

## **COMPANIES (APPLICATION OF LAWS) BILL, 1981**

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### **EXPLANATORY NOTE**

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

The Miscellaneous Acts (Companies) Amendment Bill, 1981, is cognate with this Bill.

The object of this Bill is to adopt as laws of the State the provisions of the Companies Act 1981 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 (New South Wales) Code".

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Interpretation.

Clause 5 provides that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Companies (New South Wales) Code.

Clause 6 applies the provisions of the Companies Act 1981 of the Commonwealth as laws of New South Wales, with amendments as set out in Schedule 1.

Clause 7 applies the provisions of the regulations in force under the Companies Act 1981 of the Commonwealth as regulations made under the provisions applying by reason of the proposed section 6, with amendments to the regulations as set out in Schedule 2.

Clause 8 requires fees to be paid to the Corporate Affairs Commission in respect of documents lodged and other matters connected with the National Companies and Securities Commission. The fees are to be those prescribed by regulations in force under the Companies (Fees) Act 1981 of the Commonwealth, with amendments as set out in Schedule 3.

Clause 9 empowers regulations to be made by the Governor-in-Council which are to have the effect of varying the provisions of regulations applying by reason of the proposed sections 7 and 8.

Clauses 10-12 authorise the publication of the applied laws, as applying in the State, in the form of documents respectively called the "Companies (New South Wales) Code", the "Companies (New South Wales) Regulations" and the "Companies (Fees) (New South Wales) Regulations".

Clause 13 authorises the publication of provisions of the applied laws following amendments made by Commonwealth legislation.

Clause 14 provides that a reference in any State law to a provision of the Code or the Regulations is to be construed as a reference to the corresponding provision of the Commonwealth Act or regulations applying by reason of the proposed sections 6, 7 and 8.

Clause 15 enables amendments to be made by regulations if the Ministerial Council agrees.

Clause 16 enables regulations to be made exempting a company from complying with all or any of the provisions of Division 6 of Part IV of the Code, if the Ministerial Council agrees.

Clauses 17-45 deal with matters of a transitional nature.

Schedule 1 contains amendments to the provisions of the Companies Act 1981 of the Commonwealth in their application to New South Wales.

Schedule 2 contains amendments to the provisions of regulations under the Commonwealth Act in their application to New South Wales.

Schedule 3 contains amendments to the provisions of regulations under the Companies (Fees) Act 1981 of the Commonwealth in their application to New South Wales.

Schedules 4, 5 and 6 set out the headings and preliminary provisions to be included in the provisions to be published under the proposed sections 10-12.

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# COMPANIES (APPLICATION OF LAWS) BILL, 1981

No. , 1981.

## A BILL FOR

An Act to make provision for the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters, and for other purposes.

[MR WALKER—30 November, 1981.]

See also Miscellaneous Acts (Companies) Amendment Bill, 1981.

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**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:—

**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Companies (Application of Laws) Act, 1981".

**10 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 such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Division into Parts, &c.**

**3.** This Act is divided into Parts as follows:—

**PART I.—PRELIMINARY—ss. 1–5.**

**PART II.—APPLICATION OF LAWS—ss. 6–16.**

**PART III.—TRANSITIONAL PROVISIONS—ss. 17–45.**

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**Interpretation.****4. (1) In this Act, unless the contrary intention appears—**

5       “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;

10       “Commission” or “National Commission” means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

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

15       “State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

      “the applied provisions” means the provisions applying by reason of sections 6 and 7;

20       “the Commonwealth Act” means the Companies Act 1981 of the Commonwealth.

      (2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

25       (3) In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

**Interpretation of Companies (New South Wales) Code.**

5. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Companies (New South Wales) Code.

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PART II.

APPLICATION OF LAWS.

**Application of Commonwealth Act.**

6. Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2, 3 and 4) apply—

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

10 as laws of New South Wales.

**Application of company regulations.**

7. Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

15 (a) as if amended as set out in Schedule 2; and

(b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 6.

**20 Fees payable.**

8. (1) There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

(a) the lodgment of documents with the National Commission under the applied provisions;

25 (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;

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- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- 5 (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions;
- 10 (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Fees) Act 1981 of the Commonwealth and  
15 specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a  
20 document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving  
25 the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

30 (5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or

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(b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

**5 Amendment of regulations pursuant to Agreement.**

9. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Companies (Fees) Act 1981 of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 7 or the regulations referred to in section 8, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- 20 (a) a reference to provisions of regulations applying by reason of section 7 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Companies (Fees) Act 1981 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.
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**Publication of Companies (New South Wales) Code.**

10. (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 and 4), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and sections set out in Schedule 4;
- (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 (New South Wales) Code".

(3) A document that is, or purports to be, a copy of the Companies (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 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

**15 Publication of Companies (New South Wales) Regulations.**

**11.** (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 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
- (d) may be cited as the "Companies (New South Wales) Regulations".

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(3) A document that is, or purports to be, a copy of the Companies (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 7 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 Companies (Fees) (New South Wales) Regulations.**

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Companies (Fees) Act 1981 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 6;
- 15 (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
- 20 (d) may be cited as the "Companies (Fees) (New South Wales) Regulations".

(3) A document that is, or purports to be, a copy of the Companies (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in 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).



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**Publication of provisions of amended Code or regulations.**

**13. (1)** The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

(a) provisions that by reason of—

- 5           (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (ii) the operation of section 6 (including the operation, if applicable, of Schedule 1),

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

10          (b) provisions that by reason of—

- (i) regulations under the Commonwealth Act; and
- (ii) the operation of section 7 (including the operation, if applicable, of Schedule 2),

15           apply, or will apply, as regulations made under the provisions applying by reason of section 6; or

(c) fees that by reason of—

- (i) regulations under the Companies (Fees) Act 1981 of the Commonwealth; and
- 20           (ii) the operation of section 8 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

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

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



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**Interpretation of references to the applied provisions.**

**14. (1)** Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or 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 (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 6;
- 10 (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- (c) a reference to the Companies (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 7;
- 15 (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Companies (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees in force under the Companies (Fees) Act 1981 of the Commonwealth as referred to in section 8; and
- 20 (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 8.

