

1979

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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NATIONAL COMPANIES AND SECURITIES COMMISSION BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by the Minister Representing  
the Minister for Business & Consumer Affairs, the Attorney-General  
Senator the Hon. P.D. Durack. Q.C.)

1.

The purpose of this explanatory memorandum is to explain the contents of the National Companies and Securities Commission Bill (hereafter referred to as 'the Bill' or 'the NCSC Bill') and its relationship to the Formal Agreement dated 22 December 1978 between the Commonwealth and the States on companies and securities.

2. This explanatory memorandum (hereafter referred to as 'ex memo'):-

- (a) contains a brief outline of the NCSC Bill (pages 2 and 3);
- (b) deals sequentially with each clause of the NCSC Bill (pages 4 to 41); and
- (c) summarizes the contents of the Formal Agreement and its relationship to the NCSC Bill (pages 42 to 63).

INTRODUCTION

3. On 22 December 1978 the Commonwealth and the six States executed a Formal Agreement that provided the framework for a co-operative Commonwealth/State scheme for a uniform system of law and administration in relation to company law and the regulation of the securities industry in the six States and the Australian Capital Territory. (The Northern Territory and the external Territories can also be included in the scheme if they wish).

4. The National Companies and Securities Commission Bill is the first of a series of Bills to give effect to the legislative obligations of the Commonwealth under this Formal Agreement (a copy of which is set out in the Schedule to the NCSC Bill).

5. The Bill establishes the National Companies and Securities Commission (hereafter referred to as the 'NCSC') which will have responsibility for the entire area of companies and securities matters subject to directions from the Ministerial Council. The NCSC will have such functions and powers as are conferred on it by the various pieces of Commonwealth, State and Territory legislation that are required to give effect to the co-operative companies and securities scheme (hereafter referred to as the co-operative scheme legislation).

6. The administration of the co-operative scheme legislation within each State and Territory will, so far as practicable, be carried out by the relevant registering authority in that State or Territory under delegations from the NCSC.

7. The aim is that, as far as is possible, any person or company in a particular State or Territory should be able to deal on all matters of company law and the regulation of the securities industry with the local registering authority as if that person or company were only subject to one system of company and securities law throughout Australia.

NATIONAL COMPANIES AND SECURITIES COMMISSION BILL

8. The NCSC Bill is divided into the following  
Parts:-

- Part I - Preliminary
- Part II - Establishment, functions and powers  
of Commission
- Part III - Constitution and meetings of Commission
- Part IV - Staff of Commission
- Part V - Finance
- Part VI - Hearings before Commission
- Part VII - Miscellaneous
- Schedule - Formal Agreement

NCSC BILL : PART I - PRELIMINARY

9. Part I of the Bill (cls. 1 to 4) deals with various preliminary matters.

Short Title

10. The Act will be cited as the National Companies and Securities Commission Act 1979 (Bill cl. 1).

Commencement

11. The Act will come into operation on a date to be fixed by Proclamation (Bill cl. 2).

Interpretation

12. There are general interpretation provisions (Bill cl. 3).

13. Some of the more important definitions (Bill s-cl. 3(1)) are as follows:-

- Agreement: This is the Formal Agreement made on 22 December 1978 between the Commonwealth and the States for co-operative companies and securities regulation. A copy of the Agreement is set out in the Schedule to the Bill.
  
- Companies and Securities Law Review Committee: This is the Committee referred to in s-cl. 21(2) of the Formal Agreement, the functions of which include assistance and advice to the Ministerial Council (see Bill cl. 44).

- Commission: This is the National Companies and Securities Commission (NCSC) established by cl. 5 of the Bill. Subject to the Formal Agreement and to directions of the Ministerial Council, the NCSC will have 'responsibility for the entire area of policy and administration with respect to company law and the regulation of the securities industry' (see Formal Agreement s-cl. 32(1)). Its functions and powers will derive from various provisions of the Formal Agreement (see, for example, cls. 14, 17 and 37), the Bill (see, for example, cls. 6 to 9), and the remaining co-operative scheme legislation.

- deal: is defined along the same lines as the definition of dealing in s. 4 of the Securities Industry Acts of the States which are parties to the Interstate Corporate Affairs Agreement (hereafter referred to as 'the ICAC States'). The co-operative scheme legislation is to be substantially in conformity with the companies and securities legislation of the ICAC States (see Formal Agreement para 8(2)(b)). This definition of 'deal' is relevant to cl. 48 of the Bill which prohibits dealings in securities by a person administering the

co-operative scheme legislation where that person has price sensitive information which is not generally available.

- investment contract: is defined in the same way as in s. 76 of the Companies Acts of the ICAC States. This definition is relevant to the definition of 'prescribed interest' (para (c) of that definition).
  
- Ministerial Council: This Council is the Ministerial Council for Companies and Securities established by cl. 19 of the Formal Agreement. Its functions are set out in Part VIII of that Agreement. The NCSC must comply with directions of the Ministerial Council (see Bill cl. 7).
  
- Northern Territory enactment: is defined to cover any enactment as defined in s. 4(1) of the Northern Territory (Self-Government) Act which provides that:-
  - ' "enactment" means
    - (a) a law (however described or entitled) passed by the Legislative Assembly and assented to under section 7 or 8;
    - or
    - (b) an Ordinance made under the Northern Territory (Administration) Act 1910 and continued in force by this Act,

and includes part of any such law or Ordinance.'

Such an enactment will be included in the term 'State Act' and will ensure that the provisions in the Bill (e.g. s-cl. 6(2)) relating to State legislation will also apply to Northern Territory legislation if the Northern Territory joins the scheme (see Formal Agreement, cl. 49). A reference in the Bill to 'an Act' will not include a reference to a Northern Territory enactment or subordinate legislation made thereunder (see Bill para 3(3)(b)).

- prescribed interest: is defined along the same lines as the definition of 'interest' in s. 76 of the Companies Acts of ICAC States. This definition is relevant to the definition of 'securities' (para (d) of that definition). (See also Bill s-cl. 3(2)).
- securities: are defined generally along the same lines as in s. 4 of the Securities Industry Acts of the ICAC States. However, the definition has been clarified to include specifically debentures that do not constitute a charge on assets and to exclude specifically bills of exchange and promissory notes.

This definition of 'securities' is relevant to the provisions of the Bill which:-

- establish a Register of Financial Interests of members and staff of the NCSC (Bill cl. 19);

- prohibit dealings in securities by persons administering co-operative scheme legislation who have price sensitive information which is not generally available (Bill cl. 48);  
and
- require persons administering scheme legislation (other than members or staff of the NCSC) to notify certain interests in securities (Bill s-cl. 49(1)).

