

# **CORPORATIONS AGREEMENT 2002**

**AS AMENDED**



# **CORPORATIONS AGREEMENT 2002**

## **TABLE OF PROVISIONS**

### **PREAMBLE**

### **PART 1 — PRELIMINARY**

- 101. Citation [see Note 1]
- 102. Definitions

### **PART 2 — EFFECT AND OPERATION OF AGREEMENT**

- 201. Commencement [see Note 1]
- 202. Amendment of Agreement
- 203. Obligations

### **PART 3 — PRINCIPAL RESPONSIBILITIES**

- 301. Principal responsibilities
- 302. The Commission
- 303. Commission's functions and powers

### **PART 4 — FORUM**

- 401. Continuation of Forum
- 402. Membership
- 403. Acting members
- 404. Representation by officers
- 405. Observer status
- 406. Functions
- 407. Meetings
- 408. Quorum
- 409. Chairperson
- 410. Voting
- 411. Voting out of meetings
- 412. Reserving a vote before or at a meeting
- 413. Secretariat
- 414. Procedure generally

## **PART 5 — LEGISLATION**

### **DIVISION 1 — THE NATIONAL LAW**

- 501. Purpose of this Part
- 502. Basic nature of the legislative scheme
- 503. Extent of the legislative scheme
- 504. Alternative systems
- 505. Use of referred power

### **DIVISION 2 — ALTERATION OF THE NATIONAL LAW**

- 506. Commonwealth legislation relating to the national law
- 507. Provisions relating to approval of Commonwealth legislation
- 508. Further consideration of Commonwealth legislation that does not require approval
- 509. Exposure of Commonwealth draft Bills
- 510. Introduction and passage of Commonwealth Bills
- 511. Exposure of Commonwealth draft regulations
- 512. Concurrent State and Territory legislation
- 513. Operation of existing inconsistent State and Territory legislation
- 514. Operation of future inconsistent State and Territory legislation
- 515. Additional mechanism
- 516. Commonwealth to notify Forum of other legislation
- 517. Alterations to legislation
- 518. Exceptions

### **DIVISION 3 — ALTERATION OF STATE REFERRAL LEGISLATION**

- 519. Amendment of State referral legislation
- 520. Partial termination of referral

### **DIVISION 4 — MISCELLANEOUS**

- 521. Concurrent jurisdiction
- 522. Extension of prohibition on introduction or making of legislation
- 523. Meaning of amendment

## **PART 6 — ADMINISTRATION**

- 601. The Commission
- 602. Regional administration
- 603. Levels of service
- 604. Regional Liaison Committees
- 605. Corporations and Markets Advisory Committee
- 606. Takeovers Panel
- 607. Integrated offices
- 608. National database
- 609. Access by State and Territory Ministers to information
- 610. Access by Commission to information

## **PART 8 — INVESTIGATIONS AND PROSECUTIONS**

- 801. National law offences
- 802. National scheme rights and liabilities
- 804. Ancillary provision in relation to national scheme and co-operative scheme rights and liabilities

## **PART 9 — CEASING TO BE A PARTY**

- 901. Withdrawal and cessation
- 902. Agreement continues with remaining parties

## **PART 9 — MISCELLANEOUS**

- 1001. Business names
  - 1002. Ministerial power to direct conduct of investigations
-



# CORPORATIONS AGREEMENT 2002

An agreement made between the following parties:

THE COMMONWEALTH OF AUSTRALIA ('the Commonwealth')  
THE STATE OF NEW SOUTH WALES  
THE STATE OF VICTORIA  
THE STATE OF QUEENSLAND  
THE STATE OF SOUTH AUSTRALIA  
THE STATE OF WESTERN AUSTRALIA  
THE STATE OF TASMANIA  
THE NORTHERN TERRITORY OF AUSTRALIA ('the Northern Territory')  
THE AUSTRALIAN CAPITAL TERRITORY.

## WHEREAS:

- (1) representatives of the Commonwealth, the States and the Northern Territory met at Alice Springs on 28–29 June 1990 to consider future corporate regulation in Australia; and
- (2) those representatives agreed that draft heads of agreement formulated at that meeting ('Heads of Agreement') should be submitted to their respective Governments; and
- (3) the Heads of Agreement, as subsequently amended, were endorsed by the Governments of the Commonwealth, the States and the Northern Territory; and
- (4) under the Heads of Agreement it was agreed (among other things) that:
  - (a) the Australian Securities Commission should be the sole administering authority for companies and securities regulation in Australia; and
  - (b) the provisions of the *Corporations Act 1989* of the Commonwealth, amended to give effect to the Heads of Agreement, should apply as law for the Australian Capital Territory by law of the Commonwealth and as law for each State and the Northern Territory by law of the State or Territory; and
- (5) the Parliaments of the Commonwealth, the States and the Northern Territory subsequently enacted legislation pursuant to the Heads of Agreement; and

- (6) the Governments of the Commonwealth, the States and the Northern Territory entered into an agreement on 23 September 1997, entitled the Corporations Agreement, to supplement that legislation; and
- (7) in light of certain decisions of the High Court, the parties have entered into this Agreement to facilitate the establishment of a replacement legislative foundation for Australia's national scheme of corporate regulation relying in part on State referrals in accordance with paragraph 51(xxxvii) of the Constitution; and
- (8) the parties consider that it is appropriate, in view of the fact that the Legislative Assembly of the Northern Territory has legislative power in relation to corporate regulation and the role of the Northern Territory under the original Corporations Agreement, to include the Northern Territory as a party to this agreement, although it will not make a referral in accordance with paragraph 51(xxxvii) of the Constitution.

AND GIVEN THAT:

- (1) the Commonwealth, the States and the Northern Territory made an agreement on 6 December 2002 about corporate regulation, called the Corporations Agreement 2002; and
- (2) the parties to the Corporations Agreement 2002 amended the Corporations Agreement 2002 on 13 October 2005 to enable the Australian Capital Territory to become a member of the Ministerial Council for Corporations (now known as the Legislative and Governance Forum on Corporations) and a party to the Corporations Agreement 2002.

AND GIVEN THAT:

- (1) the Council of Australian Governments agreed on 13 February 2011 to transition from the Ministerial Council for Corporations to the Legislative and Governance Forum on Corporations.

