

COMMONWEALTH-STATE SCHEME
FOR
CO-OPERATIVE COMPANIES AND
SECURITIES REGULATION

THIRD AMENDING AGREEMENT

© Commonwealth of Australia 1987 ISBN 0 644 05535 9

Published for the Attorney-General's Department
by the Australian Government Publishing Service, Canberra 1987

Printed in Australia by Canberra Publishing & Printing,
Fyshwick

THIS AGREEMENT (to be known as 'the Third Amending Agreement') is made the sixteenth day of October One thousand nine hundred and eighty-six between:

THE COMMONWEALTH OF AUSTRALIA of the first part,
THE STATE OF NEW SOUTH WALES of the second part,
THE STATE OF VICTORIA of the third part,
THE STATE OF QUEENSLAND of the fourth part,
THE STATE OF WESTERN AUSTRALIA of the fifth part,
THE STATE OF SOUTH AUSTRALIA of the sixth part,
THE STATE OF TASMANIA of the seventh part,
THE NORTHERN TERRITORY of the eighth part.

WHEREAS:

(A) by an agreement made the 22nd December 1978, known as the Formal Agreement, arrangements were made for a Commonwealth-State Scheme for Co-operative Companies and Securities Regulation;

(B) the Formal Agreement has been amended by a further agreement made the 24th February 1982, known as the First Amending Agreement, and by an agreement dated the 30th day of December 1983, known as the Second Amending Agreement, and as so amended by both agreements is referred to in this agreement as 'the Principal Agreement';

(C) the parties to this agreement have agreed that the Commonwealth-State Scheme established under the Formal Agreement shall cover the regulation of the futures industry and the regulation of franchising; and

(D) to provide for this regulation of the futures industry and of franchising and some other matters the Ministerial Council established by the Formal Agreement has, in accordance with the provisions of the Principal Agreement, unanimously resolved that the Principal Agreement should be amended as provided by this agreement:

NOW IT IS HEREBY AGREED as follows:

1. This agreement shall come into force when it has been executed by all the parties here in before designated.
2. Upon coming into force this agreement shall be incorporated into and read as part of the Principal Agreement.
- 3.(1) Recital (D) of the Principal Agreement is amended by deleting the word 'and' in the last line.

(2) Recital (E) of the Principal Agreement is amended by deleting the colon in the last line and inserting in its place a semi-colon.

(3)(a) A new Recital (F) is added after Recital (E) of the Principal Agreement as follows:

'(F) the Governments of the Commonwealth and of the States have agreed that the Commonwealth-State Scheme for Co-operative Companies and Securities Regulation shall be extended to cover the regulation of the futures industry and;' and

(b) A new Recital (G) is added after Recital (F) of the Principal Agreement as follows:

'(G) the Governments of the Commonwealth and of the States have agreed that the Commonwealth-State Scheme for Co-operative Companies and Securities Regulation shall be extended to cover the regulation of franchising:'

4. The title to Part IV of the Principal Agreement is amended by adding the words 'FOR COMPANIES AND SECURITIES REGULATION' after the word 'LEGISLATION'.

5.(1) A new PART VA is added to the Principal Agreement as follows:

'Part VA - Initial Legislation for Futures Industry Regulation

'15A.(1) The Commonwealth will:

(a) submit to the Commonwealth Parliament legislation which has been unanimously approved by the Ministerial Council to form the basis for the regulation of the futures industry and take such steps as are appropriate to secure the passage of the legislation; and

(b) submit to the Federal Executive Council for making by the Governor-General regulations under the legislation which have been unanimously approved by the Ministerial Council.

'(2) The legislation and regulations provided for by sub-clause (1) shall:

(a) constitute the substantive law relating to the regulation of the futures industry that will apply to the Australian Capital Territory;

(b) confer on the Ministerial Council such powers as may appropriately be so conferred to give effect to its functions in relation to the regulation of the futures industry under this agreement;

(c) confer on the National Commission such functions and powers as, in conjunction with the functions and powers which are conferred on it by State Acts, will enable it to carry out its functions in relation to the regulation of the futures industry under this agreement.

