

# NEW SOUTH WALES INVESTMENT CORPORATION BILL 1986

## NEW SOUTH WALES



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**NEW SOUTH WALES INVESTMENT CORPORATION  
BILL 1986**

NEW SOUTH WALES



No.       , 1986

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**A BILL FOR**

**An Act to constitute the New South Wales Investment Corporation; to  
define the Corporation's functions; and for other purposes.**

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See also State Development and Industries Assistance(Amendment) Bill 1986; Statutory and Other Offices Remuneration (Investment Corporation) Amendment Bill 1986.

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**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

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## PART 1

## PRELIMINARY

**Short title**

1. This Act may be cited as the "New South Wales Investment Corporation Act 1986".

10 **Commencement**

2. (1) Sections 1, 2 and 33 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day or days as may be appointed by the Governor and notified by  
15 proclamation published in the Gazette.

**Interpretation**

3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

20 "alternate director" means a person appointed under clause 3 of Schedule 1;

"appointed director" means a director other than the director referred to in section 4 (4) (a);

25 "business undertaking" includes any person, body corporate, trust, joint venture, government agency or instrumentality which engages in or proposes to engage in any economic activity;

"chairperson" means the chairperson of the Corporation;

"Corporation" means the New South Wales Investment Corporation constituted by this Act;

30 "creditor", in relation to a guarantee executed or proposed to be executed under this Act, means the bank or other creditor in whose favour the guarantee is or is to be executed;

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“debtor”, in relation to a guarantee executed or proposed to be executed under this Act, means the person whose debt is or is to be the subject of the guarantee;

5 “director” means a director of the Corporation, and includes an alternate director;

“economic activity” means any activity carried on with a view to making a profit or producing revenue and, without limiting the generality of the foregoing, includes—

10 (a) any primary industry or mining activity, including an activity relating to petroleum or gas;

(b) processing and manufacturing;

(c) technological development;

(d) tourism; and

15 (e) trade and commerce, including financial, marketing, transport and other services,

but does not include the activities of political parties or trade unions;

“financial assistance” means—

(a) a grant, loan or guarantee; or

20 (b) an amount provided to enable shares or prescribed interests to be acquired;

“Fund” means the New South Wales Investment Corporation Fund established under section 18;

25 “managing director” means the managing director of the Corporation appointed under section 5, and includes a person acting in the place of the managing director;

“part-time director” means a director other than the managing director;

“prescribed interest” has the meaning ascribed to that expression by section 5 (1) of the Companies (New South Wales) Code;

30 “regulation” means a regulation made and in force under this Act;

“securities”, in relation to a business undertaking, means—

(a) debentures, stocks, shares, bonds or notes issued or proposed to be issued by the business undertaking, whether corporate or unincorporate;

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- (b) any right or option in respect of such debentures, stocks, shares, bonds or notes;
- (c) bills of exchange or promissory notes issued or proposed to be issued by the business undertaking; or
- 5 (d) any prescribed interest in the business undertaking;

“value”, in relation to financial assistance provided in the form of a guarantee given under this Act, means the maximum amount for which the Corporation could be liable under the guarantee.

10 (2) For the purposes of this Act, a reference to development of economic activity includes a reference to the establishment of any economic activity.

(3) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- 15 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(4) The chairperson may be referred to as the chairman or chairwoman, as the case requires.

20 (5) Where in accordance with arrangements made under Schedule 7 to the State Development and Industries Assistance (Amendment) Act 1986 the Corporation becomes the creditor in respect of financial assistance granted or deemed to have been granted by the Ministerial Corporation under the State Development and Industries Assistance Act 1966, that financial assistance shall, for the purposes of this Act, be deemed to have been granted by the Corporation under this Act.

25 (6) Where by virtue of clause 3 of Schedule 7 to the State Development and Industries Assistance (Amendment) Act 1986 shares in a business undertaking that were acquired by the New South Wales Development Corporation in accordance with the State Development and Industries Assistance Act 1966 have become vested in the Investment Corporation,  
30 those shares shall, for the purposes of this Act, be deemed to have been acquired by the Corporation under this Act.

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## PART 2

## CONSTITUTION OF THE CORPORATION

**Constitution**

4. (1) There is constituted by this Act a corporation under the corporate  
5 name of the “New South Wales Investment Corporation”.
- (2) The Corporation—
- (a) shall have and may exercise the functions imposed or conferred  
on it by or under this or any other Act;
  - 10 (b) shall, for the purposes of any Act, be deemed to be a statutory  
body representing the Crown; and
  - (c) in accordance with section 8, shall, in the exercise of its functions,  
be subject to the control and direction of the Minister.
- (3) The Corporation shall consist of not fewer than 6 and not more than  
8 directors, of whom—
- 15 (a) one shall be the person appointed as managing director under  
section 5 or for the time being acting in the office of managing  
director; and
  - (b) the remainder shall be part-time directors.
- (4) Of the part-time directors—
- 20 (a) one shall be the Director of the Department of Industrial  
Development and Decentralisation;
  - (b) one shall be an officer of the Treasury nominated by the Treasurer;  
and
  - 25 (c) the remainder shall be persons who in the opinion of the Minister  
have suitable qualifications and experience and who have been  
nominated for appointment by the Minister.
- (5) A part-time director referred to in subsection (4) (b) or (c) shall be  
appointed by the Governor.
- (6) Schedule 1 has effect with respect to the directors.
- 30 (7) Schedule 2 has effect with respect to the procedure of the Corporation.