**(2)** In subsection (1), "provision" includes Part, Division, section, 25 sub-section, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause or other division.

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

**15.** Where, under the Agreement, the Ministerial Council—

30 (a) approves—

- (i) a proposed amendment of the Commonwealth Act;

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- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
- (iii) a proposed amendment of the Companies (Fees) Act 1981 of the Commonwealth; or
- 5 (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

10 the Governor may make regulations amending Schedule 1, 2 or 3 or section 8, as the case may be, in accordance with that approval and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 8, as the case may be, of this Act.

**Exemptions from Division 6 of Part IV of the Companies  
15 (New South Wales) Code, &c.**

16. (1) Where the Ministerial Council approves the exemption of a company from complying with all or any of the provisions of Division 6 of Part IV of the Companies (New South Wales) Code in relation to any prescribed interest, or class of prescribed interests, specified by the Ministerial  
20 Council, the Governor may make regulations exempting that company, subject to such terms and conditions as are specified in the regulations, from so complying.

(2) Where the Ministerial Council approves the declaration of a right or interest, or a right or interest included in a class or kind of rights or  
25 interests, as an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, the Governor may make regulations declaring that right or interest, or a right or interest included in that class or kind of rights or interests, to be, subject to such terms and conditions as are  
30 specified in the regulations, an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of that Division.

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(3) Where, immediately before the commencement of this Act, a right or interest was, under regulations made under the Companies Act, 1961, an exempt right or interest for the purposes of section 76 (1) (g) or of Division 5 of Part IV of that Act, that right or interest shall be deemed to  
5 have been declared by regulations under this section to be an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code.

(4) A right or interest to which subsection (3) applies ceases to be an exempt right or interest for the purposes of Division 6 of Part IV of the  
10 Companies (New South Wales) Code if the Governor makes regulations declaring that it so ceases (which regulations the Governor is hereby authorised to make).

(5) Where the Ministerial Council approves—

- 15 (a) a body corporate incorporated in the State, not being a company within the meaning of the Companies (New South Wales) Code; or
- 20 (b) an unincorporated society, association or other body, formed or established in the State, that has been admitted to the official list of a stock exchange that is a prescribed stock exchange for the purposes of that Code and has not been removed from that official list,

as a prescribed corporation for the purposes of Division 8 of Part IV of that Code, the Governor may make regulations prescribing that body corporate, unincorporated society, association or other body as a prescribed  
25 corporation for the purposes of that Division.

(6) Regulations under this section shall be read and construed as one with the Companies (New South Wales) Regulations.

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**PART III.****TRANSITIONAL PROVISIONS.****Interpretation.**

17. Expressions used in this Part that are defined by section 5 of the Companies (New South Wales) Code or in the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code have in this Part, unless the contrary intention appears, the respective meanings given to those expressions by that section or in that Code.

**Exclusion of Companies Act, 1961, &c.**

10 18. (1) The provisions applying by reason of section 6 operate to the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, in relation to acts, matters and things in relation to which the first-mentioned provisions apply.

15 (2) The provisions of subsection (1) do not, unless the contrary intention appears—

20 (a) revive anything not in force or existing at the time at which the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, takes effect;

(b) affect the previous operation of any of those Acts or anything duly done or suffered under any of those Acts;

25 (c) affect any right, privilege, obligation or liability acquired or incurred under any of those Acts;

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(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any of those Acts; or

5 (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

(3) For the purposes of the operation of subsection (2)—

10 (a) the provisions of section 7 (6) to (13) of the Companies Act, 1961, of the Second Schedule to that Act and of any regulations prescribing fees for the purposes of section 7 (11) (b) of that Act; and

15 (b) any other provisions of that Act or regulations under that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force as if this Act had not been enacted, but it is not a contravention of section 7 (8) of the Companies Act, 1961, as so continuing in force to divulge or communicate information to the Commission or to a  
20 person authorized by the Commission to receive that information.

**Interstate Corporate Affairs Agreement.**

19. The State of New South Wales withdraws from the Interstate Corporate Affairs Agreement and the operation of that agreement is terminated so far as relates to the State.

**25 General provisions.**

20. Unless the contrary intention appears in this Act or in the Companies (New South Wales) Code all persons, things and circumstances appointed or created by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, or existing or continuing under either of those Acts  
30 immediately before the commencement of this Act shall, under and subject to this Act and to the Companies (New South Wales) Code, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.



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**Particular provisions.**

21. Without affecting the generality of section 20, unless the contrary intention appears in this Act, or in the Companies (New South Wales) Code, neither this Act nor the Companies (New South Wales) Code disturbs  
5 the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence,  
10 certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, before the  
15 commencement of this Act.

**Proceedings by or against State Commission to be proceedings by or against National Commission.**

22. (1) Where, before the commencement of this Act, a proceeding under the Companies Act, 1961, had been commenced by or against the  
20 State Commission, the proceeding may be continued by or against the National Commission.

(2) Where, but for the enactment of this Act, a proceeding under the Companies Act, 1961, could have been commenced by or against the  
25 State Commission, the proceeding may be commenced by or against the National Commission.

**Property vested in State Commission vests in National Commission.**

23. Where, immediately before the commencement of this Act, property was vested in the State Commission by reason of the operation of section 310 of the Companies Act, 1961, the property vests by force of this section  
30 in the National Commission and sections 462, 463 and 464 of the Companies (New South Wales) Code apply in relation to the property in like manner as they would apply if the property had vested in the National Commission pursuant to section 461 of that Code.



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**Registers, funds and accounts.**

24. Any register, fund or account kept immediately before the commencement of this Act under any provision of the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, shall be deemed to be  
5 part of a register, fund or account kept under the corresponding provision of the Companies (New South Wales) Code.

**Acts of Minister under Companies Act, 1961, deemed to be acts of Ministerial Council or Commission, &c.****25. (1) In this section—**

- 10 “the Act” means the Companies Act, 1961;  
“the Code” means the Companies (New South Wales) Code;  
“the Gazette” means the Commonwealth of Australia Gazette.

- (2) Where the Minister had given consent under section 22 (1) of the Act to the registration of a company or an intended company by a  
15 specified name and the company had not been registered by that name before the commencement of this Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under section 38 (2) of the Code.

