its introduction or making, the Ministerial Council has been consulted about it and, except as provided by this Part, has approved it.
- (2) The Commonwealth is not obliged to introduce, make or support any legislation, or proceed with any legislative proposal, with which it does not concur.

PROVISIONS RELATING TO APPROVAL OF COMMONWEALTH LEGISLATION

507. (1) The approval of the Ministerial Council is not required for a Commonwealth Bill or regulation, so far as it relates to:
- (a) subject matters for which Chapters 2L, 5C, 6, 6A, 6B, 6C, 6D, 7 and 8 of the Corporations Law as in force on 1 July 2000 made provision, in particular:
- debentures;
 - managed investment schemes;
 - takeovers, compulsory acquisitions and buy-outs, and rights and liabilities in relation to these matters;
 - information about ownership of listed companies and managed investment schemes;
 - fundraising;
 - the securities industry; and
 - the futures industry; and
- (b) subject-matters for which Chapter 9.10 of the Corporations Law as so in force made provision; and
- (c) subject-matters for which the other provisions of Chapter 9 of the Corporations Law as so in force made provision, to the extent that those other provisions apply to the chapters referred to in paragraph (a) or the subject-matters referred to in paragraph (f); and

- (d) subject-matters for which Chapter 1 of the Corporations Law as so in force made provision, to the extent that Chapter 1 applies to the provisions referred to in paragraphs (a), (b), (c) and (f); and
 - (e) subject-matters for which the provisions (limited to those specified in subclause (3)) of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth as so in force made provision; and
 - (f) to the extent not otherwise covered by this subclause, financial products and services, including general insurance and life insurance (but not State insurance within the meaning of paragraph 51(xiv) of the Constitution), superannuation, derivatives, retirement savings accounts, foreign exchange, means of payment and banking (but not State banking within the meaning of paragraph 51(xiii) of the Constitution); and
 - (g) other subject-matters agreed on unanimously by resolution of the Ministerial Council; and
 - (h) a tax imposed under the *Corporations (Futures Organisations Levies) Act 2001*, *Corporations (Securities Exchanges Levies) Act 2001*, *Corporations (National Guarantee Fund Levies) Act 2001*, *Corporations (Fees) Act 2001*; and
 - (i) the preservation of the operation of a State or Territory law in accordance with subclause 515(1).
- (2) The approval of at least 3 State or Territory Ministers is required for a Commonwealth Bill to amend the national law, or for a Commonwealth regulation under the national law, to the extent that the Bill or regulation deals with any other subject-matter.
- (3) If approval is sought for amendments to a Bill which is currently before the Parliament, then State and Territory Ministers will use their best endeavours to vote within a time frame nominated by the Commonwealth.
- (4) For the purposes of subclause (1)(e), the following provisions of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth are specified:
- (a) The following provisions of Part 1 (Preliminary):
 - Section 4 (Extension to external Territories)
 - Section 6C (Presentation of papers to the Parliament)
 - Section 6D (Periodic reports).

- (b) Part 5 (The Commission's Members).
- (c) Part 6 (The Commission's Staff).
- (d) The following provisions of Part 7 (Preventing Conflicts of Interest and Misuse of Information):
 - Division 1 (Disclosure of interests).
- (e) Part 8 (Finance).
- (f) The following provisions of Part 9 (The Advisory Committee):
 - Sections 149–155 in Division 1 (General)
 - Division 2 (Staff and finance).
- (g) The following provisions of Part 10 (The Corporations and Securities Panel):
 - Sections 175–183 in Division 1 (General).
- (h) The following provisions of Part 11 (Companies Auditors and Liquidators Disciplinary Board):
 - Sections 205–214 in Division 1 (Constitution of Disciplinary Board).
- (i) The following provisions in Part 12 (Australian Accounting Standards Board):
 - Sections 227–234.
- (j) Part 14 (The Parliamentary Committee).
- (k) The following provision in Part 15 (Miscellaneous):
 - Section 243D (Financial Transaction Reports).

FURTHER CONSIDERATION OF COMMONWEALTH LEGISLATION THAT DOES NOT REQUIRE APPROVAL

508. (1) Where:

- (a) under clause 506, the Commonwealth consults the Council in relation to an express amendment of the national law that does not require the approval of the Council under clause 507; and
- (b) within 21 days of the Commonwealth consulting the Council, the Chairperson is advised by 4 or more State Ministers that they consider the amendment is for a purpose other than the formation of

corporations, corporate regulation or the regulation of financial products or services;

the Chairperson must convene a meeting to consider the amendment.

