



ANNO TRICESIMO QUINTO

ELIZABETHAE II REGINAE

A.D. 1986

No. 77 of 1986

**An Act to amend the National Companies and Securities Commission
(State Provisions) Act, 1981.**

[Assented to 27 November 1986]

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

1. (1) This Act may be cited as the “National Companies and Securities Commission (State Provisions) Act Amendment Act, 1986”. Short title.

(2) The National Companies and Securities Commission (State Provisions) Act, 1981, is in this Act referred to as “the principal Act”.

2. (1) Part I shall come into operation on assent. Commencement.

(2) Part II shall come into operation on the day on which the Futures Industry (Application of Laws) Act, 1986, comes into operation.

(3) Part III, other than section 9, shall be deemed to have come into operation on the day on which Part VI, other than section 162, of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* of the Commonwealth came into operation.

(4) Section 9 shall come into operation, or be deemed to have come into operation, as the case requires, on the day on which section 162 of the *Companies and Securities Legislation (Miscellaneous Amendments) Act 1985* of the Commonwealth comes or came into operation.

PART II

AMENDMENTS CONSEQUENTIAL TO THE ENACTMENT OF
PART III OF THE COMPANIES AND SECURITIES LEGISLATION
AMENDMENT (FUTURES INDUSTRY) ACT 1986 OF THE
COMMONWEALTHAmendment of
s. 3—
Interpretation

3. Section 3 of the principal Act is amended by inserting after the definition of "functions" the following definition:

"futures contract" means a futures contract within the meaning of the *Futures Industry (South Australia) Code* or of the provisions of a law in force in a participating State or in a participating Territory that corresponds with that Code.

Amendment of
s. 16—
Restrictions on
dealings in
securities and
futures contracts

4. Section 16 of the principal Act is amended—

(a) by striking out subsections (1) and (2) and substituting the following subsections:

(1) A person who—

(a) is, or has at any time been—

- (i) appointed for the purposes of this Act or any other prescribed Act or law;
- (ii) engaged as a member of the staff of the Commission;

or

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

and

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

- (i) the price of securities;

or

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

shall not—

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

or

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

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

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

(a) deals in, or causes or procures another person to deal in, securities;

or

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

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

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

or

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

as the case may be.;

(b) by striking out subsection (5) and substituting the following subsection:

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

(a) the transaction in which securities were dealt in and in which the loss occurred;

or

(b) the dealing in a futures contract, being the dealing in which the loss occurred,

as the case requires.;

and

(c) by inserting after subsection (7) the following subsection:

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

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

and

(b) in a provision of the *Futures Industry (South Australia) Code*,

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

Amendment of
s. 17—
Notification of
interests.

5. Section 17 of the principal Act is amended—

(a) by inserting after paragraph (c) of subsection (1) the following paragraphs:

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

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

(b) by striking out from subsection (2) the passage “or particular securities” and substituting the passage “, particular securities or a particular futures contract,”;

and

(c) by inserting in subsection (3) after the word “securities” the passage “or in a futures contract, whether a futures contract is of the same kind as another futures contract”.

PART III

MISCELLANEOUS AMENDMENTS

Amendment of
s. 3—
Interpretation.

6. Section 3 of the principal Act is amended by striking out the definition of “investment contract”.

Amendment of
s. 8—
Power to
summon
witnesses and
take evidence.

7. Section 8 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.

Amendment of
s. 9—
Proceedings at
hearings.

8. Section 9 of the principal Act is amended by striking out paragraph (e) of subsection (1) and the word “and” preceding that paragraph and substituting the following paragraphs:

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

and

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

Amendment of
s. 12—
Delegation by
Commission.

9. Section 12 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

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

(b) by inserting after subsection (6) the following subsection:

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

(c) by inserting in subsection (7) after the passage "subsection (1)" the passage "or (1a)";

(d) by inserting in subsection (8) after the passage "subsection (1)" the passage "or (1a)";

(e) by inserting in subsection (13) after the passage "under subsection (1)" the passage "or (1a)";

and

(f) by striking out from paragraph (a) of subsection (13) the passage "paragraph (e)" and substituting the passage "paragraphs (e) or (f)".

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

D. B. DUNSTAN, Governor