- 20 (3) A licence issued to a company under section 24 of the Act or the corresponding provision of a previous enactment and in force immediately before the commencement of this Act continues in force as if—

- (a) the licence were a licence issued by the Commission under section 66 of the Code; and  
25 (b) where the company was exempt from complying with provisions of the Act—the licence exempted the company from complying with the corresponding provisions of the Code,

and a reference in the Code to a licence under section 66 of the Code shall be construed as including a reference to a licence to which this subsection  
30 applies.

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(4) A declaration under section 38 (7) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 97 (7) (b) or (c), as the case may be, of the Code.

5 (5) A notice under section 38 (8) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice by the Commission published under section 97 (9) of the Code.

(6) Where, under section 44 (3) of the Act, an allotment of shares or debentures had been exempted from the operation of section 44 of the  
10 Act, and that exemption was in force immediately before the commencement of this Act, that allotment of shares or debentures shall be deemed to have been exempted by the Commission, under section 105 (3) of the Code, from the operation of section 105 of the Code.

(7) A declaration under section 69A (2) (b) or (c) of the Act and  
15 in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Ministerial Council by order published in the Gazette under section 134 (2) (b) or (c), as the case may be, of the Code.

(8) An approval under section 74 (1) (e) of the Act and in force  
20 immediately before the commencement of this Act shall be deemed to be an approval given by the Commission under section 152 (1) (h) of the Code.

(9) An order under section 74D (2) of the Act and in force  
25 immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 156 (2) of the Code.

(10) Where, under section 74D (2) of the Act, the trustee for the holders of debentures had been directed to apply to the Court for an order under section 74D (4) of the Act and at the commencement of this Act the trustee had not complied with that direction, the trustee shall be deemed to  
30 have been directed by the Commission under section 156 (2) of the Code to apply to the Court for an order under section 156 (4) of the Code.

(11) A declaration under section 74F (4) (d) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 158 (10) of the Code.



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(12) A notice under section 74F (4) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice published by the Commission under section 158 (11) (a) of the Code.

5 (13) A declaration under section 80 (1A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 168 (2) of the Code.

(14) Where, before the commencement of section 4 of the Companies (Further Amendment) Act, 1974, a notice was published under section 88  
10 of the Act purporting to exempt a company, subject to such terms and conditions as were specified in the notice, from complying with the provisions of section 80 (1) of the Act in respect of a deed specified in the notice, the notice—

15 (a) shall, notwithstanding any provision of the Act or the Code, have effect and be deemed always to have had effect according to its tenor; and

(b) may, notwithstanding any provision of the Code, be varied or revoked by the Commission by notice published in the Gazette.

20 (15) A direction under section 84 (3) of the Act and in force immediately before the commencement of this Act shall be deemed to be a direction given by the Commission under section 172 (5) of the Code.

(16) A declaration under section 84 (3A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration given by the Commission under section 172 (6) of the Code.

25 (17) Where a company had been exempted by notice under section 88 of the Act from complying, in relation to an interest, or class of interests, specified in the notice, with all or any of the provisions of Division 5 of Part IV of the Act and that exemption was in force immediately before the commencement of this Act, that company is, subject to such terms and  
30 conditions (if any) as were specified in that notice, deemed to have been exempted from complying, in relation to that interest, or class of interests, with the provisions of Division 6 of Part IV of the Code that correspond with the provisions specified in that notice and, for the purposes of section 176 of the Code, the notice shall be deemed to have been a notice published  
35 in the Gazette under section 176 (1).



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(18) An order under section 160 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission published under section 265 (2) of the Code requiring the company to comply with the provisions of Division 5 of Part V of the Code and of the regulations made for the purposes of that Division that correspond with the provisions of the Act specified in the order.

(19) An order under section 162c (1) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (1) of the Code relieving the directors of the company named in the order from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

(a) where the order required the directors to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and

(b) where the order was limited to a specified period—to be limited to the same period.

(20) An order under section 162c (2) of the Act in respect of a specified class of companies and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (5) of the Code relieving the directors of companies included in the specified class of companies from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

(a) where the order required the directors of companies included in the specified class of companies to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and

(b) where the order was limited to a specified period—to be limited to the same period.

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(21) A proclamation by the Governor or a declaration made by the Minister by order published in the Government Gazette under section 334 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order 5 published in the Gazette under section 490 (3) of the Code.

(22) A proclamation by the Governor or an order by the Minister published in the Government Gazette under section 339 (b) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the 10 Gazette under section 495 (2) of the Code.

(23) A declaration under section 348 (5) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 516 (7) (b) or (c), as the case may be, of the Code.

15 (24) Where the Minister had given consent under section 353 (1) of the Act to the registration of a foreign company by a specified name and the foreign company had not been registered by that name before the commencement of this Act, the consent shall be deemed to be a consent given by the Ministerial Council under section 38 (2) of the Code.

20 (25) Where the Minister had given consent under section 353 (2) of the Act to the registration of a change in the name of a foreign company to a specified new name and the change of name had not been registered before the commencement of this Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign 25 company given by the Ministerial Council under section 38 (2) of the Code.

(26) Where, under section 374 (2) of the Act, a corporation had been exempted from the provisions of section 374 (1) of the Act, and that exemption was in force immediately before the commencement of this Act, that corporation shall be deemed to have been exempted by the Commission 30 by instrument in writing published in the Gazette under section 552 (2) of the Code from the provisions of section 552 (1) of the Code.



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**Names.**

26. (1) A name under which a company was registered under the Companies Act, 1961, immediately before the commencement of this Act shall, for the purposes of Division 2 of Part III of the Companies (New South Wales) Code be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division.

(2) A reference in subsection (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of this Act, was registered under the Companies Act, 1961, as a foreign company, whether that corporation is, for the purposes of the Companies (New South Wales) Code, a recognized company or a foreign company.

(3) Where, immediately before the commencement of this Act, a name was reserved in respect of a recognized company under section 22 (8E) of the Companies Act, 1961, that name shall be deemed to be registered under section 60 of the Companies (New South Wales) Code in respect of that recognized company.

