

THIS IS A DRAFT OF A BILL PROPOSED FOR INTRODUCTION IN
THE SENATE, CIRCULATED TO STIMULATE DISCUSSION ON
THE SUBJECT.

COMMENTS ARE WELCOME AND SHOULD BE ADDRESSED TO:

SENATOR CHERYL KERNOT, THE SENATE, PARLIAMENT HOUSE,
CANBERRA ACT 2600

TEL: (06) 277 3745 or (07) 844 8155

FAX: (06) 277 3315 or (07) 844 3671

D R A F T

Foreign Investment Review Commission Bill 1992

1990-91-92

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(SENATOR KERNOT)

A BILL

FOR

**An Act to establish a Foreign Investment Review Commission,
and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives
of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Foreign Investment Review Commission Act 1992*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. In this Act, unless the contrary intention appears:

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Foreign Investment Review Commission established by section 5;

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“Commissioner” means the Chairperson, a Commissioner or a special Commissioner;

“Commonwealth authority” means:

- (a) a body or an authority established for a public purpose by or under a law of the Commonwealth; or
- (b) a body corporate:
 - (i) incorporated under a law of the Commonwealth or a State; and
 - (ii) in which the Commonwealth has a controlling interest;

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“conservation” means the management of the human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations, and includes the preservation, maintenance, sustainable utilisation, restoration and enhancement of the environment;

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“development” means the modification of the biosphere to satisfy human needs and improve the quality of life;

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“Division”, in relation to an inquiry, means the Chairperson, Commissioners or the special Commissioners (if any) for the inquiry;

“environment” includes all aspects of the surroundings of human beings, whether affecting human beings as individuals or in social groupings;

“evidence”, in relation to an inquiry, includes a submission to an inquiry, whether oral or written;

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“foreign interest” means a natural person not ordinarily resident in Australia, or any corporation, business or trust in which there is a substantial foreign interest, regardless of whether the corporation, business or trust is foreign controlled;

“foreign investment matter” means a proposal by a foreign interest, for investment in Australia;

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“inhabited external Territory” means:

- (a) Norfolk Island;
- (b) the Territory of Christmas Island; or
- (c) the Territory of Cocos (Keeling) Islands;

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“inquiry” means an inquiry initiated under section 18;

“Judge” means:

- (a) a Judge of a court created by the Parliament; or
- (b) a person who has the same designation and status as such a Judge; or
- (c) a Judge of a court of a State;

“losses” includes costs;

“referral” means a referral under section 18 of a matter to the Commission for inquiry and report;

“resource” means a biological, mineral or other material component, whether natural or not, of the environment (other than a human being) and includes a permanent or temporary combination or association of such components;

“special Commissioner” means a person appointed under paragraph 10(c) and, in relation to an inquiry, means a special Commissioner appointed for the purposes of the inquiry;

“State” includes the Australian Capital Territory and the Northern Territory;

“use” includes proposed use and, in relation to a resource, includes:

- (a) use for, or by way of, conservation or development; and
- (b) use of the resource before, during or after any processing.

Application

4. This Act extends to all external Territories.

PART 2—FOREIGN INVESTMENT REVIEW COMMISSION

Division 1—Establishment, Functions and Powers of Commission

Establishment

5. The Foreign Investment Review Commission is established.

Functions

6. The functions of the Commission are:

- (a) to hold inquiries and make reports to the Minister in respect of such matters as are referred to it;
- (b) to make decisions in respect of foreign investment matters in accordance with this Act;
- (c) to ensure compliance by foreign investors with decisions made with respect to foreign investment matters; and
- (d) to establish and maintain a foreign investment register.

