

**The Law  
Reform  
Commission**

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**Report No 65**

**The Companies  
and Securities  
Advisory Committee**

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**Report**

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

**Volume 1**

**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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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

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## 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



## Australian Law Reform Commission

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

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Justice Elizabeth Evatt AO

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  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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# Abbreviations

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AARF	Australian Accounting Research Foundation
ABS	Australian Bureau of Statistics
AC	Appeal cases
ACLC	Australian Company Law Cases
ACN	Australian Company Number
ACSR	Australian Corporations and Securities Reports
Advisory Committee	Companies and Securities Advisory Committee
AFIC	Australian Financial Institutions Commission
	A body established under co-operative legislation to oversee the prudential regulation of SBFIs under State and Territory law
AGPS	Australian Government Publishing Service
ALRC	Australian Law Reform Commission
ALRC 16	Australian Law Reform Commission Report No 16 <i>Insurance Agents and Brokers</i> AGPS Canberra 1980
ALRC 45	Australian Law Reform Commission Report No 45 <i>General Insolvency Inquiry</i> AGPS Canberra 1988
ALRC 57	Australian Law Reform Commission Report No 57 <i>Multiculturalism and The Law</i> ALRC Sydney 1992
ALRC 59	ALRC & Advisory Committee Report No 59 <i>Collective investments: Superannuation</i> ALRC Sydney 1992
ALRC 60	Australian Law Reform Commission Report No 60 <i>Customs and excise</i> ALRC Sydney 1992
ASC	Australian Securities Commission
ASC Act	<i>Australian Securities Commission Act 1989</i> (Cth)
ASCPA & ICAA	Australian Society of Certified Practising Accountants and the Institute of Chartered Accountants in Australia
ASX	Australian Stock Exchange Limited
ATO	Australian Taxation Office
BT	Bankers Trust Australia Limited
Campbell Committee Report	Committee of Inquiry into the Australian Financial System <i>Final Report</i> AGPS Canberra 1981 (Chairman: JK Campbell)
CLR	Commonwealth Law Reports
Corporations Law	The Corporations Law, set out in the <i>Corporations Act 1989</i> (Cth) s 82
CSLRC	Companies and Securities Law Review Committee established under the <i>Companies Act 1981</i> (Cth) (replaced by the Advisory Committee)
CSLRC DP	CSLRC Discussion Paper 6 <i>Prescribed Interests</i> Sydney 1987

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CSLRC Report DP 50	CSLRC Report <i>Prescribed Interests</i> Sydney 1988 ALRC & Advisory Committee Discussion Paper 50 <i>Collective investment schemes: Superannuation</i> ALRC Sydney 1992
DP 53	ALRC & Advisory Committee Discussion Paper 53 <i>Collective investment schemes</i> ALRC Sydney 1992
DTI	Deposit taking institution (principally banks, building societies and credit unions)
EC	European Community
Edwards Committee Report	Joint Select Committee on Corporations Legislation <i>Report</i> AGPS Canberra 1989 (Chairman: R Edwards)
FCA Act	<i>Federal Court of Australia Act</i> 1976 (Cth)
FPAA	Financial Planning Association of Australia Limited
GDP	Gross domestic product
ICAA	Institute of Chartered Accountants in Australia
IFA	Investment Funds Association of Australia
IP 10	ALRC & Advisory Committee Issues Paper 10 <i>Collective investment schemes</i> ALRC Sydney 1991
IOSCO	International Organisation of Securities Commissions
IRC	Industrial Relations Commission
ISC	Insurance and Superannuation Commission
ISRO	Industry self regulating organisation
ITAA	<i>Income Tax Assessment Act</i> 1936 (Cth)
Lavarch Report	House of Representatives Standing Committee on Legal and Constitutional Affairs <i>Corporate Practices and the Rights of Shareholders</i> AGPS Canberra 1991 (Chairman: M Lavarch)
LIA	<i>Life Insurance Act</i> 1945 (Cth)
LIFA	Life Insurance Federation of Australia Incorporated
Martin Report	House of Representatives Standing Committee on Finance and Public Administration <i>A Pocket Full of Change - Banking and Deregulation</i> AGPS Canberra 1991 (Chairman: S Martin)
Martin Review Group Report	Review Group on the Australian Financial System <i>Report</i> AGPS Canberra 1984 (Chairman: VE Martin)
National Mutual	National Mutual Life Association of Australasia Limited
NCA	National Crime Authority
NCSC	National Companies and Securities Commission (replaced by the ASC)
NSWLR	New South Wales Law Reports
OECD	Organisation for Economic Co-operation and Development

Rae Report	Senate Select Committee on Securities and Exchange <i>Australian Securities Markets and their Regulation</i> AGPS Canberra 1974 (Chairman: PE Rae)
The Review	The ALRC and the Advisory Committee
RBA	Reserve Bank of Australia
SBFI	State based financial institution
TCA	Trustee Companies Association of Australia
TPA	<i>Trade Practices Act 1974</i> (Cth)
TPC	Trade Practices Commission
TPC Report	TPC Report <i>Superannuation and life insurance</i> 1992
UCITS	Undertakings for Collective Investment in Transferable Securities
UNSWLJ	University of New South Wales Law Journal
VFIC	Victorian Financial Institutions Commission