(4) Where, within the period of two months immediately preceding the date of commencement of this Act—

(a) a name was reserved under section 22 (8) of the Companies Act, 1961; or

(b) the period for which a name was reserved under that Act was extended by the State Commission under section 22 (9) of that Act,

the name shall, for the purposes of the Companies (New South Wales) Code be deemed to be reserved under Division 2 of Part III of that Code until the date on which the reservation of that name under the Companies Act, 1961, would have ceased.



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**Continued application of Table A and Table B in certain circumstances.**

**27. (1)** Nothing in this Act or in the Companies (New South Wales) Code affects—

- 5 (a) Table A, or any part of Table A, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act; or
- 10 (b) Table B, or any part of Table B, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act.
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**(2)** This section does not prevent the articles of a company adopting, in accordance with section 75 (1) of the Companies (New South Wales) Code, all or any of the regulations contained in Table A or Table B of Schedule 3 to that Code.

**Existing prospectuses and section 82 statements.**

**28. (1)** Where a prospectus was registered under the Companies Act, 1961, within the period of six months before the commencement of this Act, the prospectus shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a prospectus registered under that Code.

**(2)** Where a statement under section 82 of the Companies Act, 1961, was registered under that Act within the period of six months before the commencement of this Act, the statement shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a

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statement that has been registered under Division 1 of Part IV of the Companies (New South Wales) Code as required by section 170 (1) of that Code.

**Interests in partnership agreements.**

- 5     **29.** Section 169 of the Companies (New South Wales) Code does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that—
- (a) is an interest in a partnership agreement; and
- 10     (b) was subscribed for or first purchased before 1st January, 1972.

**Registration of charges.**

**30. (1)** In this section, “company” includes a foreign company that is registered as a foreign company under the Companies (New South Wales) Code.

- 15     **(2)** Where, before the commencement of this Act, a company created a relevant charge, or acquired property subject to a relevant charge—
- (a) if the charge was, immediately before the commencement of this Act, registered under Division 7 of Part IV of the Companies Act, 1961—
- 20             (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
- 25             (ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code; or



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- 5 (b) if the charge was, immediately before the commencement of this Act, registered under the provisions of a law of another State or of a Territory that corresponded with Division 7 of Part IV of the Companies Act, 1961, but was not registered under Division 7 of Part IV of that Act—
- (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
- 10 (ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and such of the particulars
- 15 mentioned in section 203 (2) of that Code as it is able to ascertain.
- (3) Where all the documents relating to a relevant charge on property of a company that were required by Division 7 of Part IV of the Companies Act, 1961, or the provisions of a law of another State or of a Territory that
- 20 corresponded with that Division to be lodged for registration under that Division or those provisions, as the case may be, were duly lodged not later than 30 days before the date of commencement of this Act but the charge had not been registered under that Division or those provisions before that date and registration had not been refused—
- 25 (a) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
- (b) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies
- 30 (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code.
- (4) A charge is a relevant charge for the purposes of subsection (2) or (3) where—
- 35 (a) in the case of a charge created by the company—if the charge had been created after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code; or



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- 5 (b) in the case of a charge on property acquired by the company—  
if the company had acquired the property after the commencement  
of this Act, the charge would have been required to be registered  
under Division 9 of Part IV of the Companies (New South Wales)  
Code.
- 10 (5) Where two or more charges on the same property of a company  
are deemed by subsection (2) or (3) to be duly registered under Division 9  
of Part IV of the Companies (New South Wales) Code from and including  
the commencement of this Act, those charges have, as between themselves,  
the respective priorities that they would have had if this Act had not been  
enacted.
- (6) The time and date to be entered in the Register of Company  
Charges in relation to a charge pursuant to subsection (2) or (3) is 9.00  
a.m. on the date of commencement of this Act.
- 15 (7) Nothing in section 205 of the Companies (New South Wales)  
Code operates to render a charge to which subsection (2) or (3) applies  
void as a security on property of the company as against a liquidator or  
official manager of the company.
- (8) Where—
- 20 (a) before the commencement of this Act a company created a charge  
or acquired property subject to a charge, being in either case a  
charge that was required to be registered under Division 7 of  
Part IV of the Companies Act, 1961;
- 25 (b) at the commencement of this Act—
- (i) the charge had not been registered under Division 7 of  
Part IV of the Companies Act, 1961;
- (ii) the charge had not become void under section 100 (1)  
of the Companies Act, 1961; and
- (iii) the property was still subject to the charge;
- 30 (c) if the charge had been created or the property had been acquired,  
after the commencement of this Act, the charge would have been  
required to be registered under Division 9 of Part IV of the  
Companies (New South Wales) Code; and
- (d) subsection (3) does not apply in relation to the charge,

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Division 9 of Part IV of, and Schedule 5 to, the Companies (New South Wales) Code apply as if the company had created the charge, or had acquired the property, as the case may be, at the commencement of this Act, but, where two or more charges on the same property of a company, 5 being charges to which this subsection applies, are registered under Division 9 of Part IV of the Companies (New South Wales) Code then, notwithstanding Schedule 5 to that Code, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under that Division.

10 (9) Notwithstanding the enactment of this Act, the provisions of Division 7 of Part IV of the Companies Act, 1961, as in force immediately before the commencement of this Act continue in force as if this Act had not been enacted in relation to—

- 15 (a) any charge created by a company before the commencement of this Act; or
- (b) any charge to which property acquired by a company before the commencement of this Act was subject when the property was so acquired,

where—

- 20 (c) the charge was required to be registered under Division 7 of Part IV of the Companies Act, 1961; and
- (d) if the charge had been created by the company, or the property subject to the charge had been acquired by the company, after the commencement of this Act, the charge would not have been 25 required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code.

(10) Where a charge referred to in subsection (8) (a) had, before the commencement of this Act, become void under section 100 (1) of the Companies Act, 1961, and the Court, being satisfied that it is just and 30 equitable to do so, makes an order that subsection (8) is to apply in relation to that charge—

- (a) subsection (8) has effect as if the charge had not become void; and
- (b) section 100 (1) of the Companies Act, 1961, shall be deemed not to have rendered the charge void in any respect.