14. An agreement or class of agreement relating to a partnership for the carrying on of a profession or trade that is required to be registered, licensed or otherwise authorised by a Commonwealth or State law cannot be the subject of regulations made pursuant to sub-para (f)(ii) of the definition of 'prescribed interest' (Bill s-cl. 3(2)). This will ensure that an interest in an ordinary partnership is not subjected to the provisions of the legislation that regulate 'prescribed interests'.

15. A reference in the Bill to 'an Act' (which means a Commonwealth Act) includes a reference to subordinate legislation made under a Commonwealth Act, but does not include a reference to a Northern Territory enactment or subordinate legislation made thereunder (Bill para 3(3)(a) - if the Northern Territory becomes a party to the scheme, its legislation will be covered by the definition of State Act). A reference to a State Act includes a reference to subordinate legislation made under a State Act (Bill para 3(3)(b)).

16. A reference to 'a member of the staff' of the NCSC will cover:-

- (a) an employee of the NCSC;
- (b) a Commonwealth, State or Territory public servant whose services are made available to the NCSC by virtue of an arrangement under s-cl. 24(1) or (2) of the Bill; or
- (c) a person engaged as a consultant to the NCSC under s-cl. 25(1) of the Bill.

(Bill s-cl. 3(4)). Part IV of the Bill deals with the staff of the NCSC.

17. A reference to 'the functions or powers' of the NCSC will include functions and powers conferred on the NCSC by any State Act (Bill s-cl. 3(5)).

#### Extension to external Territories

18. The Bill may be extended to external Territories prescribed by regulations (Bill cl. 4). The circumstances in which the Formal Agreement can be extended to the administration of company law and the regulation of the securities industry in an external Territory are set out in cl. 50 of the Agreement.

NCSC BILL : PART II - ESTABLISHMENT, FUNCTIONS AND POWERS OF COMMISSION

19. Part II of the Bill (cls. 5 to 9) deals with the establishment functions and powers of the NCSC.

Establishment of NCSC

20. The Bill establishes the National Companies and Securities Commission (NCSC) (Bill s-cl. 5(1)). The NCSC will represent the Commonwealth Crown in exercising a power or function under a Commonwealth Act (Bill s-cl. 5(2)). State or Northern Territory enactments will be able to provide that the NCSC represents a State or the Northern Territory, as the case may be, in exercising a power or function under that jurisdiction's legislation (Bill s-cl. 5(3)).

Functions and powers of NCSC

21. The NCSC has such functions and powers as are conferred on it by a Commonwealth law made pursuant to section 122 of the Constitution ('the Territories power'), and by any State Act or N.T. legislation (Bill s-cl. 6(1) and (2)).

22. The NCSC's powers will include the making of recommendations to the Ministerial Council for new laws or for amendment to existing laws relating to companies or the regulation of the securities industry (Bill s-cl. 6(3)).

NCSC to comply with directions of Ministerial Council,  
Minister or State Minister

23. The NCSC will be required to comply with the directions of the Minister, the Ministerial Council or a State Minister given pursuant to the Agreement or to a power conferred by the co-operative scheme legislation in accordance with the Formal Agreement (Bill cl. 7 - this gives effect to the Formal Agreement s-cl. 32(2)). An individual Minister may only direct the NCSC to:-

- (a) initiate a special investigation (provided his Government meets the cost of the investigation) (see cls. 17 and 18 of Formal Agreement);
- and
- (b) keep him informed of local matters (see cl. 39 of the Formal Agreement).

Furnishing of reports and information by NCSC

24. The NCSC must provide such reports relating to the performance of its functions or the exercise of its powers as the Ministerial Council requires (Bill cl. 8 - gives effect to Formal Agreement cl. 23).

NCSC to comply with Formal Agreement

25. The NCSC will be required to perform its functions and exercise its powers in accordance with the Formal Agreement (Bill cl. 9).

NCSC BILL : PART III - CONSTITUTION AND MEETINGS OF COMMISSION

26. Part III of the Bill (cls. 10 to 21) deals with the constitution and meetings of the NCSC.

Incorporation

27. The NCSC will be a body corporate with the usual attributes (perpetual succession, a common seal, capacity to acquire and dispose of property and capacity to sue and be sued in its corporate name) (Bill s-cl. 10(1) - gives effect to Formal Agreement s-cl. 33(1)).

28. Courts, judges and other persons authorised to receive evidence (see Bill s-cl. 10(5)) will take judicial notice of:-

- (a) the common seal of the NCSC (Bill s-cl. 10(3));
- (b) the official signature of the person who holds or is acting in the office of Chairman, Deputy Chairman or other member of the NCSC if that signature appears on any official document (Bill s-cl. 10(4)).

Membership of NCSC

29. The NCSC will have at least 3 and not more than 5 members (Bill s-cl. 11(1)). Members are to be appointed by the Governor-General on the nomination of the Ministerial Council (Bill s-cl. 11(2)). At least 3 members are to be full-time (Bill s-cl. 11(3)). These provisions give effect to s-cl. 33(1) and (2) of the Formal Agreement.

30. The NCSC will be able to perform its functions and exercise its powers even if the number of members falls below the statutory minimum (Bill s-cl. 11(4) and (5)). Appointments and actions of NCSC members will be valid despite defects or irregularities in appointments (Bill s-cl. 11(6) and (7)).

#### Term of Appointment

31. A member of the NCSC will hold office for such period not exceeding 5 years as is specified in the instrument of his appointment but is eligible for re-appointment (Bill s-cl. 12(1) - gives effect to Formal Agreement s-cl. 33(6)). Full-time members may not continue beyond the age of 65 years (Bill s-cl. 12(2)).

#### Chairman and Deputy Chairman of NCSC

32. A Chairman and Deputy Chairman of the NCSC will be appointed by the Governor-General on the nomination of the Ministerial Council from the full time members of the NCSC (Bill s-cl. 13(1) to (3) - gives effect to Formal Agreement s-cl. 33(3)). Such appointees will hold office for as long as they are members (Bill s-cl. 13(4)) and will be eligible for re-appointment (Bill s-cl. 13(6)).

#### Remuneration and allowances

33. The remuneration and allowances of members of the NCSC will be determined by the Ministerial Council (Bill s-cl. 14(1)) which will be able to consult tribunals

experienced in fixing rates of remuneration (Bill s-cl. 14(2)). This remuneration and these allowances will not be determined by the Commonwealth Remuneration Tribunal (Bill s-cl. 14(3)) as the NCSC is subject to the control of both Commonwealth and State Ministers (through the Ministerial Council - see Formal Agreement para 23(2)(e)).

#### Leave of absence

34. The Ministerial Council will be able to grant leave of absence from duty to full-time members and leave of absence from a meeting of the Commission to part-time members (Bill cl. 15). The leave of absence granted by the Ministerial Council to a full-time member may be on such terms and conditions as to remuneration or otherwise as it directs (Bill s-cl. 15(1)).