Commission to be guided by policy principles

7. In the performance of its functions the Commission must be guided by the policy principles set out in Schedule 1.

Matters to be addressed in performance of Commission's functions

8. In the performance of its functions in relation to a foreign investment matter, the Commission must as far as practicable: 5

- (a) identify the subject of the investment proposal; and
- (b) identify:
 - (i) the environmental, cultural, social, industrial, economic and other effects of the investment proposal; and 10
 - (ii) the implications for those effects, including implications that are uncertain or long-term; and
- (c) assess the losses and benefits involved in the investment proposal including:
 - (i) losses and benefits of an unquantifiable nature; and
 - (ii) losses and benefits that are uncertain or long-term; and 15
- (d) give consideration to any other aspect of the matter that it considers relevant.

Powers of Commission

9. In addition to any other power conferred on it by this Act, the Commission has power to do all things necessary or convenient to be done for or in connection with the performance of its functions. 20

Division 2—Constitution of Commission**Constitution of Commission**

10. The Commission consists of:

- (a) a Chairperson; and
- (b) any Commissioners appointed from time to time under this Act; and 25
- (c) any special Commissioners appointed from time to time under this Act for the purpose of inquiries.

Appointment of Commissioners

11.(1) The Commissioners, special Commissioners and the Chairperson are to be appointed by the Governor-General on the nomination of the Minister. 30

(2) Appointments under subsection (1) are to be made on a full-time basis or on a part-time basis.

Period of appointment of Chairperson

12. The Chairperson is to be appointed for such period not exceeding 5 years as is specified in the instrument of appointment and is eligible for reappointment. 35

Period of appointment of special Commissioners

13.(1) A special Commissioner is to be appointed for the inquiry or inquiries specified in the instrument of appointment.

(2) The Governor-General may by written notice to a special Commissioner appoint the Commissioner for an additional inquiry.

Selection of special Commissioners

14. Before the appointment of a special Commissioner the Minister must consult:

- 5 (a) the Chairperson; and
(b) the presiding member (however described) of the Industries Commission;
about suitable appointees.

Terms and conditions of appointment

15 15. The Commissioners hold office on such terms and conditions in respect of matters not provided for by this Part or Part 5 as are determined by the Minister in writing.

PART 3—REFERENCE OF INVESTMENT PROPOSALS TO COMMISSION

Submission of investment proposals to Commission

15 16.(1) Where a foreign investor seeks to make a prescribed investment, he or she must submit an investment proposal in the prescribed form for the consideration of the Commission.

(2) The Commission must determine within the prescribed time whether the investment as proposed may proceed.

(3) The Commission may attach any conditions for the investment that it thinks fit, consistent with the principles set out in Schedule 1.

20 (4) The relevant foreign investor must be advised of the decision of the Commission in writing as soon as a decision has been made under this section.

(5) Each submission of an investment proposal must be accompanied by the prescribed fee.

Submission of decisions to Minister

25 17.(1) The Commission must submit in writing to the Minister all decisions made by it pursuant to section 16.

(2) The Minister may by notice in writing together with an explanatory statement, reverse, alter or attach any condition to any decision, as he or she sees fit. Such notice must be issued within the prescribed time.

30 (3) Any notice and explanatory statement under subsection (2) must be published in the *Gazette* and laid before each House of the Parliament within 15 sitting days of that House after the Minister issues the notice.

PART 4—INQUIRIES

Division 1—Preliminary

Initiation of inquiry

18.(1) The Minister may refer any matter relating to foreign investment to the Commission for inquiry and report. 5

(2) Either House of the Parliament may by resolution refer any matter relating to foreign investment to the Commission for inquiry and report.

(3) All referrals to the Commission for inquiry and report must be in writing, must include a reporting date and must be included in the Annual Report of the Commission.

Notice of inquiries 10

19. The Commission must as soon as practicable after receiving a referral of an inquiry matter, give reasonable notice in each State and inhabited external Territory, by advertisement in a newspaper circulating generally in each State or Territory, of:

- (a) the inquiry into the matter;
- (b) the subject of the inquiry; 15
- (c) when the inquiry is to begin; and
- (d) the address to which, and the date by which, written submissions to the inquiry may be sent.