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**Certificate that person is an executive officer of a company.**

31. Where it appears from a return lodged with the Registrar of Companies, the Commissioner for Corporate Affairs or the State Commission pursuant to a previous law of the State with which the Companies 5 (New South Wales) Code corresponds that a person was at a particular time a manager of a company, the Commission may give a certificate under section 238 (10) of that Code that the person was at that time a principal executive officer of the company.

**Application of Companies (New South Wales) Code to financial years  
10 ending before commencement of this Act.**

32. (1) The provisions of Division 2 of Part VI of the Companies (New South Wales) Code (other than sections 267, 268, 273 and 275) apply in relation to a company, being a company incorporated under the Companies Act, 1961, or a corresponding previous enactment, and to the directors of 15 such a company, in relation to a financial year or financial years of the company that ended before the commencement of this Act and so apply as if—

- 20 (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than fourteen days before an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than fourteen days before the end of that period were a requirement that that act or thing be done 25 within the period of five months (or, in the case of an exempt proprietary company, the period of six months) after the commencement of this Act;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of this Act;
- 30 (c) the reference in section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by subsection (2) of this section to be laid before the company;

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5 (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by subsection (2) of this section to be laid before a company at an annual general meeting; and

(e) a reference in section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of subsection (2) of this section.

10 (2) The directors of a company to which subsection (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of five months or six months, as the case requires, referred to in subsection (1) (a), in respect of each financial year of the company that ended before the commencement of this Act—

15 (a) a copy of the profit and loss account made out in accordance with section 269 (1) of the Companies (New South Wales) Code;

(b) a copy of the balance sheet made out in accordance with section 269 (2) of that Code;

20 (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with section 270 (1) of that Code;

25 (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with section 269 (3) of that Code and a copy of the directors' report made out in accordance with section 270 (2) of that Code in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;

30 (e) a copy of any auditor's report required by section 269 (5) of that Code to be attached to the accounts or group accounts of the company; and

(f) a copy of the statement by the directors required by section 269 (9) or (10) of that Code to be attached to the accounts or group accounts of the company.

35 (3) A reference in subsection (2) to a provision of the Companies (New South Wales) Code shall be read as a reference to that provision of that Code as it applies by virtue of subsection (1).



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(4) For the purposes of this section, an order under section 162c (1) or (2) of the Companies Act, 1961, in relation to the directors of a company or the directors of companies included in a specified class of companies that is, by section 25 (19) or (20) of this Act, deemed to be  
5 an order made by the Commission under section 273 (1) or (5), as the case may be, of the Companies (New South Wales) Code has the same effect unless and until the order is revoked under section 273 (8) of that Code in relation to accounts, group accounts and reports required, by the provisions of Division 2 of Part VI of that Code as applied by subsection (1)  
10 of this section, to be made out by those directors as the order has, by virtue of section 25 (19) or (20), as the case may be, of this Act, in relation to accounts, group accounts and reports required to be made out in accordance with the provisions of that Division.

(5) In this section, "financial year", in relation to a company in  
15 relation to which this section applies, has the same meaning as it has in relation to such a company under the Companies (New South Wales) Code by virtue of paragraph (a) of the definition of "financial year" in section 5 (1) of that Code.

**Annual general meeting held before commencement of this Act.**

20 33. Where, before the commencement of this Act, an annual general meeting of a company was held and at the commencement of this Act the company had not complied with section 158 or 159 of the Companies Act, 1961, in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting  
25 as if this Act had not been enacted.

**Special investigations.**

34. (1) Part VII of the Companies (New South Wales) Code applies to and in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act and so  
30 applies as if—

(a) where an inspector was appointed to carry out the investigation pursuant to an application under section 169 (1) of the Companies Act, 1961—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given pursuant to section  
25 290 (4) of that Code; and

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5 (b) where an inspector was appointed under section 170 (1) of the Companies Act, 1961, to carry out the investigation—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given in the exercise of a power under section 291 (1) of that Code otherwise than in response to a request made by the Commission under section 291 (4) of that Code.

10 (2) Where, before the commencement of this Act, an act, matter or thing had been done or had arisen in the course of an investigation to which Part VIA of the Companies Act, 1961, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

15 (3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after  
20 that commencement.

**Lodging of accounts by person administering compromise or arrangement.**

**35. Where—**

25 (a) section 330 of the Companies (New South Wales) Code applies, by virtue of section 315 (11) of that Code, in relation to a person or persons appointed to administer a compromise or arrangement; and

(b) that person or those persons was or were so appointed before the commencement of this Act,  
30 references in section 330 of that Code to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of this Act.



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**Winding up.**

36. (1) The provisions of the Companies (New South Wales) Code with respect to winding up other than the provisions of Subdivision F of Division 4 of Part XII do not apply to any company the winding up of which was commenced before the commencement of this Act and any such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted and, for the purposes of the winding up, the provisions of the Companies Act, 1961, shall apply.

(2) In this section, "company" includes an unregistered company within the meaning of Division 5 of Part X of the Companies Act, 1961.

**Registered auditors and liquidators.**

37. (1) For the purposes of the Companies (New South Wales) Code, a person who was, immediately before the date of commencement of this Act, registered as an auditor or as a liquidator or appointed as an official liquidator under the Companies Act, 1961, shall, subject to section 27 of that Code, be deemed to be registered under Division 2 of Part II of that Code as an auditor, as a liquidator or as an official liquidator, as the case may be, for the period of six months commencing on the date of commencement of this Act.

**(2) Where—**

(a) a person who is deemed by reason of subsection (1) to be registered under Division 2 of Part II of the Companies (New South Wales) Code as an auditor or as a liquidator for the period of six months commencing on the date of commencement of this Act has applied to be registered under that Division as an auditor or as a liquidator, as the case may be, within that period of six months; and

(b) at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Code, be deemed to be registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph (a) and ending—

(c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused; and

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- (d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application.

(3) Where the registration as a liquidator of a person to whom subsection (2) applies comes into force under Division 2 of Part II of the Companies (New South Wales) Code, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in paragraph (d) of subsection (2) and ending at the expiration of the day before the day on which that registration comes into force.

