

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) BILL, 1981

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

This Bill is cognate with the National Companies and Securities Commission (State Provisions) Bill, 1981.

The object of this Bill is to adopt as laws of the State the provisions of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth. The Bill also authorises the provisions as so applied to be reprinted in the form in which they apply in New South Wales. The provisions of the Commonwealth Act so applying may be cited as the "Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code".

The Code is to be used in the interpretation of provisions of the National Companies and Securities Commission (State Provisions) Act, 1981, the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code, the Companies (Acquisition of Shares) (New South Wales) Code and any other Code to which it is applied by a State Act.

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Interpretation.

Clauses 4 and 5 specify the laws which are to be interpreted in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

Clause 6 provides that the proposed Act binds the Crown.

Clause 7 enacts that the laws referred to in clauses 4 and 5 are to be interpreted in accordance with the interpretation laws of the Australian Capital Territory subject to the provisions of the proposed Act and Code.

Clause 8 applies the provisions of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth as laws of New South Wales, with amendments as set out in Schedule 1.

Clause 9 authorises the publication of the applied laws in the form of a document as applying in the State and called the "Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code".

Clause 10 authorises the publication of provisions of the applied laws following amendments made by Commonwealth legislation.

Clause 11 provides that a reference in any State law to a provision of the Code is to be construed as a reference to the provision of the Commonwealth Act applying by reason of the proposed section 8.

Clause 12 enables certain amendments to be made by regulations if the Ministerial Council agrees.

Schedule 1 contains amendments to the provisions of the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth in their application to New South Wales.

Schedule 2 sets out the headings and preliminary provisions to be included in the provisions to be published under clause 9.

PROOF

**COMPANIES AND SECURITIES (INTERPRETATION
AND MISCELLANEOUS PROVISIONS)
(APPLICATION OF LAWS) BILL, 1981**

No. , 1981.

A BILL FOR

An Act relating to the interpretation of certain provisions relating to corporations and the securities industry, and for certain other matters.

[MR WALKER—18 March, 1981.]

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

5 Short title.

1. This Act may be cited as the "Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981".

Commencement.

10 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the day on which the National Companies and Securities Commission (State Provisions) Act, 1981, commences.

15 Interpretation.

3. In this Act, unless the contrary intention appears—

20 "Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

25 "Code" means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;

30 "Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

“the Commonwealth Act” means the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth as amended and in force for the time being.

5 Relevant Codes.

4. (1) For the purposes of this Act, each of the following Codes is a relevant Code :—

- (a) the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code;
- 10 (b) the Companies (Acquisition of Shares) (New South Wales) Code; and
- (c) any Code to which this Act applies by reason of a relevant application provision in an Act.

(2) For the purposes of subsection (1) a provision in an 15 Act is a relevant application provision in relation to a Code if the provision states that this Act applies to the Code concerned.

National Companies and Securities Commission (State Provisions) Act, 1981.

5. For the purposes of this Act, a reference to a relevant Code 20 includes a reference to the provisions of the National Companies and Securities Commission (State Provisions) Act, 1981, other than sections 1, 2, 3, 4, 20, 21 and 22.

Act to bind Crown.

6. This Act binds the Crown.

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

Interpretation of relevant Codes.

7. Except in relation to matters expressly provided for by this Act and subject to any express provision contained in a relevant Code, the laws in force in the Australian Capital Territory at the commencement of the Commonwealth Act that relate to the interpretation of Ordinances of the Australian Capital Territory—
- (a) apply for the purposes of the interpretation of each relevant Code as if the relevant Code were an Ordinance of the Australian Capital Territory; and
 - (b) apply for the purposes of the interpretation of any instrument (including rules, regulations or by-laws) made, granted or issued under or, in the case of regulations, applying as regulations made under, a relevant Code as if the instrument were made, granted or issued under such an Ordinance.

Application of interpretation law.

8. The provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5) apply—
- (a) as if amended as set out in Schedule 1; and
 - (b) subject to and in accordance with this Act, as laws of New South Wales.

Publication of Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

9. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

- (2) A document published under subsection (1)—
- (a) shall include the headings and sections set out in Schedule 2;
 - 5 (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
 - (c) shall include a statement of the date on which the Minister authorized the publication; and
 - 10 (d) may be cited as the “Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code”.

(3) A document that is or purports to be a copy of the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code that has been, or purports to
15 have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 8 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

20 Publication of provisions of amended Code.

10. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out provisions that by reason of—

- 25 (a) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (b) the operation of section 8 (including the operation, if applicable, of Schedule 1),

apply, or will apply, as laws of New South Wales.

(2) A document published under subsection (1) shall
30 include a notification of the date, or dates, on which the provisions set out in the document came, or come, into operation in New South Wales.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

(3) A document that has been or purports to have been published in accordance with this section is prima facie evidence of provisions referred to in subsection (1) set out in the document.

Interpretation of reference to applied provisions.

5 11. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

10 (a) a reference to the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 8; and

15 (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying.

(2) In subsection (1), “provision” includes Part, Division, section, sub-section, paragraph, sub-paragraph, Schedule, form, regulation, sub-clause or other division.

20 **Amendment of certain provisions in accordance with approval of Ministerial Council.**

12. Where, under the Agreement, the Ministerial Council—

(a) approves a proposed amendment of the Commonwealth Act; and

25 (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment,

the Governor may make regulations amending Schedule 1, in accordance with that approval, and that Schedule as so amended shall be Schedule 1 to this Act.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1.

(Sec. 8.)

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—
 - 5 (a) for the words “relevant Act” or “relevant Acts” in the Commonwealth Act (wherever occurring) there were substituted the words “relevant Code” or “relevant Codes” respectively;
 - (b) for the words “the Territory” in the Commonwealth Act
10 (wherever occurring) there were substituted the words “New South Wales”;
 - (c) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”.

- 15 2. In section 8 of the Commonwealth Act—
 - (a) for paragraph (c) there were substituted the following paragraph:—
 - (c) an Act—
 - 20 (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
 - (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,
25 together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
 - (b) in paragraphs (d) and (f) for the words “an Ordinance” there were substituted the words “an Ordinance of a Territory”;
 - (c) in paragraph (e) for the words “State Act” there were substituted the words “Act of another State or of a Territory”.

- 30 3. In section 9 of the Commonwealth Act—
 - (a) in the definition of “Agreement” for the matter “Act 1979” there were substituted the matter “(State Provisions) Act, 1981,”;
 - (b) the definition of “another Territory” were repealed;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (c) after the definition of "calendar year" there were inserted the following definition:—
- 5 "Code" means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;
- 10 (d) for the definition of "commencement" there were substituted the following definition:—
- 15 "commencement", in relation to an Act or a provision of an Act, means the time when the Act (other than provisions providing for the citation or commencement of the Act), or the provision, as the case may be, commences or comes into operation;
- (e) for the definition of "committed for trial" there were substituted the following definition:—
- 20 "committed for trial", in relation to a person, means committed to prison to await his trial or released on bail on undertaking to appear at his trial;
- (f) in the definition of "Consolidated Revenue Fund" for the words "the Commonwealth" there were substituted the words "New South Wales";
- 25 (g) in paragraph (b) of the definition of "constituent documents" for the words "(other than the *Companies Ordinance* 1962 or the corresponding law of a State or another Territory or of another country)" there were substituted the words "(other than the *Companies Act*, 1961, or the corresponding law of another State or of a Territory or of another country)";
- 30 (h) for the definitions of "Court" and "court of summary jurisdiction" there were substituted the following definitions:—
- "Court" means the Supreme Court of New South Wales;
- 35 "court of summary jurisdiction" means a court of petty sessions of New South Wales;
- (i) for the definition of "Crown" there were substituted the following definition:—
- "Crown" means the Crown in right of New South Wales;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (j) the definition of "Executive Council" were repealed;
- (k) for the definition of "external Territory" there were substituted the following definition:—
- 5 "external Territory" means a Territory, not being an internal Territory, for the government of which as such a Territory, provision is made by an Act of the Commonwealth;
- (l) after the definition of "Gazette" there were inserted the following definition:—
- 10 "*Government Gazette*" means the *New South Wales Government Gazette*;
- (m) for the definition of "Jervis Bay Territory" there were substituted the following definition:—
- 15 "Jervis Bay Territory" means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act* 1915 of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;
- (n) the definition of "Judge" were repealed;
- 20 (o) for the definition of "law of the Territory" or "law of the Australian Capital Territory" there were substituted the following definition:—
- "law of the Australian Capital Territory" includes a law of New South Wales as applying in that Territory;
- 25 (p) for the definition of "Minister" there were substituted the following definition:—
- "Minister" means a Minister of State for New South Wales;
- (q) in the definition of "Ordinance" before the word "Territory" there were inserted the words "Australian Capital";
- 30 (r) for the definition of "Parliament" there were substituted the following definition:—
- "Parliament" means the Parliament of New South Wales;
- (s) for the definitions of "participating State" and "participating Territory" there were substituted the following definitions:—
- 35 "participating State" means a State other than New South Wales that is a party to the Agreement;
- "participating Territory" means—
- (a) the Australian Capital Territory;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (b) if the Northern Territory is a party to the Agreement—that Territory; and
- 5 (c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;
- (t) for the definition of “prescribed” there were substituted the following definition:—
“prescribed” means prescribed by the relevant Code or by regulations applying under the relevant Code;
- 10 (u) for the definition of “Proclamation” there were substituted the following definition:—
“Proclamation” means proclamation by the Governor published in the *Government Gazette*;
- 15 (v) for the definition of “regulations” there were substituted the following definitions:—
“regulations” means regulations applying under the relevant Code;
“relevant Code” means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*;
- 20
- (w) the definition of “State Act” were repealed;
- (x) for the definition of “the Minister” there were substituted the following definition:—
- 25 “the Minister” means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of New South Wales or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;
- 30
- (y) the definition of “the Territory” or “the Australian Capital Territory” were repealed;
- (z) for the definition of “this Act” there were substituted the following definition:—
- 35 “this Code” includes regulations applying under the relevant Code.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