- (2) The Commonwealth must not pursue an amendment in relation to which a meeting under subclause (1) is convened if, at the meeting, 4 or more State Ministers vote against the amendment.

EXPOSURE OF COMMONWEALTH DRAFT BILLS

509. (1) All Commonwealth Bills referred to in clause 506(1) will be exposed for public comment for at least 3 months before introduction.
- (2) If the Bill is one referred to in clause 507(1), the Commonwealth may shorten or dispense with the period of exposure without the agreement of the Ministerial Council. In that event, the Commonwealth Minister will advise each other member of the Ministerial Council of the reasons for this action.
- (3) If the Bill is one referred to in clause 507(2), the Commonwealth may shorten or dispense with the period of exposure, but only with the approval of at least 3 State or Territory Ministers.

INTRODUCTION AND PASSAGE OF COMMONWEALTH BILLS

510. (1) When introducing into a House of the Commonwealth Parliament a Bill referred to in clause 506(1), a Minister of State for the Commonwealth will inform the House of the outcome of any consultation with the Ministerial Council and, in the case of matters requiring the approval of the Ministerial Council, the outcome of voting.
- (2) If amendments to such a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government), the Commonwealth will use its best endeavours to ensure adequate consultation with and, if the subject matter would ordinarily be required to be considered under subclause 507(2), a vote by, the Ministerial Council on those amendments.
- (3) In addition to the obligations undertaken in subclause 510(2), the Commonwealth will not move amendments to such a Bill and will oppose amendments to such a Bill which are moved by other parties if the amendments:
- (a) rely to any extent on the reference by the States referred to in paragraph 502(a); and

- (b) are other than for the purpose of the formation of corporations, corporate regulation and the regulation of financial products and services.

EXPOSURE OF COMMONWEALTH DRAFT REGULATIONS

511. (1) Except as provided by this clause, a Commonwealth regulation referred to in clause 506(1) is not required to be exposed for public comment before being made.
- (2) If the regulation is one referred to in clause 507(1), or is one referred to in clause 507(2) and relates exclusively to the imposition or alteration of fees or taxes, the Commonwealth may expose the regulation for public comment for any period it considers appropriate or may decide not to expose it for public comment at all. The Commonwealth Minister will advise each other member of the Ministerial Council whether or not it is to be exposed. The advice will include either the reasons for deciding not to expose it, or a statement of the period of exposure and the reasons for choosing the period of exposure.
 - (3) The Commonwealth Minister will consult the Ministerial Council as to whether a regulation referred to in clause 507 (2) should be exposed for public comment. This subclause does not apply to a regulation that relates exclusively to the imposition or alteration of fees or taxes.
 - (4) If the regulation is one to which subclause (3) applies and the Ministerial Council resolves that the regulation should be exposed for public comment, the regulations will be exposed for public comment for at least one month or a shorter or longer period not exceeding 3 months approved by the Commonwealth Minister and at least 3 State or Territory Ministers.

CONCURRENT STATE AND TERRITORY LEGISLATION

512. (1) The national law will provide that it does not exclude the operation of State and Territory legislation (whether enacted before or after the commencement of the national law) that is capable of operating concurrently with it.
- (2) Nothing in this Part is intended to impose obligations in relation to such State or Territory legislation.

OPERATION OF EXISTING INCONSISTENT STATE AND TERRITORY LEGISLATION

513. (1) Subject to this clause, the national law will provide for the continued operation of State and Territory legislation that is in force immediately before the commencement of the national law that:
- (a) would otherwise be inconsistent with the national law; and
 - (b) has an operation that is not preserved by the provision referred to in clause 512; and
 - (c) prevailed over the Corporations Law immediately before the commencement of the national law.
- (2) The national law will provide that the State and Territory laws whose operation is continued under the provisions referred to in subclause (1) do not operate to the extent:
- (a) prescribed by regulations under the national law; and
 - (b) provided by the relevant legislation of the State or Territory concerned including a regulation made under such a law.
- (3) The Commonwealth must not make a regulation of the kind referred to in subclause (2) without the agreement of the State or Territory Minister concerned.