IT IS HEREBY AGREED:

## PART 1 — PRELIMINARY

### CITATION [SEE NOTE 1]

101. This Agreement may be referred to as the Corporations Agreement 2002.

### DEFINITIONS

102. (1) In this Agreement, unless the contrary intention appears:

**‘Commission’** means the Australian Securities and Investments Commission;

**‘Commonwealth Minister’** means a member of the Forum who represents the Commonwealth, and includes a Minister who is acting as a member of the Forum in place of that member;

**‘co-operative scheme law’** means:

- (a) an Act of the Commonwealth that is a Co-operative Scheme Act for the purposes of Part 12 of the *Corporations Act 1989* of the Commonwealth as in force on 31 December 2000; or
- (b) a law of a State or the Northern Territory that is a co-operative scheme law of that State or Territory for the purposes of a national scheme law of that State or Territory;

**‘Corporations Agreement’** means the agreement of that title dated 23 September 1997 between the Governments of the Commonwealth, the States and the Northern Territory;

**‘enact’** legislation includes make or approve subordinate legislation;

**‘financial year’** means a year commencing on 1 July;

**‘Forum’** means the Legislative and Governance Forum on Corporations, formerly known as the Ministerial Council for Corporations, established by the Corporations Agreement and continued by this Agreement;

**‘Heads of Agreement’** means the document referred to in the preamble to this Agreement, a copy of which was tabled in the Senate of the Parliament of the Commonwealth on 11 December 1990;

**'Intergovernmental Agreement for Business Names'** means the agreement of that title dated 2 July 2009 between the Governments of the Commonwealth, the States and the Territories;

**'Minister'** means a Minister of State (including a Parliamentary Secretary) for the Commonwealth or a Minister of the Crown (including a Parliamentary Secretary) for a State or Territory;

**'National Credit Law Agreement 2009'** means the agreement of that title dated 7 December 2009 between the Governments of the Commonwealth, the States and the Territories;

**'national law'** means:

- (a) the *Corporations Act 2001*;
- (b) the *Australian Securities and Investments Commission Act 2001*; and
- (c) the *Corporations (Compensation Arrangements Levies) Act 2001*, *Corporations (National Guarantee Fund Levies) Act 2001*, *Corporations (Fees) Act 2001*, *Corporations (Review Fees) Act 2003*;

as enacted by the Commonwealth Parliament and amended from time to time;

**'national scheme law'** means an Act or law of the Commonwealth or another jurisdiction that was a national scheme law for the purposes of the *Australian Securities and Investments Commission Act 1989* as in force on 1 July 2000;

**'Parliament'** includes the Legislative Assembly of a Territory;

**'party'** means a party to this Agreement;

**'Regional Commissioner'** means a Regional Commissioner employed under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

**'referring State'** means a State which:

- (a) in accordance with paragraph 51(xxxvii) of the Constitution, has referred matters to the Commonwealth Parliament sufficient to enable the following legislation to extend to that State of its own force:
  - (i) the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* as first enacted by the Commonwealth Parliament; and
  - (ii) express amendments to those Acts, that are amendments with respect to the formation of corporations, corporate regulation or the regulation of financial products or services; and
- (b) has not withdrawn, in whole or in part, any of the matters so referred other than where all States have terminated the reference referred to in paragraph (a)(ii) on the same day after having given at least 6 months' notice.

**'State'** means a State of the Commonwealth;

**'State Minister'** means a member of the Forum who represents a State, and includes a Minister who is acting as a member of the Forum in place of that member;

**'Territory'** means a Territory that is a party to this Agreement;

**'Territory Minister'** means a member of the Forum who represents a Territory, and includes a Minister who is acting as a member of the Forum in place of that member.

- (2) In this Agreement, unless the contrary intention appears, words and expressions have the same meanings as in the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) In this Agreement, a reference to an Act (whether of the Commonwealth or a State or Territory) includes a reference to:
  - (a) that Act as amended and in force for the time being; and
  - (b) an Act passed in substitution for that Act.

## **PART 2 — EFFECT AND OPERATION OF AGREEMENT**

### **COMMENCEMENT** [SEE NOTE 1]

201. This Agreement comes into operation when it has been executed by or on behalf of all of the parties named above.

### **AMENDMENT OF AGREEMENT**

202. This Agreement may be amended only by the unanimous decision of all the parties to it.

### **OBLIGATIONS**

203. Where this Agreement is expressed to impose an obligation on an officer or authority of a party, or an employee of such an officer or authority, it is the responsibility of the party to take such steps as are appropriate to ensure that the officer or authority complies with the obligation.

## **PART 3 — PRINCIPAL RESPONSIBILITIES**

### **PRINCIPAL RESPONSIBILITIES**

301. (1) The Commission will have sole responsibility for the general administration of the national law.
- (2) This clause has effect subject to the national law and to this Agreement.

### **THE COMMISSION**

302. (1) The Commission will be responsible and accountable to the relevant Commonwealth Minister and the Commonwealth Parliament, and not to State or Territory Ministers or State or Territory Parliaments.
- (2) The Forum has no power of control or direction over the Commission.

## **COMMISSION'S FUNCTIONS AND POWERS**

303. (1) The Commission has national law functions and powers, being functions and powers mentioned in section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (2) The Commission has functions and powers not mentioned in subclause (1), being functions and powers mentioned in section 12A of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) This Agreement applies only in respect of the national law functions and powers of the Commission mentioned in subclause (1).

## **PART 4 — FORUM**

### **CONTINUATION OF FORUM**

401. The Council of Commonwealth, State and Territory Ministers established by the Corporations Agreement, and formerly known as the Ministerial Council for Corporations, continues under this Agreement as the Legislative and Governance Forum on Corporations.

### **MEMBERSHIP**

402. (1) The Forum consists of the Minister or Ministers representing each party.
- (2) Each member must be a Minister with responsibility for matters relating to corporations or business names or consumer credit within the jurisdiction of the party that member represents.
- (3) If a party to this Agreement is represented by more than one Minister, the party must nominate one Minister as the lead member representing the party.

### **ACTING MEMBERS**

403. (1) A Minister who is acting for a Minister who is a member of the Forum may act as a member of the Forum in place of the member.

- (2) A member of the Forum may appoint a Minister (being a Minister in the government in which the member is a Minister) to act as a member of the Forum in place of the member. Such an appointment may be limited to a particular meeting or particular meetings or to a particular period or particular periods, and may be revoked at any time.
- (3) References in this Agreement (other than in this clause) to a member of the Forum extend to an acting member.
- (4) Without limitation, an acting member may in that capacity:
  - (a) attend and participate in meetings of the Forum in place of the member concerned (including meetings referred to in subclause 407(2)); and
  - (b) exercise the voting rights of the member concerned (including voting rights under clause 411 or 412).

## **REPRESENTATION BY OFFICERS**

404. (1) A member of the Forum may appoint an officer to attend and participate in a meeting of the Forum in the absence of the member or of a Minister who is acting in place of the member.
- (2) Such an appointment must be notified in writing to the Chairperson or Secretary at or before the meeting.
  - (3) An officer is not to be counted in determining the quorum at the meeting and cannot cast a vote on any matter before the Forum.

## **OBSERVER STATUS**

405. (1) The Forum may, by unanimous resolution, and on such terms as it thinks fit, confer non-voting observer status on a representative of a government that is not a party to this Agreement.
- (2) The representative's observer status ceases when a member of the Forum notifies the Chairperson or Secretary in writing that the member does not support continuation of that status.
  - (3) The Secretary will notify the other members of the Forum in writing of the receipt and contents of a notification under subclause (2).