4. In section 11 of the Commonwealth Act—
- 5 (a) for the words “law of a State or of another Territory” (where twice occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”;
- (b) for the words “another Act” there were substituted the words “another law”;
- (c) for the words “other Act” there were substituted the words “other law”.
- 10 5. For section 12 of the Commonwealth Act there were substituted the following section:—
12. Where in any relevant Code—
- 15 (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
- 20 (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.
6. For section 17 of the Commonwealth Act there were substituted the following section:—
- 25 17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.
7. For section 19 of the Commonwealth Act there were substituted the following section:—
- 30 19. In any relevant Code, unless the contrary intention appears—
- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for New South Wales; and
- 35 (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such a locality, jurisdiction or other matter or thing in and of New South Wales.
8. In section 24 (1) of the Commonwealth Act after the words “any Act” (where twice occurring) there were inserted the words “or Code”.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

9. For sections 28, 29, 30, 31 and 32 of the Commonwealth Act there were substituted the following sections:—

5 28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

10 (2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision, of—

(a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980 of the Commonwealth;

(b) the *Companies (Acquisition of Shares) Act* 1980 of the Commonwealth; or

15 (c) any other Act of the Commonwealth,

which, by reason of—

(d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981;

20 (e) the *Companies (Acquisition of Shares) (Application of Laws) Act*, 1981; or

(f) an Act containing a relevant application provision,

apply as, or applies as, a law of New South Wales or, in the case of a repealed provision, has applied as a law of New South Wales.

25 (3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply (whether with or without qualification) as laws of New South Wales.

30 29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act then, unless the contrary intention appears, the repeal does not—

(a) revive anything not in force or existing at the time when the repeal takes effect;

35 (b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- 5 (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- 10 (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,
- 15 and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed as if the repealing provision of the relevant Commonwealth Act had not been enacted.
30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.
- 20 31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.
- 25 32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued in force.
- 30 10. In section 33 of the Commonwealth Act—
- (a) the matter “(1)” were repealed;
- (b) for the words “another Act” (where twice occurring) there were substituted the words “an Act”;
- 35 (c) for the words “that other Act” (where twice occurring) there were substituted the words “that Act”;
- (d) sub-section (2) were repealed.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

11. After sub-section (5) of section 35 of the Commonwealth Act there were inserted the following sub-sections:—

5 (6) Where an offence against a relevant Code may be dealt with summarily, the offence may be dealt with in a summary manner, by a magistrate sitting alone, according to the provisions of the Act or Acts for the time being regulating proceedings before justices of the peace.

10 (7) For the purposes of the *Fines and Penalties Act, 1901*, a relevant Code shall be deemed to be an Act.

12. For paragraph (b) of section 37 of the Commonwealth Act there were substituted the following paragraph:—

(b) under another law of New South Wales or a law of another State or of a Territory,

15 13. For sub-section (3) of section 38 of the Commonwealth Act there were substituted the following sub-section:—

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than sections 351 and 546) of the *Crimes Act, 1900*.

20 14. In the heading to Part IV of the Commonwealth Act for the word "ACT" there were substituted the words "(STATE PROVISIONS) ACT".

25 15. In section 39 of the Commonwealth Act for the matter "*Act 1979*" (wherever occurring) there were substituted the matter "*(State Provisions) Act, 1981*" or the matter "*(State Provisions) Act, 1981*," whichever is applicable.

16. In section 40 (1) of the Commonwealth Act for the words "This Act" there were substituted the words "This Code".

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 2.

(Sec. 9.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 9:—

5 COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (NEW SOUTH WALES) CODE

RELATING TO THE INTERPRETATION OF CERTAIN PROVISIONS RELATING TO CORPORATIONS AND THE SECURITIES INDUSTRY, AND FOR CERTAIN OTHER MATTERS

10 PART I—PRELIMINARY

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code*.

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, except sections 1 and 2, commences.

3. For the purposes of this Code, each of the following Codes is a relevant Code:

- (a) this Code;
- (b) the *Companies (Acquisition of Shares) (New South Wales) Code*; and
- (c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies by reason of a relevant application provision in an Act.

4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies to the Code concerned.

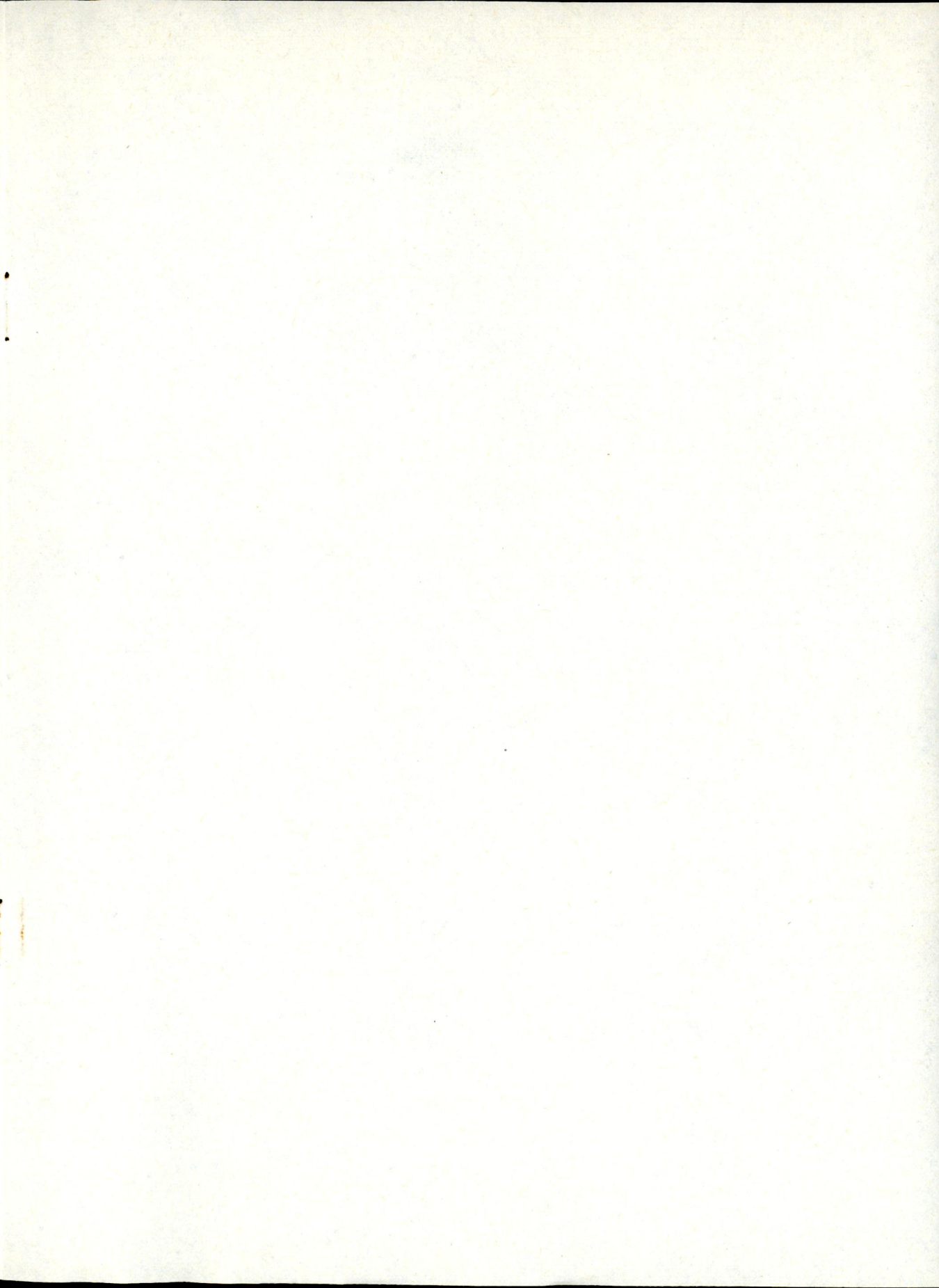
Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 2—*continued.*

5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act, 1981*, other than sections 1, 2, 3, 4, 20, 21 and 22.