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**Managing director**

5. (1) The Governor may appoint a person as the managing director of the Corporation.

(2) The managing director—

- 5 (a) is responsible, as chief executive officer of the Corporation, for the management of the affairs of the Corporation subject to and in accordance with any directions of the Corporation; and
- 10 (b) shall have and may exercise such other functions as are conferred or imposed on the managing director by or under this or any other Act.

(3) Schedule 3 has effect with respect to the managing director.

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PART 3

FUNCTIONS OF THE CORPORATION

**General functions of Corporation**

15 6. (1) The functions of the Corporation are—

- (a) to promote the development of economic activity in New South Wales by—
- 20 (i) providing, or assisting with the provision of, financial assistance and other services to business undertakings; and
- (ii) engaging in or participating in the development of economic activity either alone or with any business undertaking;
- (b) to organise the assembly and deployment of financial resources for investment in business undertakings and other economic activities and to increase the availability of capital to business undertakings;
- 25 (c) to promote the participation by New South Wales residents and other Australian residents in the ownership and control of business undertakings which are engaging in or proposing to engage in economic activity in New South Wales or in other parts of
- 30 Australia or elsewhere;



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- (d) to provide and manage economic development assistance programmes by making grants and loans and providing guarantees to secure the performance by business undertakings of financial obligations owed to their creditors;
- 5 (e) to participate in the activities of business undertakings through the acquisition of shareholdings in those undertakings, or by means of other kinds of commercial arrangements;
- (f) to provide financial assistance to business undertakings in appropriate cases; and
- 10 (g) to exercise such functions conferred or imposed under the Country Industries (Pay-roll Tax Rebates) Act 1977 on the Minister administering that Act as that Minister directs.

(2) The Corporation shall exercise its functions in such manner as will promote the economic development of New South Wales.

- 15 (3) Any act, matter or thing done or omitted by the Corporation pursuant to subsection (1) (g) shall be treated as having been done or omitted by the Minister administering the Country Industries (Pay-roll Tax Rebates) Act 1977.

**Powers of Corporation**

- 20 7. (1) The Corporation has power to do, in New South Wales or in other parts of Australia or elsewhere, all things necessary or convenient to be done for or in connection with the exercise of its functions.

(2) Without limiting the generality of subsection (1) and without limiting section 38 (I) of the Interpretation Act 1897, the powers of the Corporation  
25 referred to in subsection (1) include power—

- (a) subject to subsection (3), to obtain financial accommodation in accordance with the Public Authorities (Financial Accommodation) Act 1981;
- (b) to lend money;
- 30 (c) to maintain an account or accounts with any bank, whether within Australia or elsewhere;
- (d) to improve, develop or alter property, whether real or personal;
- (e) to form or establish, or participate in the formation or establishment of, any business undertaking;

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- (f) to subscribe for, invest in or otherwise acquire, and to dispose of, shares in, or debentures or other securities of, a body corporate;
  - (g) to enter into a partnership or an arrangement for carrying on an economic activity;
  - 5 (h) to underwrite issues of securities of a business undertaking;
  - (i) to execute instruments guaranteeing the performance by business undertakings of financial obligations owed to their creditors;
  - (j) to appoint agents and attorneys;
  - (k) to act as an agent of any other person;
  - 10 (l) to exercise any right or power conferred on the Corporation to appoint a director of, or to appoint a person to hold office in, a business undertaking; and
  - (m) to do anything incidental to, or conducive to the exercise of, its powers.
- 15 (3) The Corporation is not (except for temporary purposes) authorised to obtain financial accommodation if, as a result of obtaining that accommodation, the total amount of accommodation obtained by the Corporation (otherwise than for temporary purposes) and not repaid would exceed 10 times the sum of, or, if some other number is prescribed, that
- 20 number times the sum of—
- (a) the amount of capital for the time being held by the Corporation; and
  - (b) the amount (if any) held by the Corporation in the form of accumulated reserves.
- 25 **Corporation to comply with Government's policy objectives, etc.**
8. The Minister may from time to time give to the Corporation—
- (a) a statement in writing specifying the Government's policy objectives with respect to matters concerning the exercise of the Corporation's functions;
  - 30 (b) a direction in writing requiring the Corporation to refer to the Minister for the Minister's approval determinations made or proposed to be made by the Corporation with respect to applications made under section 19 for financial assistance or for any specified class of financial assistance; or

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5 (c) with respect to a particular proposal for the provision by the Corporation of financial assistance to a specified business undertaking or a specified group of business undertakings, a direction in writing requiring the Corporation to grant that assistance,

and, except in so far as such a statement or direction is not consistent with this Act, it is the duty of the Corporation to comply with such a statement or direction.

**Power to appoint staff**

10 9. (1) The Corporation may appoint as full-time or part-time employees of the Corporation such persons as it considers necessary to assist it to exercise its functions.

(2) The Minister may determine the maximum number of persons that may be appointed under this section.

15 (3) Subject to the regulations and any relevant award or industrial agreement made or entered into under or for the purposes of the Industrial Arbitration Act 1940, the conditions of employment of persons appointed under this section (including conditions as to annual leave, sick leave and long service leave) shall be such as are agreed between those persons and  
20 the Corporation.