## **FUNCTIONS**

406. The Forum has the functions conferred on it by:

- (a) this Agreement; and
- (b) the National Credit Law Agreement 2009; and
- (c) the Intergovernmental Agreement for Business Names.

## **MEETINGS**

407. (1) Meetings of the Forum are to be held at such times and at such places as are from time to time decided by the Forum, but the Forum is to meet at least once each calendar year unless it decides to meet less frequently, either generally or in any particular year.
- (2) Meetings of the Forum may be held using any technological means agreed to by all parties.
- (3) Clause 403 extends to meetings referred to in subclause (2) of this clause, and references in clause 403 to attending a meeting of the Forum extend to joining in the meeting in whatever way the meeting is held.

## **QUORUM**

408. There is a quorum for a meeting of the Forum if there are Ministers representing the Commonwealth and at least 4 other parties.

## **CHAIRPERSON**

409. The Commonwealth Minister, or lead Commonwealth Minister if there is one, is the Chairperson of the Forum.

## **VOTING**

410. (1) The Forum should seek to make decisions on the basis of consensus wherever possible.

- (2) Except as provided in subclauses 507(2), 508(2), 509(3) and 511(4):
  - (a) a resolution will be carried by the Forum if a majority of the votes cast on the resolution are in favour of it; and
  - (b) each party has one vote; and
  - (c) the Chairperson does not have a casting vote.
- (3) If a party is represented by more than one Minister, then that party is to ensure that its members submit a single vote for that party. In the event that multiple votes are submitted by one party, the vote of the lead member shall be treated as the vote of that party.

## **VOTING OUT OF MEETINGS**

411. (1) Except for matters under clause 508, parties may vote on a matter referred to all members of the Forum, even though the Forum is not in session, and whether or not the matter has been considered at a meeting of the Forum.
- (2) When a vote is cast by a party outside a meeting of the Forum:
  - (a) the vote should be cast at the earliest opportunity; and
  - (b) the vote may be cast by electronic means to the Secretary of the Forum or other recipient approved by the Forum.
- (3) Nothing in this clause affects or is affected by clause 412.

## **RESERVING A VOTE BEFORE OR AT A MEETING**

412. (1) A member of the Forum not attending a meeting of the Forum may reserve a vote by informing the Secretary of the Forum in writing, before the date of the meeting, that the member wishes to reserve a vote.
- (2) If a matter is considered at a meeting of the Forum and a vote is taken:
  - (a) a member may reserve a vote until the member has taken further advice in respect of the matter; or
  - (b) an officer attending the meeting in the absence of the member may, on behalf of the member, reserve a vote.

- (3) When a vote is reserved under this clause by or on behalf of a member:
  - (a) the member may cast a vote after the meeting; and
  - (b) the vote should be cast at the earliest opportunity, but in any event within 21 days after the meeting or such other period as the Forum may from time to time decide either generally or in any particular case; and
  - (c) the vote may be cast by electronic means to the Secretary of the Forum or other recipient approved by the Forum.
- (4) This clause does not apply to a Forum meeting convened in accordance with clause 508.

## **SECRETARIAT**

413. (1) The secretariat functions for the Forum will be carried out by the Commonwealth Treasury.
- (2) The Secretary of the Forum will be the person for the time being designated as such by the Chairperson.
- (3) Any such designation of a person as Secretary will be communicated by the Chairperson to the other members of the Forum as soon as possible.

## **PROCEDURE GENERALLY**

414. Subject to this Agreement, the Forum may determine its own procedure.

## **PART 5 — LEGISLATION**

### **DIVISION 1 — THE NATIONAL LAW**

#### **PURPOSE OF THIS PART**

501. The purpose of this Part is to preserve and promote the legislative scheme that the parties have enacted for the formation of corporations, corporate regulation and the regulation of financial products and services and other matters. This Part establishes procedures involving both consultation between the parties on legislation covering a wide range of matters and a commitment not to promote certain kinds of legislation without the approval of the Forum.

#### **BASIC NATURE OF THE LEGISLATIVE SCHEME**

502. The legislative scheme agreed to by the parties involves:

- (a) the enactment by State Parliaments of legislation referring certain matters to the Commonwealth Parliament in accordance with paragraph 51(xxxvii) of the Constitution; and
- (b) the enactment by the Commonwealth Parliament of laws of national application, partly in reliance on State referrals mentioned in paragraph (a), for the formation of corporations, corporate regulation and the regulation of financial products and services; and
- (c) the amendment from time to time of the laws mentioned in paragraph (b) in accordance with this Agreement.

#### **EXTENT OF THE LEGISLATIVE SCHEME**

503. (1) Except as provided in subclause (2) or agreed unanimously by resolution of the Forum, the national law (including regulations under the national law) will not provide for the regulation of State or Territory statutory authorities, corporations established by specific State or Territory enactments, or corporations established under State or Territory statutes (other than State or Territory companies legislation) that authorise the incorporation of particular classes of corporations, including co-operative societies and incorporated associations, but not including building societies, credit unions and friendly societies.

- (2) Except as agreed unanimously by resolution of the Forum, the national law will apply to authorities and corporations to which subclause (1) applies, both within and outside their respective jurisdictions of establishment or incorporation, only to the same extent (if any) and in the same way as the provisions of the co-operative scheme laws applied to those authorities and corporations immediately before the Corporations Law came into operation in 1991.

### **ALTERNATIVE SYSTEMS**

504. The parties acknowledge that, while nothing in this Agreement prevents a State or Territory from legislating in relation to the formation and regulation of business entities other than companies, this Agreement is entered into on the basis that the company is, and is expected to continue to be, the primary vehicle for corporate business enterprises.

### **USE OF REFERRED POWER**

505. (1) The Commonwealth will not introduce a Bill that depends, in whole or in part, on a State referral mentioned in paragraph 502(a) for a purpose other than that specified in paragraph 502(b). In particular, the Commonwealth will not introduce a Bill that depends, in whole or in part, on a State referral mentioned in paragraph 502(a) for the purpose of regulating:
  - (a) industrial relations; or
  - (b) the environment; or
  - (c) any other matter declared unanimously by the members of the Forum representing referring States to be a matter to which this clause applies.

A declaration of a matter for the purposes of paragraph (c) may be revoked by unanimous agreement of the referring States.

- (2) Subject to subclause (3), the Commonwealth will not introduce a Bill that depends in whole or in part on a State referral mentioned in paragraph 502(a) for the purpose of requiring the adoption of a corporate structure by natural persons or unincorporated bodies, or requiring any activities of natural persons or unincorporated bodies to be conducted by employees of a corporation.

- (3) The Commonwealth may introduce a Bill that depends in whole or in part on a State referral mentioned in paragraph 502(a) prohibiting the formation of partnerships or associations that consist of more than 20 members. The Commonwealth may also introduce a Bill if it is for the purpose of the regulation of financial products, financial services, or markets regulated by the national law, or a purpose unanimously agreed by the Forum.