(4) A person who is deemed to be registered as an auditor, as a liquidator or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with subsection (1) shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under the Companies (New South Wales) Code.

**Power of Minister to consent to institution of proceeding.****38. Where—**

- (a) the institution of a particular proceeding under the Companies Act, 1961, was subject to the consent of the Minister; and
- (b) the proceeding was not instituted before the commencement of this Act but may be instituted after the commencement of this Act by reason of the operation of section 18 (2) of this Act,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

**Recognized companies.**

39. (1) Where a corporation that is a recognized company for the purposes of the Companies (New South Wales) Code was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, the registered office of that corporation in the State the situation of which was specified—

- (a) in a case to which paragraph (b) does not apply—in a notice lodged under section 346 (1) of that Act; or



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(b) if a notice or notices have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices, shall be deemed to be the principal office within the State of the corporation  
5 for the purposes of section 507 of the Companies (New South Wales) Code.

(2) Where—

- 10 (a) before the commencement of this Act, an act, matter or thing had been done or commenced under the Companies Act, 1961, in relation to a corporation that was a foreign company for the purposes of that Act;
- (b) the corporation is a recognized company for the purposes of the Companies (New South Wales) Code; and
- 15 (c) that act, matter or thing could have been done or commenced under the Companies (New South Wales) Code after the commencement of this Act in relation to a recognized company,
- that act, matter or thing shall be deemed to have been done or commenced, as the case may be, and, in the case of an act, matter or thing that has been commenced, may be continued or completed under the Companies (New South Wales) Code, in relation to that corporation as a recognized company.

20 **Recognized companies under corresponding laws.**

40. (1) Section 501 of the Companies (New South Wales) Code applies in relation to a company that, immediately before the commencement of this Act, had a place of business or carried on business in a State or Territory that is a participating State or participating Territory as if the company had  
25 established a place of business or commenced to carry on business, as the case may be, in that State or Territory at the commencement of this Act.

(2) Where a company had, before the commencement of this Act, lodged under the provisions of a law of a State or Territory that is a participating State or participating Territory that corresponds with section  
30 346 (1A) or 347 (1A) of the Companies Act, 1961, a notice or notices that specified the days and hours during which the registered office of the company in that State or Territory was open and accessible to the public, the company

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shall, for the purposes of section 502 (2) of the Companies (New South Wales) Code, be deemed to have lodged a notice under section 501 (2) of that Code in relation to that State or Territory.

- (3) Where, immediately before the commencement of this Act, a company maintained a branch register in a State or Territory that is a participating State or participating Territory in accordance with the provision of the law of that State or Territory that corresponded with section 354 of the Companies Act, 1961, that register shall be deemed to be a branch register of the company kept under section 262 of the Companies (New South Wales) Code and section 262 of that Code applies in relation to that register as if it had been established, and as if the office where it is kept had been opened, on the date of commencement of this Act.

**Foreign companies.**

41. (1) A corporation formed outside the State, other than a corporation that is a recognised company for the purposes of the Companies (New South Wales) Code, that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, shall be deemed to be registered, as from the commencement of this Act, as a foreign company for the purposes of the Companies (New South Wales) Code.

- 20 (2) A corporation formed outside Australia and the external Territories that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, may within one month after the date of commencement of this Act, or within such further period as the Commission allows, lodge with the Commission a notice in the 25 prescribed form—

- (a) stating whether the corporation wishes to continue to be registered as a foreign company under the Companies (New South Wales) Code; and
- 30 (b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Code—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of this Act and which is a



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participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.

(3) A corporation is not entitled pursuant to subsection (2) (b)—

- 5 (a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory; or
- 10 (b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.

(4) Where a corporation to which subsection (2) applies lodges with the Commission a notice under that subsection specifying pursuant to 15 subsection (2) (b) a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—

- (a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the Companies (New South Wales) Code; and
- 20 (b) the registered office of the corporation in the State the situation of which was specified—
- (i) in a case to which subparagraph (ii) does not apply—in a notice lodged under section 346 (1) of the Companies Act, 1961; or
- 25 (ii) if a notice or notices has or have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the Companies (New South Wales) Code.

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(5) In this section, "external Territory" means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a 35 Territory provision is made by an Act of the Commonwealth.

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**Commission may destroy or dispose of documents.**

42. (1) Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that is a recognized company for the purposes of that Code was, immediately before the commencement of this Act, a recognized company under the Companies Act, 1961, or was registered as a foreign company under that Act, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

(2) Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, becomes a recognized foreign company for the purposes of that Code, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

**Marketable Securities Act, 1970.**

43. (1) A sufficient instrument of transfer under the Marketable Securities Act, 1970, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of this Act has the same effect, and may be used and dealt with, as if this Act had not been enacted.

(2) An agreement, application, acceptance, warranty or indemnity deemed by the Marketable Securities Act, 1970, to have been made or given by a person continues to operate and has the same force and effect as if this Act had not been enacted.

**Court may resolve difficulties.**

44. (1) Where any difficulty arises in the application to a particular matter of this Part, or in the application to a particular matter of any of the provisions of the Companies (New South Wales) Code, the Companies Act, 1961, or the Marketable Securities Act, 1970, by reason of the operation of



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*Companies (Application of Laws).*

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this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order made under subsection (1) has effect notwithstanding anything contained in this Act or in the Companies (New South Wales) Code, the Companies Act, 1961, or the Marketable Securities Act, 1970.

(3) In subsection (1), "Court" means the Supreme Court of New South Wales.

**Regulations.**

45. (1) The Governor may make regulations, not inconsistent with this Part, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Regulations prescribing matters for the purposes of this Part may prescribe those matters by reference to regulations for the time being in force under the Companies (Transitional Provisions) Act 1981 of the Commonwealth.

(3) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

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*Companies (Application of Laws).*

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## SCHEDULE 1.

(Sec. 6.)