(4) One of the persons appointed under this section shall be employed as the secretary of the Corporation and that person shall be responsible for keeping proper records of all meetings of the directors and shall perform such other duties as the Corporation may direct.

25 (5) A person of or above the age of 65 years is not eligible to be appointed under this section and a person employed under this section shall cease to be so employed on attaining that age.

(6) The regulations may make provision for or with respect to—

30 (a) the control and governance of persons employed under this section; and

(b) any other matter or thing necessary or convenient to ensure the maintenance of discipline and efficiency in the service of the Corporation of such employees or classes of employees as are employed under this section.

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(7) The Corporation may terminate the employment of a person appointed under this section for incapacity, incompetence or misbehaviour.

(8) The Public Service Act 1979 does not apply to or in respect of the appointment of persons under this section and such a person is not, as an employee of the Corporation, subject to that Act.

(9) Schedule 3 has effect with respect to employees of the Corporation.

**Superannuation**

10 10. (1) The Corporation may, with the concurrence of the Minister administering the Public Authorities Superannuation Act 1985, grant, or make provision for the grant of, pensions, gratuities and retirement benefits to its employees and for that purpose may establish, manage and control, or enter into an arrangement with any body corporate for the establishment, management and control by the body corporate, either alone or jointly with the Corporation, of any fund or scheme for the purpose of providing for 15 those pensions, gratuities and benefits.

(2) The Corporation may make contributions to any fund or scheme referred to in subsection (1).

20 (3) In subsection (1), “employee” includes the managing director and also includes former employees and the dependants of employees or former employees.

**Power to make use of services of staff of government department, etc.**

11. The Corporation may—

(a) with the approval of the Minister; and

25 (b) on such terms and conditions as may be approved by the Public Service Board,

arrange for the use of the services of any staff or facilities of a government department, administrative office or public authority.

**Power of Corporation to engage consultants**

12. The Corporation may—

30 (a) with the approval of the Minister; and

(b) on such terms and conditions as may be approved by the Public Service Board,

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engage, otherwise than as employees, persons having suitable qualifications and experience as consultants.

**Power to establish committees**

13. (1) The Corporation may establish such committees as it considers  
5 necessary to assist it to exercise its functions.

(2) A person may be appointed to be a member of a committee whether or not the person is a director.

(3) The procedure for calling meetings of a committee shall, subject to the regulations, be as determined by the Corporation or, to the extent that  
10 any matter is not provided for by the regulations or by a determination of the Corporation, shall be as determined by the committee.

**Delegation**

14. (1) The Corporation may delegate to—

(a) a director; or

15 (b) a committee established under section 13,

the exercise of any of its functions, other than this power of delegation.

(2) The managing director may delegate to a person the exercise of any of the functions delegated to the managing director under subsection (1), unless the Corporation otherwise provides in its instrument of delegation  
20 to the managing director.

(3) A delegation under this section—

(a) shall be in writing;

(b) may be general or limited; and

25 (c) may be revoked, wholly or partly, by the Corporation or the managing director, as the case requires.

(4) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

30 (5) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Corporation.

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(6) A delegation under this section does not prevent the exercise of a function by the Corporation or the managing director.

(7) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

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PART 4

FINANCIAL PROVISIONS

**Financial objectives of Corporation**

15. (1) The Corporation shall—

- 10 (a) exercise its functions in accordance with prudent commercial principles; and
- 15 (b) endeavour to ensure that, except in relation to its functions with respect to the administration of a prescribed special assistance scheme or a prescribed development fund or with respect to the exercise of its function of providing financial assistance pursuant to a direction given under section 8 (b) or (c), the revenue derived from its operations in each financial year of the Corporation exceeds its expenditure for that year.

20 (2) Where, in relation to a financial year of the Corporation, the Corporation has made a net profit, the Corporation shall, within 6 months after the end of that year, pay to the Treasurer for payment into the Consolidated Fund—

- 25 (a) an amount equivalent to the amount that the Corporation would have been liable to pay for that year in respect of that profit to the Commonwealth by way of tax under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company within the meaning of that Act; and
- 30 (b) after making provision for payment of the amount referred to in paragraph (a), an amount by way of dividend equal to such proportion of the balance of the net profit for that year as may be determined in respect of that year by the Treasurer after consultation with the Corporation.

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(3) For the purposes of this section, a reference to net profit, in relation to a financial year of the Corporation, is a reference to the net profit that would be taxable for that year under the Income Tax Assessment Act 1936 of the Commonwealth if the Corporation were a company that was liable to pay tax under that Act.

(4) For the purposes of this section, in determining whether or not the Corporation has derived a profit in relation to a financial year, any transaction or activity entered into or engaged by the Corporation relating to the exercise of its functions with respect to a prescribed special assistance scheme or a prescribed development fund or its function of providing financial assistance pursuant to a direction given under section 8 (b) or (c) shall be disregarded.

(5) Subsection (2) does not apply to or in relation to a financial year of the Corporation before the financial year ending on 30 June 1987.

5 (6) Any amount not payable to the Treasurer under subsection (2) may be applied by the Corporation for any purpose consistent with the exercise by the Corporation of its functions.

#### **Financial year of Corporation**

16. The financial year of the Corporation shall—

- 0 (a) except as provided by paragraph (b)—be the period of 12 months ending 30 June; or
- (b) be such period as may be determined in accordance with section 4 (1A) of the Public Finance and Audit Act 1983.