## **DIVISION 2 — ALTERATION OF THE NATIONAL LAW**

### **COMMONWEALTH LEGISLATION RELATING TO THE NATIONAL LAW**

506. (1) The Commonwealth will not introduce a Bill that would repeal or amend the national law, or make a regulation under the national law unless, before its introduction or making, the Forum has been consulted about it and, except as provided by this Part, has approved it.
- (2) The Commonwealth is not obliged to introduce, make or support any legislation, or proceed with any legislative proposal, with which it does not concur.

### **PROVISIONS RELATING TO APPROVAL OF COMMONWEALTH LEGISLATION**

507. (1) The approval of the Forum is not required for a Commonwealth Bill or regulation, so far as it relates to:
- (a) subject matters for which Chapters 2L, 5C, 6, 6A, 6B, 6C, 6D, 7 and 8 of the Corporations Law as in force on 1 July 2000 made provision, in particular:
- debentures;
  - managed investment schemes;
  - takeovers, compulsory acquisitions and buy-outs, and rights and liabilities in relation to these matters;
  - information about ownership of listed companies and managed investment schemes;
  - fundraising;
  - the securities industry; and
  - the futures industry; and

- (b) subject-matters for which Chapter 9.10 of the Corporations Law as so in force made provision; and
- (c) subject-matters for which the other provisions of Chapter 9 of the Corporations Law as so in force made provision, to the extent that those other provisions apply to the chapters referred to in paragraph (a) or the subject-matters referred to in paragraph (f); and
- (d) subject-matters for which Chapter 1 of the Corporations Law as so in force made provision, to the extent that Chapter 1 applies to the provisions referred to in paragraphs (a), (b), (c) and (f); and
- (e) subject-matters for which the provisions (limited to those specified in subclause (4)) of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth as so in force made provision; and
- (f) to the extent not otherwise covered by this subclause, financial products and services, including general insurance and life insurance (but not State insurance within the meaning of paragraph 51(xiv) of the Constitution), superannuation, derivatives, retirement savings accounts, foreign exchange, means of payment and banking (but not State banking within the meaning of paragraph 51(xiii) of the Constitution); and
- (g) other subject-matters agreed on unanimously by resolution of the Forum; and
- (h) a tax imposed under the *Corporations (Compensation Arrangements Levies) Act 2001*, *Corporations (National Guarantee Fund Levies) Act 2001*, *Corporations (Fees) Act 2001*, *Corporations (Review Fees) Act 2003*; and
- (i) the preservation of the operation of a State or Territory law in accordance with subclause 515(1); and
- (j) an amendment which is technical or has a minor policy impact and has a low or nil regulatory impact, unless any member considers that the amendment does not meet the criteria specified in this paragraph and notifies the Secretary within 21 days of the Commonwealth consulting the Forum.

- (2) The approval of at least 3 State or Territory parties (of whom at least 2 must be States) is required for a Commonwealth Bill to amend the national law, or for a Commonwealth regulation under the national law, to the extent that the Bill or regulation deals with any other subject-matter.
- (3) If approval is sought for amendments to a Bill which is currently before the Parliament, then State and Territory Ministers will use their best endeavours to vote within a time frame nominated by the Commonwealth.
- (4) For the purposes of subclause (1)(e), the following provisions of the *Australian Securities and Investments Commission Act 1989* of the Commonwealth are specified:
  - (a) The following provisions of Part 1 (Preliminary):
    - Section 4 (Extension to external Territories)
    - Section 6C (Presentation of papers to the Parliament)
    - Section 6D (Periodic reports).
  - (b) Part 5 (The Commission's Members).
  - (c) Part 6 (The Commission's Staff).
  - (d) The following provisions of Part 7 (Preventing Conflicts of Interest and Misuse of Information):
    - Division 1 (Disclosure of interests).
  - (e) Part 8 (Finance).
  - (f) The following provisions of Part 9 (The Advisory Committee):
    - Sections 149–155 in Division 1 (General)
    - Division 2 (Staff and finance).
  - (g) The following provisions of Part 10 (The Corporations and Securities Panel):
    - Sections 175–183 in Division 1 (General).

- (h) The following provisions of Part 11 (Companies Auditors and Liquidators Disciplinary Board):
  - Sections 205–214 in Division 1 (Constitution of Disciplinary Board).
- (i) The following provisions in Part 12 (Australian Accounting Standards Board):
  - Sections 227–234.
- (j) Part 14 (The Parliamentary Committee).
- (k) The following provision in Part 15 (Miscellaneous):
  - Section 243D (Financial Transaction Reports).

**FURTHER CONSIDERATION OF COMMONWEALTH LEGISLATION THAT DOES NOT REQUIRE APPROVAL**

508. (1) Where:

- (a) under clause 506, the Commonwealth consults the Forum in relation to an express amendment of the national law that does not require the approval of the Forum under clause 507; and
- (b) within 21 days of the Commonwealth consulting the Forum, the Chairperson is advised by 4 or more State Ministers representing different parties that they consider the amendment is for a purpose other than the formation of corporations, corporate regulation or the regulation of financial products or services;

the Chairperson must convene a meeting to consider the amendment.

- (2) The Commonwealth must not pursue an amendment in relation to which a meeting under subclause (1) is convened if, at the meeting, 4 or more State parties vote against the amendment.

## **EXPOSURE OF COMMONWEALTH DRAFT BILLS**

509. (1) All Commonwealth Bills referred to in clause 506(1) will be exposed for public comment for at least 4 weeks before introduction.
- (2) If the Bill is one referred to in subclause 507(1), the Commonwealth may shorten or dispense with the period of exposure without the agreement of the Forum. In that event, the Commonwealth Minister will advise each other member of the Forum of the reasons for this action.
- (3) If the Bill is one referred to in subclause 507(2):
- (a) the Commonwealth may shorten or dispense with the period of exposure, but only with the approval of at least 3 State or Territory parties (of whom at least 2 must be States); and
  - (b) the Commonwealth will extend the period of exposure to a period not exceeding 3 months upon the request of at least 3 State or Territory parties (of whom at least 2 must be States). The Secretary must be notified of the requests within 21 days of the Commonwealth consulting the Forum.

## **INTRODUCTION AND PASSAGE OF COMMONWEALTH BILLS**

510. (1) When introducing into a House of the Commonwealth Parliament a Bill referred to in subclause 506(1), a Minister of State for the Commonwealth will inform the House of the outcome of any consultation with the Forum and, in the case of matters requiring the approval of the Forum, the outcome of voting.
- (2) If amendments to such a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government), the Commonwealth will use its best endeavours to ensure adequate consultation with and, if the subject matter would ordinarily be required to be considered under subclause 507(2), a vote by, the Forum on those amendments.

- (3) In addition to the obligations undertaken in subclause 510(2), the Commonwealth will not move amendments to such a Bill and will oppose amendments to such a Bill which are moved by other parties if the amendments:
  - (a) rely to any extent on the reference by the States referred to in paragraph 502(a); and
  - (b) are other than for the purpose of the formation of corporations, corporate regulation and the regulation of financial products and services.

