



## SECURITIES ACT (AUSTRALIAN ISSUERS) EXEMPTION NOTICE 1997

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PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

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### NOTICE

**1. Title, commencement, and expiry**—(1) This notice may be cited as the Securities Act (Australian Issuers) Exemption Notice 1997.

(2) This notice comes into force on 1 October 1997.

(3) This notice expires on the close of 30 September 2002.

**2. Interpretation**—(1) In this notice, unless the context otherwise requires,—

“Act” means the Securities Act 1978:

“Australian issuer” means—

(a) A company incorporated under the law of a specified State or any corresponding previous law:

(b) A company incorporated in a country, other than Australia or New Zealand, that is admitted to the official list of the Australian Stock Exchange:

(c) A company incorporated in a country, other than Australia or New Zealand, that has applied to be admitted to the official list of the Australian Stock Exchange:

(d) A person named in the Schedule:

“Australian prospectus” means a document—

(a) That contains—

(i) An offer of equity securities by an Australian issuer, being equity securities of which it is the issuer; or

(ii) An offer of equity securities that have previously been allotted by an Australian issuer, being an offer by the holder of those securities; and

(b) That is identical to a document that is lodged or registered under the law of a specified State and that is signed by or on behalf of such persons (if any) as are required by that law to sign that document; and

(c) By means of which it is lawful under the law of that specified State to make an offer of those equity securities to the public in that specified State; and

(d) Where the Australian issuer is a person described in paragraph (c) of the definition of that term in this clause, that contains a statement to the effect that that person has made, or will within 3 days after the issue of the document make, an application to be admitted to the official list of the Australian Stock Exchange; and

(e) That contains no statement referring to listing or intended listing on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange:

“Lodged” means lodged under the law of a specified State; and  
“lodgement” has a corresponding meaning:

“Registered” means registered under the law of a specified State; and  
“registration” has a corresponding meaning:

“Regulations” means the Securities Regulations 1983:

“Specified State” means a State or Territory of the Commonwealth of Australia.

(2) Any term or expression that is not defined in this notice, but that is defined in the Act or the Regulations, has the meaning given to it by the Act or the Regulations.

**3. Exemptions**—(1) Every Australian issuer, and every person acting on its behalf, are exempted from—

(a) Sections 37 and 37A (2) of the Act; and

(b) Section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and

(c) Sections 51 to 54 of the Act—  
in respect of any equity securities of which the Australian issuer is the issuer.

(2) Every person who is the holder of equity securities that have been previously allotted by an Australian issuer, and every person acting on behalf of that holder, are exempted from—

(a) Sections 37 and 37A (2) of the Act; and

(b) Section 38A of the Act and regulations 11 to 18 and 21 to 23 of the Regulations; and

(c) Sections 51 to 54 of the Act—  
in respect of any such securities.

(3) Subclauses (1) (b) and (2) (b) apply in respect of an Australian prospectus only, and not in respect of any investment statement or other advertisement.

(4) Every Australian issuer and every person referred to in subclause (2), and every person acting on behalf of such an issuer or person, are exempted from section 38 (a) of the Act to the extent that that provision requires an Australian prospectus to refer to an investment statement.

**4. Australian prospectus**—The exemptions granted by clause 3 (1) (a) and (b) and clause 3 (2) (a) and (b) are subject to the conditions that—

(a) There is an Australian prospectus relating to the equity securities at the time that offers of the equity securities are made or are open for acceptance in New Zealand; and

- (b) The Australian prospectus contains no statement referring to listing or intended listing of the equity securities on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (c) It is a term of each offer of the equity securities made in New Zealand that the Australian issuer will, within 5 working days of receiving a request of an offeree for a copy of the Australian prospectus relating to the equity securities, without fee, send, or cause to be sent, to that offeree—
  - (i) A copy of the Australian prospectus; and
  - (ii) Copies of any documents that, under the law of the specified State concerned, must accompany any copy of the Australian prospectus sent to any person to whom an offer of the equity securities is made in that specified State.

**5. Documents to be deposited in Wellington**—The exemptions granted by clause 3 (1) (a) and (b) and clause 3 (2) (a) and (b) are subject to the further condition that a copy of each of the following documents has been deposited with the Registrar of Companies at Wellington:

- (a) The Australian prospectus relating to the equity securities, together with a certificate signed by the solicitor to the Australian issuer to the effect that the Australian prospectus complies with paragraphs (a) to (e) of the definition of that term in clause 2 (1):
- (b) A copy of any material contract that has been lodged or registered with the Australian prospectus; or
  - (i) If the contract is not in writing, a copy of any memorandum that has been so lodged or registered and that contains particulars of the contract; or
  - (ii) If an exemption or declaration has been granted by the Australian Securities Commission under section 1084 of the Corporations Law of the Commonwealth of Australia, a copy of any memorandum that has been so lodged or registered and that contains particulars of the material contract prepared pursuant to that exemption or declaration:
- (c) Any certificate or other document evidencing lodgement or registration of the Australian prospectus:
- (d) The certificate of incorporation of the Australian issuer:
- (e) The memorandum and articles of association or other documents, statutes, or instruments constituting or defining the constitution of the Australian issuer.

