

originated in the House of Representatives;
g this day passed, is now ready for
n to the Senate for its concurrence.

J. A. PETTIFER
Clerk of the House of Representatives

Representatives,
24 February 1981

A BILL

FOR

An Act to amend the *Securities Industry Act 1980*

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

Short title, &c.

1. (1) This Act may be cited as the *Securities Industry Amendment Act 1981*.

(2) The *Securities Industry Act 1980*¹ is in this Act referred to as the
Principal Act.

10 Commencement

2. This Act shall come into operation on the day on which the *Securities
Industry Act 1980* comes into operation.

Interpretation

3. Section 4 of the Principal Act is amended—

15 (a) by omitting the definition of “banker’s books” in sub-section (1) and
substituting the following definitions:

“ ‘banker’s books’ means—

(a) books of a banking corporation, including any documents
used in the ordinary business of a banking corporation;

- (b) cheques, orders for the payment of money, bills of exchange and promissory notes in the possession or under the control of a banking corporation; and
- (c) securities or documents of title to securities in the possession or under the control of a banking corporation whether by way of pledge or otherwise;

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“ ‘banking corporation’ means—

- (a) a bank as defined in section 5 of the *Banking Act* 1959;
- (b) the Primary Industry Bank of Australia; or
- (c) a bank constituted under a law of a State or Territory;”;

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- (b) by omitting “of affairs” from the definition of “executive officer” in sub-section (1);
- (c) by omitting “its creditors” from paragraph (e) of the definition of “officer” in sub-section (1) and substituting “another person or other persons”;
- (d) by omitting “a share” from the definition of “voting share” in sub-section (1) and substituting “an issued share”; and
- (e) by omitting from sub-section (7) “that Act” and substituting “that Ordinance”.

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Relevant interests in securities

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4. Section 5 of the Principal Act is amended—

- (a) by omitting from sub-sections (4) and (7) “20%” and substituting “the prescribed percentage”; and
- (b) by omitting from sub-section (7) “in a share”.

Power of Commission to require production of books

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5. Section 8 of the Principal Act is amended—

- (a) by inserting before sub-section (1) the following sub-section:

“(1A) The powers of the Commission under sub-section (1), or the powers of an authorized person under sub-section (2), to make a requirement of a corporation or person shall not be exercised except—

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- (a) for the purpose of the performance of a function or the exercise of a power by the Commission under an Act that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980; or

- (b) where the requirement relates to a matter that constitutes or may constitute—

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- (i) a contravention of, or failure to comply with, a provision of such a relevant Act; or

- (ii) an offence relating to securities that involves fraud or dishonesty.”;

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- (b) by omitting from sub-section (1) "if it considers there is sufficient reason to do so, by writing" and substituting "by notice in writing";
- (c) by omitting from sub-paragraph (iv) of paragraph (a) of sub-section (1) "or" (last occurring);
- 5 (d) by inserting after sub-paragraph (v) of paragraph (a) of sub-section (1) the following word and sub-paragraph:
 " ; or (va) any other person who, in the opinion of the Commission, has been a party to any dealing in securities,";
- 10 (e) by omitting from paragraph (a) of sub-section (2) "or (v)" and substituting ", (v) or (va)";
- (f) by inserting in paragraph (a) and paragraph (b) of sub-section (2) "by notice in writing" after "require"; and
- (g) by omitting sub-paragraphs (ii) and (iii) of paragraph (a) of sub-section (6) and substituting the following sub-paragraphs:
 15 " (ii) may require the other person, or any person who was party to the compilation of the books, to make a statement providing any explanation that the person concerned is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;
 20 (iii) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission; and".