### **EXPOSURE OF COMMONWEALTH DRAFT REGULATIONS**

511. (1) Except as provided by this clause, a Commonwealth regulation referred to in subclause 506(1) is not required by this Agreement to be exposed for public comment before being made.
- (2) If the regulation is one referred to in subclause 507(1), or is one referred to in subclause 507(2) and relates exclusively to the imposition or alteration of fees or taxes, the Commonwealth may expose the regulation for public comment for any period it considers appropriate or may decide not to expose it for public comment at all. The Commonwealth Minister will advise each other member of the Forum whether or not it is to be exposed. The advice will include either the reasons for deciding not to expose it, or a statement of the period of exposure and the reasons for choosing the period of exposure.
  - (4) If the regulation is one referred to in subclause 507(2) and is not covered by subclause 511(2), the Commonwealth will expose the regulation for public comment for at least 4 weeks unless:
    - (a) the Commonwealth shortens or dispenses with the period of exposure, but it may only do so with the approval of at least 3 State or Territory parties (of whom at least 2 must be States); or
    - (b) the Commonwealth extends the period of exposure to a period not exceeding 3 months, which it will do upon the request of at least 3 State or Territory parties (of whom at least 2 must be States). The Secretary must be notified of the requests within 21 days of the Commonwealth consulting the Forum.

### **CONCURRENT STATE AND TERRITORY LEGISLATION**

512. (1) The national law will provide that it does not exclude the operation of State and Territory legislation (whether enacted before or after the commencement of the national law) that is capable of operating concurrently with it.
- (2) Nothing in this Part is intended to impose obligations in relation to such State or Territory legislation.

### **OPERATION OF EXISTING INCONSISTENT STATE AND TERRITORY LEGISLATION**

513. (1) Subject to this clause, the national law will provide for the continued operation of State and Territory legislation that is in force immediately before the commencement of the national law that:
- (a) would otherwise be inconsistent with the national law; and
  - (b) has an operation that is not preserved by the provision referred to in clause 512; and
  - (c) prevailed over the Corporations Law immediately before the commencement of the national law.
- (2) The national law will provide that the State and Territory laws whose operation is continued under the provisions referred to in subclause (1) do not operate to the extent:
- (a) prescribed by regulations under the national law; and
  - (b) provided by the relevant legislation of the State or Territory concerned including a regulation made under such a law.
- (3) The Commonwealth must not make a regulation of the kind referred to in subclause (2) without the agreement of the State or Territory Minister concerned.

## **OPERATION OF FUTURE INCONSISTENT STATE AND TERRITORY LEGISLATION**

514. (1) The national law will provide for the operation of State and Territory legislation that commences after the commencement of the national law that:

- (a) is inconsistent with the national law;
- (b) has an operation that is not enabled by the provision referred to in clause 512; and
- (c) the State or Territory legislation expressly indicates that it is inconsistent legislation in accordance with the provisions of the national law.

(2) Subclause (3) applies to:

- (a) proposals for State and Territory legislation which is of a kind referred to in subclause (1); and
- (b) State or Territory legislative proposals which rely on a State or Territory legislative declaration that the matter is an excluded matter in relation to the whole or specified provisions of the national law;

and which would significantly alter the effect or operation of the national law having regard to the operation of provisions to preserve the operation of State and Territory laws unless:

- (c) the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity); or
- (d) without limiting paragraph (2)(c), the provisions are provisions of State or Territory legislation for the temporary administration of a corporation authorised by the State or Territory to provide electricity, gas, water, drainage, sewerage, railways, pipeline or other essential services.

(3) A State or Territory must not introduce a Bill or make a regulation which subclause (2) provides is subject to this subclause unless:

- (a) the relevant State or Territory gives the Forum reasonable notice of the inconsistent provisions; and

- (b) the Forum has approved the enactment or making of the inconsistent provisions in accordance with clause 410.
- (4) A State or Territory must not introduce a Bill or make a regulation which is of the kind referred to in subclause (1) or paragraph (2)(b) but which is not subject to subclause (3) unless it has notified the Forum of the legislative proposal.
- (5) The notification required by subclause (4) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor in Forum (or other appropriate body), to maximise the opportunity for members of the Forum to comment on the proposed legislation.
- (6) It is sufficient compliance with the notification provisions of subclause (4) if the State or Territory sends to the members of the Forum a document describing fully:
  - (a) the relevant provisions of the proposed Bill or subordinate legislation; and
  - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The State or Territory will, at the earliest practicable time, provide a draft of any such provision to each member of the Forum.

- (7) If, because of exceptional and unavoidable considerations of government, the requirements of subclauses (3) or (4) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the State or Territory will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to members of the Forum and indicate the extent to which comments made by them may be able to be taken into account.

- (8) If amendments to a Bill are or are to be moved in the State or Territory Parliament (whether or not on behalf of the Government) and those amendments would require approval under subclause (3) or notification under subclause (4), the State or Territory will use its best endeavours to notify the Forum of those amendments at the earliest practicable time.
- (9) Where State or Territory legislation which is preserved under the mechanism referred to in clause 513 is amended after the commencement of the national law in such a manner that the inconsistency is dealt with in substantially the same terms, then the requirements of subclauses (3) and (4) do not apply but the relevant State or Territory must notify other members of the Forum about the amendments, preferably before their introduction or making.

#### **ADDITIONAL MECHANISM**

- 515. (1) In addition to the mechanisms referred to in subclauses 513(1) and 514(1), the national law will provide for the making of regulations to allow the effective operation of specified State or Territory laws that may otherwise be incompatible with the national law or regulations under the national law.
- (2) If a State or Territory requests a regulation of the kind referred to in subclause (1), the Commonwealth must determine that request within 6 weeks of receipt unless a longer period is approved by the Forum. The Commonwealth must not refuse the request without reasonable cause.
- (3) The Commonwealth must expose for public comment any draft regulation made in accordance with this clause for a period of 4 weeks unless a different period is approved by the Forum.
- (4) The Commonwealth must use its best endeavours to ensure that a regulation to be made under this clause is made at the earliest reasonable opportunity.

## **COMMONWEALTH TO NOTIFY FORUM OF OTHER LEGISLATION**

516. (1) Subject to this clause, the Commonwealth will notify the Forum of all other legislative proposals for Commonwealth legislation (including Commonwealth legislation for the Australian Capital Territory) that would alter the effect, scope or operation of the national law.
- (2) The notification required by subclause (1) should ordinarily occur at the earliest practicable time after the development of a legislative proposal and preferably before the introduction of the Bill concerned, or the submission of the subordinate legislation concerned to the Governor-General in Forum, to maximise the opportunity for members of the Forum to comment on the proposed legislation.
- (3) It is sufficient compliance with the notification provisions of subclause (1) if the Commonwealth sends to the members of the Forum a document describing fully:
- (a) the relevant provisions of the proposed Bill or subordinate legislation; and
  - (b) the manner in which each such provision would alter the effect, scope or operation of the national law.