#### **Capital of Corporation**

15 17. (1) There is payable to the Corporation in accordance with this section, as the capital of the Corporation, the amount of \$100,000,000.

(2) The amount specified in subsection (1) shall be paid to the Corporation in such instalments and at such times as may be determined by the Treasurer after consultation with the Corporation.

30 (3) An amount payable to the Corporation under this section is a charge on the Consolidated Fund and is payable out of that Fund without further appropriation than this Act.

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**New South Wales Investment Corporation Fund**

18. (1) There shall be established in the Special Deposits Account in the Treasury an account to be known as the "New South Wales Investment Corporation Fund".

- 5 (2) There shall be paid into the Fund—
- (a) the capital of the Corporation;
  - (b) all principal money received or recovered by the Corporation in respect of the repayment of loans made or deemed to have been made under this Act;
  - 10 (c) except in relation to loans of a class specified by the Treasurer with the concurrence of the Minister, all interest received or recovered in respect of loans referred to in paragraph (b);
  - (d) except in relation to dividends derived from shares of a class specified by the Treasurer with the concurrence of the Minister,  
15 all money received by the Corporation as dividends or profits by virtue of being the holder of shares or prescribed interests acquired or deemed to have been acquired by the Corporation under this Act; and
  - 20 (e) all other money received by the Corporation in connection with the exercise of its functions.
- (3) The Fund shall be applied to the following purposes:
- (a) the making of grants and loans under this Act;
  - (b) the making of payments in respect of the acquisition by the Corporation under this Act of shares in, or prescribed interests  
25 issued by, a body corporate that is a business undertaking;
  - (c) the payment of amounts that become payable under guarantees executed under this Act;
  - (d) the payment of remuneration and allowances to directors,  
30 employees and consultants appointed, employed or engaged under this Act;
  - (e) the payment of other expenses incurred in the administration of this Act;
  - 35 (f) where a direction referred to in section 6 (1) (g) has been given, the payment of pay-roll tax rebates under the Country Industries (Pay-roll Tax Rebates) Act 1977.



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**Provision of financial assistance to business undertakings**

19. (1) An application for financial assistance under this Act may be made to the Corporation by or on behalf of a business undertaking.

(2) An application under this section shall—

- 5 (a) be in a form provided by the Corporation; and  
 (b) be accompanied by such fee (if any) as may be determined by the Corporation.

(3) On receiving an application made under this section, the Corporation shall forthwith consider the application.

10 (4) On considering an application made under this section, the Corporation may, if satisfied that the financial assistance sought by the applicant would, if granted, be applied in accordance with the current policy objectives of the Government as notified to the Corporation under section 8—

- 15 (a) make to the applicant a grant of such amount as it may determine;  
 (b) make to the applicant a loan of such amount as it may determine;  
 (c) where the applicant is a body corporate which has a share capital or which has issued or proposes to issue prescribed interests—  
 20 acquire such number of those shares or prescribed interests as it may determine; or  
 (d) subject to section 22, execute in favour of a creditor of the applicant a guarantee in writing to secure the performance by the applicant of financial obligations owed by the applicant to the creditor,

25 or do any combination of the foregoing.

(5) As soon as practicable after determining an application for financial assistance made under this section, the Corporation shall notify the applicant in writing of its determination with respect to the application.

30 (6) In granting financial assistance under this section, the Corporation may—

- (a) in the case of a loan—  
 (i) determine the rate of interest applicable to the loan; and

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- (ii) specify the security to be provided to secure the repayment of the loan and the payment of the interest applicable to the loan;
- 5       (b) in the case of a grant, loan or guarantee—impose such charges as it considers appropriate; and
- (c) in the case of financial assistance of any kind—impose such conditions as it considers appropriate.

**Provisions as to acquisition and disposal of shares, etc., of business undertakings to which financial assistance is granted**

10    **20. (1)** Where the Corporation holds shares or prescribed interests acquired or deemed to have been acquired by it under this Act, neither the Corporation nor the Crown shall be taken to assume or incur any greater liability or responsibility for the conduct or affairs of the business  
 15    person would assume or incur by virtue of being a holder of those shares or prescribed interests.

**(2)** Where the Corporation is or has been the holder of shares or prescribed interests acquired or deemed to have been acquired by it under this Act, then, except in relation to dividends derived from shares of a class  
 20    determined by the Treasurer with the concurrence of the Minister, the Corporation shall, as soon as practicable after receiving any dividends or profits in respect of those shares or prescribed interests, pay those dividends or profits into the Fund.

**(3)** Whenever the Corporation sells any shares, or redeems or sells any  
 25    prescribed interests, acquired or deemed to have been acquired by it under this Act, the Corporation shall pay the proceeds of sale (including, except in relation to shares of a class determined by the Treasurer with the concurrence of the Minister, any part of those proceeds attributable to dividends or profits payable in respect of those shares or interests) into the  
 30    Fund.

**(4)** The Corporation shall pay dividends that are the subject of an exception referred to in subsection (2) and proceeds of sale that are the subject of an exception referred to in subsection (3) into the Consolidated Fund.