Constitution of Commission for purposes of inquiry

20.(1) An inquiry must be conducted by a Division of the Commission constituted by the Chairperson and the Commissioners or special Commissioners (if any) for the inquiry. 20

(2) A Division must include at least two Commissioners unless the Minister otherwise directs.

Inquiries may be held at the same time

21. The Commission may hold more than one inquiry at the same time. 25

Delegation of Chairperson's powers

22. The Chairperson may by signed instrument delegate to a Commissioner for the purposes of an inquiry all or any of the Chairperson's powers under this Act in relation to the conduct of meetings and hearings of the Division conducting the inquiry, but those powers may only be exercised at meetings and hearings at which the Chairperson is not present. 30

Protection of Commissioners and witnesses

23.(1) A Commissioner has, in the performance of his or her duties as a Commissioner, the same protection and immunity as a Justice of the High Court.

(2) A person giving evidence to an inquiry has the same protection and is, in addition to the penalties provided by this Act, subject to the same liabilities as a witness in proceedings in the High Court.

Division 2—Conduct of Inquiries

General conduct of inquiries

24. Subject to this Division, in the conduct of an inquiry:

- (a) the procedure is to be decided upon by the Chairperson; and
- (b) the Commission:

- (i) may inform itself about any matter in any way the Chairperson thinks fit;
- (ii) may receive oral or written evidence;
- (iii) may consult with such persons as the Chairperson thinks fit;
- (iv) is not bound to act in a formal manner; and
- (v) is not bound by the rules of evidence.

Meetings of Commissioners

25.(1) Where there is at least one special Commissioner for an inquiry, the Chairperson may convene such meetings of the Division conducting the inquiry as the Chairperson thinks necessary for the efficient conduct of the inquiry.

(2) The Chairperson may determine the places at which the meetings are to be held.

Hearings by Commission

26.(1) The Commission may hold such hearing or hearings as the Chairperson thinks necessary for the purposes of an inquiry.

(2) Before the Commission begins hearings for the purposes of an inquiry, the Commission must give reasonable notice in each State and inhabited external Territory, by advertisement in a newspaper circulating generally in each State or Territory, of:

- (a) the hearings;
- (b) the subject of the hearings; and
- (c) the times and places at which the hearings are to be held.

Quorum for meetings and hearings

27.(1) Subject to subsection (2), where there is at least one special Commissioner for an inquiry, the majority of the Commissioners constituting the Division for the inquiry constitute a quorum at a meeting or hearing of the Division.

(2) A quorum of a Division for an inquiry must not be taken to be present unless the Chairperson or his or her delegate for the purposes of the inquiry is present.

Presiding at meetings and hearings

28.(1) The Chairperson is to preside at all meetings and hearings at which he or she is present.

(2) Where the Chairperson is not present at a meeting or hearing for the purposes of an inquiry, his or her delegate for the purposes of the inquiry is to preside at the meeting or hearing.

Procedure at hearings

29.(1) Subject to this section, a hearing is to be held in public.

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(2) Where:

(a) a person who appears to give evidence at a hearing objects to giving evidence in public; and

(b) the Commission considers that:

(i) the evidence is of a confidential nature; and

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(ii) the interest in maintaining confidentiality is greater than the interest in having the evidence taken in public;

the Commission may take the evidence in private.

(3) Where the Commission considers that:

(a) that evidence to be given at a hearing is of a confidential nature, even though the person who appears to give the evidence has not objected to doing so in public; and

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(b) the interest in maintaining confidentiality is greater than the interest in having the evidence taken in public;

the Commission may take the evidence in private.

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(4) The Commission may if it thinks fit permit or require a person who is to give evidence to the Commission to do so in writing.

(5) The Commission may take evidence on oath or affirmation at a hearing.