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981



UPDATE SHEET NO. 1
(Issued as at 21st January, 1982)

COMPANIES AND SECURITIES (INTERPRETATION AND
MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS)
ACT, 1981, NO. 63

Not reprinted under the Reprints Act, 1972, as
at the date of issue of this sheet.

Amendments have been made by the following Act(s):-

Miscellaneous Acts (Companies) Amendment
Act, 1981, No. 123

Details of Amendments

s.11	Am.	1981,	No. 123,	Sch. 6(1)
Sch. 1	"	"	" "	Schs. 6(2)(3),7

Note. Amendments are listed above irrespective
of whether they are in force at the date of issue
of this sheet.



**COMPANIES AND SECURITIES (INTERPRETATION
AND MISCELLANEOUS PROVISIONS) (APPLICATION
OF LAWS) ACT, 1981, No. 63**

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 63, 1981.

An Act relating to the interpretation of certain provisions relating to corporations and the securities industry, and for certain other matters. [Assented to, 28th May, 1981.]

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

Short title.

1. This Act may be cited as the "Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981".

Commencement.

2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsection (1), this Act shall commence on the day on which the National Companies and Securities Commission (State Provisions) Act, 1981, commences.

Interpretation.

3. In this Act, unless the contrary intention appears—

"Agreement" means the agreement made on 22nd December, 1978, between the Commonwealth and the States in relation to a proposed scheme for the co-operative regulation of companies and the securities industry or, if that agreement is or has been amended or affected by another agreement, that agreement as so amended or affected;

"Code" means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;

"Ministerial Council" means the Ministerial Council for Companies and Securities established by the Agreement;

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

“the Commonwealth Act” means the Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 of the Commonwealth as amended and in force for the time being.

Relevant Codes.

4. (1) For the purposes of this Act, each of the following Codes is a relevant Code :—

- (a) the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code;
- (b) the Companies (Acquisition of Shares) (New South Wales) Code; and
- (c) any Code to which this Act applies by reason of a relevant application provision in an Act.

(2) For the purposes of subsection (1) a provision in an Act is a relevant application provision in relation to a Code if the provision states that this Act applies to the Code concerned.

National Companies and Securities Commission (State Provisions) Act, 1981.

5. For the purposes of this Act, a reference to a relevant Code includes a reference to the provisions of the National Companies and Securities Commission (State Provisions) Act, 1981, other than sections 1, 2, 3, 4, 20, 21 and 22.

Act to bind Crown.

6. This Act binds the Crown.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

Interpretation of relevant Codes.

7. Except in relation to matters expressly provided for by this Act and subject to any express provision contained in a relevant Code, the laws in force in the Australian Capital Territory at the commencement of the Commonwealth Act that relate to the interpretation of Ordinances of the Australian Capital Territory—

- (a) apply for the purposes of the interpretation of each relevant Code as if the relevant Code were an Ordinance of the Australian Capital Territory; and
- (b) apply for the purposes of the interpretation of any instrument (including rules, regulations or by-laws) made, granted or issued under or, in the case of regulations, applying as regulations made under, a relevant Code as if the instrument were made, granted or issued under such an Ordinance.

Application of interpretation law.

8. The provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5) apply—

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with this Act,

as laws of New South Wales.

Publication of Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

9. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

(2) A document published under subsection (1)—

- (a) shall include the headings and sections set out in Schedule 2;
- (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in New South Wales;
- (c) shall include a statement of the date on which the Minister authorized the publication; and
- (d) may be cited as the "Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code".

(3) A document that is or purports to be a copy of the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Commonwealth Act applying by reason of section 8 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

Publication of provisions of amended Code.

10. (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out provisions that by reason of—

- (a) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (b) the operation of section 8 (including the operation, if applicable, of Schedule 1),

apply, or will apply, as laws of New South Wales.

(2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions set out in the document came, or come, into operation in New South Wales.

*Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).*

(3) A document that has been or purports to have been published in accordance with this section is prima facie evidence of provisions referred to in subsection (1) set out in the document.

Interpretation of reference to applied provisions.

11. (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under any other Act or in any other document made by or under the authority of, or for the purposes of, a law of New South Wales—

- (a) a reference to the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 8; and
- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying.

(2) In subsection (1), “provision” includes Part, Division, section, sub-section, paragraph, sub-paragraph, Schedule, form, regulation, sub-clause or other division.

Amendment of certain provisions in accordance with approval of Ministerial Council.

12. Where, under the Agreement, the Ministerial Council—

- (a) approves a proposed amendment of the Commonwealth Act; and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment,

the Governor may make regulations amending Schedule 1, in accordance with that approval, and that Schedule as so amended shall be Schedule 1 to this Act.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1.

(Sec. 8.)

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—
 - (a) for the words “relevant Act” or “relevant Acts” in the Commonwealth Act (wherever occurring) there were substituted the words “relevant Code” or “relevant Codes” respectively;
 - (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “New South Wales”;
 - (c) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”.

2. In section 8 of the Commonwealth Act—
 - (a) for paragraph (c) there were substituted the following paragraph:—
 - (c) an Act—
 - (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
 - (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,
together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
 - (b) in paragraphs (d) and (f) for the words “an Ordinance” there were substituted the words “an Ordinance of a Territory”;
 - (c) in paragraph (e) for the words “State Act” there were substituted the words “Act of another State or of a Territory”.

3. In section 9 of the Commonwealth Act—
 - (a) in the definition of “Agreement” for the matter “Act 1979” there were substituted the matter “(State Provisions) Act, 1981.”;
 - (b) the definition of “another Territory” were repealed;

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(Application of Laws).

SCHEDULE 1—*continued.*

- (c) after the definition of “calendar year” there were inserted the following definition:—
- “Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;
- (d) for the definition of “commencement” there were substituted the following definition:—
- “commencement”, in relation to an Act or a provision of an Act, means the time when the Act (other than provisions providing for the citation or commencement of the Act), or the provision, as the case may be, commences or comes into operation;
- (e) for the definition of “committed for trial” there were substituted the following definition:—
- “committed for trial”, in relation to a person, means committed to prison to await his trial or released on bail on undertaking to appear at his trial;
- (f) in the definition of “Consolidated Revenue Fund” for the words “the Commonwealth” there were substituted the words “New South Wales”;
- (g) in paragraph (b) of the definition of “constituent documents” for the words “(other than the *Companies Ordinance* 1962 or the corresponding law of a State or another Territory or of another country)” there were substituted the words “(other than the *Companies Act*, 1961, or the corresponding law of another State or of a Territory or of another country)”;
- (h) for the definitions of “Court” and “court of summary jurisdiction” there were substituted the following definitions:—
- “Court” means the Supreme Court of New South Wales;
- “court of summary jurisdiction” means a court of petty sessions of New South Wales;
- (i) for the definition of “Crown” there were substituted the following definition:—
- “Crown” means the Crown in right of New South Wales;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (j) the definition of "Executive Council" were repealed;
- (k) for the definition of "external Territory" there were substituted the following definition:—
"external Territory" means a Territory, not being an internal Territory, for the government of which as such a Territory, provision is made by an Act of the Commonwealth;
- (l) after the definition of "*Gazette*" there were inserted the following definition:—
"*Government Gazette*" means the *New South Wales Government Gazette*;
- (m) for the definition of "Jervis Bay Territory" there were substituted the following definition:—
"Jervis Bay Territory" means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act* 1915 of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;
- (n) the definition of "Judge" were repealed;
- (o) for the definition of "law of the Territory" or "law of the Australian Capital Territory" there were substituted the following definition:—
"law of the Australian Capital Territory" includes a law of New South Wales as applying in that Territory;
- (p) for the definition of "Minister" there were substituted the following definition:—
"Minister" means a Minister of State for New South Wales;
- (q) in the definition of "Ordinance" before the word "Territory" there were inserted the words "Australian Capital";
- (r) for the definition of "Parliament" there were substituted the following definition:—
"Parliament" means the Parliament of New South Wales;
- (s) for the definitions of "participating State" and "participating Territory" there were substituted the following definitions:—
"participating State" means a State other than New South Wales that is a party to the Agreement;
"participating Territory" means—
(a) the Australian Capital Territory;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (b) if the Northern Territory is a party to the Agreement—that Territory; and
 - (c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;
- (t) for the definition of “prescribed” there were substituted the following definition:—
- “prescribed” means prescribed by the relevant Code or by regulations applying under the relevant Code;
- (u) for the definition of “Proclamation” there were substituted the following definition:—
- “Proclamation” means proclamation by the Governor published in the *Government Gazette*;
- (v) for the definition of “regulations” there were substituted the following definitions:—
- “regulations” means regulations applying under the relevant Code;
- “relevant Code” means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*;
- (w) the definition of “State Act” were repealed;
- (x) for the definition of “the Minister” there were substituted the following definition:—
- “the Minister” means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of New South Wales or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;
- (y) the definition of “the Territory” or “the Australian Capital Territory” were repealed;
- (z) for the definition of “this Act” there were substituted the following definition:—
- “this Code” includes regulations applying under the relevant Code.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

4. In section 11 of the Commonwealth Act—
 - (a) for the words “law of a State or of another Territory” (where twice occurring) there were substituted the words “law of a State other than New South Wales or of a Territory”;
 - (b) for the words “another Act” there were substituted the words “another law”;
 - (c) for the words “other Act” there were substituted the words “other law”.