'15B. Each State will as soon as practicable after the passage of the Commonwealth Acts submit to the Parliament of the State and take such steps as are appropriate to secure the passage of legislation which has been unanimously approved by the Ministerial Council and which:

(a) applies, as from the coming into force of that legislation, the legislation relating to the regulation of the futures industry enacted by the Parliament of the Commonwealth as provided in paragraph (a) of sub-clause 15A.(1) and, as from the respective dates of that coming into force, any

legislation from time to time enacted in accordance with this agreement which amends, supplements or is substituted for that legislation;

(b) applies, as from the coming into force of the legislation, the regulations referred to in paragraph (b) of sub-clause 15A(1) and any further regulations that amend or supplement or are substituted for those regulations.

(2) A new PART VB is added to the Principal Agreement as follows:

Part VB - Initial Legislation for Franchising Regulation

'15C. The Commonwealth will:

(a) submit to the Commonwealth Parliament legislation which has been unanimously approved by the Ministerial Council to form the basis for the regulation of franchising and take such steps as are appropriate to secure the passage of the legislation; and

(b) submit to the Federal Executive Council for making by the Governor-General regulations under the legislation which have been unanimously approved by the Ministerial Council.

'15D. Each State will as soon as practicable after the passage of the Commonwealth Acts submit to the Parliament of the State and take such steps as are appropriate to secure the passage of legislation which has been unanimously approved by the Ministerial Council and which:

(a) applies, as from the coming into force of that legislation, the legislation relating to the regulation of franchising enacted by the Parliament of the Commonwealth as provided in paragraph (a) of clause 15C and, as from the respective dates of that coming into force, any legislation from time to time enacted in accordance with this agreement which amends, supplements or is substituted for that legislation; and

(b) applies, as from the coming into force of the legislation, the regulations referred to in paragraph (b) of clause 15C and any further regulations that amend or supplement or are substituted for those regulations.'

6.(1) The title to Part VI of the Principal Agreement is amended by adding the words 'UNDER COMPANIES, SECURITIES INDUSTRY AND FUTURES INDUSTRY LEGISLATION'.

(2) Paragraph 17(g) is amended by including after the words 'special investigation' the words 'into the affairs, or into particular affairs, of a corporation or into any matters relating to dealing in securities' and by deleting the full-stop in the last line and inserting in its place a semi-colon.

(3) Clause 17 is amended by adding a new paragraph (h) as follows:

'(h) Where an investigation into any matters relating to dealing in futures contracts has been ordered by a Minister without any request by the National Commission for the Minister to do so, that Minister, not the National Commission, shall, unless and until the Ministerial Council subsequently approves the investigation, have in relation to that investigation such powers and functions of "the Minister" in respect of any matters relating to dealing in futures contracts as are presently given to "the Minister" in Division 2 of Part II of the Securities Industry Act 1975 of the State of New South Wales relating to dealing in securities.'

7.(1) Paragraphs 6(a) and 22(1)(a) of the Principal Agreement are amended by deleting the word and number 'clause 8' and inserting in their place the words and numbers 'clauses 8, 15A and 15C'.

(2) Paragraphs 6(a) and 22(1)(b) of the Principal Agreement are amended by deleting the word and number 'clause 9' and inserting in their place the words and numbers 'clauses 9, 15B and 15D'.

8. Clause 25 of the Principal Agreement is deleted and the following clause is inserted in its place:

'25. The Ministerial Council may itself exercise and, without derogation from its power in that respect at any time, may from time to time and for such time as it may determine, authorize any one or more of its members or the National Commission to:

(a) exercise a discretion arising out of or relating to a matter or to matters specified in, and subject to, Part 1 of the First Schedule to this agreement; and

(b) disallow the whole or a specified part of any amendments to the business rules of an approved futures association, an approved futures exchange or an approved clearing house.'

9.(1) Sub-clause 29(1) of the Principal Agreement is amended by deleting the numbers and word '8 and 9' and inserting in their place the numbers and word '8, 9, 15A, 15B, 15C and 15D'.

(2) Paragraph 29(2)(b) of the Principal Agreement is amended by deleting the word 'or'.

(3) Paragraph 29(2)(c) of the Principal Agreement is amended by deleting the full-stop and inserting in its place a semi-colon and the word 'or'.