The Commonwealth will, at the earliest practicable time, provide a draft of any such provision to each member of the Forum.

- (4) If, because of exceptional and unavoidable considerations of government, the notification required by subclause (1) cannot be undertaken before the introduction of the Bill concerned or the submission of the subordinate legislation concerned, the Commonwealth will, at the earliest practicable time (and, in the case of a Bill, preferably before passage of the Bill), provide copies of the Bill or subordinate legislation to the members of the Forum and indicate the extent to which comments made by them may be able to be taken into account.

- (5) If amendments to a Bill are or are to be moved in the Commonwealth Parliament (whether or not on behalf of the Government) and those amendments would require to be notified under subclause (1) because they would alter the effect, scope or operation of the national law, the Commonwealth will use its best endeavours to notify the Forum of those amendments at the earliest practicable time.
- (6) The approval of the Forum is not required for any such legislative proposals or amendments.

### **ALTERATIONS TO LEGISLATION**

517. (1) The purpose of this clause is to make provision in regard to alterations made to a Commonwealth Bill or regulation referred to in subclause 506(1) before it is introduced or made.
- (2) A Commonwealth Bill or regulation requiring the approval of the Forum has to be approved in the form in which it is to be introduced or made.
  - (3) However, the approval of the Forum to such a Bill or regulation may be given so as to permit the making of alterations of a drafting nature, or alterations of other kinds or for other purposes, as specified in the approval, without the need for further approval.
  - (4) The exposure provisions of this Division do not apply again to a Commonwealth Bill or regulation merely because it has been altered. However, those provisions do apply again if the alteration amounts to the inclusion in the Bill or regulation of a substantially new subject-matter.
  - (5) The Commonwealth will provide to the members of the Forum a statement of and commentary on alterations made to a Commonwealth Bill or regulation after the Forum was consulted about the Bill or regulation.
  - (6) The statement and commentary referred to in subclause (5) will be provided as follows:
    - (a) If the Bill or regulation is one to which subclause 507(1) applies, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.

- (b) If the Bill or regulation is one to which subclause 507(2) applies and the alterations all fall within subclause (3) of this clause, the statement and commentary will be provided not later than the day when the Bill or regulation is first introduced or made.
- (c) If the Bill or regulation is one to which subclause 507(2) applies and the alterations do not all fall within subclause (3) of this clause, the statement and commentary will be provided when the Bill or regulation is submitted or re-submitted for the approval of the Forum.

### **EXCEPTIONS**

518. (1) This Part does not apply to the re-enactment of Commonwealth legislation, so long as the matters are dealt with in substantially the same terms.
- (2) This Part does not apply to Commonwealth legislation that is, or is of a class, approved by a resolution of the Forum supported by the Chairperson.

## **DIVISION 3 — ALTERATION OF STATE REFERRAL LEGISLATION**

### **AMENDMENT OF STATE REFERRAL LEGISLATION**

519. (1) A State shall not introduce a Bill that would amend the referral legislation referred to in the definition of 'referring State' in clause 102 of this Agreement unless the Forum has been consulted about the proposed amendments.
- (2) If amendments to such a Bill are or are to be moved in a State Parliament (whether or not on behalf of the Government), the State will use its best endeavours to ensure adequate consultation with the Forum on those amendments.

### **PARTIAL TERMINATION OF REFERRAL**

520. (1) The State legislation will include provisions by the use of which a State could terminate the amendment reference.

- (2) The Commonwealth legislation will provide that if 6 States terminate the amendment reference on the same day then the Corporations Act, as in force at the time the termination becomes effective, will continue to apply in those States.
- (3) However, the Commonwealth legislation will treat any State which terminates its amendment reference in circumstances where the condition referred to in subclause (2) is not satisfied as a non-referring State.
- (4) A State will withdraw its amendment reference where and only where:
  - (a) each of 4 or more State Ministers representing different parties has advised the Chairperson that legislation specified in the advice is considered by that Minister to have been introduced, made or enacted by the Commonwealth in breach of a prohibition imposed by this Part;
  - (b) after the expiry of the period of 6 months beginning on the day on which the advice was given under paragraph (a) of this subclause, 4 or more State Ministers representing different parties agree:
    - (i) that the breach mentioned in paragraph (a) of this subclause has not been remedied; and
    - (ii) that the amendment references of all the States should be withdrawn; and
  - (c) each State withdraws its amendment reference in such a manner that the withdrawals have effect on the same day in each of the States.
- (5) If the advice under subclause (4)(a) is given on different days the period of 6 months mentioned in subclause (4)(b) begins on the later or latest of those days.
- (6) In this clause, 'amendment reference' means the reference by a State to the Commonwealth Parliament of the matters of the formation of corporations, corporate regulation and the regulation of financial products and services to the extent of express amendments of the national law.

## **DIVISION 4 — MISCELLANEOUS**

### **CONCURRENT JURISDICTION**

521. Jurisdiction under and in relation to the national law is to be conferred on State and Territory Superior Courts of Record and other appropriate State and Territory courts to the extent conferred under the national scheme laws.

### **EXTENSION OF PROHIBITION ON INTRODUCTION OR MAKING OF LEGISLATION**

522. A prohibition imposed by this Part on the introduction or making of any kind of legislation imports a requirement to oppose and take all practicable steps to prevent the introduction, making or enactment of any such legislation.

### **MEANING OF AMENDMENT**

523. Except as provided in clause 508, in this Part, 'amend' the national law means:

- (a) directly amend the text of the national law by the insertion, omission or substitution of matter; or
- (b) indirectly amend the national law by making provisions that would significantly alter its effect, scope or operation, unless the provisions are of specially limited application (such as transitional provisions relating to the corporatisation or privatisation of a government owned enterprise or entity).

## **PART 6 — ADMINISTRATION**

### **THE COMMISSION**

601. (1) The Commonwealth will consult the Forum on the making of appointments to the Commission.

- (2) The Commonwealth will consider the desirability of appointing part-time members of the Commission in the light of experience with the operation of the Commission and having regard to the views of the Commission and the State and Territory Ministers.

## **REGIONAL ADMINISTRATION**

602. (1) The Regional Offices of the Commission established in the referring States and the Northern Territory will be located in the capitals of the respective States and the Northern Territory.
- (2) The Commission will maintain Service Centres in those capitals and also in the major provincial cities that warrant such a presence.
- (3) The Commission will consult the relevant State or Territory Minister in relation to the appointment of the Regional Commissioner who will have responsibilities in relation to that Minister's jurisdiction.
- (5) The Commission will, to the fullest extent practicable, and having regard to issues of efficiency, delegate its functions and powers to the Regional Commissioners.
- (6) Subject to the ultimate authority of the Commission, the Regional Commissioners will be fully consulted on the allocation of the Commission's resources and the setting of the Commission's priorities.

