

**The Law
Reform
Commission**

Report No 65

**The Companies
and Securities
Advisory Committee**

Report

**COLLECTIVE INVESTMENTS:
OTHER PEOPLE'S MONEY**

Volume 2: Draft legislation

**This Report
reflects the law
as at 1 June 1993**

[It assumes that the *Corporate Law Reform Act 1992* (Cth) and the *Corporate Law Reform (No 2) Bill 1992 [1993]* (Cth) are both fully in operation.]

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ALRC Reference: ALRC 65

The Law Reform Commission was established by the *Law Reform Commission Act 1973* section 5 to review, modernise and simplify the law. It started operation in 1975. The office of the Commission is at 99 Elizabeth Street, Sydney, NSW, Australia (tel (02) 231 1733; fax (02) 223 1203).

The Companies and Securities Advisory Committee was established by the *Australian Securities Commission Act 1989* to monitor and advise on the operation of national scheme laws. It started operation in 1989. The office of the Committee is at Level 16, Westpac Plaza, 60 Margaret Street, Sydney, NSW, Australia (tel (02) 911 2950; fax (02) 911 2955).

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Terms of reference

COMMONWEALTH OF AUSTRALIA

Law Reform Commission Act 1973
Australian Securities Commission Act 1989

1. I, Michael Duffy, Attorney-General of Australia noting:

- the report of the Companies and Securities Law Review Committee to the Ministerial Council for Companies and Securities titled 'Prescribed Interests'; and
- the need to ensure that there is a proper legal framework for prescribed interests and like collective investment schemes (collective investment schemes) that:
 - promotes commercial stability, and efficiency in capital raising and capital formation; and
 - provides an appropriate level of regulation that adequately and effectively protects the interest of investors,

refer to the Law Reform Commission for review and report under the *Law Reform Commission Act 1973* section 6:

- (1) Whether the present legal framework for collective investment schemes provides for the most efficient and effective legal framework for the operation of the various kinds of such schemes and, in particular, whether a different operating structure should be provided for such schemes, including whether separate structures should apply to different kinds of schemes;
- (2) Whether there is a proper level of regulation of the various kinds of collective investment schemes, and in particular:
 - whether different systems of regulation should be provided for different kinds of such schemes;
 - what disclosures should be made to the public;
 - whether scheme documents, such as trust deeds, can be simplified or standardised;
 - what should be the powers, duties and responsibilities of the persons who promote, manage, or supervise the operation of collective investment schemes, such as managers and trustees, including whether, and the extent to which, such duties and responsibilities should be codified;
 - whether any form of self-regulation would be appropriate;
 - what prudential requirements, if any, should be imposed on such persons as promoters, managers or trustees of such schemes, including requirements as to availability of capital;
 - whether a special framework for the liquidity of collective investment schemes, and for the secondary sale or trading of collective investment scheme interests, is desirable, including whether buy-back arrangements are appropriate and, if so, whether there is a need for particular buy-back provisions for particular kinds of such schemes; and
- (3) any related matter;

and, under the *Australian Securities Commission Act 1989* section 148, request the Companies and Securities Advisory Committee to advise me about those matters.

2. In carrying out their functions, the Commission and the Committee are to consult the Australian Securities Commission, the Commonwealth Attorney-General's Department, relevant Commonwealth, State, and Territory authorities, the securities industry and any other person or body they think appropriate, having special regard to the Commonwealth's Access and Equity policy.

3. The report and advice should include draft legislation and an explanatory memorandum.

4. The report is to be delivered by 1 November 1992.

DATED: 24 May 1991

Michael Duffy
Attorney-General

Participants

Australian Law Reform Commission

The Division of the Commission for the purpose of this report comprised:

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Justice Elizabeth Evatt AO

Members

Jim Armitage (to 31 December 1992)¹

Leigh Hall (to 31 December 1992)²

Stephen Mason

Mr Mason drafted the legislation in Volume 2.

Christopher Sidoti

Justice John von Doussa (from 17 September 1992)

The Companies and Securities Advisory Committee

Convenor

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Members

Mr Don Argus

Mr John Barner

Mr Reg Barrett

Professor Philip Brown

Mr Alan Cameron (from 1 January 1993)

Mr David Crawford

Mr Kevin Driscoll CBE

Mr William Gurry

Mr Leigh Hall

Mr Tony Hartnell (to 31 December 1992)

Mr Wayne Lonergan

Ms Ann McCallum

Mr Alan McGregor AO

Mr Mark Rayner

Mr Andrew Turnbull

Officers (ALRC)

*Project manager*³

Russell Agnew

-
1. Mr Armitage and Mr Hall continued to work with the Review until the completion of this report.
 2. Mr Hall is also a member of the Advisory Committee.
 3. By agreement, the ALRC project team had primary responsibility for preparing this report.

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4. The recommendations, statements of opinion and conclusions in this report are those of the members of the ALRC and the Advisory Committee. They do not necessarily represent the views of consultants or of the organisations with which they are associated.

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