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(5) Whenever on the winding-up of a business undertaking in which the Corporation is the holder of shares acquired or deemed to have been acquired by it under this Act there is a distribution of property of the business undertaking among its members, the Corporation shall—

- 5       (a) where necessary, cause the share of the property received by the Corporation to be sold; and
- (b) pay the proceeds of sale or, where the share of the property so received is already in the form of money, pay that money into the Fund.

0 **Directors to be indemnified by Corporation against certain liabilities**

21. Where—

- 15       (a) a person who is a director of the Corporation becomes a director of a body corporate that is a business undertaking to which financial assistance has been granted, or is deemed to have been granted, under this Act; and
- 20       (b) the person's appointment as a director of the business undertaking is directly or indirectly attributable to the fact that the Corporation is the holder of shares in the business undertaking that have been acquired or are deemed to have been acquired by it under this Act,

the Corporation is liable to indemnify that person against any liability that by law attaches to that person in his or her capacity as a director of the business undertaking in respect of any act done or omitted to be done by that person, but only if the act was done or omitted to be done in good  
25 faith in relation to the business undertaking.

**Guarantees by Corporation**

22. (1) The following provisions apply to and in respect of a guarantee proposed to be executed by the Corporation under this Act:

- 30       (a) the Corporation may execute the guarantee alone or jointly with some other person;
- (b) the guarantee may include any interest charges and expenses chargeable by the creditor against the debtor and the expenses of enforcing or obtaining or endeavouring to enforce or obtain payment of the debt guaranteed and those interest charges and  
35 expenses;
- (c) the guarantee may be expressed to include compound interest;

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- 5 (d) without limiting the generality of section 19 (6), the guarantee may, where the debt to be guaranteed is or will be owed by a business undertaking that is a body corporate having a share capital, include a condition conferring on the Corporation a right or option to acquire shares of the body corporate;
- 10 (e) the creditor shall, if required to do so by the Corporation, obtain, take and hold, or retain and hold, securities of such nature as the Corporation requires to secure the repayment of the principal debt and of any interest and other charges payable in respect of that debt.
- (2) In relation to a guarantee executed under this Act by the Corporation—
- 15 (a) the guarantee is not enforceable against the Corporation or the Fund, unless the creditor has exercised all rights and remedies under the securities held by the creditor in respect of the debt guaranteed, other than the guarantee; and
- (b) the creditor shall not, without the approval of the Corporation, assign or encumber the benefit of the guarantee.
- 20 (3) If the creditor under a guarantee executed by the Corporation under this Act—
- (a) after being required to do so by the Corporation, fails to comply with subsection (1) (e); or
- (b) contravenes subsection (2) (b),
- the Corporation is entitled to avoid the guarantee.
- 25 (4) The Corporation shall not execute a guarantee under this Act if, after the execution of the guarantee, the total value of all outstanding guarantees executed by the Corporation under this Act would exceed an amount for the time being determined by the Minister with the concurrence of the Treasurer.
- 30 (5) The execution by the Corporation, either alone or jointly with some other person, of a guarantee under this Act shall, in favour of the creditor, be conclusive evidence that the requirements of this Act with respect to the guarantee have been complied with.

**Appropriation of money to meet liability of Corporation under a guarantee and payment of certain money into the Fund**

23. (1) The amount of any liability incurred by the Corporation under a guarantee executed under this Act is a charge on the Fund and is payable out of the Fund without further appropriation than this Act.

(2) Where a liability incurred by the Corporation under a guarantee executed under this Act has been met, all money received or recovered by the Corporation in relation to that liability from the person whose debts were the subject of the guarantee shall be paid into the Fund.

**Undertakings by Treasurer**

24. (1) Where the Corporation, after considering an application for financial assistance under section 19, proposes to refuse the application on the grounds that the purpose for which the financial assistance is proposed to be applied or used is unlikely to be profitable or involves a high degree of commercial risk but is considered by the Minister to be a matter of special significance to the State, the Corporation may refer the application to the Treasurer, together with a statement in writing specifying the grounds on which the Corporation proposes (unless an undertaking is given under this section) to refuse the application.

(2) On receiving an application and statement referred under subsection (1), the Treasurer may, after considering the matter and notwithstanding the grounds specified in the statement, give an undertaking in writing to the Corporation to the effect that the Treasurer will pay to the Corporation an amount equal to the amount expended by the Corporation in granting, or the amount of any liability subsequently incurred by the Corporation in connection with granting, the financial assistance sought in the application.

(3) On being given an undertaking in accordance with subsection (2), the Corporation shall grant the financial assistance sought in the application.

(4) In giving an undertaking in accordance with subsection (2), the Treasurer may require the Corporation to impose on the applicant concerned such conditions with respect to the granting of the financial assistance and to the economic activities carried on by the applicant as the Treasurer thinks fit and, where any such requirement is made, the Corporation has responsibility for ensuring that, when the financial assistance is granted, those conditions are imposed on the applicant.

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## PART 5

## MISCELLANEOUS PROVISIONS

**Disclosure of information**

25. (1) A person to whom this section applies shall not disclose any  
5 information obtained in connection with the administration or execution  
of this Act, unless that disclosure is made—

- (a) with the consent of the person from whom the information was  
obtained;
- (b) in connection with the administration or execution of this Act;
- 10 (c) for the purpose of any legal proceedings arising out of this Act or  
of any report of any such proceedings;
- (d) in accordance with a requirement imposed under the Ombudsman  
Act 1974; or
- (e) with other lawful excuse.