## **LEVELS OF SERVICE**

603. (1) The Commission will, through the Regional Office and Service Centres established in each referring State and the Northern Territory, maintain levels of service not lower than the levels of service formerly provided in that State or Territory in the course of the local administration of co-operative scheme laws.
- (2) The Commission will maintain a system of performance indicators in relation to the levels of service in each referring State and the Northern Territory, and will monitor and report to each relevant State or Territory Minister on the performance of the Commission against the indicators in the Minister's State or Territory. The frequency of reporting to each such Minister will be as agreed between the Commission and the Minister concerned, but will not be more than twice each calendar year.

- (3) The Commission will include, in its annual report, a statement on the performance of the Commission against those performance indicators during the relevant period.
- (4) Each Minister mentioned in subclause (2) will be entitled to make a complaint at a meeting of the Forum about the levels of service provided by the Commission in the Minister's State or Territory.
- (5) The Commonwealth Minister will provide a written response to such a complaint within one month to all members of the Forum, if the Forum so resolves in relation to the complaint or to the class of complaints to which the complaint belongs.
- (6) The Commonwealth acknowledges that a State or Territory Minister may, subject to and in accordance with any relevant law, make a complaint to the Parliamentary Joint Committee on Corporations and Financial Services (established under the *Australian Securities and Investments Commission Act 2001* of the Commonwealth) about the levels of service provided by the Commission in the Minister's State or Territory.
- (7) The provisions of this clause are subject to clause 302.

## **REGIONAL LIAISON COMMITTEES**

604. (1) The Regional Commissioner for each State and the Northern Territory will maintain a Regional Liaison Committee to meet regularly for the purpose of:
- (a) briefing representatives of the local business community on the work of the Commission; and
  - (b) receiving views on the levels of service provided by the Commission in the State or Territory.
- (2) Each Committee will meet quarterly, or otherwise as agreed by the Committee.
  - (3) The Commission will use its best endeavours to have a member of the Commission present at each meeting of each Committee.
  - (4) The annual report of the Commission will include a report on the activities of the Committees.

## **CORPORATIONS AND MARKETS ADVISORY COMMITTEE**

605. (1) The Commonwealth will consult the Forum on the making of appointments to the Corporations and Markets Advisory Committee.
- (2) Each State and Territory Minister will be entitled to nominate a panel of persons for potential appointment to the Advisory Committee and the Legal Sub-Committee of the Advisory Committee.
- (3) The Commonwealth will ensure so far as practicable that at any time there is at least one member of the Advisory Committee from the Northern Territory and each referring State.
- (4) The Commonwealth will ensure so far as practicable that at any time there is at least one member of the Legal Sub-Committee from the Northern Territory and each referring State.
- (5) For the purposes of subclauses (3) and (4), a member is from a particular State or Territory if he or she is a resident of that jurisdiction.
- (6) The Commonwealth Minister will confer with the relevant State or Northern Territory Minister if it is proposed that no person be appointed from the panel of persons nominated by that Minister.

## **TAKEOVERS PANEL**

606. (1) The Commonwealth will consult the Forum on the making of appointments to the Takeovers Panel.
- (2) The selection of persons for appointment to the Panel will be made from persons with knowledge of, or experience in, relevant fields, with the objective that members of the Panel should, subject to the national law, be equipped to make a peer group assessment of the acceptability or unacceptability of relevant practices.
- (3) As far as practicable, at least one member of the Panel must, at any time, be a qualified person nominated by one or more of the State or Territory Ministers.

## **INTEGRATED OFFICES**

607. (1) The Commission will, at the request of any referring State or the Northern Territory, enter into negotiations with that State or Territory for the purpose of entering into arrangements for the integration, within the Service Centre in the capital of the jurisdiction, of registration functions under laws of the State or Territory relating to business names and corporations, where those functions remain or become the responsibility of the State or Territory.
- (2) Any such arrangements will be on the following basis:
- (a) the functions that may be performed by the Commission on behalf of the State or Territory will be limited to counter, registry and the like services;
  - (b) the services will be provided by the Commission on a full cost recovery basis;
  - (c) the presence of State or Territory officers and employees will be confined to the minimum decision-making presence necessary for the efficient discharge of the service;
  - (d) the State or Territory officers and employees will be administratively responsible to the Commission for office functions, but responsible to the State or Territory for policy and legislative matters;
  - (e) enforcement of relevant State or Territory laws will remain exclusively a matter for the State or Territory.
- (3) The Commission will, at the request of any State or the Northern Territory, enter into negotiations with that State or Territory for the co-location, with the Service Centre in the capital of the State or Territory, of the State or Territory office at which continuing State or Territory business regulation functions are performed.

## **NATIONAL DATABASE**

608. (1) The Commission will maintain its national companies database and a document imaging system.

- (2) The Commission will provide to each referring State and the Northern Territory free on-line access to its public national companies database and free access to the documents stored on its document imaging system, in the manner and subject to the terms agreed to by Commonwealth, State and Territory Ministers at Cairns on 12 July 1991.
- (3) The Commission will, through the national companies database, maintain and progressively enhance existing levels of data related service in each referring State and the Northern Territory.
- (4) The Commission will provide to each referring State and the Northern Territory free certification of documents produced by its public national companies database, in the manner and subject to the terms agreed to by Commonwealth, State and Northern Territory Ministers at Perth on 2 July 1992.
- (5) If a State or the Northern Territory has transferred microfiche companies records to the Commission, that State or Territory will be entitled to free access to those microfiche records, in the manner and subject to the terms agreed to by Commonwealth, State and Territory Ministers at Cairns on 12 July 1991.

## **ACCESS BY STATE AND TERRITORY MINISTERS TO INFORMATION**

- 609.
- (1) Each State and Territory Minister will be entitled to request the Regional Commissioner responsible for that jurisdiction for information not available on the Commission's public national database.
  - (2) To facilitate consideration of such requests, the Chairperson of the Commission will, to the fullest extent practicable, and having regard to issues of efficiency, delegate his or her functions and powers to the Regional Commissioners under paragraph 127(4)(b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
  - (3) The response to a request by a State or Territory Minister will be at the discretion of the Chairperson of the Commission or the Chairperson's delegate.

## **ACCESS BY COMMISSION TO INFORMATION**

610. (1) The Commission will be entitled to free on-line access to any State or Territory electronic business names register.
- (2) The cost of terminals, lines and other equipment is to be borne by the Commission or as otherwise agreed between the State or Territory concerned and the Commission.
- (3) If a State or Territory does not have an electronic business names register, the Commission will be entitled to free access to the business names register of the State or Territory in whatever form it is kept.

## **PART 8 — INVESTIGATIONS AND PROSECUTIONS**

### **NATIONAL LAW OFFENCES**

801. (1) The Commission and the Commonwealth Director of Public Prosecutions will have responsibility for the prosecution of offences under the national law and regulations under the national law.
- (2) Notwithstanding subclause (1), arrangements may be entered into under which:
- (a) State or Territory prosecuting authorities may prosecute offences under the national law, where the relevant conduct is associated with the prosecution of offences under State or Territory criminal law; and
- (b) the Commonwealth Director of Public Prosecutions may prosecute offences under State or Territory criminal law, where the relevant conduct is associated with the prosecution by the Commonwealth Director of Public Prosecutions of offences under the national law or arises out of an investigation by the Commission.
- (3) The national law and State and Territory law will enable such arrangements to be entered into.