Power of magistrate to issue warrant to seize books

- 25 6. Section 9 of the Principal Act is amended—
- (a) by omitting sub-section (3) and substituting the following sub-section:
 " (3) Where, under this section, a person takes possession of, or secures against interference, any books, and a person has a lien on the books, the taking of possession of the books or the securing of the books against interference does not prejudice the lien.";
- 30 (b) by omitting paragraphs (b) and (c) of sub-section (4) and substituting the following paragraphs:
 " (b) may require any person who was a party to the compilation of the books to make a statement providing any explanation that that person is able to provide as to any matter relating to the compilation of the books or as to any matter to which the books relate;
 35 (c) may retain possession of the books for such period as is necessary to enable the books to be inspected, and copies of, or extracts from, the books to be made or taken, by or on behalf of the Commission; and"; and
- 40 (c) by omitting sub-section (6) and substituting the following sub-section:
 " (6) In this section, 'premises' includes any structure, building, aircraft, vehicle, vessel or place (whether built upon or not) and any part of such a structure, building, aircraft, vehicle, vessel or place.".
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Offences

7. Section 10 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) It is a defence to a prosecution for an offence against sub-section (2) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.”. 5

8. After section 10 of the Principal Act the following section is inserted:

Copies or extracts of books to be admitted in evidence

“10A. (1) Subject to this section, in any legal proceedings (whether proceedings under this Act or otherwise), a copy of or extract from a book relating to a matter mentioned in sub-paragraph 8 (1) (a) (vi), (vii), (viii), (ix) or (x) is admissible in evidence as if it were the original book or the relevant part of the original book. 10

“(2) A copy of or extract from a book is not admissible in evidence under sub-section (1) unless it is proved that the copy or extract is a true copy of the book or of the relevant part of the book. 15

“(3) For the purposes of sub-section (2), evidence that a copy of or extract from a book is a true copy of the book or of a part of the book may be given by a person who has compared the copy or extract with the book or the relevant part of the book and may be given either orally or by an affidavit sworn, or by a declaration made, before a Commissioner or person authorized to take affidavits or statutory declarations.”. 20

Privilege

9. Section 11 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “forthwith furnish in writing to the Commission or authorized person the name and address of the person to whom or by whom the communication was made” and substituting “, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the Commission or authorized person”; 25
and 30
- (b) by omitting sub-sections (2) and (3).

Disclosure to Commission

10. Section 12 of the Principal Act is amended—

- (a) by inserting after sub-section (3) the following sub-sections: 35
- “(3A) Where the Commission considers—
- (a) that it may be necessary to prohibit trading in securities of, or made available by, a body corporate;

- (b) that a person may have contravened section 123, 124, 125, 126, 127, 128 or 132 in relation to securities of, or made available by, a body corporate;
- 5 (c) that a person may have contravened a provision of Division 3A of Part IV of the *Companies Ordinance* 1962 in relation to shares in a body corporate;
- (d) that an acquisition of shares in a body corporate may have occurred in circumstances referred to in sub-section 60 (7) of the *Companies (Acquisition of Shares) Act* 1980; or
- 10 (e) that a person may have engaged in conduct that has had a result referred to in sub-section 60 (7A) of the *Companies (Acquisition of Shares) Act* 1980,

the Commission—

(f) may require—

- 15 (i) in a case to which paragraph (a), (b), (c) or (d) applies—a director, secretary or executive officer of the body corporate referred to in that paragraph; or
- (ii) in a case to which paragraph (e) applies—a director, secretary or executive officer of a body corporate in
- 20 relation to shares in which, or affairs of which, that conduct was engaged in,

to disclose to the Commission any information of which he is aware, being information that might have affected any dealing that has taken place, or that might affect any dealing that may take place, in securities of, or made available by, the body corporate of which he is the director, secretary or executive officer, as the case may be; and

- 25 (g) may require a person whom the Commission believes on reasonable grounds to be capable of giving information concerning—
- 30 (i) any dealing in relevant securities;
- (ii) any advice given by a dealer, an investment adviser, a dealer's representative or an investment representative concerning relevant securities;
- 35 (iii) the issuing or publication of a report or analysis by a dealer, an investment adviser, a dealer's representative or an investment representative concerning relevant securities;
- 40 (iv) the financial position of any business carried on by a person who is or has been (either alone or together with another person or other persons) a dealer or an investment adviser and has dealt in, or given advice concerning, as the case may be, relevant securities;

(v) the financial position of any business carried on by a nominee controlled by a person referred to in sub-paragraph (iii) or jointly controlled by 2 or more persons at least one of whom is a person referred to in that sub-paragraph; or

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(vi) an audit of, or any report of an auditor concerning, any accounts or records of a dealer or of an investment adviser, being accounts or records relating to dealings in relevant securities,

to disclose to the Commission the information that the person has in relation to the matters concerning which the Commission believes that the person is capable of giving information.