5. For section 12 of the Commonwealth Act there were substituted the following section:—
 12. Where in any relevant Code—
 - (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
 - (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.

6. For section 17 of the Commonwealth Act there were substituted the following section:—
 17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.

7. For section 19 of the Commonwealth Act there were substituted the following section:—
 19. In any relevant Code, unless the contrary intention appears—
 - (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for New South Wales; and
 - (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such a locality, jurisdiction or other matter or thing in and of New South Wales.

8. In section 24 (1) of the Commonwealth Act after the words “any Act” (where twice occurring) there were inserted the words “or Code”.

Act No. 63, 1981.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

9. For sections 28, 29, 30, 31 and 32 of the Commonwealth Act there were substituted the following sections:—

28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

(2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision, of—

- (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980 of the Commonwealth;
- (b) the *Companies (Acquisition of Shares) Act* 1980 of the Commonwealth; or
- (c) any other Act of the Commonwealth,

which, by reason of—

- (d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981;
- (e) the *Companies (Acquisition of Shares) (Application of Laws) Act*, 1981; or
- (f) an Act containing a relevant application provision,

apply as, or applies as, a law of New South Wales or, in the case of a repealed provision, has applied as a law of New South Wales.

(3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply (whether with or without qualification) as laws of New South Wales.

29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act then, unless the contrary intention appears, the repeal does not—

- (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed as if the repealing provision of the relevant Commonwealth Act had not been enacted.

30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.

31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.

32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued **in force.**

10. In section 33 of the Commonwealth Act—

- (a) the matter “(1)” were repealed;
- (b) for the words “another Act” (where twice occurring) there were substituted the words “an Act”;
- (c) for the words “that other Act” (where twice occurring) there were substituted the words “that Act”;
- (d) sub-section (2) were repealed.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 1—*continued.*

11. After sub-section (5) of section 35 of the Commonwealth Act there were inserted the following sub-sections:—

(6) Where an offence against a relevant Code may be dealt with summarily, the offence may be dealt with in a summary manner, by a magistrate sitting alone, according to the provisions of the Act or Acts for the time being regulating proceedings before justices of the peace.

(7) For the purposes of the *Fines and Penalties Act*, 1901, a relevant Code shall be deemed to be an Act.

12. For paragraph (b) of section 37 of the Commonwealth Act there were substituted the following paragraph:—

(b) under another law of New South Wales or a law of another State or of a Territory,

13. For sub-section (3) of section 38 of the Commonwealth Act there were substituted the following sub-section:—

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than sections 351 and 546) of the *Crimes Act*, 1900.

14. In the heading to Part IV of the Commonwealth Act for the word "ACT" there were substituted the words "(STATE PROVISIONS) ACT".

15. In section 39 of the Commonwealth Act for the matter "*Act 1979*" (wherever occurring) there were substituted the matter "*(State Provisions) Act, 1981*" or the matter "*(State Provisions) Act, 1981*," whichever is applicable.

16. In section 40 (1) of the Commonwealth Act for the words "This Act" there were substituted the words "This Code".

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 2.

(Sec. 9.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 9:—

COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS
PROVISIONS) (NEW SOUTH WALES) CODE

RELATING TO THE INTERPRETATION OF CERTAIN PROVISIONS RELATING TO
CORPORATIONS AND THE SECURITIES INDUSTRY, AND FOR CERTAIN
OTHER MATTERS

PART I—PRELIMINARY

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code*.

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, except sections 1 and 2, commences.

3. For the purposes of this Code, each of the following Codes is a relevant Code:

- (a) this Code;
- (b) the *Companies (Acquisition of Shares) (New South Wales) Code*; and
- (c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies by reason of a relevant application provision in an Act.

4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies to the Code concerned.

Companies and Securities (Interpretation and Miscellaneous Provisions)
(Application of Laws).

SCHEDULE 2—*continued.*

5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act, 1981*, other than sections 1, 2, 3, 4, 20, 21 and 22.

In the name and on behalf of Her Majesty I assent to this Act.

J. A. ROWLAND,
Governor.

Government House,
Sydney, 28th May, 1981.

PROPOSED COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (NEW SOUTH WALES) CODE

This document is issued only as a guide to the provisions of the Code that will come into operation if the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1981*, is enacted and brought into operation. It contains the text of the *Companies and Securities*
5 *(Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth, as amended by the *Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act 1981* of the Commonwealth, with alterations proposed by the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Bill, 1981*. The document
10 does not, at the date of its issue, have the force of law.

NEW SOUTH WALES.



COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (NEW SOUTH WALES) CODE

RELATING TO THE INTERPRETATION OF CERTAIN PROVISIONS RELATING TO
15 CORPORATIONS AND THE SECURITIES INDUSTRY, AND FOR CERTAIN
OTHER MATTERS

PART I—PRELIMINARY

Short title

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code*.
20

The several provisions of this document come into operation in New South Wales on the day on which the *National Companies and Securities Commission (State Provisions) Act, 1981* (except sections 1 and 2) comes into operation.

Commencement

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, except sections 1 and 2, commences.

5 Relevant Codes

3. For the purposes of this Code, each of the following Codes is a relevant Code:

(a) this Code;

10 (b) the *Companies (Acquisition of Shares) (New South Wales) Code*; and

(c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies by reason of a relevant application provision in an Act.

Relevant application provision

15 4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies to the Code concerned.

National Companies and Securities Commission (State Provisions) Act, 1981

20 5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act, 1981*, other than sections 1, 2, 3, 4, 20, 21 and 22.

PART II—INTERPRETATION

25

Division 1—General

Every section to be a substantive enactment

6. Every section of a relevant Code has effect as a substantive enactment without introductory words.

Headings, schedules, marginal notes and footnotes

30 7. (1) The headings of the Parts, Divisions and Subdivisions into which a relevant Code is divided form part of the relevant Code.

(2) A schedule to a relevant Code forms part of the relevant Code.

(3) No marginal note or footnote to a relevant Code, and no heading to a section of a relevant Code, shall be taken to be part of the relevant Code.

Citation

8. In any relevant Code—

- 5 (a) an Act may be cited by its short title or by reference to the calendar year in which it was passed and its number;
- (b) an Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act;
- (c) an Act—
- 10 (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
- (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,
- 15 together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
- (d) an Ordinance of a Territory may be cited by its short title or by reference to the calendar year in which it was made and its number;
- (e) an enactment may be cited by reference to the part, section, sub-section or other division of the Act, Imperial Act or Act of another State or of a Territory in which the enactment is contained; and
- 20 (f) a provision of an Ordinance of a Territory may be cited by reference to the part, section, sub-section or other division of the Ordinance in which the provision is contained.