The provisions of the Commonwealth Act apply as if—

## 1. Unless inconsistent with another provision of this Schedule—

- 5 (a) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
- 10 (b) for the words “of a State or of another Territory” and “of a State or another Territory” in the Commonwealth Act (wherever occurring otherwise than immediately after the word “law”) there were substituted the words “of another State or of a Territory”;
- 15 (c) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the words “commencement of the *Companies (Application of Laws) Act, 1981*” or the words “commencement of the *Companies (Application of Laws) Act, 1981*,” whichever are applicable;
- (d) for the words “*Companies (Acquisition of Shares) Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies (Acquisition of Shares) (New South Wales) Code*”;
- 20 (e) for the words “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961*,” whichever are applicable;
- (f) for the words “*Securities Industry Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Securities Industry (New South Wales) Code*”;
- 25 (g) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “the State”;
- (h) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”.
- 30

## 2. In section 5 (1) of the Commonwealth Act—

- (a) after the definition of “banker’s books” there were inserted the following definition:—
- 35 “*Banking Act 1959*” means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being;
- (b) after the definition of “banking corporation” there were inserted the following definition:—
- “*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;



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## SCHEDULE 1—continued.

- (c) for the definition of "*Companies Ordinance 1962*" there were substituted the following definitions:—
- 5        "Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the *Companies Act 1981* of the Commonwealth as amended and in force for the time being;
- "*Companies (New South Wales) Code*" or "Code" means the provisions applying by reason of section 6 of the *Companies (Application of Laws) Act, 1981*;
- 10     (d) in the definition of "corporation" for paragraphs (c) and (d) there were substituted the following paragraphs:—
- (c) any society, association or union registered under the *Co-operation Act, 1923*;
- 15     (d) any society or association registered under the *Permanent Building Societies Act, 1967*;
- (e) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the *Credit Union Act, 1969*; or
- 20     (f) any foreign company or recognized company in respect of which an exemption from compliance with—
- (i) section 61 (1) of the *Co-operation Act, 1923*;
- (ii) section 35 (1) of the *Permanent Building Societies Act, 1967*;
- or
- (iii) section 28 (1) of the *Credit Union Act, 1969*,
- 25     is for the time being in force;
- (e) after the definition of "insolvent under administration" there were inserted the following definition:—
- "*Insurance Act 1973*" means the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being;
- 30     (f) after the definition of "leave of absence" there were inserted the following definition:—
- "*Life Insurance Act 1945*" means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;
- 35     (g) in the definition of "lodged" for paragraph (b) there were substituted the following paragraph:—
- (b) in relation to a prescribed State authority—lodged or filed with that authority under any corresponding previous law of the State;
- (h) after the definition of "mining purposes" there were inserted the following definitions:—
- 40     "Minister" means the Minister of State for New South Wales for the time being administering the *Companies (Application of Laws) Act, 1981*;

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

“National Companies and Securities Commission Act 1979” means the National Companies and Securities Commission Act 1979 of the Commonwealth as amended and in force for the time being;

- 5 (i) after the definition of “prescribed interest” there were inserted the following definition:—

“prescribed State authority” means—

- 10 (a) the Registrar of Companies;  
(b) the Commissioner for Corporate Affairs; or  
(c) the Corporate Affairs Commission;

(j) the definition of “Registrar of Companies” were repealed;

- (k) before the definition of “related corporation” there were inserted the following definition:—

15 “regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the *Companies (Application of Laws) Act, 1981*;

- (l) for the definition of “rules” there were substituted the following definition:—

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

- 20 (m) after the definition of “special resolution” there were inserted the following definition:—

“State Commission” means the Corporate Affairs Commission continued in existence by the *Corporate Affairs Commission Act, 1981*;

3. After section 5 (9) of the Commonwealth Act there were inserted the following sub-section:—

- 25 (10) In this Code—

- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of New South Wales or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the *Companies Act, 1961*; and  
30 (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the *Companies Act, 1961*.



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SCHEDULE 1—*continued.*

4. For paragraphs (a) and (b) of section 12 (1) of the Commonwealth Act there were substituted the following paragraphs:—

- 5       (a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, or under a law of a participating State or of a participating Territory that corresponds with such a relevant Code; or
- 10       (b) where the requirement relates to a matter that constitutes or may constitute—
- (i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);
- (ii) a contravention of, or failure to comply with, a provision of the *Companies Act, 1961*, as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act; or
- 15       (iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.

5. In section 13 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”.

20

6. In section 18 (7) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.

7. In section 19 of the Commonwealth Act after the words “Auditor-General” there were inserted the words “of New South Wales”.

25

8. In section 20 (8) (a) and (9) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.

9. For section 22 (4) of the Commonwealth Act there were substituted the following sub-section:—

30

(4) In this section, “local authority” means the State Commission.

10. In section 27 (21), (22) and (23) of the Commonwealth Act for the words “debt due to the Commonwealth” there were substituted the words “debt due to the Crown”.

35   11. In section 27 (28) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

## 12. In section 30 of the Commonwealth Act—

- 5 (a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- 10 (b) in sub-section (2) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- (c) in sub-section (3) for the words “an action” there were substituted the word “proceedings”.

13. In section 31 (2) and (5) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State  
15 authority”.

14. In section 32 (1) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State authority”.

## 15. In section 33 of the Commonwealth Act—

- 20 (a) in paragraph (a) of sub-section (3) for the words “under this Act or is formed pursuant to another Act” there were substituted the words “under this Code or is formed pursuant to an Act”;
- (b) in sub-section (4) for the words “under this Act and is not formed pursuant to another Act” there were substituted the words “under this Code and is not formed pursuant to an Act”.