**6. Investment statements**—The exemptions granted by clause 3 (1) (a) and (b) and clause 3 (2) (a) and (b) are subject to the further condition that any investment statement that relates to the equity securities concerned—

- (a) Includes, to the extent appropriate, statements to the following effect:
  - (i) That allotments of the securities will be made in the manner specified in the Australian prospectus and in the manner prescribed under the law of the specified State concerned; and
  - (ii) That investors should satisfy themselves as to the tax implications of investing in the equity securities; and
  - (iii) That investing in the securities of an Australian issuer may carry with it a currency exchange risk; and

- (iv) That the financial reporting requirements applying in New Zealand and those applying to the Australian issuer may be different and the financial statements of the Australian issuer may not be compatible in all respects with financial statements prepared in accordance with New Zealand law; and
  - (v) That the Australian issuer may not be subject in all respects to New Zealand law; and
  - (vi) That the contract in respect of the equity securities may not be enforceable in New Zealand courts; and
  - (vii) That the Australian prospectus has not been registered in New Zealand under New Zealand law and may not contain all the information that a New Zealand registered prospectus is required to contain; and
  - (viii) The general nature and effect of any exemption, order, or declaration that may have been granted by the Australian Securities Commission in respect of the offer of the equity securities; and
  - (ix) That it is not a condition of this notice that the Australian issuer be listed on the New Zealand Stock Exchange and that, if the Australian issuer is not listed on the New Zealand Stock Exchange, New Zealand resident investors may not have access to information concerning the Australian issuer in the same way as investors have in relation to an issuer listed on the New Zealand Stock Exchange; and
- (b) Contains no statement referring to listing or intended listing of the securities on the New Zealand Stock Exchange other than a statement that has been approved by the New Zealand Stock Exchange; and
- (c) Complies with the provisions of the Act and the Regulations relating to investment statements as if references in the Act or the Regulations to “registered prospectus” were references to the Australian prospectus.

**7. Offers to be made in Australia at same time**—The exemptions granted by clause 3 (1) (a) and (b) and clause 3 (2) (a) and (b) are subject to the further condition that at the same time as offers of the equity securities are made or are open for acceptance in New Zealand, offers of the equity securities are also made or are open for acceptance in the specified State concerned in accordance with the law of that specified State.

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## SCHEDULE

The Australian Gas Light Company  
Westpac Banking Corporation

Dated at Wellington this 29th day of September 1997.

The Common Seal of the Securities Commission was affixed in the presence of:

[L.S.]

M. R. H. WEBB,  
Member.

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EXPLANATORY NOTE

*This note is not part of the notice, but is intended to indicate its general effect.*

This notice, which is required as a result of the coming into force on 1 October 1997 of new disclosure and other requirements under the Securities Act 1978, comes into force on 1 October 1997 and expires on 30 September 2002.

The notice replaces the Securities Act (Australian Issuers) Exemption Notice 1996, the Securities Act (Specified Australian Issuers) Exemption Notice 1993, and the Securities Act (Westpac Banking Corporation) Exemption Notice 1993.

The notice applies to offers by Australian issuers of equity securities issued by those issuers and to offers of equity securities that have already been allotted by Australian issuers where the offers are made by the existing holders of the securities.

Australian issuers are—

- (a) Companies incorporated in Australia;
- (b) Companies incorporated outside Australia that are listed on the Australian Stock Exchange;
- (c) Companies incorporated outside Australia that have applied for listing on the Australian Stock Exchange;
- (d) Any person named in the Schedule of the notice.

The notice exempts those to whom it applies from the following provisions of the Securities Act 1978 and the Securities Regulations 1983:

- (a) Sections 37 and 37A (2), which prohibit the allotment of securities offered to the public unless there is a registered prospectus relating to the securities, and prescribe the minimum amount payable on application;
- (b) Sections 51 to 54, which relate to the keeping of registers and accounting records, and the sending of certificates to security holders;
- (c) Sections 38 (a) and 38A and regulations 11 to 18 and 21 to 23, which contain requirements as to the content of advertisements (including investment statements) and registered prospectuses.

The exemption is subject to the following conditions:

- (a) A copy of the prospectus required by the law of the State or Territory of the Commonwealth of Australia concerned (the “Australian prospectus”) must be deposited with the Registrar of Companies at Wellington, together with copies of various other documents;
- (b) Any investment statement that relates to the equity securities concerned must contain a number of specified statements;
- (c) The Australian issuer must undertake to send a copy of the Australian prospectus and other documents to any offeree who so requests within 5 working days of receiving the request;
- (d) Offers of the equity securities must be made in the State or Territory of the Commonwealth of Australia concerned at the same time as offers are made in New Zealand.

The notice is drafted on the basis that, where an exemption is given from a specified provision, it is not necessary to refer to other provisions that will not apply as a consequence of that exemption. For example, the exemption from section 37 of the Securities Act 1978 (the requirement to register a prospectus) means that sections 34, 37A (1) (c) and (d), and 39 to 44 of that Act will not apply.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 30 September 1997.

This notice is administered in the Securities Commission.