Written evidence and documents to be made public

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30. Where a person:

(a) gives written evidence to an inquiry; or

(b) gives or produces a document to the Commission in connection with an inquiry; the Commission must as soon as practicable make available to the public, in any way it thinks fit, the particulars of the evidence or the contents of the document, other than any matter where:

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(c) the person objects to the matter being made public and the Commission considers that evidence of the matter would have been taken in private if it had been given orally at a hearing; or

(d) the Commission considers that, even though the person does not object to the matter being made public, evidence of the matter would have been taken in private if it had been given orally at a hearing.

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Commission may prepare background papers etc.

31.(1) In the course of an inquiry, the Commission may prepare for public consideration a background paper or issues paper in relation to the inquiry.

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(2) The Commission must as soon as practicable make copies of any background paper or issues paper available to the public.

Draft reports

5 32.(1) In the course of an inquiry the Commission must, unless the Minister otherwise directs, prepare for public consideration a draft report of the inquiry.

(2) The Commission must as soon as practicable make copies of the draft report available to the public and must provide opportunities for public comment on the draft report.

Conduct of meetings

10 33.(1) The Commission may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

(2) Without limiting subsection (1), the Chairperson may permit participation in a meeting or hearing by telephone, closed circuit television or any other means of communication.

15 (3) A Commissioner or other person who is permitted to participate in a meeting or hearing under subsection (2) is to be regarded as being present at that meeting.

Powers of Chairperson

20 34.(1) A power of the Chairperson under section 24, 25, 26 or 33 in relation to an inquiry is to be exercised as far as practicable only after consultation with the Commissioners for the inquiry.

(2) The Chairperson is to direct and control travel arrangements by Commissioners for the purpose of the performance of their duties.

Division 3—Reports

Report to be tabled

25 35.(1) Where the Commission receives a reference under section 18, the Commission must report on the reference within a reasonable time having regard to the size and complexity of the reference.

30 (2) The Minister must cause a copy of a report relating to an inquiry that is given to him or her to be laid before each House of the Parliament within 10 sitting days of that House after the day on which the Minister receives the report.

*Division 4—Evidence***Power to obtain information and documents**

36.(1) Where the Commission:

- (a) is conducting an inquiry or considering an investment proposal; and
- (b) has reason to believe that a person is capable of giving information or producing documents relevant to the inquiry or investment proposal; 5

the Chairperson may give written notice to the person:

- (c) requiring him or her to appear at a hearing to give evidence or to produce the documents specified in the notice; or
- (d) requiring him or her to give to the Commission on or before a day specified in the notice: 10
 - (i) a statement signed by the person or, in the case of a body corporate, on behalf of the body corporate, setting out the information specified in the notice; or
 - (ii) the documents specified in the notice. 15

(2) Where documents are produced or given to the Commission under subsection (1), the Commission:

- (a) may take possession of and may make copies of or take extracts from the documents;
- (b) may retain possession of the documents for such period as is necessary for the purposes of the inquiry or consideration of the investment proposal to which the documents relate; and 20
- (c) during that period must permit them to be inspected at all reasonable times by persons who would be entitled to inspect them if they were not in the possession of the Commission. 25

Allowances to persons giving evidence

37.(1) A person who appears at a hearing because of a notice under subsection 36(1) is entitled to be paid such allowances for the person's travelling and other expenses as are prescribed.

(2) If the Chairperson considers it appropriate, a person who appears at a hearing to give evidence or produce documents (otherwise than because of a notice under subsection 36(1)) may be paid such allowances for the person's travelling and other expenses as are prescribed. 30

(3) If the Chairperson considers it appropriate, a person who gives evidence to or produces documents at an inquiry may be: 35

- (a) paid such remuneration as is prescribed for the performance of work involved in collecting and preparing the evidence or documents; or
- (b) reimbursed such expenses or compensated for such losses as were reasonably incurred in collecting and preparing the evidence or documents; 40

or both.

(4) Money payable under this section is to be paid by the Commonwealth.