OPERATION OF FUTURE INCONSISTENT STATE AND TERRITORY LEGISLATION

514. (1) The national law will provide for the operation of State and Territory legislation that commences after the commencement of the national law that:
- (a) is inconsistent with the national law;
 - (b) has an operation that is not enabled by the provision referred to in clause 512; and
 - (c) the State or Territory legislation expressly indicates that it is inconsistent legislation in accordance with the provisions of the national law.
- (2) Subclause (3) applies to:
- (a) proposals for State and Territory legislation which is of a kind referred to in subclause (1); and

- (b) State or Territory legislative proposals which rely on a State or Territory legislative declaration that the matter is an excluded matter in relation to the whole or specified provisions of the national law;

and which would significantly alter the effect or operation of the national law having regard to the operation of provisions to preserve the operation of State and Territory laws unless:

- (c) the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity); or
 - (d) without limiting paragraph (2)(c), the provisions are provisions of State or Territory legislation for the temporary administration of a corporation authorised by the State or Territory to provide electricity, gas, water, drainage, sewerage, railways, pipeline or other essential services.
- (3) A State or Territory must not introduce a Bill or make a regulation which subclause (2) provides is subject to this subclause unless:
 - (a) the relevant State or Territory gives the Council reasonable notice of the inconsistent provisions; and
 - (b) the Council has approved the enactment or making of the inconsistent provisions in accordance with clause 410.
 - (4) A State or Territory must not introduce a Bill or make a regulation which is of the kind referred to in subclause (1) or paragraph (2)(b) but which is not subject to subclause (3) unless it has notified the Ministerial Council of the legislative proposal.
 - (5) The notification required by subclause (4) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor in Council (or other appropriate body), to maximise the opportunity for members of the Ministerial Council to comment on the proposed legislation.
 - (6) It is sufficient compliance with the notification provisions of subclause (4) if the State or Territory sends to the members of the Ministerial Council a document describing fully:
 - (a) the relevant provisions of the proposed Bill or subordinate legislation; and
 - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The State or Territory will, at the earliest practicable time, provide a draft of any such provision to each member of the Council.

- (7) If, because of exceptional and unavoidable considerations of government, the requirements of subclauses (3) or (4) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the State or Territory will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to members of the Ministerial Council and indicate the extent to which comments made by them may be able to be taken into account.
- (8) If amendments to a Bill are or are to be moved in the State or Territory Parliament (whether or not on behalf of the Government) and those amendments would require approval under subclause (3) or notification under subclause (4), the State or Territory will use its best endeavours to notify the Ministerial Council of those amendments at the earliest practicable time.
- (9) Where State or Territory legislation which is preserved under the mechanism referred to in clause 513 is amended after the commencement of the national law in such a manner that the inconsistency is dealt with in substantially the same terms, then the requirements of subclauses (3) and (4) do not apply but the relevant State or Territory must notify other members of the Council about the amendments, preferably before their introduction or making.

ADDITIONAL MECHANISM

515. (1) In addition to the mechanisms referred to in subclauses 513(1) and 514(1), the national law will provide for the making of regulations to allow the effective operation of specified State or Territory laws that may otherwise be incompatible with the national law or regulations under the national law.
- (2) If a State or Territory requests a regulation of the kind referred to in subclause (1), the Commonwealth must determine that request within 6 weeks of receipt unless a longer period is approved by the Ministerial Council. The Commonwealth must not refuse the request without reasonable cause.
 - (3) The Commonwealth must expose for public comment any draft regulation made in accordance with this clause for a period of 4 weeks unless a different period is approved by the Ministerial Council.

-
- (4) The Commonwealth must use its best endeavours to ensure that a regulation to be made under this clause is made at the earliest reasonable opportunity.

COMMONWEALTH TO NOTIFY MINISTERIAL COUNCIL OF OTHER LEGISLATION

516. (1) Subject to this clause, the Commonwealth will notify the Ministerial Council of all other legislative proposals for Commonwealth legislation (including Commonwealth legislation for the Capital Territory) that would alter the effect, scope or operation of the national law.
- (2) The notification required by subclause (1) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor-General in Council, to maximise the opportunity for members of the Ministerial Council to comment on the proposed legislation.
- (3) It is sufficient compliance with the notification provisions of subclause (1) if the Commonwealth sends to the members of the Ministerial Council a document describing fully:
- (a) the relevant provisions of the proposed Bill or subordinate legislation; and
 - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The Commonwealth will, at the earliest practicable time, provide a draft of any such provision to each member of the Council.