#### Resignation of member

35. A member of the NCSC will be able to resign by writing delivered to the Governor-General (Bill cl. 16). Resignation from the office of Chairman or Deputy Chairman is dealt with in s-cl. 13(5) of the Bill, and resignation of an acting appointment in s-cl. 17(7) of the Bill.

#### Acting Appointments

36. When there is no Chairman of the NCSC or the Chairman is absent from duty, the Deputy Chairman will act as Chairman (Bill s-cl. 17(1)). A member or acting member of the NCSC nominated by the Ministerial Council and appointed by the Governor-General may act as Deputy Chairman when that office is vacant or when the Deputy

Chairman is absent (Bill s-cl. 17(2) - see also Bill s-cl. 17(4) and 17(6)). These provisions give effect to s-cl. 33(4) of the Formal Agreement.

37. The Governor-General will be able to appoint acting members on the nomination of the Ministerial Council when there are less than 5 members and when members are absent (Bill s-cl. 17(3)).

38. The Governor-General, on the advice of the Ministerial Council, will be able to determine the remuneration and allowances of persons holding acting appointments (Bill s-cl. 17(5) and (6)). A person will be able to resign an acting appointment by writing delivered to the Governor-General (Bill s-cl. 17(7)). A person with an acting appointment will have all the powers and will be required to perform all the functions of the office in which he is acting (Bill s-cl. 17(8)). Any acts of such a person will be valid notwithstanding any defects in that person's appointment (Bill s-cl. 17(9)).

#### Termination of appointment

39. The Governor-General, acting in accordance with the advice of the Ministerial Council, will be able to terminate the appointment of a member of the NCSC in the following situations (Bill cl. 18):-

- (a) by reason of misbehaviour or physical or mental incapacity;

- (b) if he becomes bankrupt, etc;
- (c) if, being a full-time member, he engages in other paid employment without the consent of the Ministerial Council or is absent without leave for a certain period;
- (d) if, being a part-time member, he is absent without leave for three consecutive Commission meetings;
- (e) if he fails to comply with his obligations to register financial interests, to observe secrecy, to refrain from dealing in securities where he has price sensitive information that is not generally available or to notify relevant past employment (see Bill cls. 19, 47, and 48; and s-cl. 49(2)).

#### Register of Financial Interests

40. The NCSC will be required to maintain a Register of Financial Interests in relation to members or acting members of the NCSC and in relation to staff of the NCSC (Bill s-cl. 19(1) and (3)). This Register will be open for public inspection during normal business hours (Bill s-cl. 19(11)). For the purposes of this Register, financial interest is defined to mean a company directorship or an interest in non-governmental securities, determined as prescribed by regulation (Bill s-cl. 19(2)).

41. A member of the staff of the NCSC (the 'responsible officer') will be required to maintain the register (Bill s-cl 19(4)). Financial interests must be disclosed:-

(a) within 7 days of appointment (Bill s-cl. 19(5));  
and

(b) within 7 days of any change (Bill s-cl. 19(6)).

A person will not contravene these disclosure requirements if he establishes that he was not aware that he had the financial interest and that he notified the responsible officer within 7 days of becoming aware (Bill s-cl. 19(7)).

42. Particulars of financial interests that must be given to the responsible officer include:-

(a) the date of commencement, cessation or change of interest; and

(b) the nature and extent of the interest

(Bill s-cl. 19(9)).

43. Separate provision is made for the notification of a specific interest in securities by persons administering co-operative scheme legislation but who are not covered by the Register of Financial Interests (see Bill cl. 49) when they are dealing with a matter relating to that interest (see Bill s-cl. 49(1)). Persons covered by the Register will have to notify relevant past employment (Bill s-cl. 49(2)). (See also ex memo paras 109 to 112).

#### Meetings of Commission

44. The Chairman or Acting Chairman will be able to convene a meeting of the NCSC at any time or place (Bill s-cl. 20(1) and (9)). He will be required to convene meetings for the efficient performance of the NCSC's functions

when requested to do so by a majority of members (Bill s-cl. 20(2) and (3)). Under the Formal Agreement (s-cl. 34(1)) the affairs of the NCSC are to be conducted at meetings of members of the NCSC and in such other manner as is provided by the Commonwealth Acts that give effect to the co-operative scheme.

45. At a meeting of the NCSC a quorum will be 3 members if there are more than 3 members of the NCSC, or 2 if there are 3 or less members (Bill s-cl. 20(4) - gives effect to Formal Agreement s-cl. 34(2)). However, the quorum for a meeting of a Division of the NCSC will be 2 (see Bill s-cl. 21(5)).

46. The Chairman or acting Chairman will preside at meetings of the NCSC at which he is present and in his absence the Deputy Chairman or acting Deputy Chairman will preside (Bill s-cl. 20(5), (6), (10) and (11) - gives effect to Formal Agreement s-cl. 34(3)).

47. A majority of votes will determine questions (Bill s-cl. 20(7)) and the member presiding has a deliberative but not a casting vote (Bill s-cl. 20(8) - gives effect to Formal Agreement s-cl. 34(4)).

48. The provisions relating to meetings of the NCSC will also apply, so far as possible, to hearings before the NCSC (see Bill para 38(1)(e)).

Divisions of Commission

49. The NCSC will be able to direct that its functions or powers in relation to a matter be performed or exercised by a Division. Each Division will consist of the Chairman or acting Chairman and at least 2 other specified members or acting members (Bill s-cl. 21(1), (7) and (8)).

50. A direction in relation to Divisions will be able to be revoked or varied prior to any determination by the Division (Bill s-cl. 21(2)). The NCSC will be required to notify the Ministerial Council of any direction in relation to Divisions, any amendment of that direction and any revocation of that direction (Bill s-cl. 21(3)).

51. Division meetings will be deemed to be NCSC meetings (Bill s-cl. 21(4)). At a meeting of a Division, 2 members or acting members will form a quorum (Bill s-cl. 20(5)). More than one Division will be able to exercise NCSC powers at the same time (Bill s-cl. 20(6)).

NCSC BILL : PART IV - STAFF OF THE COMMISSION

52. Part IV of the Bill (cls. 22 to 25) deals with the staff of the NCSC (see also Bill s-cl. 3(4)). Under the Formal Agreement (s-cl. 36(1)), the staff of the NCSC is to consist of such persons as are employed by it in accordance with the Commonwealth Acts.

Employees

53. The NCSC will be able to engage such employees as it thinks necessary (Bill cl. 22).

Terms and conditions of employment

54. The terms and conditions of employment of the staff of the NCSC (including the duration of, or dismissal from, such employment) will be determined by the NCSC, subject to the approval of the Commonwealth Public Service Board.