PART 5—ADMINISTRATION***Division 1—Office of Commissioner*****Acting Chairperson**

38.(1) The Minister may appoint a person to act as the Chairperson:

- (a) during a vacancy in the office of the Chairperson (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chairperson is absent from Australia or is, for any other reason, unable to perform the functions of the office of the Chairperson;

but a person appointed to act during a vacancy must not continue to act for more than 12 months.

(2) Anything done by or in relation to a person purporting to act as the Chairperson is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Acting special Commissioners

39.(1) The Minister may appoint a person to act as a special Commissioner for an inquiry:

- (a) in the place of a person who has ceased to be a special Commissioner for the inquiry; or
- (b) during any period, or during all periods, when a special Commissioner for the inquiry:

- (i) is absent from Australia; or
- (ii) is unable to take part in the inquiry because of a direction under subsection 41(4); or
- (iii) is for any other reason unable to perform the function of a special Commissioner for the inquiry;

but a person appointed to act under paragraph (a) must not continue to act for more than 6 months.

(2) In considering the persons suitable for appointment for an inquiry under subsection (1), the Minister must take into account the consultations under section 14 in relation to the inquiry.

(3) Anything done by or in relation to a person purporting to act as a special Commissioner is not invalid on the ground that:

- (a) the occasion for the person's appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Outside employment

40.(1) A Commissioner must not:

- (a) if appointed on a full-time basis—engage in paid employment outside the duties of the office of Commissioner except with the consent of the Minister; or
- (b) if appointed on a part-time basis—engage in paid employment that conflicts with the proper performance of the Commissioner's functions. 5

(2) A reference in this section to paid employment includes a reference to the performance by a person of a service for which it could reasonably be expected that the person would receive payment.

Disclosure of interests

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41.(1) The Chairperson must give written notice to the Minister of all direct and indirect pecuniary interests that the Chairperson has or acquires in a business carried on in Australia or in a body corporate carrying on any such business.

(2) Where the Chairperson has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry: 15

- (a) he or she must, as soon as possible after the relevant facts have come to his or her knowledge, disclose the interest to the Minister;
- (b) the Minister must take such action as the Minister considers appropriate; and
- (c) the interest must be disclosed in the report of the inquiry. 20

(3) Where a Commissioner has or acquires an interest, pecuniary or otherwise, that could conflict with the proper performance of his or her functions during an inquiry he or she must, as soon as practicable after the relevant facts have come to his or her knowledge, disclose the interest to the Minister.

(4) Where the Chairperson becomes aware that a Commissioner has, in relation to an inquiry, an interest of the kind referred to in subsection (3), the Chairperson must direct the Commissioner not to take any further part in the inquiry. 25

Suspension and removal from office

42.(1) The Governor-General may suspend a Commissioner from office on the ground of misbehaviour or physical or mental incapacity. 30

(2) Where the Governor-General suspends a Commissioner from office, the Minister must cause a statement of the ground of the suspension to be laid before each House of the Parliament within 7 sitting days of the House after the suspension.

(3) Where such a statement has been laid before a House of the Parliament, that House may by resolution within 15 sitting days of that House after the day on which the statement has been laid before it, declare that the Commissioner should be restored to office. If each House so passes a resolution, the Governor-General must revoke the suspension. 35

(4) If at the expiration of 15 sitting days of a House of the Parliament after the day on which the statement has been laid before that House, that House has not passed such a resolution, the Governor-General must remove the Commissioner from office.

(5) If a Commissioner:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) being a person holding office on a full-time basis:

(i) engages, except with the consent of the Minister, in paid employment outside the duties of his or her office; or

(ii) is absent from duty except on leave granted by the Minister in accordance with section 46, for 14 consecutive days or for 28 days in any period of 12 months; or

(c) fails without reasonable excuse to comply with subsection 41(1), (2) or (3) or with a direction under subsection 41(4);

the Governor-General must terminate the appointment of the Commissioner.

(6) A Commissioner must not be removed from office except as provided by this section.