25

Division 2—Words and References

Definitions

9. In any relevant Code, unless the contrary intention appears—

“Act” means an Act passed by the Parliament;

- 30 “Agreement” means the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission (State Provisions) Act, 1981*, or, if that Agreement is or has been amended or affected by another agreement, that Agreement as so amended or affected;

35 “another Territory”

* * * * *

“Australia” or “the Commonwealth” means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory;

“calendar year” means a period of 12 months commencing on 1 January;

5 “Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;

10 “commencement”, in relation to an Act or a provision of an Act, means the time when the Act (other than provisions providing for the citation or commencement of the Act), or the provision, as the case may be, commences or comes into operation;

“Commission” means the National Companies and Securities Commission;

15 “committed for trial”, in relation to a person, means committed to prison to await his trial or released on bail on undertaking to appear at his trial;

“Consolidated Revenue Fund” means the Consolidated Revenue Fund of New South Wales;

20 “constituent documents”, in relation to a body, whether corporate or unincorporate, means—

(a) the charter, memorandum or memorandum and articles of the body; and

25 (b) any other instrument or law (other than the *Companies Act*, 1961, or the corresponding law of another State or of a Territory or of another country) constituting, or defining the constitution of, the body or governing activities or conduct of the body or of its members;

“Constitution” means the Constitution of the Commonwealth;

30 “Court” means the Supreme Court of New South Wales;

“court of summary jurisdiction” means a court of petty sessions of New South Wales;

“Crown” means the Crown in right of New South Wales;

“Executive Council”

* * * * *

- “external Territory” means a Territory, not being an internal Territory, for the government of which as such a Territory, provision is made by an Act of the Commonwealth;
- 5 “financial year”, in relation to matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, means the 12 months ending on 30 June;
- “Gazette” means the *Commonwealth of Australia Gazette*;
- “Government Gazette” means the *New South Wales Government Gazette*;
- “High Court” means the High Court of Australia;
- 10 “Imperial Act” means an Act passed by the Parliament of the United Kingdom;
- “indictment” includes information;
- “internal Territory” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;
- 15 “Jervis Bay Territory” means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;
- “Judge” * * * * *
- 20 “land” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein;
- “law of the Australian Capital Territory” includes a law of New South Wales as applying in that Territory;
- 25 “magistrate” means a magistrate in respect of whose office an annual salary is payable;
- “Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement;
- “Minister” means a Minister of State for New South Wales;
- 30 “month” means calendar month;
- “Northern Territory” means the Northern Territory of Australia;
- “Ordinance” means an Ordinance of the Australian Capital Territory;
- “Parliament” means the Parliament of New South Wales;

“participating State” means a State other than New South Wales that is a party to the Agreement;

“participating Territory” means—

(a) the Australian Capital Territory;

5 (b) if the Northern Territory is a party to the Agreement—that Territory; and

(c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;

10 “person” and “party” include a body politic or corporate as well as a natural person;

“prescribed” means prescribed by the relevant Code or by regulations applying under the relevant Code;

“Proclamation” means proclamation by the Governor published in the *Government Gazette*;

15 “property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action;

“regulations” means regulations applying under the relevant Code;

20 “relevant Code” means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*;

“State” means a State of the Commonwealth;

“State Act” * * * * *

“statutory declaration” * * * * *

25 “Territory” means a Territory referred to in section 122 of the Constitution;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

30 “the Minister” means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of New South Wales or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;

“the Territory” or “the Australian Capital Territory” * * *

“this Code” includes regulations applying under the relevant Code.

Parts of speech and grammatical forms

10 **10.** In any relevant Code, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

References to corresponding laws

11. In any relevant Code, unless the contrary intention appears—

- 10 (a) a reference to the corresponding law of a State other than New South Wales or of a Territory shall, in the case of a participating State or participating Territory, be construed as a reference to the provisions of that relevant Code as they apply, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement; and
- 15 (b) a reference to a provision of a law of a State other than New South Wales or of a Territory that corresponds with a particular provision of that relevant Code or of another law shall, in the case of a participating State or participating Territory, be construed as a reference to that provision of that relevant Code or of that other law, as
- 20 the case may be, as it applies, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement.

25 References to a Minister

12. Where in any relevant Code—

- 30 (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
- (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.
- 35

References to writing, printing and documents

13. In any relevant Code, unless the contrary intention appears—

(a) a reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;

(b) “printed” includes type-written, lithographed or reproduced by any mechanical means; and

(c) “document” includes—

(i) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and

(ii) a disc, tape or other article from which sounds, images or messages are capable of being reproduced,

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice.

Lodging of documents and references to office of Commission

14. (1) A document that is required by a relevant Code to be lodged with the Commission shall be lodged at the office of the Corporate Affairs Commission for New South Wales and any such document that is lodged, or submitted for lodgment, at that office shall be deemed to be lodged, or submitted for lodgment, as the case may be, with the Commission.

(2) Any application to the Commission for the issuing of a document or the doing of any other act or thing by the Commission under a relevant Code shall be in writing and shall be delivered to the office of the Corporate Affairs Commission for New South Wales and any such application that is delivered to that office shall be deemed to have been made to the Commission.

(3) A reference in a relevant Code to the office of the Commission shall be construed as a reference to the office of the Corporate Affairs Commission for New South Wales.

30 Service by post

15. Where a relevant Code authorizes or requires a document to be served by post, whether the expression “serve” or the expression “give” or “send” or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing and posting (under pre-paid post) the document as a letter to the last-known address of

the person to be served, and unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

Gender and number

- 5 16. In any relevant Code, unless the contrary intention appears—
- (a) words importing the masculine gender include females, and words importing the feminine gender includes males; and
 - (b) words in the singular include the plural, and words in the plural include the singular.

10 References to the Crown

17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.

Corporations liable to and may sue for penalties

- 15 18. (1) Every provision of a relevant Code relating to offences punishable on indictment or summary conviction shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.
- (2) Where under a relevant Code a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate where the body corporate
20 is the party aggrieved.

References to officers, localities, &c.

19. In any relevant Code, unless the contrary intention appears—
- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for New South Wales; and
 - 25 (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such a locality, jurisdiction or other matter or thing in and of New South Wales.

Mention of officer in general terms

20. Where in a relevant Code a person holding or occupying a particular
30 office or position is referred to in general terms, the reference shall, unless the contrary intention appears, be deemed to include a reference to all persons who at any time occupy that office or position for the time being.

Division 3—Powers and Duties

Exercise of powers and duties

21. (1) Where a relevant Code confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where a relevant Code confers a power or imposes a duty on the holder of an office as such, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

10 Power to make, grant or issue an instrument includes power to repeal or amend the instrument

22. Where a relevant Code confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary such an instrument.

Power to appoint includes power to remove or suspend

23. (1) Subject to sub-section (2), where a relevant Code confers upon a person or authority a power to make appointments to an office or position, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend a person appointed, and to appoint another person temporarily in the place of a person so removed or suspended or in place of a sick or absent holder of the office or position.

(2) Where the power of a person or authority to make appointments is exercisable only upon the recommendation, or subject to the approval or consent, of some other person or authority, the power of removal or suspension is, unless the contrary intention appears, exercisable only upon the recommendation, or subject to the approval or consent, of that other person or authority.

Exercise of certain powers, duties and functions by a delegate or person authorized by a delegate

24. (1) Where, under any relevant Code, the exercise of a power or duty or the performance of a function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter—
- 5
- (a) if that power, duty or function has been delegated pursuant to any Act or Code—that power or duty may be exercised or that function may be performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - 10 (b) if a person to whom that power, duty or function has been so delegated has, pursuant to any Act or Code, authorized another person to exercise that power or duty or to perform that function—that power or duty may be exercised or that function may be performed by the authorized person upon the opinion, belief or state of mind of the
 - 15 authorized person in relation to that matter.
- (2) For the purpose of the exercise of a power or duty or the performance of a function under a relevant Code by—
- (a) a person to whom that power, duty or function has been delegated by the Commission; or
 - 20 (b) a person authorized by a delegate of the Commission to exercise that power or duty or to perform that function,
- any reference to the Commission in a provision of that relevant Code relating to the exercise of that power or duty or the performance of that function shall be construed as including a reference to the delegate or the person authorized
- 25 by the delegate, as the case may be.

Division 4—Distance and Time

Measurement of distance

25. In the measurement of any distance for the purposes of any relevant Code, that distance shall, unless the contrary intention appears, be measured
- 30 in a straight line on a horizontal plane.

Reckoning of time

26. (1) Where, in a relevant Code, a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or
- 35 of the day of that act or event.

(2) Where the last day of a period prescribed or allowed by a relevant Code for the doing of anything falls on a Saturday, on a Sunday or on a day that is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following that is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Expressions of time

27. Where, in a relevant Code, a reference to time occurs, the reference shall, unless the contrary intention appears, be deemed in relation to the doing of an act or thing in a State or Territory to be a reference to the legal time in that State or Territory.

Division 5—Effect of Repeal, Amendment or Expiration

Effect of repeal

28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

(2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision, of—

- 20 (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980 of the Commonwealth;
- (b) the *Companies (Acquisition of Shares) Act* 1980 of the Commonwealth; or
- (c) any other Act of the Commonwealth,
- 25 which, by reason of—
- (d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981;
- (e) the *Companies (Acquisition of Shares) (Application of Laws) Act*, 1981; or
- 30 (f) an Act containing a relevant application provision, apply as, or applies as, a law of New South Wales or, in the case of a repealed provision, has applied as a law of New South Wales.

(3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply (whether with or without qualification) as laws of New South Wales.