- (4) If, because of exceptional and unavoidable considerations of government, the notification required by subclause (1) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the Commonwealth will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to the members of the Ministerial Council and indicate the extent to which comments made by them may be able to be taken into account.
- (5) If amendments to a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government) and those amendments would require to be notified under subclause (1) because they would alter the effect, scope or operation of the national law, the Commonwealth will use its best endeavours to notify the Ministerial Council of those amendments at the earliest practicable time.

- (6) The approval of the Ministerial Council is not required for any such legislative proposals or amendments.

ALTERATIONS TO LEGISLATION

517. (1) The purpose of this clause is to make provision in regard to alterations made to a Commonwealth Bill or regulation referred to in clause 506 (1) before it is introduced or made.
- (2) A Commonwealth Bill or regulation requiring the approval of the Ministerial Council has to be approved in the form in which it is to be introduced or made.
- (3) However, the approval of the Ministerial Council to such a Bill or regulation may be given so as to permit the making of alterations of a drafting nature, or alterations of other kinds or for other purposes, as specified in the approval, without the need for further approval.
- (4) The exposure provisions of this Division do not apply again to a Commonwealth Bill or regulation merely because it has been altered. However, those provisions do apply again if the alteration amounts to the inclusion in the Bill or regulation of a substantially new subject-matter.
- (5) The Commonwealth will provide to the members of the Ministerial Council a statement of and commentary on alterations made to a Commonwealth Bill or regulation after the Council was consulted about the Bill or regulation.
- (6) The statement and commentary referred to in subclause (5) will be provided as follows:
- (a) If the Bill or regulation is one to which clause 507(1) applies, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.
- (b) If the Bill or regulation is one to which clause 507(2) applies and the alterations all fall within subclause (3) of this clause, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.
- (c) If the Bill or regulation is one to which clause 507(2) applies and the alterations do not all fall within subclause (3) of this clause, the statement and commentary will be provided when the Bill or regulation is submitted or re-submitted for the approval of the Ministerial Council.

EXCEPTIONS

518. (1) This Part does not apply to the re-enactment of Commonwealth legislation, so long as the matters are dealt with in substantially the same terms.
- (2) This Part does not apply to Commonwealth legislation that is, or is of a class, approved by a resolution of the Ministerial Council supported by the Commonwealth Minister.

DIVISION 3 – ALTERATION OF STATE REFERRAL LEGISLATION**AMENDMENT OF STATE REFERRAL LEGISLATION**

519. (1) A State shall not introduce a Bill that would amend the referral legislation referred to in the definition of 'referring State' in clause 102 of this Agreement unless the Council has been consulted about the proposed amendments.
- (2) If amendments to such a Bill are or are to be moved in a State Parliament (whether or not on behalf of the Government), the State will use its best endeavours to ensure adequate consultation with the Ministerial Council on those amendments.

PARTIAL TERMINATION OF REFERRAL

520. (1) The State legislation will include provisions by the use of which a State could terminate the amendment reference.
- (2) The Commonwealth legislation will provide that if 6 States terminate the amendment reference on the same day then the Corporations Act, as in force at the time the termination becomes effective, will continue to apply in those States.
- (3) However, the Commonwealth legislation will treat any State which terminates its amendment reference in circumstances where the condition referred to in subclause (2) is not satisfied as a non-referring State.
- (4) A State will withdraw its amendment reference where and only where:
- (a) each of 4 or more State Ministers has advised the Chairperson that legislation specified in the advice is considered by that Minister to have been introduced, made or enacted by the Commonwealth in breach of a prohibition imposed by this Part;

-
- (b) after the expiry of the period of 6 months beginning on the day on which the advice was given under paragraph (a) of this subclause, 4 or more State Ministers agree:
 - (i) that the breach mentioned in paragraph (a) of this subclause has not been remedied; and
 - (ii) that the amendment references of all the States should be withdrawn;

and
 - (c) each State withdraws its amendment reference in such a manner that the withdrawals have effect on the same day in each of the States.
- (5) If the advice under subclause (4)(a) is given on different days the period of 6 months mentioned in subclause (4)(b) begins on the later or latest of those days.
 - (6) In this clause, ‘amendment reference’ means the reference by a State to the Commonwealth Parliament of the matters of the formation of corporations, corporate regulation and the regulation of financial products and services to the extent of express amendments of the national law.

DIVISION 4 — MISCELLANEOUS

CONCURRENT JURISDICTION

521. Jurisdiction under and in relation to the national law is to be conferred on State and Territory Superior Courts of Record and other appropriate State and Territory courts to the extent conferred under the national scheme laws.