Arrangements relating to staff

55. The NCSC will be able to arrange with the appropriate authorities to obtain the services of Commonwealth, State or Territory public servants (Bill s-cl. 24(1) and (2) - gives effect to part of Formal Agreement s-cl. 36(1)). The NCSC will also be able to arrange for the services of its staff to be made available to a State or Territory (Bill s-cl. 24(3) - gives effect to Formal Agreement s-cl. 36(2)).

Engagement of consultants

56. The NCSC will be able to engage persons to advise or perform services for it otherwise than as its employees. The terms and conditions of such engagements will be determined by the NCSC with the approval of the Commonwealth Public Service Board (Bill cl. 25).

NCSC BILL : PART V - FINANCE

57. Part V of the Bill (cls. 26 to 35) deals with financial matters. These provisions are the standard provisions currently being used for non-trading statutory authorities with modifications to take account of the fact that the NCSC is subject to joint Commonwealth/State control and will receive moneys from both the Commonwealth and the States.

Payments to Commission by Commonwealth

58. Moneys appropriated by the Parliament for the purposes of the NCSC will be paid to the NCSC as the Commonwealth Minister for Finance directs from time to time (Bill cl. 26). Under the Formal Agreement (cl. 41) the Commonwealth is responsible for 50% of the funds required by the NCSC, the other 50% being provided by the States (and the Northern Territory - if it becomes a party to the Agreement) on a per capita basis.

Payments to Commission by States and Territories

59. The NCSC will be able to receive moneys paid to it by a State or Territory (Bill cl. 27).

Moneys of Commission

60. The moneys of the NCSC will consist of moneys paid to it by the Commonwealth (see Bill cl. 26), moneys paid to it by a State or Territory (see Bill cl. 27) and any other moneys paid to it (Bill cl. 28). The NCSC will be able to accept gifts, bequests and devises made to it on trust (see Bill s-cl. 43(1)).

Application of Moneys

61. The moneys of the NCSC will only be able to be applied in payment:-

- (a) of the expenses, charges, obligations or liabilities of the NCSC or the Companies and Securities Law Review Committee (provided for in s-cl. 21(2) of the Formal Agreement);
- (b) of any remuneration or allowances payable under the Bill or payable to the members of the Companies and Securities Law Review Committee (see also cl. 44 of Bill); and
- (c) to the Commonwealth, a State or Territory in accordance with the Formal Agreement or arrangements under that Agreement (see cl. 42 of Formal Agreement which provides that the parties will enter into a fee sharing agreement).

(Bill s-cl. 29(1)).

62. Moneys not immediately required by the NCSC will be able to be invested with an approved bank or in any other manner approved by the Ministerial Council (Bill s-cl. 29(2)).

63. These provisions relating to the application of moneys will not apply to trust moneys held by the NCSC (see Bill s-cl. 43(3)).

Bank Accounts

64. The NCSC will have to maintain at least one bank account with an approved bank (see Bill s-cl. 3(1)) and all moneys received by it will be paid into an account of the NCSC (Bill cl. 30). Any trust moneys will have to be kept in separate accounts (see Bill s-cl. 43(2)).

Estimates

65. The NCSC will have to prepare estimates of receipts and expenditure for each financial year in such form as the Ministerial Council directs. The NCSC will also have to submit estimates for other periods if the Ministerial Council so directs. Such estimates will have to be submitted on the date that the Ministerial Council directs (Bill s-cl. 31(1)).

66. The moneys of the NCSC will only be able to be expended in accordance with estimates approved by the Ministerial Council unless the Council agrees otherwise (Bill s-cl. 31(2) - gives effect to para 22(1)(e) of the Formal Agreement which provides that one of the functions of the Ministerial Council is budgetary control over the functioning of the NCSC).

Accounts and Records

67. The NCSC will have to keep proper accounts and records of its transactions and affairs, to ensure that payments out of its moneys are correctly authorised and to ensure that adequate control is maintained over its assets

and the incurring of liabilities (Bill cl. 32). These requirements will also apply to trust moneys or property received or held by the NCSC (see Bill s-cl. 43(4)).

68. The NCSC will only be able to:-

- (a) enter into a contract involving payments exceeding \$50,000; or
- (b) enter into a lease of land for a period exceeding 10 years

with the approval of the Ministerial Council or if provision is made in the regulations (Bill cl. 33).

#### Audit

69. The Auditor-General will be required to inspect and audit the accounts and records of the NCSC and forthwith draw the attention of the Ministerial Council to any important irregularity (Bill s-cl. 34(1)). The Auditor-General will also report on the annual financial statements that are made public (see Bill cl. 52).

70. The Auditor-General will have a discretion to dispense with any part of the detailed audit or inspection (Bill s-cl. 34(2)). The results of the inspection and audit will be reported to the Ministerial Council at least once a year (s-cl. 34(3)).

71. The Auditor-General or his agent will be able:-

- (a) at all reasonable times to have access to all financial records (Bill s-cl. 34(3));

- (b) to make copies of such records (Bill s-cl. 34(5));  
and
- (c) to require any person to furnish information to  
enable the Auditor-General to carry out his functions  
under the Bill (Bill s-cl. 34(6)).

Failure to furnish information required by the Auditor-General  
or his agent will be an offence (Bill s-cl. 34(7)).

72. Transactions relating to moneys or property held  
by the NCSC on trust will also be subject to audit (see  
Bill s-cl. 43(5)).

Liability to Taxation

73. The NCSC will be exempt from liability to pay  
taxation under any law not specified in the regulations  
(Bill cl. 35).

NCSC BILL : PART VI - HEARINGS BEFORE COMMISSION

74. Part VI of the Bill (cls. 36 to 42) deals with hearings before the NCSC. Under the Formal Agreement (s-cl. 34(1)) the affairs of the NCSC can be conducted at meetings of members of the NCSC and 'in such other manner as is provided by the Commonwealth Acts'. A delegate of the NCSC or a person authorised by that delegate will also be able to conduct hearings under Part VI (see Bill s-cl. 45(13)).

Hearings before Commission

75. The NCSC will be able to hold hearings in order to perform its functions or exercise its powers (Bill s-cl. 36(1)). If a person entitled to appear at a hearing requests that the hearing take place in public, the NCSC will be required to so direct (Bill s-cl. 36(3)). However, a particular hearing must be held in private if:-

- this is required by the relevant co-operative scheme legislation (Bill s-cl. 36(4)); or
- the NCSC decides that this is desirable because of confidentiality or for any other reason (Bill s-cl. 36(6)).

76. Where a hearing takes place in private, the NCSC will decide who may be present (Bill s-cl. 36(5)). However, the following persons cannot be prevented from being present at a hearing (Bill s-cl. 36(7)):-

- (a) a person entitled under a Commonwealth or State Act to appear at that hearing;

- (b) a person representing such a person; and
- (c) a person representing a person entitled to be present at a private hearing by reason of a direction given by the Commission.

It will be an offence for a person to be present at a private hearing if he is not entitled to be there (Bill s-cl. 36(8)).

77. The NCSC will have to notify details of a hearing to persons entitled to be afforded an opportunity to appear (Bill s-cl. 36(9)). Written submissions may be lodged with the Commission if such persons do not wish to appear (Bill s-cl. 36(10)). The NCSC will have to take account of evidence and submissions in making decisions (Bill s-cl. 36(11)).

Power to summon witnesses and take evidence

78. A member or acting member of the NCSC will be able to summon persons to attend at a hearing to give evidence or produce any documents referred to in the summons (Bill s-cl. 37(1)). A person who attends pursuant to such a summons will be entitled to such allowances and expenses as are provided for by the regulations (see Bill s-cl. 38(3) and 53(2)).

79. A member or acting member will be able to require and administer an oath or affirmation that the answers given to the questions asked will be true (Bill s-cl. 37(2) and (3)). A person refusing to take this oath or affirmation will be liable to punishment by the Supreme Court (see Bill s-cl. 39(8)).

Proceedings at hearings

80. Proceedings at hearings before the NCSC will be conducted with a minimum of formality and technicality, and maximum expedition. The NCSC:-

- (a) will not be bound by the rules of evidence;
- (b) may permit a person to intervene in the proceedings on such conditions as it thinks fit; and
- (c) will be required to observe the rules of natural justice.

The provisions of the Bill relating to meetings (see Bill cl. 20) will apply as far as practicable (Bill s-cl. 38(1)).

81. At hearings before the NCSC:-

- (a) a natural person may be represented by an employee approved by the NCSC;
- (b) a body corporate may be represented by an employee, director or officer approved by the NCSC;
- (c) an unincorporated association or one of its members may be represented by a member or officer approved by the NCSC;
- (d) any person may be represented by a barrister or a solicitor.

(Bill s-cl. 38(2)).

82. A person summoned to appear before a hearing will be entitled to be paid allowances and expenses prescribed in the regulations (Bill s-cl. 38(3) and 53(2)). Evidence may be given by written statement (Bill s-cl. 38(4)).

Failure of witnesses to attend and answer questions

83. A person served with a summons must appear as a witness at a hearing before the NCSC, unless he has a reasonable excuse (Bill s-cl. 39(1)).

84. A person appearing as a witness will be required, unless he has a reasonable excuse, to:-

- (a) take an oath or affirmation if required;
- (b) answer questions; and
- (c) produce documents if required by a summons

(Bill s-cl. 39(2)).

85. A witness will be prohibited from giving false or misleading evidence (Bill s-cl. 39(3)). A duly qualified legal practitioner may withhold a privileged communication made by or to him in that capacity unless the person involved agrees to the furnishing of that information.

Where a privileged communication is withheld, a member or acting member is entitled to the name and address of the person to whom or from whom the communication was made (Bill s-cl. 39(4)).

86. It will be an offence for a witness to contravene the provisions outlined in the three preceding paragraphs (Bill s-cl. 39(6)).

87. It is not an excuse to fail to answer a question on the grounds of self-incrimination, but an answer given in such a case is not admissible evidence in criminal proceedings other than proceedings for giving false and misleading information (which is a breach of Bill s-cl. 39(3)) or

for perjury (Bill s-cl. 39(5)).

88. A member or acting member of the NCSC may certify to the Supreme Court of a State or Territory a refusal or failure to:-

- (a) appear as a witness (without reasonable excuse) after being summoned;
- (b) take an oath or make an affirmation (under Bill cl. 37);
- (c) answer a question when required by a member or acting member; or
- (d) produce a document required by summons (s-cl. 39(7)).

The Court will be able to order such a person to comply with the requirement and/or to punish that person as if he were in contempt of Court (Bill s-cl. 39(8)).

#### Contempt of NCSC

89. A maximum penalty of \$1,000 or 3 months imprisonment is included in the Bill for:-

- (a) insulting a member or acting member of the NCSC at a hearing;
- (b) interrupting a hearing;
- (c) creating a disturbance; or
- (d) doing any other act that would constitute contempt if the NCSC were a court of record

(Bill cl. 40 - along same lines as s. 162 of the Trade Practices Act).

Protection of members etc.

90. A member or acting member of the NCSC has the same protection and immunity in relation to hearings as a Justice of the High Court. Protection and immunity is given to barristers, solicitors, other representatives and witnesses as if they were appearing in the High Court (Bill s-cl. 41(1) to (3)).

91. A person administering the scheme legislation and appointed under this Bill or a prescribed Act is not liable for actions done or omitted to be done in good faith (Bill s-cl. 41(4)).

92. A member of the Ministerial Council is not liable to an action, suit or proceeding in relation to an act done or omitted to be done by the Ministerial Council in good faith in the exercise of a power conferred on the Ministerial Council under any Act (Bill s-cl. 41(5)). A similar immunity is conferred on an individual Minister exercising a discretion of the Ministerial Council that he has been authorised to exercise under cl. 25 of the Formal Agreement (Bill s-cl. 41(6)).

Hearings deemed to be judicial proceedings

93. A hearing before the NCSC is deemed to be a judicial proceeding for the purposes of Part III of the Commonwealth Crimes Act (which creates various offences in relation to a judicial proceeding before a holder of a judicial office as defined in that Part (Bill cl. 42)).

NCSC BILL : PART VII - MISCELLANEOUS

94. Part VII of the Bill (cls. 43 to 53) deals with various miscellaneous matters.

Trust Moneys

95. The NCSC will be able to accept gifts, bequests and devises on trust. All moneys received or held by the NCSC on trust will be paid into a bank account or accounts set aside for trust moneys. The trust moneys are to be applied and may be invested in accordance with the usual powers of a trustee (Bill s-cl. 43(1) to (3)).

96. The NCSC will have to keep proper accounts and records for trust moneys, similar to the accounts and records to be kept for its own funds (Bill s-cl. 43(4)). Transactions with trust moneys will be audited in a similar manner to audits of the NCSC's own funds (Bill s-cl. 43(5)).

Companies and Securities Law Review Committee

97. The NCSC will be required to provide the Companies and Securities Law Review Committee (referred to in s-cl. 21(2) of the Formal Agreement) with such staff and facilities as the Ministerial Council approves (Bill cl. 44). (See also Bill paras 29(1)(a) and (b) dealing with the payment of the Committee's expenses etc. and of the remuneration and allowances for its members).

Delegation by NCSC

98. Under the Formal Agreement (cl. 35) the NCSC is to have the power to delegate its functions to State or Territory administrations and is to attempt the maximum practicable decentralization.

99. The NCSC will be able to delegate any of its functions or powers under the co-operative scheme legislation either to a State or Territory administration or to an officer of that administration (Bill s-cl. 45(1)). That delegate will be able to authorise another person to perform any powers or functions delegated to the delegate (Bill s-cl. 45(4)).

100. The exercise of delegations and authorisations will be regulated as follows:-

- (a) Unless prohibited by the Ministerial Council, the NCSC will also be able to delegate functions and powers that the Ministerial Council has delegated to it (Bill s-cl. 45(2)).
- (b) Delegations and authorisations may be to a specified person or body corporate or a person holding a specified office (Bill s-cl. 45(3)).
- (c) Actions of a delegate or person authorised by the delegate have effect as if done by the NCSC (Bill s-cl. 45(6)).
- (d) The delegate or persons authorised by the delegate may exercise his delegated functions or powers upon his own opinion, belief or state of mind where necessary (Bill s-cl. 45(7)).
- (e) Delegated powers or functions may still be exercised by the NCSC (Bill s-cl. 45(8)).
- (f) A delegate who has authorised another person to exercise delegated functions or powers may also exercise those powers or functions himself (Bill s-cl. 45(9)).

101. Unless the contrary is established:-

- (a) A person purporting to perform a function or exercise a power conferred on the NCSC under the co-operative scheme legislation will be presumed to be duly authorised to do so (Bill s-cl. 45(10)).
- (b) A document purporting to be signed by a delegate of the NCSC or by a person authorised by a delegate will be deemed to be duly signed (Bill s-cl. 45(11) and (12)).

102. A delegate or person authorised by a delegate may conduct hearings in accordance with Part VI of the Bill (Bill s-cl. 45(13)).

Directions by NCSC

103. Where the NCSC has delegated a power or function (under Bill cl. 45) it may direct the delegate as to the performance of a delegated function or the exercise of a delegated power. Such a direction must be conveyed to any person authorised by the delegate to exercise the delegated power or function, as must any directions by the delegate himself (Bill cl. 46).

Secrecy

104. Any person administering the co-operative scheme legislation will be prohibited from divulging or making use of information by reason of his employment otherwise than in the performance of his official duties (Bill s-cl. 47(1)).

A breach of this provision will attract a maximum penalty of \$5,000 and/or imprisonment for one year.

105. However, such a person will be allowed to produce or divulge information:-

- (a) to a court in criminal proceedings or proceedings under the Bill or other prescribed legislation;
- (b) to a person to whom, in the NCSC's opinion, it would be in the public interest to do so; or
- (c) where required or permitted by any other legislation.

(Bill s-cl. 47(2)).

#### Restrictions on dealings in securities

106. Any person administering the co-operative scheme legislation will be prohibited from dealing in securities if he has price sensitive information that is not generally available (Bill s-cl. 48(1)). A breach of this provision attracts a maximum penalty of \$20,000 or imprisonment for 5 years.

107. A person in breach of this prohibition will be liable to pay compensation to any party who sustains loss as a result of the breach (Bill s-cl. 48(2)). Provision is also made for the amount of compensation to be paid (Bill s-cl. 48(3)).

108. The onus of proof will lie on the person liable to pay the amount arising from a transaction (Bill s-cl. 48(4)). No action for recovery can be taken after two years from the completion of the transaction (Bill s-cl. 48(5)). If it

considers it to be in the public interest, the NCSC will be able to take action in the name of a body corporate or other person for recovery of compensation (Bill s-cl. 48(6)). A person may still incur liability under some other law (Bill s-cl. 48(7)).

#### Notification of interests

109. Background: To ensure adequate disclosure of possible conflicts of interest involving persons administering the co-operative scheme legislation, the Bill provides for:-

- (a) a public Register of Financial Interests for members and acting members of the NCSC and for its staff (see Bill cl. 19 - ex memo para 40 to 43).
- (b) the notification by other persons administering the scheme legislation of interests which become relevant to any matter they are considering (see Bill para 49(1)(a) to (c)); and
- (c) the notification by all such persons of relevant past employment (see Bill paras 49(1)(d) and (e) and s-cl. 49(2)).

110. Any person administering the co-operative scheme legislation (other than a member or acting member of the NCSC or its staff) will be required to notify the NCSC if, in the course of his duties, he is required to consider any matter relating to:-

- (a) a body corporate in which he has a relevant interest;

- (b) securities in which he has a relevant interest;
- (c) securities of the same class of securities in which he has a relevant interest;
- (d) a person or body by whom or by which he has been employed during the last 3 years or a person or body with whom or with which he is associated;
- (e) a body corporate that is related to a body corporate by which he has been employed during the last 3 years.

(Bill s-cl. 49(1)). The tests for determining relevant interest, association and relationship will be set out in the regulations (see Bill s-cl. 49(4)).

111. In addition to their obligations to notify interests for inclusion in the Register of Financial Interests (see Bill cl. 19) a member or acting member of the NCSC or a member of the NCSC staff will be required to notify the NCSC if, in the course of his official duties, he has to consider any matter relating to:-

- (a) a person or body that employed him in the last 3 years, or with whom or which he is associated;
- (b) a body corporate that is related to a body corporate that employed him

(Bill s-cl. 49(2)). The tests for determining association and relationship will be set out in the regulations (see Bill s-cl. 49(4)).

112. A defence of ignorance of a particular fact or matter is provided (Bill s-cl. 49(3)).

Rights of Commonwealth public servants

113. The Commonwealth Officers Rights Declaration Act applies to, and existing and accrued rights are retained by, full-time members and employees of the NCSC who were officers of the Australian Public Service immediately prior to their appointment to the NCSC (Bill cl. 50).

Provisions relating to Ministerial Council

114. A certificate signed by a member of the Ministerial Council or a person authorised by the Council in relation to a particular act will be prima facie evidence of the facts stated in it (Bill s-cl. 51(1)).

115. A certificate signed by a Council member authorising a person to sign certificates is prima facie evidence of that authorisation (Bill s-cl. 51(2)).

116. The NCSC or a member of the Ministerial Council will be able to perform a function or exercise a power conferred on the Ministerial Council by a Commonwealth Act if authorised by the Council to do so (Bill s-cl. 51(3)).

Annual report and financial statements

117. The NCSC, as soon as practicable after 30 June and no later than 31 October each year, will have to prepare an annual report and financial statements in a form approved by the Ministerial Council and to submit the latter to the Auditor-General (Bill s-cl. 52(1)).

118. The Auditor-General will be required to report to the Ministerial Council on various matters dealing with the financial records, financial statements, handling of moneys and any other matters arising out of the statements (Bill s-cl. 52(2)). The Auditor-General's report is to be sent to the NCSC which will submit its report along with financial statements and the Auditor-General's report to the Ministerial Council with copies to each Minister (Bill s-cl. 52(3)).

119. The Commonwealth Minister is required to lay the NCSC's report and financial statements, and the report of the Auditor-General, before both Houses of the Commonwealth Parliament within 15 sitting days of his receiving them (Bill s-cl. 52(4)).