5 Saving

29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act then, unless the contrary intention appears, the repeal does not—

- 10 (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;
- 15 (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- 20 (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed as if the repealing provision of the relevant Commonwealth Act had not been
25 enacted.

Repealed provisions continue in force until substituted provisions operate

30 30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.

Amending Act to be construed with amended Act

35 31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.

Expiration of Acts

32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and every-
5 thing in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued in force.

References to amended or re-enacted laws

33. Where a relevant Code contains a reference to a short title that is or was provided by law for the citation of an Act as originally enacted, or of
10 an Act as amended, then, except so far as the contrary intention appears—

- (a) the reference shall be construed as a reference to that Act as originally enacted and as amended from time to time; and
- (b) where that Act has been repealed and re-enacted, with or without modifications, the reference shall be construed as including a reference
15 to the re-enacted Act as originally enacted and as amended from time to time and, where, in connection with that reference, particular provisions of the repealed Act are referred to, being provisions to which provisions of the re-enacted Act correspond, the reference to those particular provisions shall be construed as including a reference
20 to those corresponding provisions.

* * * * *

PART III—OFFENCES AND PENALTIES

Time for instituting criminal proceedings

34. Notwithstanding anything in any other law, proceedings for an offence
25 against a relevant Code may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Ministerial Council, at any later time.

Indictable offences and summary offences

35. (1) An offence against a relevant Code that is not punishable by
30 imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

(2) An offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months is, subject to sub-section (3), punishable on indictment.

(3) Where—

(a) proceedings for an offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months are brought in a court of summary jurisdiction; and

5 (b) the prosecutor requests the court to hear and determine the proceedings,

the offence is punishable summarily and the court shall hear and determine the proceedings.

(4) A court of summary jurisdiction may not—

10 (a) impose, in respect of any one offence against a relevant Code, a period of imprisonment exceeding 2 years; or

(b) impose, in respect of offences against a relevant Code or relevant Codes, cumulative periods of imprisonment that, in the aggregate, exceed 5 years.

15 (5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) Where an offence against a relevant Code may be dealt with summarily, the offence may be dealt with, in a summary manner, by a magistrate sitting alone, according to the provisions of the Act or Acts for the time
20 being regulating proceedings before justices of the peace.

(7) For the purposes of the *Fines and Penalties Act*, 1901, a relevant Code shall be deemed to be an Act.

Proceedings how and when taken

36. (1) Except where provision is otherwise made in the relevant Code
25 concerned, in any proceedings for an offence against a provision of a relevant Code, any information, charge, complaint or application may be laid or made only—

(a) by the Commission;

30 (b) by a person to whom the Commission has delegated the power to institute the proceedings;

(c) by a person authorized by a person referred to in paragraph (b) to institute the proceedings; or

(d) by another person authorized in writing by the Ministerial Council to institute the proceedings.

(2) A delegation for the purposes of paragraph (1) (b) or an authorization for the purposes of paragraph (1) (c) or (d) may relate to all offences against relevant Codes, to all offences against a particular relevant Code or particular relevant Codes, to a particular offence or particular offences against a relevant Code, to any offences against, or constituted by any contravention of, or failure to comply with, a particular provision or particular provisions of a relevant Code or to a class of offences against a relevant Code.

Double jeopardy

10 37. Where an act or omission constitutes an offence—

(a) under a relevant Code; and

(b) under another law of New South Wales or a law of another State or of a Territory,

and the offender has been punished in respect of the offence under a law referred to in paragraph (b), he is not liable to be punished in respect of the offence under the relevant Code.

Aiding and abetting, attempts, &c.

38. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to, the commission of an offence against any relevant Code shall be deemed to have committed that offence and is punishable accordingly.

(2) A person who attempts to commit an offence against any relevant Code is guilty of an offence and is punishable as if the attempted offence had been committed.

25 (3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than sections 351 and 546) of the *Crimes Act, 1900*.

PART IV—OFFENCES UNDER NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT

30 Penalties at foot of sections or sub-sections

39. (1) Subject to sub-section (2), the penalty, pecuniary or other, set out—

(a) at the foot of a section of the *National Companies and Securities Commission (State Provisions) Act, 1981*; or

(b) at the foot of a sub-section of a section of the *National Companies and Securities Commission (State Provisions) Act, 1981*, but not at the foot of the section,

indicates that a contravention of the section or the sub-section, respectively, whether by act or omission, is an offence against that Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

(2) Where a penalty set out at the foot of a section, or sub-section of a section, of the *National Companies and Securities Commission (State Provisions) Act, 1981*, is expressed to apply to a part only of the section or sub-section, it applies to that part only.

PART V—INSTRUMENTS UNDER RELEVANT CODES

Application of Code to instruments under relevant Codes

40. (1) This Code applies to and in relation to an instrument (including regulations, rules and by-laws) made, granted or issued under a relevant Code as if the instrument were a relevant Code and as if each regulation, rule or by-law were a section of a relevant Code.

(2) Unless the contrary intention appears, expressions used in such an instrument have the same meanings as in the relevant Code under which the instrument was made, granted or issued.

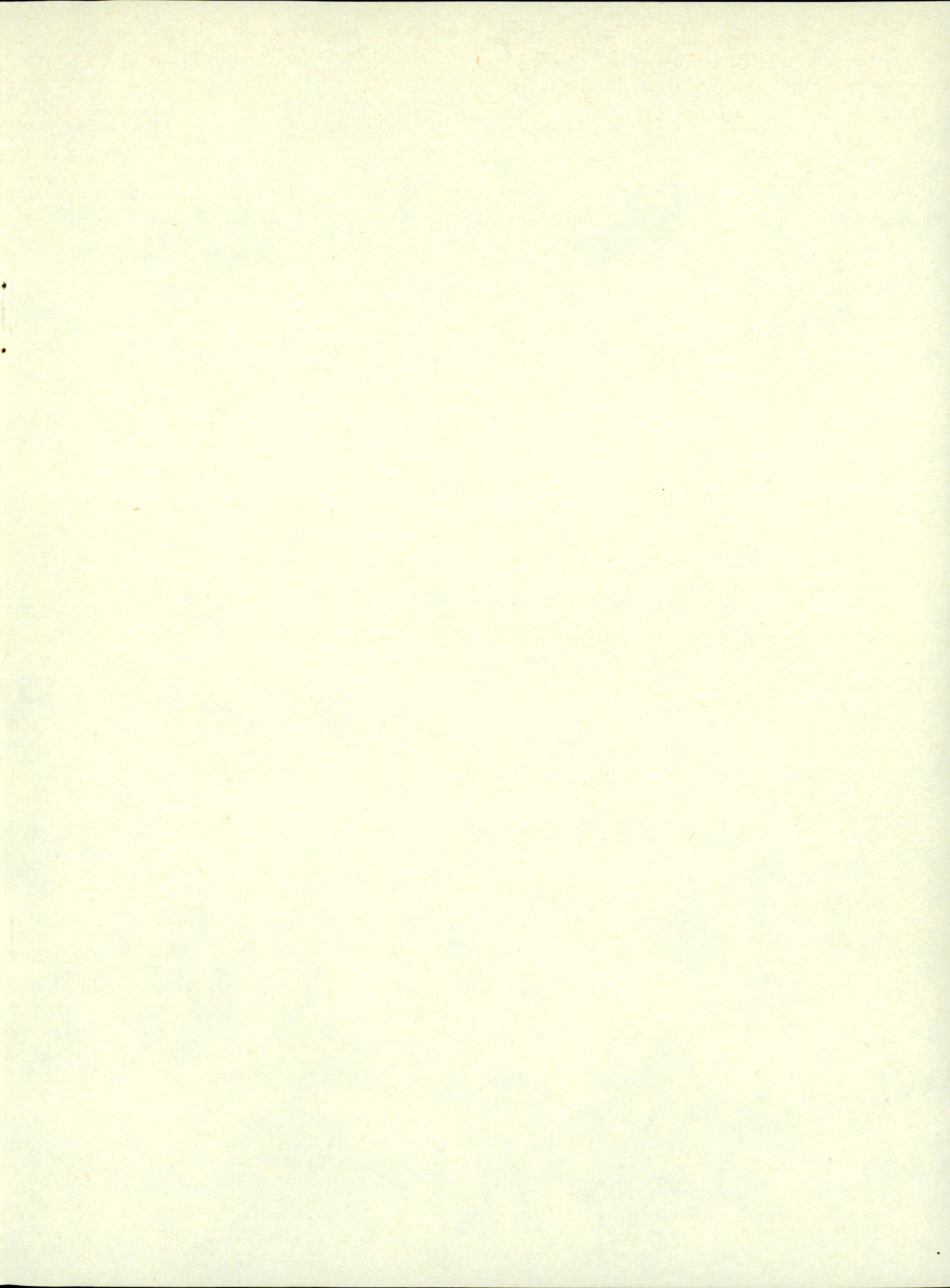
PART VI—EVIDENCE OF CORRESPONDING LAWS

Evidence of laws of other States and Territories

41. Where a provision of a law of a State other than New South Wales or of a Territory, being a law by reason of which provisions of a relevant Code or regulations in force for the time being under a relevant Code apply as laws of that State or Territory, provides that a document published in accordance with that provision is *prima facie* evidence of the provisions of

that relevant Code or those regulations as so applying on a particular date, a document that is, or purports to be, a copy of a document so published is *prima facie* evidence of the provisions of that relevant Code or those regulations as so applying on that date.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981



COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (NEW SOUTH WALES) CODE

[As at 1st July, 1981]

This document contains the text of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980 of the Commonwealth, as amended by the *Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act* 1981 of the Commonwealth, with alterations made in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981, of New South Wales.