EXTENSION OF PROHIBITION ON INTRODUCTION OR MAKING OF LEGISLATION

522. A prohibition imposed by this Part on the introduction or making of any kind of legislation imports a requirement to oppose and take all practicable steps to prevent the introduction, making or enactment of any such legislation.

MEANING OF AMENDMENT

523. Except as provided in clause 508, in this Part, “amend” the national law means:

- (a) directly amend the text of the national law by the insertion, omission or substitution of matter; or

- (b) indirectly amend the national law by making provisions that would significantly alter its effect, scope or operation, unless the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity).

PART 6 — ADMINISTRATION

THE COMMISSION

601. (1) The Commonwealth will consult the Ministerial Council on the making of appointments to the Commission.
- (2) The Commonwealth will consider the desirability of appointing part-time members of the Commission in the light of experience with the operation of the Commission and having regard to the views of the Commission and the State and Territory Ministers.

REGIONAL ADMINISTRATION

602. (1) The Regional Offices of the Commission established in the referring States and the Northern Territory will be located in the capitals of the respective States and the Northern Territory.
- (2) The Commission will maintain Business Centres in those capitals and also in the major provincial cities that warrant such a presence.
- (3) The Commission will consult the relevant State or Territory Minister in relation to the appointment of the Regional Commissioner who will have responsibilities in relation to that Minister's jurisdiction.
- (4) Regional Commissioners are to be employed on contract outside the framework of the Australian Public Service.
- (5) The Commission will, to the fullest extent practicable, and having regard to issues of efficiency, delegate its functions and powers to the Regional Commissioners.
- (6) Subject to the ultimate authority of the Commission, the Regional Commissioners will be fully consulted on the allocation of the Commission's resources and the setting of the Commission's priorities.

LEVELS OF SERVICE

603. (1) The Commission will, through the Regional Office and Business Centres established in each referring State and the Northern Territory, maintain

levels of service not lower than the levels of service formerly provided in that State or Territory in the course of the local administration of co-operative scheme laws.

- (2) The Commission will maintain a system of performance indicators in relation to the levels of service in each referring State and the Northern Territory, and will monitor and report to each relevant State or Territory Minister on the performance of the Commission against the indicators in the Minister's State or Territory. The frequency of reporting to each such Minister will be as agreed between the Commission and the Minister concerned, but will not be more than twice each calendar year.
- (3) The Commission will include, in its annual report, a statement on the performance of the Commission against those performance indicators during the relevant period.
- (4) Each Minister mentioned in subclause (2) will be entitled to make a complaint at a meeting of the Ministerial Council about the levels of service provided by the Commission in the Minister's State or Territory.
- (5) The Commonwealth Minister will provide a written response to such a complaint within one month to all members of the Ministerial Council, if the Ministerial Council so resolves in relation to the complaint or to the class of complaints to which the complaint belongs.
- (6) The Commonwealth acknowledges that a State or Territory Minister may, subject to and in accordance with any relevant law, make a complaint to the Parliamentary Joint Committee on Corporations and Financial Services (established under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth) about the levels of service provided by the Commission in the Minister's State or Territory.
- (7) The provisions of this clause are subject to clause 302.

REGIONAL LIAISON COMMITTEES

604. (1) The Regional Commissioner for each State and the Northern Territory will maintain a Regional Liaison Committee to meet regularly for the purpose of:
- (a) briefing representatives of the local business community on the work of the Commission; and
 - (b) receiving views on the levels of service provided by the Commission in the State or Territory.
- (2) Each Committee will meet quarterly, or otherwise as agreed by the Committee.

- (3) The Commission will use its best endeavours to have a member of the Commission present at each meeting of each Committee.
- (4) The annual report of the Commission will include a report on the activities of the Committees.

CORPORATIONS AND MARKETS ADVISORY COMMITTEE

605. (1) The Commonwealth will consult the Ministerial Council on the making of appointments to the Corporations and Markets Advisory Committee.
- (2) Each State and Territory Minister will be entitled to nominate a panel of persons for potential appointment to the Advisory Committee and the Legal Sub-Committee of the Advisory Committee.
 - (3) The Commonwealth will ensure so far as practicable that at any time there is at least one member of the Advisory Committee from the Northern Territory and each referring State.
 - (4) The Commonwealth will ensure so far as practicable that at any time there is at least one member of the Legal Sub-Committee from the Northern Territory and each referring State.
 - (5) For the purposes of subclauses (3) and (4), a member is from a particular State or Territory if he or she is a resident of that jurisdiction.
 - (6) The Commonwealth Minister will confer with the relevant State or Northern Territory Minister if it is proposed that no person be appointed from the panel of persons nominated by that Minister.