(7) Where a Commissioner who is an eligible employee for the purposes of the *Superannuation Act 1976* is removed from office under subsection (4) on the ground of physical or mental incapacity, he or she is to be taken for the purposes of that Act to have been retired on the ground of invalidity on the day on which he or she was suspended from office.

(8) A Commissioner who is suspended from office under this section is not entitled to be paid any remuneration or allowances in respect of the period of suspension unless he or she is restored to office.

Division 2—Conditions of Commissioners

Part-time Chairperson taken to be full-time

43. Where:

(a) the Chairperson has been appointed on a part-time basis; and

(b) the Minister becomes satisfied that the Chairperson will not be able to perform the functions of Chairperson during a period otherwise than on a full-time basis; the Minister must, in writing specifying the period, direct that for the purposes of paragraph 42(5)(b) and sections 45 and 46, the Chairperson is to be taken to have been appointed on a full-time basis for that period.

Part-time special Commissioner taken to be full-time

44. Where:

(a) a special Commissioner has been appointed on a part-time basis; and

- (b) the Chairperson becomes satisfied that the special Commissioner will not be able to perform the functions of special Commissioner during a period otherwise than on a full-time basis;
 the Chairperson must, in writing specifying the period, direct that for the purposes of paragraph 42(5)(b) and sections 45 and 46, the special Commissioner is to be taken to have been appointed on a full-time basis for that period. 5

Remuneration and allowances

45.(1) Subject to this section, a Commissioner is to be paid such remuneration as is determined by the Remuneration Tribunal.

- (2) A Commissioner is to be paid such allowances as are prescribed. 10

- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(4) If a person who is a Judge is appointed as a Commissioner, the person is not entitled to remuneration under this Act while receiving salary or annual allowance as a Judge.

Leave of absence

46.(1) Subject to arrangements under section 43 and to section 44, where a Commissioner is appointed on a full-time basis, the Minister may grant the Commissioner leave of absence on such terms and conditions as to remuneration and otherwise as the Minister determines. 15

- (2) The Minister may in writing delegate to the Chairperson the powers under subsection (1) in relation to special Commissioners. 20

Resignation of Commissioners

47.(1) The Chairperson or a Commissioner may resign by signed instrument delivered to the Governor-General.

- (2) A special Commissioner may resign as a special Commissioner for an inquiry by signed instrument delivered to the Governor-General. 25

Division 3—Staff and Consultants

Staff

48.(1) Subject to section 50, the staff of the Commission are to be persons appointed or employed under the *Public Service Act 1922*. 30

- (2) The Chairperson has all the powers of or exercisable by a Secretary of a Department of the Australian Public Service under the *Public Service Act 1922*, so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in subsection (1), as if that branch were a separate Department of the Australian Public Service. 35

Arrangements relating to staff

5 **49.(1)** The Chairperson may, on behalf of the Commission, arrange with the Secretary of a Department of the Australian Public Service or with a body established for a public purpose by or under a law of the Commonwealth, for the services of officers or employees of the Department or body to be made available to the Commission.

10 **(2)** The Chairperson may, on behalf of the Commission, enter into an arrangement with the appropriate authority of a State or Territory for the services of officers or employees of the Public Service of the State or Territory, or of a body established for a public purpose by or under a law of the State or Territory, to be made available to the Commission.

Engagement of consultants

15 **50.(1)** The Chairperson may, on behalf of the Commission, engage persons having suitable qualifications and experience as consultants to the Commission.

20 **(2)** The terms and conditions of the engagement of a person under subsection (1) are such as are determined by the Chairperson.

PART 6—OFFENCES**Offences relating to administration of Act**

25 **51.(1)** A person must not hinder, obstruct, molest or interfere with:

30 (a) a Commissioner participating in an inquiry; or

35 (b) a person acting on behalf of the Commission for the purposes of an inquiry.

Penalty: \$3,000.