NEW SOUTH WALES.



COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (NEW SOUTH WALES) CODE

RELATING TO THE INTERPRETATION OF CERTAIN PROVISIONS RELATING TO
CORPORATIONS AND THE SECURITIES INDUSTRY, AND FOR CERTAIN
OTHER MATTERS

PART I—PRELIMINARY

Short title

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code*.

The publication of this document was authorized by the Attorney General in accordance with section 9 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981, on 22nd June, 1981.

The several provisions set out in this document come into operation in New South Wales on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981 (except sections 1 and 2), commences.

Commencement

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, except sections 1 and 2, commences.

Relevant Codes

3. For the purposes of this Code, each of the following Codes is a relevant Code:

- (a) this Code;
- (b) the *Companies (Acquisition of Shares) (New South Wales) Code*; and
- (c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies by reason of a relevant application provision in an Act.

Relevant application provision

4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, applies to the Code concerned.

National Companies and Securities Commission (State Provisions) Act, 1981

5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act, 1981*, other than sections 1, 2, 3, 4, 20, 21 and 22.

PART II—INTERPRETATION

Division 1—General

Every section to be a substantive enactment

6. Every section of a relevant Code has effect as a substantive enactment without introductory words.

Headings, schedules, marginal notes and footnotes

7. (1) The headings of the Parts, Divisions and Subdivisions into which a relevant Code is divided form part of the relevant Code.

(2) A schedule to a relevant Code forms part of the relevant Code.

(3) No marginal note or footnote to a relevant Code, and no heading to a section of a relevant Code, shall be taken to be part of the relevant Code.

Citation

8. In any relevant Code—

- (a) an Act may be cited by its short title or by reference to the calendar year in which it was passed and its number;
- (b) an Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act;
- (c) an Act—
 - (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
 - (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
- (d) an Ordinance of a Territory may be cited by its short title or by reference to the calendar year in which it was made and its number;
- (e) an enactment may be cited by reference to the part, section, subsection or other division of the Act, Imperial Act or Act of another State or of a Territory in which the enactment is contained; and
- (f) a provision of an Ordinance of a Territory may be cited by reference to the part, section, sub-section or other division of the Ordinance in which the provision is contained.

Division 2—Words and References

Definitions

9. In any relevant Code, unless the contrary intention appears—

“Act” means an Act passed by the Parliament;

“Agreement” means the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission (State Provisions) Act, 1981*, or, if that Agreement is or has been amended or affected by another agreement, that Agreement as so amended or affected;

“Australia” or “the Commonwealth” means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory;

“calendar year” means a period of 12 months commencing on 1 January;

“Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of New South Wales pursuant to the Agreement, as laws of New South Wales;

“commencement”, in relation to an Act or a provision of an Act, means the time when the Act (other than provisions providing for the citation or commencement of the Act), or the provision, as the case may be, commences or comes into operation;

“Commission” means the National Companies and Securities Commission;

“committed for trial”, in relation to a person, means committed to prison to await his trial or released on bail on undertaking to appear at his trial;

“Consolidated Revenue Fund” means the Consolidated Revenue Fund of New South Wales;

“constituent documents”, in relation to a body, whether corporate or unincorporate, means—

- (a) the charter, memorandum or memorandum and articles of the body; and
- (b) any other instrument or law (other than the *Companies Act, 1961*, or the corresponding law of another State or of a Territory or of another country) constituting, or defining the constitution of, the body or governing activities or conduct of the body or of its members;

“Constitution” means the Constitution of the Commonwealth;

“Court” means the Supreme Court of New South Wales;

“court of summary jurisdiction” means a court of petty sessions of New South Wales;

“Crown” means the Crown in right of New South Wales;

- “external Territory” means a Territory, not being an internal Territory, for the government of which as such a Territory, provision is made by an Act of the Commonwealth;
- “financial year”, in relation to matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, means the 12 months ending on 30 June;
- “Gazette” means the *Commonwealth of Australia Gazette*;
- “Government Gazette” means the *New South Wales Government Gazette*;
- “High Court” means the High Court of Australia;
- “Imperial Act” means an Act passed by the Parliament of the United Kingdom;
- “indictment” includes information;
- “internal Territory” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;
- “Jervis Bay Territory” means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;
- “land” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein;
- “law of the Australian Capital Territory” includes a law of New South Wales as applying in that Territory;
- “magistrate” means a magistrate in respect of whose office an annual salary is payable;
- “Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement;
- “Minister” means a Minister of State for New South Wales;
- “month” means calendar month;
- “Northern Territory” means the Northern Territory of Australia;
- “Ordinance” means an Ordinance of the Australian Capital Territory;
- “Parliament” means the Parliament of New South Wales;

“participating State” means a State other than New South Wales that is a party to the Agreement;

“participating Territory” means—

- (a) the Australian Capital Territory;
- (b) if the Northern Territory is a party to the Agreement—that Territory; and
- (c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;

“person” and “party” include a body politic or corporate as well as a natural person;

“prescribed” means prescribed by the relevant Code or by regulations applying under the relevant Code;

“Proclamation” means proclamation by the Governor published in the *Government Gazette*;

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes things in action;

“regulations” means regulations applying under the relevant Code;

“relevant Code” means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*;

“State” means a State of the Commonwealth;

“Territory” means a Territory referred to in section 122 of the Constitution;

“United Kingdom” means the United Kingdom of Great Britain and Northern Ireland;

“the Minister” means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of New South Wales or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;

“this Code” includes regulations applying under the relevant Code.

Parts of speech and grammatical forms

10. In any relevant Code, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

Reference to corresponding laws

11. In any relevant Code, unless the contrary intention appears—

- (a) a reference to the corresponding law of a State other than New South Wales or of a Territory shall, in the case of a participating State or participating Territory, be construed as a reference to the provisions of that relevant Code as they apply, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement; and
- (b) a reference to a provision of a law of a State other than New South Wales or of a Territory that corresponds with a particular provision of that relevant Code or of another law shall, in the case of a participating State or participating Territory, be construed as a reference to that provision of that relevant Code or of that other law, as the case may be, as it applies, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement.

References to a Minister

12. Where in any relevant Code—

- (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
- (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.

References to writing, printing and documents

13. In any relevant Code, unless the contrary intention appears—

- (a) a reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- (b) “printed” includes type-written, lithographed or reproduced by any mechanical means; and
- (c) “document” includes—
 - (i) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
 - (ii) a disc, tape or other article from which sounds, images or messages are capable of being reproduced,

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice.

Lodging of documents and references to office of Commission

14. (1) A document that is required by a relevant Code to be lodged with the Commission shall be lodged at the office of the Corporate Affairs Commission for New South Wales and any such document that is lodged, or submitted for lodgment, at that office shall be deemed to be lodged, or submitted for lodgment, as the case may be, with the Commission.

(2) Any application to the Commission for the issuing of a document or the doing of any other act or thing by the Commission under a relevant Code shall be in writing and shall be delivered to the office of the Corporate Affairs Commission for New South Wales and any such application that is delivered to that office shall be deemed to have been made to the Commission.

(3) A reference in a relevant Code to the office of the Commission shall be construed as a reference to the office of the Corporate Affairs Commission for New South Wales.

Service by post

15. Where a relevant Code authorizes or requires a document to be served by post, whether the expression “serve” or the expression “give” or “send” or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing and posting (under pre-paid post) the document as a letter to the last-known address of

the person to be served, and unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

Gender and number

16. In any relevant Code, unless the contrary intention appears—
- (a) words importing the masculine gender include females, and words importing the feminine gender includes males; and
 - (b) words in the singular include the plural, and words in the plural include the singular.

References to Crown

17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.

Corporations liable to and may sue for penalties

18. (1) Every provision of a relevant Code relating to offences punishable on indictment or summary conviction shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.