15 Penalty: \$2,000 or imprisonment for 6 months.

(2) This section applies to—

- (a) a director or former director;
- (b) an employee or former employee of the Corporation; and
- (c) any person who is or has been engaged under section 12.

20 **Shortened references to Corporation**

26. In any Act, in any instrument made under any Act or in any other  
instrument of any kind, except in so far as the context or subject-matter  
otherwise indicates or requires, a reference to the “Investment Corporation”  
shall be read as a reference to the New South Wales Investment Corporation  
25 constituted by this Act.

**Service of documents**

27. (1) A document may be served on the Corporation by leaving it at  
or by sending it by post to the office of the Corporation in Sydney or, where  
the Corporation has more than one office, by leaving it at or by sending it  
30 by post to any of the Corporation’s offices.

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(2) Nothing in subsection (1) affects the operation of any provision of a law or of the rules of a court authorising a document to be served on the Corporation in any manner not provided for by subsection (1).

**Authentication of documents**

28. (1) A document is duly executed by the Corporation if—

- (a) it is sealed with the common seal of the Corporation in accordance with subsections (2) and (3); or
- (b) it is signed on behalf of the Corporation by the director or directors or employee or employees of the Corporation authorised by the Corporation to do so.

(2) The common seal of the Corporation must not be affixed to a document except by resolution of the directors.

(3) The common seal of the Corporation must be affixed to a document in the presence of 2 directors and each must sign the document to attest that the common seal was so affixed.

(4) A document purporting to be executed in accordance with this section is presumed to be duly executed until the contrary is shown.

(5) Where a document is produced bearing a seal purporting to be the common seal of the Corporation, the seal is presumed to be the seal of the Corporation until the contrary is shown.

**Recovery of charges, etc., by Corporation**

29. Any charge, fee or money due to the Corporation may be recovered by the Corporation as a debt in a court of competent jurisdiction.

**Proof of certain matters not required**

5 30. In any legal proceedings, proof is not required (until evidence is given to the contrary) of—

- (a) the constitution of the Corporation;
- (b) any resolution of the Corporation;
- (c) the appointment of, or the holding of office by, any director; or
- 0 (d) the presence of a quorum at any meeting of the Corporation.

**Proceedings for offences**

31. Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

**5 Regulations**

32. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for  
10 or with respect to—

(a) the application to the Corporation, the directors, or the employees of the Corporation, either with or without modification or variation, of any written law which would not otherwise be binding on the Corporation, the directors, or the employees of the  
15 Corporation; and

(b) the requirements and procedures which are to be observed or followed by the Corporation in relation to the exercise of its functions.

(2) Regulations under subsection (1) may, with or without modification  
20 or variation, impose duties and liabilities, and confer rights, on the directors by reference to the relevant provisions of the Companies (New South Wales) Code.

(3) A regulation may create an offence punishable by a penalty not exceeding \$500.

25 (4) A provision of a regulation may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors;

(b) apply differently according to different factors of a specified kind;  
or

30 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body,

or may do any combination of those things.



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**Review of Act**

33. (1) The Minister is directed to conduct a review of the operation of this Act 5 years after the first proclamation is published under section 2, and in the course of the review the Minister shall consider and have regard to—

- (a) the effectiveness of the operations of the Corporation;
- (b) whether or not there is a need for the functions of the Corporation to continue to be exercised; and
- (c) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the Minister's review of this Act and shall, as soon as practicable after its preparation, cause the report to be laid before each House of Parliament.

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SCHEDULE 1

5

(Sec. 4 (6))

PROVISIONS RELATING TO THE DIRECTORS

**Age of directors**

- 1. (1) A person of or above the age of 65 years is not eligible to be appointed as managing director or to act in the office of managing director.
- 20 (2) A person of or above the age of 70 years is not eligible to be appointed as a part-time director or to act in the office of a part-time director.

**Chairperson of the Corporation**

- 25 2. (1) Of the part-time directors, one shall, in and by the relevant instrument of appointment as such a director, or by another instrument executed by the Governor, be appointed as chairperson of the Corporation.
- (2) The Governor may remove a part-time director from the office of chairperson.
- (3) A person who is a part-time director and chairperson shall be deemed to have vacated office as chairperson if the person—
  - (a) is removed from that office by the Governor under subclause (2);
  - 30 (b) resigns that office by instrument in writing addressed to the Minister; or
  - (c) ceases to be a part-time director.

*New South Wales Investment Corporation 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE DIRECTORS —*continued***Alternate directors and acting chairperson**

3. (1) The Governor may, from time to time, appoint a person as an alternate director to act in place of a director during the illness or absence of the director, and the person, while so acting, shall have and may exercise all the functions of the director and shall be deemed to be a director.

(2) The Governor may, from time to time, appoint a part-time director to act in the office of chairperson during the illness or absence of the chairperson, and the part-time director, while so acting, shall have and may exercise all the functions of the chairperson and shall be deemed to be the chairperson.

(3) The Governor may remove any person from any office to which the person was appointed under this clause.

(4) A person while acting in the office of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) For the purposes of this clause—

(a) a vacancy in the office of a director or the chairperson shall be deemed to be an absence from office of the director or chairperson, as the case may be; or

(b) a part-time director shall be deemed to be absent from office as a part-time director during any period when the director acts in the office of the managing director pursuant to an appointment under subclause (1).

