

Passed by both Houses



New South Wales

Corporations (Administrative Actions) Bill 2001

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2001*



New South Wales

Corporations (Administrative Actions) Bill 2001

Act No , 2001

An Act relating to administrative actions taken by Commonwealth authorities or officers of the Commonwealth under certain State laws relating to corporations.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:**1 Name of Act**

This Act is the *Corporations (Administrative Actions) Act 2001*.

2 Commencement

This Act commences immediately before the *Corporations Act 2001* of the Commonwealth, as originally enacted, comes into operation.

3 Definitions

In this Act:

administrative action means an act or omission of an administrative or legislative nature, and includes any act or omission of an administrative nature that is done or omitted in the course of or ancillary to or preliminary to or subsequent to judicial proceedings (civil or criminal).

commencement time means the time when this Act commences under section 2.

Commonwealth authority means an authority or body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth, but does not include the Federal Court of Australia, the Family Court of Australia or the Federal Magistrates Court.

confer includes impose.

function includes a duty.

invalid administrative action means an administrative action of a Commonwealth authority or an officer of the Commonwealth taken, or purportedly taken, at or before the commencement time:

- (a) pursuant to a function or power conferred, or purportedly conferred, by or under a relevant State Act (the ***relevant function or power***), and
- (b) in circumstances where the relevant function or power could not have been conferred on the authority or officer by a law of the Commonwealth the operation of which in the relevant respect was based on the legislative powers of the Parliament

of the Commonwealth (including, for example, circumstances where the authority or officer was, or purportedly was, under an express or implied duty to perform the function or exercise the power),

that was invalid because of the circumstances referred to in paragraphs (a) and (b), whether or not it was also invalid on any other ground.

liability includes a duty or obligation.

officer of the Commonwealth has the same meaning as in section 75 (v) of the Constitution of the Commonwealth.

relevant function or **power** means a function or power referred to in paragraph (a) of the definition of **invalid administrative action**.

relevant State Act means:

- (a) the *Corporations (New South Wales) Act 1990*, or
- (b) the *Companies (Application of Laws) Act 1981*, or
- (c) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, or
- (d) the *Securities Industry (Application of Laws) Act 1981*, or
- (e) the *Futures Industry (Application of Laws) Act 1986*, or
- (f) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,

and includes any law applying as a law of the State by force of any such Act.

right includes an interest or status.

4 Application and operation of Act

- (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.
- (2) This Act has effect despite any provision of the *Corporations (New South Wales) Act 1990* or of the applicable provisions (as defined in that Act) of the State.
- (3) Subject to subsection (4), this Act extends to rights or liabilities arising between parties to proceedings initiated at or before the commencement time where an allegedly invalid administrative action is or was the subject of or relevant to the proceedings.

- (4) This Act does not affect rights or liabilities arising between parties to proceedings heard and finally determined at or before the commencement time to the extent to which those rights or liabilities arise from, or are affected by, an invalid administrative action.

5 Legal effect of invalid administrative actions

Every invalid administrative action has, and is deemed always to have had, the same force and effect for all purposes as it would have had if:

- (a) it had been taken, or purportedly taken, by a State authority or officer of the State, and
- (b) the relevant function or power had been duly conferred on that authority or officer.

6 Rights and liabilities declared in certain cases

- (1) Without affecting the generality of section 5, the rights and liabilities of all persons are, by force of this Act, declared to be, and always to have been, for all purposes the same as if:
- (a) every invalid administrative action had been taken, or purportedly taken, by a State authority or officer of the State, and
 - (b) the relevant function or power had been duly conferred on that authority or officer.
- (2) A right or liability conferred or affected by subsection (1):
- (a) is exercisable or enforceable, and
 - (b) is to be regarded as always having been exercisable or enforceable,
- as if it were a right or liability conferred or affected by (or arising from) an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.
- (3) Any act or thing done or omitted to be done at or before the commencement time under or in relation to a right or liability conferred or affected by subsection (1):
- (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law, and

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- (b) is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law,

as if it were done, or omitted to be done, to give effect to, or under the authority of, or in reliance on, an administrative action of a State authority or officer of the State on which or whom the relevant function or power had been duly conferred.

7 Registration or incorporation of companies

Without affecting the generality of sections 5 and 6, it is declared that those sections extend to the registration or incorporation, or purported registration or incorporation, of companies by, or consequent on administrative action taken or purportedly taken by, Commonwealth authorities or officers of the Commonwealth at or before the commencement time.

8 This Act to apply to administrative actions as purportedly in force from time to time

- (1) The purpose of this section is to ensure that this Act operates to give to an invalid administrative action that has subsequently been affected by another action or process no greater effect than it would have had if the administrative action, or any other relevant administrative action, had not been invalid on constitutional grounds (arising from the circumstances referred to in paragraphs (a) and (b) of the definition of *invalid administrative action* in section 3).
- (2) If administrative action taken by a Commonwealth authority or an officer of the Commonwealth was affected (whether by way of revocation, modification or otherwise) at or before the commencement time by any later administrative action or by any judicial process or by any administrative review process, this Act applies to the administrative action as so affected from time to time.
- (3) In this section, a reference to administrative action taken includes a reference to administrative action purportedly taken, and a reference to administrative action affected in any way includes a reference to administrative action purportedly affected in that way.

9 Corresponding authorities or officers

It is immaterial, for the purposes of this Act, that a Commonwealth authority or an officer of the Commonwealth does not have a counterpart in the State, or that the powers and functions of a counterpart State authority or a counterpart officer of the State do not correspond exactly or substantially with those of the Commonwealth authority or the officer of the Commonwealth.

10 Act not to give rise to liability against the State

- (1) The State is not liable to any action, liability, claim or demand arising from the enactment, commencement or operation of this Act.
- (2) Without limiting subsection (1), no proceedings lie against the State in respect of an administrative action affected by this Act, except to the extent that the proceedings would lie had this Act not been enacted.
- (3) In this section:

proceedings includes proceedings for an order in the nature of prohibition, certiorari or mandamus or for a declaration or injunction or for any other relief.

the State includes any State authority or officer of the State, and also includes:

- (a) the Crown in right of the State, and
- (b) the Government of the State, and
- (c) a Minister of the Crown in right of the State, and
- (d) a statutory corporation, or other body, representing the Crown in right of the State.