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“(3B) For the purposes of paragraph (3A) (g), ‘relevant securities’ means—

(a) in a case to which paragraph (3A) (a), (b), (c) or (d) applies— securities of, or made available by, the body corporate referred to in that paragraph; and

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(b) in a case to which paragraph (3A) (e) applies—securities of, or made available by, the body corporate in relation to shares in which, or affairs of which, the conduct referred to in that paragraph was engaged in.

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“(3C) A person is not excused from disclosing information to the Commission pursuant to a requirement made of him under sub-section (3A) on the ground that the disclosure of the information might tend to incriminate him but, where the person claims before disclosing the information that the information might tend to incriminate him, the information is not admissible in evidence against him in criminal proceedings other than proceedings under this section.”;

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“(3D) Where, pursuant to paragraph (3A) (f) or (g), the Commission requires a person to disclose information to the Commission, the Commission shall give, or cause to be given, to the person, at the time when the requirement is made, a notice in the prescribed form setting out the terms of sub-section (3C).”;

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(b) by omitting from sub-section (4) “or (3)” and substituting “, (3) or (3A)”;

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(c) by adding at the end thereof the following sub-sections:

“(5) A person shall not, in purported compliance with a requirement of the Commission under sub-section (1), (2), (3) or (3A), disclose information, or make a statement, that is false or misleading in a material particular.

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Penalty: \$5,000 or imprisonment for 1 year, or both.

“(6) It is a defence to a prosecution for an offence against sub-section (5) if the defendant proves that he believed on reasonable grounds that the information or statement was true and was not misleading.

“(7) In this section, a reference to disclosing information includes, in relation to information that is contained in a document, a reference to furnishing the document.”.

Powers of inspectors

5 **11.** Section 19 of the Principal Act is amended—

(a) by omitting from sub-section (1) “in the prescribed form” and substituting “containing the prescribed matters”;

(b) by inserting after sub-section (1) the following sub-section:

10 “(1A) A notice given pursuant to paragraph (1) ~~(c)~~ shall set out the provisions of sub-sections (8) and (9).”; and

(c) by adding at the end thereof the following sub-section:

15 “(15) The powers of the Court under this section may be exercised in relation to a person notwithstanding that the person has been convicted of an offence in relation to the matter in respect of which the powers are to be exercised.”.

12. Section 21 of the Principal Act is repealed and the following section substituted:

Record of examination

20 “21. (1) An inspector may cause to be made a record of the questions asked and the answers given at an examination under this Division.

“(2) Where a record of the questions asked and the answers given at an examination under this Division is in writing or is reduced to writing—

25 (a) the inspector may require the person to read the written record or have the written record read to him and may require him to sign the written record; and

(b) if the person requests the inspector in writing to furnish him with a copy of the written record, the inspector shall furnish the copy to the person without charge but subject to such conditions (if any) as the inspector imposes.

30 “(3) A written record of the examination of a person under this Division that is signed by the person as mentioned in sub-section (2) or is authenticated in any other prescribed manner is *prima facie* evidence of the questions asked and the answers given at the examination.

35 “(4) A person to whom a copy of a written record of an examination is given under paragraph (2) (b) and any person who comes into possession of the copy or a copy of the copy shall comply with any conditions imposed by the inspector under that paragraph.

40 “(5) Nothing in this section affects or limits the admissibility in any criminal or civil proceedings of other evidence of the questions asked and answers given at an examination under this Part.