40 **(2)** A person who:

45 (a) refuses to employ another person;

50 (b) dismisses, or threatens to dismiss, another person from the other person's employment;

55 (c) prejudices, or threatens to prejudice, another person in the other person's employment; or

60 (d) intimidates or coerces, imposes any pecuniary or other penalty upon, or takes any other disciplinary action in relation to, another person;

65 because the other person:

70 (e) has given or proposes to give information or documents to the Commission or to a person acting on behalf of the Commission; or

75 (f) has given or proposes to give evidence before the Commission or to a person acting on behalf of the Commission;

80 is guilty of an offence.

Penalty: Imprisonment for 6 months.

Failure to comply with requirement

52.(1) A person who, after having been given notice under subsection 36 (1), without reasonable excuse:

- (a) refuses or fails to comply with the notice; or
- (b) when appearing at a hearing because of the notice refuses or fails: 5
 - (i) to take an oath or make an affirmation; or
 - (ii) to answer a question that is required by the Commissioner presiding at the hearing to be answered;

is guilty of an offence.

Penalty: \$3,000. 10

(2) A person who, after having been given notice under subsection 36(1) requiring the person to appear at a hearing, without reasonable excuse refuses or fails to attend from day to day, unless excused or released from further attendance by the Commissioner presiding at the hearing, is guilty of an offence.

Penalty: \$3,000. 15

(3) It is a reasonable excuse for the purposes of subsection (1) for a person to refuse or fail to answer a question, give information or produce a document, that the answer, the information or the production of the document might tend to incriminate the person or make the person liable to forfeiture or a penalty.

False or misleading evidence or information 20

53.(1) A person must not:

- (a) give to the Commission information or documents that the person knows to be false or misleading in a material particular; or
- (b) at a hearing, give evidence or produce a document that the person knows to be false or misleading in a material particular. 25

Penalty: Imprisonment for 6 months.

(2) Subsection (1) does not apply to a document if, at the time when the person gives it to the Commission, produces it at a hearing or gives it to the Commission, the person informs the Commission that it is false or misleading in a material particular and specifies in what respect it is to the person's knowledge false or misleading in a material particular. 30

Conduct of directors, servants and agents

54.(1) Where it is necessary to establish for the purposes of this Act or the regulations, the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and 35
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) Where it is necessary to establish for the purposes of this Act or the regulations, the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her apparent authority shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) Where:

- (a) a person other than a body corporate is convicted of an offence; and
- (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

(7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

PART 7—MISCELLANEOUS

Relationship of this Act to other laws

55. The provisions of this Act are in addition to, and not in derogation of nor in substitution for, the requirements of the *Environment Protection (Impact of Proposals) Act 1974* or any other law of the Commonwealth.

Annual report

56.(1) The Chairperson must not, later than 31 December in each year, prepare and give to the Minister a report on the Commission's activities including the financial statements of the Commission, during the period of 12 months that ended on the preceding 30 June.

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(2) A report is to contain comments on issues arising from inquiries conducted by the Commission and must contain information concerning the foreign investment register.

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day on which the Minister received the report.

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Regulations

57.(1) The Governor-General may make regulations not inconsistent with this Act prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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(2) In prescribing a fee in accordance with subsection 16(5), the regulations must not prescribe a fee that exceeds the reasonable expenses of the Commission in dealing with the investment proposal.

SCHEDULE 1**Section 7****Policy principles for determining applications for reviewable foreign investment proposals.**

In determining whether an investment proposal should proceed, the Commission must have regard to:

- 5 . the net economic benefits to Australia of the proposed investment;
- . the sustainable development and growth of Australian industries that are efficient in their use of resources, self-reliant, enterprising, innovative and internationally competitive;
- 10 . the maximisation of Australian participation in the development and exploitation of Australian natural resources and in Australian industries generally;
- . the maximisation of employment and harmonious industrial relations in Australia;
- . national and local environmental and cultural policies;
- . the concentration of foreign ownership within an industry;
- 15 . the interests of consumers and the community in general; and
- . the national interest.



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