(2) Where under a relevant Code a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate where the body corporate is the party aggrieved.

References to officers, localities, &c.

19. In any relevant Code, unless the contrary intention appears—
- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for New South Wales; and
 - (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such a locality, jurisdiction or other matter or thing in and of New South Wales.

Mention of officer in general terms

20. Where in a relevant Code a person holding or occupying a particular office or position is referred to in general terms, the reference shall, unless the contrary intention appears, be deemed to include a reference to all persons who at any time occupy that office or position for the time being.

Division 3—Powers and Duties

Exercise of powers and duties

21. (1) Where a relevant Code confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

(2) Where a relevant Code confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

Power to make, grant or issue an instrument includes power to repeal or amend the instrument

22. Where a relevant Code confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary such an instrument.

Power to appoint includes power to remove or suspend

23. (1) Subject to sub-section (2), where a relevant Code confers upon a person or authority a power to make appointments to an office or position, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend a person appointed, and to appoint another person temporarily in the place of a person so removed or suspended or in place of a sick or absent holder of the office or position.

(2) Where the power of a person or authority to make appointments is exercisable only upon the recommendation, or subject to the approval or consent, of some other person or authority, the power of removal or suspension is, unless the contrary intention appears, exercisable only upon the recommendation, or subject to the approval or consent, of that other person or authority.

Exercise of certain powers, duties and functions by a delegate or person authorized by a delegate

24. (1) Where, under any relevant Code, the exercise of a power or duty or the performance of a function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter—

- (a) if that power, duty or function has been delegated pursuant to any Act or Code—that power or duty may be exercised or that function may be performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (b) if a person to whom that power, duty or function has been so delegated has, pursuant to any Act or Code, authorized another person to exercise that power or duty or to perform that function—that power or duty may be exercised or that function may be performed by the authorized person upon the opinion, belief or state of mind of the authorized person in relation to that matter.

(2) For the purpose of the exercise of a power or duty or the performance of a function under a relevant Code by—

- (a) a person to whom that power, duty or function has been delegated by the Commission; or
- (b) a person authorized by a delegate of the Commission to exercise that power or duty or to perform that function,

any reference to the Commission in a provision of that relevant Code relating to the exercise of that power or duty or the performance of that function shall be construed as including a reference to the delegate or the person authorized by the delegate, as the case may be.

Division 4—Distance and Time

Measurement of distance

25. In the measurement of any distance for the purposes of any relevant Code, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Reckoning of time

26. (1) Where, in a relevant Code, a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or of the day of that act or event.

(2) Where the last day of a period prescribed or allowed by a relevant Code for the doing of anything falls on a Saturday, on a Sunday or on a day that is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following that is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Expressions of time

27. Where, in a relevant Code, a reference to time occurs, the reference shall, unless the contrary intention appears, be deemed in relation to the doing of an act or thing in a State or Territory to be a reference to the legal time in that State or Territory.

Division 5—Effect of Repeal, Amendment or Expiration

Effect of repeal

28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

(2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision, of—

- (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth;
- (b) the *Companies (Acquisition of Shares) Act 1980* of the Commonwealth; or
- (c) any other Act of the Commonwealth,

which, by reason of—

- (d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*;
- (e) the *Companies (Acquisition of Shares) (Application of Laws) Act, 1981*; or

(f) an Act containing a relevant application provision, apply as, or applies as, a law of New South Wales or, in the case of a repealed provision, has applied as a law of New South Wales.

(3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply (whether with or without qualification) as laws of New South Wales.

Saving

29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act then, unless the contrary intention appears, the repeal does not—

- (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;
- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed as if the repealing provision of the relevant Commonwealth Act had not been enacted.

Repealed provisions continue in force until substituted provisions operate

30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.

Amending Act to be construed with amended Act

31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.

Expiration of Acts

32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued in force.

References to amended or re-enacted laws

33. Where a relevant Code contains a reference to a short title that is or was provided by law for the citation of an Act as originally enacted, or of an Act as amended, then, except so far as the contrary intention appears—

- (a) the reference shall be construed as a reference to that Act as originally enacted and as amended from time to time; and
- (b) where that Act has been repealed and re-enacted, with or without modifications, the reference shall be construed as including a reference to the re-enacted Act as originally enacted and as amended from time to time and, where, in connection with that reference, particular provisions of the repealed Act are referred to, being provisions to which provisions of the re-enacted Act correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.

PART III—OFFENCES AND PENALTIES

Time for instituting criminal proceedings

34. Notwithstanding anything in any other law, proceedings for an offence against a relevant Code may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Ministerial Council, at any later time.

Indictable offences and summary offences

35. (1) An offence against a relevant Code that is not punishable by imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

(2) An offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months is, subject to sub-section (3), punishable on indictment.

(3) Where—

- (a) proceedings for an offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months are brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceedings,

the offence is punishable summarily and the court shall hear and determine the proceedings.

(4) A court of summary jurisdiction may not—

- (a) impose, in respect of any one offence against a relevant Code, a period of imprisonment exceeding 2 years; or
- (b) impose, in respect of offences against a relevant Code or relevant Codes, cumulative periods of imprisonment that, in the aggregate, exceed 5 years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) Where an offence against a relevant Code may be dealt with summarily, the offence may be dealt with, in a summary manner, by a magistrate sitting alone, according to the provisions of the Act or Acts for the time being regulating proceedings before justices of the peace.

(7) For the purposes of the *Fines and Penalties Act*, 1901, a relevant Code shall be deemed to be an Act.

Proceedings how and when taken

36. (1) Except where provision is otherwise made in the relevant Code concerned, in any proceedings for an offence against a provision of a relevant Code, any information, charge, complaint or application may be laid or made only—

- (a) by the Commission;
- (b) by a person to whom the Commission has delegated the power to institute the proceedings;
- (c) by a person authorized by a person referred to in paragraph (b) to institute the proceedings; or
- (d) by another person authorized in writing by the Ministerial Council to institute the proceedings.

(2) A delegation for the purposes of paragraph (1) (b) or an authorization for the purposes of paragraph (1) (c) or (d) may relate to all offences against relevant Codes, to all offences against a particular relevant Code or particular relevant Codes, to a particular offence or particular offences against a relevant Code, to any offences against, or constituted by any contravention of, or failure to comply with, a particular provision or particular provisions of a relevant Code or to a class of offences against a relevant Code.

Double jeopardy

37. Where an act or omission constitutes an offence—

- (a) under a relevant Code; and
- (b) under another law of New South Wales or a law of another State or of a Territory,

and the offender has been punished in respect of the offence under a law referred to in paragraph (b), he is not liable to be punished in respect of the offence under the relevant Code.

Aiding and abetting, attempts, &c.

38. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to, the commission of an offence against any relevant Code shall be deemed to have committed that offence and is punishable accordingly.

(2) A person who attempts to commit an offence against any relevant Code is guilty of an offence and is punishable as if the attempted offence had been committed.

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than sections 351 and 546) of the *Crimes Act, 1900*.

PART IV—OFFENCES UNDER NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT

Penalties at foot of sections or sub-sections

39. (1) Subject to sub-section (2), the penalty, pecuniary or other, set out—
- (a) at the foot of a section of the *National Companies and Securities Commission (State Provisions) Act, 1981*; or

(b) at the foot of a sub-section of a section of the *National Companies and Securities Commission (State Provisions) Act, 1981*, but not at the foot of the section,

indicates that a contravention of the section or the sub-section, respectively, whether by act or omission, is an offence against that Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

(2) Where a penalty set out at the foot of a section, or sub-section of a section, of the *National Companies and Securities Commission (State Provisions) Act, 1981*, is expressed to apply to a part only of the section or sub-section, it applies to that part only.

PART V—INSTRUMENTS UNDER RELEVANT CODES

Application of Code to instruments under relevant Codes

40. (1) This Code applies to and in relation to an instrument (including regulations, rules and by-laws) made, granted or issued under a relevant Code as if the instrument were a relevant Code and as if each regulation, rule or by-law were a section of a relevant Code.

(2) Unless the contrary intention appears, expressions used in such an instrument have the same meanings as in the relevant Code under which the instrument was made, granted or issued.

PART VI—EVIDENCE OF CORRESPONDING LAWS

Evidence of laws of other States and of Territories

41. Where a provision of a law of a State other than New South Wales or of a Territory, being a law by reason of which provisions of a relevant Code or regulations in force for the time being under a relevant Code apply as laws of that State or Territory, provides that a document published in accordance with that provision is *prima facie* evidence of the provisions of

that relevant Code or those regulations as so applying on a particular date, a document that is, or purports to be, a copy of a document so published is *prima facie* evidence of the provisions of that relevant Code or those regulations as so applying on that date.

BY AUTHORITY
D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1981