## **NATIONAL SCHEME RIGHTS AND LIABILITIES**

802. (1) The national law will, to the greatest extent possible:
- (a) confer rights and liabilities (whether criminal or civil) on persons under that law, equivalent to the rights and liabilities they had under national scheme law; and
  - (b) enable court proceedings under the national scheme laws in progress at the time of commencement to continue as if they were proceedings under the national law.
- (2) To the extent that rights and liabilities are so conferred and court proceedings are so continued:
- (a) the Commission and the Commonwealth Director of Public Prosecutions are to be responsible for any enforcement action in the same way as they are responsible for prosecution of other national law offences under clause 801; and
  - (b) the States and Northern Territory will ensure that the relevant rights and liabilities under the national scheme laws are extinguished.
- (3) The States and Northern Territory will enact legislation to preserve rights and liabilities in relation to which equivalent rights and liabilities are not created under the national law ('national scheme rights and liabilities').
- (4) In respect of national scheme rights and liabilities, State and Northern Territory legislation will:
- (a) confer on the Commonwealth Director of Public Prosecutions and the Commission the function of continuing to carry out any enforcement action, including the continuation of any prosecutorial or appeal action, or civil litigation, in relation to national scheme rights and liabilities; and
  - (b) enable the relevant State or Northern Territory Minister to appoint any other person to perform such functions where it appears to the Minister on reasonable grounds that such an appointment is appropriate or necessary in all the circumstances.

## **ANCILLARY PROVISION IN RELATION TO NATIONAL SCHEME AND CO-OPERATIVE SCHEME RIGHTS AND LIABILITIES**

804. (1) The national law will:
- (a) enable the Commonwealth Director of Public Prosecution, or his or her delegate, or the Commission to perform the functions referred to in clauses 802; and
  - (b) enable the Commonwealth Director of Public Prosecutions or the Commission to make available any information or evidence and to provide any other assistance to persons appointed under paragraph 802(4)(b) necessary for the purposes of carrying out the functions for which they are appointed.
- (2) State and Northern Territory law will make provision for any information/evidence or other assistance so provided to only be used for the purpose of carrying out those functions.

## **PART 9 — CEASING TO BE A PARTY**

### **WITHDRAWAL AND CESSATION**

901. (1) A party may withdraw from this Agreement on giving at least 6 months' notice to the other parties.
- (2) A State ceases to be a party if it ceases to be a referring State.

### **AGREEMENT CONTINUES WITH REMAINING PARTIES**

902. (1) The failure of a State or Territory to remain a party does not terminate this Agreement. In the event that a State or Territory ceases to be a party, the Agreement will remain in force in relation to the remaining parties.
- (2) If a State or Territory ceases to be a party, the Commonwealth will, within 3 months, convene a meeting of the remaining parties for the purpose of negotiating such amendments to this Agreement as are necessary to take account of that fact (including amendments relating to the voting arrangements for the Forum).

## **PART 10 — MISCELLANEOUS**

### **BUSINESS NAMES**

1001. (1) The national law will contain provisions prohibiting the incorporation of a company whose name is identical with a business name recorded on an electronic national business names register (being a register to which the Commission has on-line access) as a currently registered business name.
- (2) The register is to be provided by and at the expense of the States and Territories.

### **MINISTERIAL POWER TO DIRECT CONDUCT OF INVESTIGATIONS**

1002. The power of the Minister under section 14 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth to direct the Commission to investigate a matter will be retained in the national law.
-

## Notes to the Corporations Agreement 2002

### Note 1

The *Corporations Agreement 2002* as shown in this compilation is amended as indicated in the Tables below.

#### Table of Instruments

Title	Date made	Date of commencement	Application, saving or transitional provisions
<i>Corporations Agreement 2002</i>	6 Dec 2002	6 Dec 2002	
<i>Corporations Amendment Agreement 2005 No. 1</i>	13 Oct 2005	13 Oct 2005	—
<i>Corporations Amendment Agreement 2017 No. 1</i>	29 Jun 2017	29 Jun 2017	Sch 2 and Sch 3

#### Table of Amendments

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
underlining = whole or part not commenced or to be commenced

Provision affected	How affected
Preamble.....	am. 2017 No. 1
C. 102 .....	am. 2005 No. 1; am. 2017 No. 1
C. 302 .....	am. 2017 No. 1
Part 4, heading.....	am. 2017 No. 1
C. 401 .....	am. 2017 No. 1
C. 402 .....	am. 2017 No. 1
C. 403 .....	am. 2017 No. 1
C. 404 .....	am. 2017 No. 1
C. 405 .....	am. 2017 No. 1
C. 406 .....	am. 2017 No. 1
C. 407 .....	am. 2017 No. 1
C. 408 .....	am. 2017 No. 1
C. 409 .....	am. 2017 No. 1
C. 410 .....	am. 2017 No. 1
C. 411 .....	am. 2017 No. 1
C. 412 .....	am. 2017 No. 1
C. 413 .....	am. 2017 No. 1
C. 414 .....	am. 2017 No. 1
C. 501 .....	am. 2017 No. 1
C. 503 .....	am. 2017 No. 1
C. 505 .....	am. 2017 No. 1

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted  
underlining = whole or part not commenced or to be commenced

<b>Provision affected</b>	<b>How affected</b>
C. 506 .....	am. 2017 No. 1
C. 507 .....	am. 2005 No. 1; <u>2017 No. 1</u>
C. 508 .....	am. 2017 No. 1
C. 509 .....	am. 2005 No. 1; 2017 No. 1
C. 510 .....	am. 2017 No. 1
C. 511 .....	am. 2017 No. 1
C. 514 .....	am. 2005 No. 1; 2017 No. 1
C. 515 .....	am. 2017 No. 1
C. 516 .....	am. 2017 No. 1
C. 517 .....	am. 2017 No. 1
C. 518 .....	am. 2017 No. 1
C. 519 .....	am. 2017 No. 1
C. 520 .....	am. 2017 No. 1
C. 601 .....	am. 2017 No. 1
C. 602 .....	am. 2017 No. 1
C. 603 .....	am. 2017 No. 1
C. 605 .....	<u>rep. 2017 No. 1</u>
C. 606 .....	am. 2017 No. 1
C. 607 .....	am. 2017 No. 1
C. 608 .....	<u>am. 2017 No. 1</u>
Part 7 .....	rep. 2017 No. 1
C. 803 .....	rep. 2017 No. 1
C. 804 .....	am. 2017 No. 1
C. 902 .....	am. 2017 No. 1
C. 1003–1006 .....	rep. 2017 No. 1