TAKEOVERS PANEL

606. (1) The Commonwealth will consult the Ministerial Council on the making of appointments to the Takeovers Panel.
- (2) The selection of persons for appointment to the Panel will be made from persons with knowledge of, or experience in, relevant fields, with the objective that members of the Panel should, subject to the national law, be equipped to make a peer group assessment of the acceptability or unacceptability of relevant practices.
 - (3) As far as practicable, at least one member of the Panel must, at any time, be a qualified person nominated by one or more of the State or Territory Ministers.

INTEGRATED OFFICES

607. (1) The Commission will, at the request of any referring State or the Territory, enter into negotiations with that State or Territory for the purpose of entering into arrangements for the integration, within the Business Centre in the capital of the jurisdiction, of registration functions under laws of the State or Territory relating to business names and corporations, where those functions remain or become the responsibility of the State or Territory.
- (2) Any such arrangements will be on the following basis:
- (a) the functions that may be performed by the Commission on behalf of the State or Territory will be limited to counter, registry and the like services;
 - (b) the services will be provided by the Commission on a full cost recovery basis;
 - (c) the presence of State or Territory officers and employees will be confined to the minimum decision-making presence necessary for the efficient discharge of the service;
 - (d) the State or Territory officers and employees will be administratively responsible to the Commission for office functions, but responsible to the State or Territory for policy and legislative matters;
 - (e) enforcement of relevant State or Territory laws will remain exclusively a matter for the State or Territory.
- (3) The Commission will, at the request of any State or the Northern Territory, enter into negotiations with that State or Territory for the co-location, with the Business Centre in the capital of the State or Territory, of the State or Territory office at which continuing State or Territory business regulation functions are performed.

NATIONAL DATABASE

608. (1) The Commission will maintain its national companies database and a document imaging system.
- (2) The Commission will provide to each referring State and the Northern Territory free on-line access to its public national companies database and free access to the documents stored on its document imaging system, in the manner and subject to the terms agreed to by Commonwealth, State and Territory Ministers at Cairns on 12 July 1991.

- (3) The Commission will, through the national companies database, maintain and progressively enhance existing levels of data related service in each referring State and the Northern Territory.
- (4) The Commission will provide to each referring State and the Northern Territory free certification of documents produced by its public national companies database, in the manner and subject to the terms agreed to by Commonwealth, State and Northern Territory Ministers at Perth on 2 July 1992.
- (5) If a State or the Northern Territory has transferred microfiche companies records to the Commission, that State or Territory will be entitled to free access to those microfiche records, in the manner and subject to the terms agreed to by Commonwealth, State and Territory Ministers at Cairns on 12 July 1991.

ACCESS BY STATE AND TERRITORY MINISTERS TO INFORMATION

609. (1) Each State and Territory Minister will be entitled to request the Regional Commissioner responsible for that jurisdiction for information not available on the Commission's public national database.
- (2) To facilitate consideration of such requests, the Chairperson of the Commission will, to the fullest extent practicable, and having regard to issues of efficiency, delegate his or her functions and powers to the Regional Commissioners under paragraph 127(4)(b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) The response to a request by a State or Territory Minister will be at the discretion of the Chairperson of the Commission or the Chairperson's delegate.

ACCESS BY COMMISSION TO INFORMATION

610. (1) The Commission will be entitled to free on-line access to any State or Territory electronic business names register.
- (2) The cost of terminals, lines and other equipment is to be borne by the Commission or as otherwise agreed between the State or Territory concerned and the Commission.
- (3) If a State or Territory does not have an electronic business names register, the Commission will be entitled to free access to the business names register of the State or Territory in whatever form it is kept.

PART 7 — FINANCE**FUNDING**

701. (1) The Commonwealth will distribute among the referring States and the Northern Territory in respect of the year commencing on 1 July 1991, and each succeeding year commencing 1 July, an amount determined in accordance with this clause.
- (2) The amount for any such year ('the current year') is the amount ascertained by adjusting the base amount of \$102,000,000 upwards in line with movements in the Consumer Price Index for the financial year 1989-1990 and each succeeding financial year to and including the financial year immediately preceding the current year.