120. These provisions give effect to cl. 43 of the Formal Agreement.

#### Regulations

121. The Governor-General will be able to make any necessary regulations (in accordance with a resolution by the Ministerial Council) (Bill s-cl. 53(1) and (4)).

122. Regulations for allowances and expenses to be paid under s-cl. 38(3) to summoned persons (see Bill s-cl. 38(3)) may be made by reference to a scale of witness fees of a superior Court (Bill s-cl. 53(2)).

FORMAL AGREEMENT

123. The text of the Formal Agreement is set out in the Schedule to the NCSC Bill.

124. A brief summary of the clauses of the Formal Agreement and any relationship to the NCSC Bill is as follows:

Preamble

Sets out the parties to the Agreement as the Commonwealth and the six States. Recital (A) stresses the need for uniformity in the laws relating to companies and the regulation of the securities industry and in the administration of those laws.

Recital (B) sets out the objectives of the scheme. Recital (C) states that the Governments have reached agreement. Recital (D) sets out the essential element of the scheme. Recital (E) specifies that funds and resources for State and Territory administrations will be provided by the respective parties.

Part I Interpretation

Cl. 1 Contains the definitions of the

parties to the Agreement. The definition of "Territory", read with cl.50 of the Agreement, ensures that the Agreement can later be extended to external Territories.

Cl. 2 Contains general definitions. "Financial year" is defined to avoid funding problems under cl. 41 of the Agreement if the NCSC starts operations mid-year.

Cl. 3 Defines "Part", "clause" and "sub-clause" for the purpose of the Agreement.

## Part II - Operation of Agreement

Cl. 4 Provides that, for the Agreement to come into force, all parties must sign. Thereafter, the Agreement may be amended only by the unanimous decision of all parties with representatives in the Ministerial Council with voting rights.

Cl. 5 Ensures that if a State withdraws after commencement of the Agreement, the Agreement continues in force for the remaining parties.

Cl. 6 Provides that a State will cease to be a party if it fails to pass initial legislation within six months of the Commonwealth so doing, unless this period is extended by the Ministerial Council. A State may also withdraw pursuant to Part XVI of the Agreement.

Part III - Establishment of Scheme

Cl. 7 Stresses the general obligations of the parties to implement the objectives of the scheme set out in recital (B).

Part IV - Initial Legislation

Cl. 8 Provides for steps which the Commonwealth must take in securing the passage of its initial legislation, which must be unanimously approved by the Ministerial Council.

The initial legislation will:

- (a) constitute the substantive companies and securities law of the A.C.T. (and later, if appropriate, other Territories);
- (b) be based substantially on present legislation in force in the States which are party to the Interstate Corporate Affairs Agreement, ie. Victoria, New South Wales, Queensland and Western Australia (subject to agreed initial amendments);
- (c) confer powers on the Ministerial Council established by this Agreement;
- (d) establish the NCSC and make provisions relating to its operation.

Cl. 9 Obliges States to adopt the initial Commonwealth legislation and repeal or amend present laws relating to the same subject matter as soon as

practicable. The Interstate  
Corporate Affairs Agreement is also  
to be terminated as soon as  
practicable.

Cl. 10 States that the question of review of administrative decisions, freedom of information and archives is still to be resolved and is subject to further agreement between the parties.

Part V - Names and Registration

Cl. 11 Provides that the Commonwealth and State legislation shall include provisions dealing with undesirable names and names of a kind which the Ministerial Council directs to be unacceptable. (These provisions will be included in the Commonwealth and States companies legislation).

Cl. 12 Provides that the Commonwealth and State legislation shall contain:

- (a) transitional provisions to preserve the rights of existing bodies to operate in relevant States or Territories under established (and in some cases reserved) names;

- (b) provisions enabling new bodies to reserve their names, if acceptable, in other States or Territories;
- (c) provisions allowing a company or body incorporated in one jurisdiction to operate in another jurisdiction without additional registration or lodgement of further documents provided its name has been reserved in each relevant jurisdiction;
- (d) provisions preventing new Australian bodies other than companies (e.g. building societies) from operating in other States or Territories unless they gain registration in the relevant jurisdiction as a foreign company.

(These provisions will be included in the Commonwealth and States Companies Legislation).

Cl. 13 Requires the legislation to provide that a company or other body shall not change its name to an undesirable name or an unacceptable name without the consent of the Ministerial Council. (This provision will be included in the Commonwealth and States companies legislation.)

Cl. 14 Requires the NCSC to consider proposals for alternative provisions to those contained in cls. 11 - 13 of the Agreement inclusive and to report to the Ministerial Council on the proposals within two years after they were made.

Cl. 15 Defines "company" and "body" for the purposes of this Part of the Agreement.

#### Part VI - Special Investigations

Cl. 16 States that the power to order special investigations rests with Ministers (whether individually or collectively as the Ministerial Council) and gives responsibility for the appointment of inspectors and co-ordination of investigatory activities to the NCSC.

(These provisions will be included in the Commonwealth and States companies and securities industry legislation).

Cl. 17 Spells out the general scheme for investigations in more detail.

In particular:

- (a) the local Minister may order a special investigation in the public interest of his State or Territory;
- (b) the Commonwealth Minister may order a special investigation in the national interest;
- (c) the Ministerial Council may order a special investigation in any circumstances it thinks fit;
- (d) a Minister who, on his own initiative, orders an investigation has the right to nominate the inspector and his terms and conditions of appointment. In all other cases, the NCSC decides the identity of the inspector and

his terms and conditions of appointment, but must consider the views of the ordering authority. In the event of a disagreement with those views, the NCSC must accept the decision of the Ministerial Council on the matter;

- (e) the NCSC is entitled to request a Minister or the Ministerial Council to order an investigation;
- (f) the power to publish the report of an inspector resides in the Ministerial Council or Minister depending on who bore the costs of the investigation, although the relevant Law Officer of a State or Territory in which proceedings occur can stop publication in the interests of justice;
- (g) ancillary powers in relation to special investigations are vested in the hands of an individual Minister if he orders the investigation

on his own initiative unless  
or until the Ministerial Council  
approves the investigation. In  
any other case, the NCSC will  
exercise the relevant discretions.

(These provisions will be included in  
the Commonwealth and States companies  
and securities industry legislation.)

Cl. 18 Provides that the responsibility for  
paying for special investigations  
rests with the NCSC unless an individual  
Minister orders an investigation  
without a request from the NCSC and  
without subsequent Ministerial Council  
approval, in which case the party to  
this agreement whose Minister ordered  
the investigation bears the cost.

(These provisions will be included in  
the Commonwealth and State companies  
and securities industry legislation.)

#### Part VII - Establishment of Ministerial Council

Cl. 19 Establishes the Ministerial Council  
for Companies and Securities.

Cl. 20 Sets out the membership of the Ministerial Council. Ministers may be represented by delegates of Ministerial rank.

Part VIII - Functions of Ministerial Council

Cl. 21 Sets out the general functions of the Ministerial Council. A Companies and Securities Law Review Committee is established to assist the Ministerial Council (Bill cl.44 requires staff and facilities for the Committee to be provided by the NCSC).

Cl. 22 Sets out some specific functions of the Ministerial Council. These include:

- (a) consideration and approval of proposed Commonwealth and State legislation and amendments;
- (b) general oversight, including budgetary control, over the functioning of the NCSC;

- (c) giving directions to the NCSC in respect of relevant matters.

Cl. 23 Provides for the NCSC to furnish reports to the Ministerial Council at the latter's request. (see Bill cl.8).

Cls. 24 and 25 Provide that the Ministerial Council's powers of delegation are to be limited to authorizing its members, or the NCSC, to exercise discretions specified in Part 1 of the First Schedule to the Agreement.

Part IX - Proceedings of Ministerial Council

Cl. 26 Requires at least four ordinary meetings of the Ministerial Council to be held each year. Special meetings will normally be convened with 14 days notice with all matters for consideration being specified at the time of notice.

Cl. 27 Fixes the quorum for Council meetings at five.

Cl. 28 Relates to appointment of the Chairman of the Council and gives him a deliberative but not a casting vote.

Cl. 29 Specifies the voting majorities required for the passage of a resolution. A simple majority will be sufficient in the absence of a specific provision in the Agreement to the contrary. Provisions to the contrary include those relating to extension of time for States to pass initial legislation, identity of members of the NCSC, change in the number of members and cancellation of approval of a stock exchange.

Cl. 30 Enables the Council to make valid decisions by telephone, teleprinter message or any other mode of communication to the NCSC without the need for a formal meeting.

Cl. 31 Empowers the Council to determine its own procedure.

Part X - National Companies and Securities Commission

Cl. 32 Sets out the functions of the NCSC to be established by Commonwealth Act (see Bill cls. 5 and 6).

The NCSC is required to comply with Ministerial Council directions or in the case of particular special investigations (see para. 17(d) of the Agreement) with a Minister's directions (see Bill cl.7).

Cl. 33 Provides for the NCSC to be a body corporate (see Bill para. 10(1)(a)) and deals with the appointment and terms of office of the Chairman, Deputy Chairman, acting Chairman and members (see Bill cls.11-13, 17). The qualifications of a person for appointment as a member include suitable experience in business, commerce, law, economics, accounting or public administration.

Cl. 34 Provides for the conduct of the affairs of the NCSC including quorums for meetings, the person presiding and his voting power (see Bill cl.20).

Cl. 35 Provides for the NCSC to delegate its functions (see Bill cl.45). In performing its functions and exercising its powers, including the power of delegation, the NCSC is to have regard to the principle of maximum decentralization of decision making.

Cl. 36 Provides for the staffing of the NCSC (see Bill cl.22) for mutual interchange of staff between the NCSC, the Commonwealth and the States (see Bill cl.24).

Part XI - State and Territory Administrations

Cl. 37 Provides for companies and securities administration in each State and Territory to be carried out, to the maximum extent possible, by the existing administrations in that State and Territory (see cl.35 of the Agreement), subject to direction by the NCSC (see Bill cl.46).

Cl. 38 Makes it clear that administrative control by the Ministerial Council and the NCSC over matters within the scope of the scheme is to the exclusion of individual Ministerial responsibility except for public service and local house-keeping matters. The rights of individual Ministers in relation to special investigations and delegated powers are preserved.

Cl. 39 Sets out the right of an individual Minister to be informed of matters dealt with by the NCSC itself or by a local administration, and to refer any matters to the NCSC or to the Ministerial Council.

Cl. 40 Reinforces the undertaking in recital (E) of the Preamble that funds and other resources for State and Territory administrations will be provided by the respective parties.

Part XII - Funding of National Commission

Cl. 41 Sets out the proportions in which the expenditure by the NCSC is

to be borne by the parties,  
including the Northern Territory  
if it becomes a party to the  
Agreement. The Commonwealth is  
to contribute 50%, the States  
providing the other 50% on a per  
capita basis.

Cl. 42 Commits the parties to agree to  
fee sharing arrangements similar  
to those under the current agreement  
between the States which are party  
to the Interstate Corporate Affairs  
Agreement. These arrangements may  
be varied by unanimous decision of  
the Ministerial Council.

#### Part XIII - Reports and Statements

Cl. 43 Requires the NCSC to prepare an  
annual report and financial statements  
by 31 October each year. The  
Commonwealth and State Ministers are  
required to submit these documents to  
their respective Parliaments (see  
Bill cl.52).

Part XIV - Amendment of Legislation

Cl. 44 Sets out the procedures for the amendment of Commonwealth and State legislation. The Ministerial Council may consider proposals for amendment put to it by the NCSC, a party to the Agreement or by its own motion.

The Commonwealth must act to pass any Bill approved by the Council and a State can act unilaterally to pass any Bill approved by the Council if the Commonwealth fails to pass its Bill within six months.

Cl. 45 Sets out the procedures for the amendment of regulations, which are along the same lines as the procedures for the amendment of Acts under cl. 44 of the Agreement.

Cl. 46 Contains an undertaking by the Commonwealth that no amendments to the Commonwealth legislation will be made unless first approved by the Ministerial Council.

- Cl. 47 Contains undertakings by the Commonwealth and the States that they will not legislate to negative the operation of the legislation under this Agreement.

Part XV - Accession of New States and Territories

- Cl. 48 Allows new States to become parties to the Agreement.

- Cl. 49 Provides for the Northern Territory to become a party to the Agreement before it achieves full statehood if administrative responsibility for company law and securities industry regulation is vested in a Territorial Minister or Executive Officer.

Following that vesting, the Northern Territory is entitled to become a party to the Agreement with non-voting rights. It would subsequently be entitled to full voting rights if there were unanimous agreement of Ministerial Council.

Cl. 50 Deals with the application of this Agreement to an external Territory. The Commonwealth has the right to decide to apply the Agreement to external Territories, but on doing so that Territory does not get separate representation or voting rights.

Part XVI - Withdrawal of a Party

Cl. 51 Deals with the withdrawal of a party from the Agreement. A State has the right of immediate withdrawal if the Commonwealth acts to amend the legislation under the Agreement without Ministerial Council approval. Otherwise, one year's notice must be given.

First Schedule

Part 1. Relates back to cl. 25 of the Agreement and specifies the powers which the Ministerial Council may authorize its members or the NCSC to exercise.

Part 2. Relates back to s-cl. 32(3) of the Agreement and specifies the powers which may be exercised by the NCSC.

Second Schedule

This lists State legislation which is to be repealed, amended or modified, as referred to in paragraph (a) of cl.9 of the Agreement.