(4) Sub-clause 29(2) of the Principal Agreement is amended by adding, after paragraph (c), a new paragraph (d), as follows:

'(d) cancels the approval of any futures exchange or clearing house of a futures exchange in Australia.'

10. Sub-clause 32(1) of the Principal Agreement is deleted and the following sub-clause is inserted in its place:

'32.(1) Subject to this agreement, the functions of the National Commission to be established by the Commonwealth Acts shall be to have and to exercise, subject only to directions from time to time of the Ministerial Council, responsibility for the entire area of policy and administration with respect to:

(a) company law;

(b) the regulation of the securities and futures industries;
and

(c) any law relating to franchising enacted pursuant to this agreement.'

11. Sub-clause 33(1) of the Principal Agreement is amended by deleting the word 'five' and inserting in its place the word 'eight'.

12. Sub-clause 36(2) of the Principal Agreement is amended by deleting the words 'or the State of company law or the regulation of the securities industry' and inserting in their place the words 'of the Commonwealth legislation or by the State of the State legislation relating to companies, the

regulation of the securities or futures industries or the regulation of franchising'.

13. Sub-clauses 37(1), 38(1) and 49(1) of the Principal Agreement are amended by deleting in each of them the words 'and the regulation of the securities industry' and inserting in their place the words, 'the regulation of the securities and futures industries and the regulation of franchising'.

14.(1) Sub-clause 47(1) of the Principal Agreement is amended by deleting the words and number 'sub-clause 8(1)' and inserting in their place the words and numbers 'sub-clauses 8(1), 15A(1) and clause 15C' and deleting the words 'that sub-clause' and inserting in their place the words 'those sub-clauses and that clause'.

(2) Paragraph 47(2)(a) of the Principal Agreement is amended by inserting after the word and number 'clause 9' the words and numbers 'and in paragraph (a) of clauses 15B and 15D'.

(3) Paragraph 47(2)(b) of the Principal Agreement is amended by inserting after the word and number 'clause 9' the words and numbers 'and in paragraph (b) of clauses 15B and 15D'.

15. Sub-clause 50(1) of the Principal Agreement is amended by deleting the words 'and the regulation of the securities industry' second occurring and inserting in their place the words 'the regulation of the securities and futures industries and the regulation of franchising'.

16. Part I of the First Schedule to the Principal Agreement is amended by deleting the words 'The National Commission shall not be authorized to exercise the discretion arising from section 29 of the said Securities Industry Act 1975'.

IN WITNESS WHEREOF this Agreement has been respectively signed for and behalf of the parties as at the day and year first above written.

SIGNED by the Right Honourable
LIONEL FROST BOWEN,
Attorney-General of the Commonwealth
of Australia, acting, by the Authority
of the Governor-General in Council,
in the stead of the Prime Minister,
in the presence of:

LIONEL BOWEN

STEPHANIE FORGIE

SIGNED by the Honourable
BARRIE JOHN UNSWORTH,
Premier of the state of
New South Wales, in the
presence of:

BARRIE UNSWORTH

GAY BRANSGROVE

SIGNED by the Honourable
JOHN CAIN,
Premier of the State of
Victoria, in the
presence of:

JOHN CAIN

G.E. BROUWER

SIGNED by the Honourable
JOHANNES BJELKE-PETERSEN,
Premier of the State of
Queensland, in the
presence of:

J. BJELKE-PETERSEN

J. WALSH

SIGNED by the Honourable

JOHN CHARLES BANNON,
Premier of the State of
South Australia, in the
presence of:

J.C. BANNON

MICHELE N. KENNEDY

SIGNED by the Honourable
BRIAN THOMAS BURKE,
Premier of the State of
Western Australia, in the
presence of:

BRIAN BURKE

DONNA RADALJ

SIGNED by the Honourable
GEOFFREY ALLAN PEARSALL, Acting
Premier of the State of
Tasmania, in the
presence of:

G. PEARSALL

P.J. SULLIVAN

SIGNED by the Honourable
STEPHEN PAUL HATTON,
Chief Minister of the
Northern Territory in the
presence of:

STEVE HATTON

GARY YOUNG

Commonwealth-State Scheme for Co-operative Companies and
Securities Regulation Third Amending Agreement

R 86/734 Cat. No. 86 2061 0