**Terms of office**

4. Subject to this Schedule, an appointed director shall hold office for such period not exceeding 5 years as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

**Managing director to be full-time**

5. The managing director shall devote the whole of his or her time to the duties of the office of managing director, except as permitted by the Corporation or as authorised by or in accordance with the terms of his or her employment.

**Remuneration**

6. (1) The managing director is entitled to be paid—

(a) remuneration in accordance with the Statutory and Other Offices Remuneration Act 1975; and

(b) such travelling and subsistence allowances as the Minister may from time to time determine in respect of the managing director.

(2) An appointed director other than the director referred to in section 4 (4) (b) is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the director.

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE DIRECTORS —*continued*

**Filling of vacancy in office of appointed director**

7. If the office of an appointed director becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

**Casual vacancies**

8. (1) An appointed director shall be deemed to have vacated office if the director—

- (a) dies;
- (b) being managing director, absents himself or herself from duty for 14 days (whether or not wholly or partly consecutive) in any period of 12 months, except on leave granted by the Minister or unless the absence is occasioned by illness or other unavoidable cause;
- (c) being an appointed part-time director, absents himself or herself from 4 consecutive meetings of the Corporation of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings;
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (e) becomes a temporary patient, a continued treatment patient, a protected person or an incapable person within the meaning of the Mental Health Act 1958 or a person under detention under Part VII of that Act;
- (f) is convicted in New South Wales of an offence which is punishable by imprisonment for 12 months or upwards or is convicted elsewhere than in New South Wales of an offence which if committed in New South Wales would be an offence so punishable;
- (g) being managing director, engages in any paid employment outside the duties of the office of managing director, except with the consent of the Minister;
- (h) resigns the office by instrument in writing addressed to the Minister;
- (i) being—
  - (i) managing director, attains the age of 65 years; or
  - (ii) an appointed part-time director, attains the age of 70 years;
- (j) is retired from office by the Governor under subclause (3); or
- (k) is removed from office by the Governor under subclause (4), (5) or (6).

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SCHEDULE 1—*continued*

PROVISIONS RELATING TO THE DIRECTORS —*continued*

(2) A director referred to in section 4 (4) (a) or (b) shall be deemed to have vacated office if the director ceases to hold the qualification by virtue of which the director holds office.

5 (3) The managing director may, after attaining the age of 60 years and before attaining the age of 65 years, be retired from office by the Governor and, if so retired, is entitled to such compensation (if any) as the Statutory and Other Offices Remuneration Tribunal determines.

(4) The Governor may remove the managing director from office for incapacity, incompetence or misbehaviour.

10 (5) The Governor may remove an appointed part-time director from office.

(6) Without affecting the generality of subclauses (4) and (5), the Governor may remove from office an appointed director who contravenes the provisions of clause 9.

**Disclosure of pecuniary interests**

9. (1) A director who has a direct or indirect pecuniary interest—

15 (a) in a matter that is being considered, or is about to be considered, at a meeting of the Corporation; or

(b) in a thing being done or about to be done by the Corporation,

shall, as soon as possible after the relevant facts have come to the director's knowledge, disclose the nature of the interest at a meeting of the Corporation.

20 (2) A disclosure by a member at a meeting of the Corporation that the director—

(a) is a member, or is in the employment, of a specified company or other body;

(b) is a partner, or is in the employment, of a specified person; or

(c) has some other specified interest relating to a specified company or other body or a specified person,

25 shall be deemed to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

30 (3) The Corporation shall cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book shall be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Corporation from time to time.

(4) After a director has, or is deemed to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the director shall not, unless the Minister otherwise determines—

35 (a) be present during any deliberation of the Corporation, or take part in any decision of the Corporation, with respect to that matter; or

*New South Wales Investment Corporation 1986*SCHEDULE 1—*continued*PROVISIONS RELATING TO THE DIRECTORS —*continued*

(b) exercise any functions under this Act with respect to that thing,  
as the case requires.

(5) Notwithstanding that a director contravenes the provisions of this clause, that  
5 contravention does not invalidate any decision of the Corporation or the exercise of any  
function under this Act.

(6) A reference in this clause to a meeting of the Corporation includes a reference to  
a meeting of a committee of the Corporation.

**Effect of certain other Acts**

10. (1) The Public Service Act 1979 does not apply to or in respect of the  
0 appointment of a director and a director is not, as a director, subject to that Act.

(2) Where, by or under any other Act, provision is made requiring a person who is  
the holder of an office specified in that Act to devote the whole of his or her time to the  
duties of that office, or prohibiting the person from engaging in employment outside the  
15 duties of that office, that provision does not operate to disqualify the person from holding  
that office and also the office of a part-time director or from accepting and retaining any  
remuneration payable to the person under this Act as a part-time director.

**Liability of directors, etc.**

11. No matter or thing done by the Corporation, any director or any person acting  
under the direction of the Corporation shall, if the matter or thing was done in good  
20 faith for the purposes of executing this or any other Act, subject a director or a person  
so acting personally to any action, liability, claim or demand.

## SCHEDULE 2

(Sec. 4 (7))

## PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION

25 **General procedure**

1. The procedure for the calling of meetings of the Corporation and for the conduct  
of business at those meetings shall, subject to this Act, be as determined by the  
Corporation.

**Quorum**

30 2. The quorum for a meeting of the Corporation is a majority of the directors.