DISTRIBUTION

702. (1) The amount to be distributed under clause 701 is to be distributed among the referring States and the Northern Territory on the basis of the following percentages:

New South Wales	33.23 per cent
Victoria	29.05 per cent
Queensland	16.36 per cent
Western Australia	10.07 per cent
South Australia	7.49 per cent
Tasmania	2.32 per cent
Northern Territory	1.48 per cent

(2) The amount to be distributed to each referring State and the Northern Territory is to be paid by way of monthly instalments during the period to which it relates, with any necessary adjustments being made during the period or as soon as possible after the end of the period.

GRANTS COMMISSION ASSESSMENTS

703. The distribution resulting from the agreed formula will be quarantined from Grants Commission assessments, and the Grants Commission will be asked to exclude the companies and securities regulation functions being transferred to the Commonwealth from its future assessments and relativities updates.

NATURE OF ANNUAL DISTRIBUTIONS

704. The distribution of amounts under clause 701 will be made by way of separate specific purpose payments designated as compensation for permanent loss of revenue.

Part 8 — Investigations and Prosecutions**NATIONAL LAW OFFENCES**

801. (1) The Commission and the Commonwealth Director of Public Prosecutions will have responsibility for the prosecution of offences under the national law and regulations under the national law.

- (2) Notwithstanding subclause (1), arrangements may be entered into under which:
 - (a) State or Territory prosecuting authorities may prosecute offences under the national law, where the relevant conduct is associated with the prosecution of offences under State or Territory criminal law; and
 - (b) the Commonwealth Director of Public Prosecutions may prosecute offences under State or Territory criminal law, where the relevant conduct is associated with the prosecution by the Commonwealth Director of Public Prosecutions of offences under the national law or arises out of an investigation by the Commission.
- (3) The national law and State and Territory law will enable such arrangements to be entered into.

NATIONAL SCHEME RIGHTS AND LIABILITIES

802. (1) The national law will, to the greatest extent possible:
- (a) confer rights and liabilities (whether criminal or civil) on persons under that law, equivalent to the rights and liabilities they had under national scheme law; and
 - (b) enable court proceedings under the national scheme laws in progress at the time of commencement to continue as if they were proceedings under the national law.
- (2) To the extent that rights and liabilities are so conferred and court proceedings are so continued:
- (a) the Commission and the Commonwealth Director of Public Prosecutions are to be responsible for any enforcement action in the same way as they are responsible for prosecution of other national law offences under clause 801; and
 - (b) the States and Northern Territory will ensure that the relevant rights and liabilities under the national scheme laws are extinguished.
- (3) The States and Northern Territory will enact legislation to preserve rights and liabilities in relation to which equivalent rights and liabilities are not created under the national law ('national scheme rights and liabilities').
- (4) In respect of national scheme rights and liabilities, State and Northern Territory legislation will:
- (a) confer on the Commonwealth Director of Public Prosecutions and the Commission the function of continuing to carry out any

enforcement action, including the continuation of any prosecutorial or appeal action, or civil litigation, in relation to national scheme rights and liabilities; and

- (b) enable the relevant State or Northern Territory Minister to appoint any other person to perform such functions where it appears to the Minister on reasonable grounds that such an appointment is appropriate or necessary in all the circumstances.

CO-OPERATIVE SCHEME RIGHTS AND LIABILITIES

803. (1) The States and Northern Territory will enact legislation to preserve rights and liabilities under the co-operative scheme legislation ('co-operative scheme rights and liabilities').

(2) In relation to co-operative scheme rights and liabilities, state law will:

- (a) confer on the Commonwealth Director of Public Prosecutions and the Commission the function of continuing to carry out any enforcement action, including the continuation of any prosecutorial or appeal action, or civil litigation, in relation to co-operative scheme rights and liabilities; and
- (b) enable the relevant State or Northern Territory Minister to appoint any other person to carry out such functions where it appears to the Minister on reasonable grounds that such an appointment is appropriate or necessary in all the circumstances.

ANCILLARY PROVISION IN RELATION TO NATIONAL SCHEME AND CO-OPERATIVE SCHEME RIGHTS AND LIABILITIES

804. (1) The national law will:

- (a) enable the Commonwealth Director of Public Prosecution, or his or her delegate, or the Commission to perform the functions referred to in clauses 802 and 803; and
- (b) enable the Commonwealth Director of Public Prosecutions or the Commission to make available any information or evidence and to provide any other assistance to persons appointed under clauses 802(4)(b) and 803(2)(b) necessary for the purposes of carrying out the functions for which they are appointed.