“(6) The Commission may give a copy of a written record made of an examination under this Division and a copy of any related book to a duly qualified legal practitioner who satisfies the Commission that he is acting for a person who is conducting, or is, in good faith, contemplating, criminal or civil proceedings in respect of any matters into which an investigation has been or is being made by an inspector under this Division. 5

“(7) A duly qualified legal practitioner to whom a copy of a written record of an examination or of a related book is given under sub-section (6) or any other person who comes into possession of the copy shall not use the copy otherwise than in connection with the institution or preparation of, or in the course of, criminal or civil proceedings and shall not publish or communicate for any other purpose the copy or any part of the contents of the copy to any other person. 10

“(8) The Commission may if it thinks fit give a copy of a written record made of an examination under this Division and of any related book to any other person subject to such conditions as the Commission imposes. 15

“(9) A person to whom a copy of a written record of an examination or of a related book is given under sub-section (8) and any person who comes into possession of the copy or a copy of the copy shall comply with any conditions imposed by the Commission under that sub-section. 20

“Penalty: \$1,000 or imprisonment for 3 months, or both.”.

Admissibility in other proceedings of questions and answers at an examination

13. Section 24 of the Principal Act is amended—

- (a) by adding at the end of sub-paragraph (ii) of paragraph (a) “or”; 25
- (b) by adding at the end of sub-paragraph (iii) of paragraph (a) “or”; and
- (c) by omitting sub-paragraphs (iv) and (v) of paragraph (a).

Determination of objection to admissibility of question and answer

14. Section 27 of the Principal Act is amended by inserting in sub-section (6) “, without the leave of the court or tribunal hearing the proceedings,” after “entitled”. 30

Privileged communications

15. Section 32 of the Principal Act is amended by omitting “forthwith furnish in writing the name and address of the person to whom or by whom the communication was made” and substituting “, if he knows the name and address of the person to whom or by or on behalf of whom the communication was made, forthwith furnish that name and address in writing to the inspector”. 35

Grant of representatives licence

16. Section 49 of the Principal Act is amended by omitting from sub-section (1) "advisers" and substituting "representatives".

Conditions to which licence is subject

5 17. Section 51 of the Principal Act is amended—

(a) by omitting paragraph (d) of sub-section (2) and substituting the following paragraph:

10 "(d) may include a condition requiring the holder of a dealers licence or of an investment advisers licence to lodge and maintain with the local authority a security approved by the Commission for such amount not exceeding \$20,000 as is, from time to time, determined by the Commission in relation to the holder of that licence.";

15 (b) by omitting from sub-section (9) "Commission" (twice occurring) and substituting "local authority"; and

(c) by adding at the end thereof the following sub-section:

"(10) In this section, 'local authority' means the Corporate Affairs Commission for the Territory."

Penalties

20 18. Section 129 of the Principal Act is amended by omitting "indictable".

Power of Court to prohibit payment or transfer of moneys, securities or other property

19. Section 147 of the Principal Act is amended—

25 (a) by omitting from sub-section (1) "either or both" and substituting "any one or more";

(b) by inserting in paragraph (d) of sub-section (1) ", either absolutely or subject to conditions," after "prohibiting";

(c) by inserting in paragraph (e) of sub-section (1) ", either absolutely or subject to conditions," after "prohibiting"; and

30 (d) by adding at the end of sub-section (1) the following paragraphs:

"(h) an order appointing—

(i) where the relevant person is a natural person—a receiver or trustee, having such powers as the Court orders, of the property or part of the property of that person; or

35 (ii) where the relevant person is a body corporate—a receiver or receiver and manager, having such powers as the Court orders, of the property or part of the property of that person;

40 (j) where the relevant person is a natural person—an order requiring that person to deliver up to the Court his passport and such other documents as the Court thinks fit;

- (k) where the relevant person is a natural person—an order prohibiting that person from leaving Australia without the consent of the Court.”.

Regulations

20. Section 150 of the Principal Act is amended—

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(a) by omitting from paragraph (c) of sub-section (2) “or” (last occurring);

(b) by inserting after paragraph (c) the following paragraph:

“(ca) do not have effect in relation to a specified transaction or class of transactions; or”; and

(c) by omitting from sub-section (4) “19 (8)” and substituting “19 (11)”. 10

NOTE

1. No. 66, 1980.