*New South Wales Investment Corporation 1986*SCHEDULE 2—*continued*PROVISIONS RELATING TO THE PROCEDURE OF THE CORPORATION—  
*continued***Presiding director**

3. (1) The chairperson or, in the absence of the chairperson, another part-time director elected as chairperson for the meeting by the directors present shall preside at a meeting of the Corporation.

- 5 (2) The person presiding at any meeting of the Corporation has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

**Voting**

4. A decision supported by a majority of the votes cast at a meeting of the Corporation at which a quorum is present shall be the decision of the Corporation.

10 **Minutes**

5. The Corporation shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Corporation.

**First meeting of Corporation**

- 15 6. The Minister shall call the first meeting of the Corporation in such manner as the Minister thinks fit.

## SCHEDULE 3

(Secs. 5 (3), 9 (9))

PRESERVATION OF RIGHTS OF EMPLOYEES AND THE MANAGING  
DIRECTOR OF THE CORPORATION20 **Interpretation**

1. In this Schedule, a reference to an employee of the Corporation includes a reference to the managing director.

**Preservation of rights of employees previously public servants, etc.**

- 25 (1) Subject to subclause (2) and to the terms of appointment, where a person was immediately before being appointed as an employee of the Corporation—

- (a) an officer of the Public Service or a Teaching Service;
- (b) contributor to a superannuation scheme;
- (c) an officer employed by a statutory body; or
- 30 (d) a person in respect of whom provision was made by any Act for the retention of any rights accrued or accruing to the person as an officer or employee,

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SCHEDULE 3—*continued*

PRESERVATION OF RIGHTS OF EMPLOYEES AND THE MANAGING  
DIRECTOR OF THE CORPORATION—*continued*

he or she—

- (e) shall retain any rights accrued or accruing to him or her as such an officer, contributor or person;
  - 5 (f) may continue to contribute to any superannuation scheme to which he or she was a contributor immediately before being appointed as an employee of the Corporation; and
  - (g) shall be entitled to receive any deferred or extended leave and any payment, pension or gratuity,
- as if he or she had continued to be such an officer, contributor or person during his or  
10 her service as an employee of the Corporation and—
- (h) his or her service as an employee of the Corporation shall be deemed to be service as an officer or employee for the purpose of any law under which those rights accrued or were accruing, under which he or she continues to contribute or by which that entitlement is conferred; and
  - 15 (i) he or she shall be deemed to be an officer or employee, and the Corporation shall be deemed to be the employer, for the purposes of the superannuation scheme to which he or she is entitled to contribute under this clause.
- (2) If an employee of the Corporation would, but for this subclause, be entitled under subclause (1) to contribute to a superannuation scheme or to receive any payment,  
20 pension or gratuity under the scheme, he or she shall not be so entitled on becoming (whether on appointment as an employee of the Corporation or at any later time while such an employee) a contributor to any other superannuation scheme, and the provisions of subclause (1) (i) cease to apply to or in respect of him or her and the Corporation in any case where he or she becomes a contributor to any such other superannuation  
25 scheme.
- (3) Subclause (2) does not prevent the payment to an employee of the Corporation on his or her ceasing to be a contributor to a superannuation scheme of such amount as would have been payable to him or her if he or she had ceased, by reason of resignation, to be an officer or employee for the purposes of the scheme.
- 30 (4) An employee of the Corporation shall not, in respect of the same period of service, be entitled to claim a benefit under this Act and another Act.
- (5) In this clause—
- “statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule;
  - 35 “superannuation scheme” means a scheme, fund or arrangement under which any superannuation or retirement benefits are provided and which is established by or under any Act.

*New South Wales Investment Corporation 1986*SCHEDULE 3—*continued*PRESERVATION OF RIGHTS OF EMPLOYEES AND THE MANAGING  
DIRECTOR OF THE CORPORATION—*continued***Employees entitled to re-appointment to former employment in certain cases**

3. (1) A person who—
- (a) ceases to be an employee of the Corporation by reason of the expiration of the period for which the person was appointed or by reason of resignation;
  - 5 (b) was, immediately before being appointed as such an employee—
    - (i) an officer of the Public Service or a Teaching Service; or
    - (ii) an officer or employee of a statutory body; and
  - (c) has not attained the age at which the person would have been entitled to retire had the person continued to be such an officer or employee,
- 10 shall be entitled to be appointed to some position in the Public Service, the Teaching Service or the service of that statutory body, as the case may be, not lower in classification and salary than that which the person held immediately before being appointed as an employee of the Corporation.
- (2) Where subclause (1) does not apply to a person who—
- 15 (a) was, immediately before being appointed to a full-time office constituted by an Act, an officer or employee referred to in subclause (1) (b); and
  - (b) is after that appointment appointed as an employee of the Corporation,
- the person shall have such rights (if any) to appointment as such an officer or employee, in the event of ceasing to be an employee of the Corporation, as are specified in the
- 20 instrument of appointment as an employee of the Corporation or as are agreed on by the person and by or on behalf of the Government.
- (3) In this clause, “statutory body” means any body declared under clause 4 to be a statutory body for the purposes of this Schedule.

**Declaration of statutory bodies**

- 25 4. The Governor may, by proclamation published in the Gazette, declare any body constituted by or under any Act to be a statutory body for the purposes of this Schedule.