(2) State and Northern Territory law will make provision for any information/evidence or other assistance so provided to only be used for the purpose of carrying out those functions.

PART 9 — CEASING TO BE A PARTY

WITHDRAWAL AND CESSATION

901. (1) A party may withdraw from this Agreement on giving at least 6 months' notice to the other parties.
- (2) A State ceases to be a party if it ceases to be a referring State.

AGREEMENT CONTINUES WITH REMAINING PARTIES

902. (1) The failure of a State or Territory to remain a party does not terminate this agreement. In the event that a State or Territory ceases to be a party, the Agreement will remain in force in relation to the remaining parties.
- (2) If a State or Territory ceases to be a party, the Commonwealth will, within 3 months, convene a meeting of the remaining parties for the purpose of negotiating such amendments to this Agreement as are necessary to take account of that fact (including amendments relating to the voting arrangements for the Ministerial Council).

PART 10 — MISCELLANEOUS

BUSINESS NAMES

1001. (1) The national law will contain provisions prohibiting the incorporation of a company whose name is identical with a business name recorded on an electronic national business names register (being a register to which the Commission has on-line access) as a currently registered business name.
- (2) The register is to be provided by and at the expense of the States and Territories.

MINISTERIAL POWER TO DIRECT CONDUCT OF INVESTIGATIONS

1002. The power of the Minister under section 14 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth to direct the Commission to investigate a matter will be retained in the national law.

ARCHIVES

1003. (1) The Commission has responsibility on and from 1 January 1991 for:
- (a) all CAC public registers of company documents; and

- (b) all files relevant to then current CAC operations relating to companies and the regulation of the securities and futures industries; and
 - (c) other classes of CAC files identified by the Commission as necessary for the ongoing activities of the Commission.
- (2) Where CAC public registers are in the form of microfiche (including microjacket) records:
- (a) the CAC reading and printing equipment will be made available without charge to the Commission; and
 - (b) the Commission will take those records in their current state and without obligation to enhance or add to them.
- (3) The Director-General of the Australian Archives will confer with relevant State and Northern Territory authorities regarding storage of and access to other State and Northern Territory company archives.

STAMP DUTIES

1004. (1) The Commonwealth will not stand in the way of the continued collection of State and Territory stamp duty and will, if necessary, facilitate as far as practicable the removal of any perceived impediment to the continued levying of State and Territory stamp duty on relevant transactions as a result of the passage of the national law.
- (2) For the period during which State or Territory stamp duty laws continue to operate, the national law will contain provisions requiring the Commission to satisfy itself, when registering a charge, that the instrument is accompanied by a certificate to the effect that all documents accompanying the instrument have been duly stamped in accordance with any applicable State or Territory law in respect of the charge.

RECONSIDERATION OF THE CONSTITUTIONAL BASIS OF THE SCHEME

1005. As soon as possible after the third anniversary of the commencement of the national law, responsible Ministers will review the operation of the legislative framework encompassing the national law having regard to possible alternative constitutional bases for that framework.

FORMER AGREEMENT

1006. The former agreement ceases to have effect on the coming into operation of this Agreement.

IN WITNESS WHEREOF this Agreement has been respectively signed for and on behalf of the parties as at the date first mentioned in this Agreement.

SIGNED by the Honourable
JOHN WINSTON HOWARD, Prime Minister
of the Commonwealth of Australia, in the
presence of:

SIGNED by the Honourable
ROBERT JOHN CARR, Premier of the State
of New South Wales, in the presence of:

SIGNED by the Honourable STEPHEN P
BRACKS MP, Premier of the State of Victoria,
in the presence of:

SIGNED by the Honourable
PETER DOUGLAS BEATTIE MLA, Premier
of the State of Queensland, in the presence of:

SIGNED by the Honourable Dr GEOFF
GALLOP, Premier of the State of Western
Australia, in the presence of:

SIGNED by the Honourable MICHAEL
DAVID RANN, Premier of the State of South
Australia, in the presence of:

SIGNED by the Honourable JAMES
ALEXANDER BACON, Premier of the State
of Tasmania, in the presence of:

SIGNED by the Honourable
CLARE MARTIN, Chief Minister of the
Northern Territory, in the presence of:
