

## Prescribed Interests Under the Companies Code

### Terms of Reference

In 1981 the Commission received a reference to enquire into and report upon the existing law in Australia as it concerns the issue to, or offer to, the public for subscription or purchase of any “prescribed interest” within the meaning of s 5(1) and Part IV Division 6 of the *Companies (Western Australia) Code*, with the object of recommending suitable legislative reform whether within the scope of the companies legislation or not. In considering the foregoing and without limiting the generality thereof, the Attorney-General requested that particular attention be paid to the need to facilitate fund-raising schemes which benefit the community, but at the same time, provide adequate safeguards for the investor, having regard to the nature and size of the investment.

### Background of Reference

Section 5(1)<sup>1</sup> was introduced primarily to regulate unit trusts. However, as the definition of “prescribed interests” within the section was very broad, it covered a large range of collective investment schemes, many of which had developed since the legislation was introduced. The legislation covered not only conventional unit trusts (property and share trusts) but also time-sharing of real and personal property, horse racing syndicates, film production syndicates, plantation schemes and gold and silver bullion schemes. It was suggested that the legislation was inappropriate to regulate these investments and also possibly inappropriate to regulate traditional unit trusts.

The Commission worked on the reference for a period of just over 2 years, during which Commission staff prepared a seminar paper<sup>2</sup> on the subject and attended a relevant national conference.<sup>3</sup>

### Reference Withdrawn

In early 1984, the Companies and Securities Law Review Committee was established to undertake research and recommend reform in company and securities law at the national level. The Ministerial Council for Companies and Securities decided that, as the matter required review on a nation-wide basis, the Companies and Securities Law Review Committee should be given a reference on prescribed interests. To avoid duplication the Commission’s reference was withdrawn.

<sup>1</sup> Section 5(1) of the *Companies (Western Australia) Code* essentially reproduced the definition of “prescribed interest” in the *Companies Act 1961 (WA)* s 76(1).

<sup>2</sup> DR Williams and R W Broertjes, ‘Prescribed Interests: An Overview’ (Paper presented at the Law Council of Australia: Business Law Section Seminar, Perth, 1984).

<sup>3</sup> The Fourth Annual Convention of the Australian Resort Time-Sharing Council, Sydney, February 1983. This conference considered a wide range of practical and legal problems confronting developers.