25 16. In section 46 (9) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

17. In section 52 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

30 18. In section 55 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

19. In section 59 of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

20. In section 65 (4) of the Commonwealth Act for the words “that Ordinance” there were substituted the words “that Act”.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

21. In section 77 (1) and (2) of the Commonwealth Act for the matter "1 October 1954" there were substituted the matter "1 January 1937".
22. In section 85 (6) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".
23. In section 90 (6) of the Commonwealth Act—
- 10 (a) for the words "the *Companies (Transitional Provisions) Act* 1981" there were substituted the words "Part III of the *Companies (Application of Laws) Act*, 1981,";
- (b) for the words "as if this Act" there were substituted the words "as if that Act".
24. In section 99 (5) for the words "or any other Act" there were substituted the words "Code or any Act".
- 15 25. In section 122 (1) (a) of the Commonwealth Act for the words "this or any other Act" there were substituted the words "this Code or of any Act".
26. (1) In section 123 (15) of the Commonwealth Act for the words "*Companies (Acquisition of Shares) Act* 1980 or a corresponding law of a participating State or participating Territory, or of regulations made under that Act or under such a corresponding law," there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law,".
- 20
- (2) After section 123 (15) of the Commonwealth Act there were inserted the following sub-section:—
- 25
- (16) Where land is comprised in a strata plan registered under the *Strata Titles Act*, 1973, and at the time of registration of the strata plan the proprietor of that land was a company, the transfer by the company of any lot on the strata plan in exchange for or in satisfaction of a right of a kind referred to in sub-section (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.
- 30
27. In section 129 (6) (a) of the Commonwealth Act for the words "*Act* 1980" there were substituted the words "*(New South Wales) Code*".
28. In section 129 (17) of the Commonwealth Act for the words "if this Act" there were substituted the words "if that Act".
- 35
29. In section 152 (7) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".
30. In section 154 (5) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

31. In paragraph (b) of the definition of "company" in section 164 (1) of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".
- 5 32. In section 172 (5) (a) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".
33. In the definition of "prescribed corporation" in section 189 (1) of the Commonwealth Act for the words "that is under the regulations a prescribed corporation" there were substituted the words "that is, by reason of section 16 (2) of the *Companies (Application of Laws) Act*, 1981, a prescribed corporation".
- 10
34. In section 199 (5) of the Commonwealth Act for the words "an office of the Commission" there were substituted the words "the office of the State Commission".
35. Section 204 (5) of the Commonwealth Act were repealed.
- 15 36. In section 209 (1) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".
37. In section 211 of the Commonwealth Act—
- (a) in sub-section (1) for the words "personal chattel or book debt within the meaning of the *Instruments Ordinance* 1933" there were substituted the words "personal chattel within the meaning of the *Bills of Sale Act* of 1898";
- 20
- (b) in sub-section (1) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (2) for the words "*Instruments Ordinance* 1933" (wherever occurring) there were substituted the words "*Bills of Sale Act* of 1898".
- 25 38. In section 213 of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".
39. In the definition of "exempt benefit" in section 233 (7) of the Commonwealth Act—
- (a) for the matter "1 October 1954" (wherever occurring) there were substituted the matter "1 July 1962";
- 30
- (b) in paragraph (b) for the words "if this Act had not been enacted" there were substituted the words "if the *Companies (Application of Laws) Act*, 1981, had not been enacted".
40. In section 238 (10) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".
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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

41. In section 265 (1) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

5 42. In section 267 (2) of the Commonwealth Act for the words "A company shall" there were substituted the words "Subject to section 9 of the *Evidence (Reproductions) Act, 1967*, a company shall".

43. In section 277 (2) (e) of the Commonwealth Act for the words "*Business Names Ordinance 1963*" there were substituted the words "*Business Names Act, 10 1962*".

44. In section 285 (3) (b) of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

45. In section 289 of the Commonwealth Act—

15 (a) for paragraph (a) of the definition of "relevant authority" in sub-section (1) there were substituted the following paragraphs:—

(a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Commonwealth Minister;

20 (aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Minister; or

(b) for sub-section (7) there were substituted the following sub-section:—

25 (7) An investigation under this Part shall, for the purposes of Part IV of the *Evidence Act, 1898*, be deemed to be a legal proceeding.

46. In section 291 of the Commonwealth Act—

(a) in sub-section (2) for the words "the Minister" (where twice occurring) there were substituted the words "the Commonwealth Minister";

30 (b) in sub-section (4) for the words "the Minister" there were substituted the words "the Minister or the Commonwealth Minister";

(c) in sub-section (6) for the expression "or under sub-section (1) or (2) of this section" there were substituted the expression "or under sub-section (1) of this section or by the Commonwealth Minister under sub-section (2) of this section".

35 47. Section 295 (4) of the Commonwealth Act were repealed.

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

48. In section 306 of the Commonwealth Act—

(a) in sub-section (6) (a) the word “and” (where lastly occurring) were repealed;

5 (b) in sub-section (6) (b) for the word “Commonwealth.” there were substituted the words “State; and”;

(c) after sub-section (6) (b) there were inserted the following paragraph:—

10 (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.

(d) in sub-section (7) for the words “Ministerial Council or the Minister” (where four times occurring) there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”;

15 (e) after sub-section (13) there were inserted the following sub-section:—

(14) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act*, 1898.

49. For section 314 of the Commonwealth Act there were substituted the following section:—

20 314. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

50. In section 315 of the Commonwealth Act—

25 (a) in sub-section (3) for the words “a State or another Territory” there were substituted the words “another State or in a Territory”;

(b) in sub-section (19) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;

30 (c) in sub-section (19) for the words “in the Australian Capital Territory” there were substituted the words “in New South Wales”;

(d) in sub-section (20) for the words “the Australian Capital Territory” there were substituted the words “New South Wales”.

51. In section 317 (4) of the Commonwealth Act—

35 (a) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;



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## SCHEDULE 1—continued.

- (b) for the words "in the Australian Capital Territory" there were substituted the words "in New South Wales".

52. In section 318 of the Commonwealth Act—

- 5 (a) in sub-sections (11), (12), (13) and (15) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917*," whichever are applicable;
- 10 (b) in sub-section (15) for the word "Commonwealth" there were substituted the word "State".

53. For section 322 of the Commonwealth Act there were substituted the following section:—

322. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

15 54. For section 334 of the Commonwealth Act there were substituted the following section:—

334. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

20 55. In section 335 (9) (b) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".

25 56. For section 358 of the Commonwealth Act there were substituted the following section:—

358. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

30 57. In section 398 (2) (d) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".

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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

58. In section 419 of the Commonwealth Act—

- 5 (a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- (b) in sub-section (2) for the words “an action” there were substituted the word “proceedings”.

59. In section 425 (2) of the Commonwealth Act after the matter “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”.

60. In section 427 of the Commonwealth Act—

- (a) for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”;
- 15 (b) for the matter “6 years” in sub-section (6) there were substituted the matter “2 years”.

61. In section 428 of the Commonwealth Act—

- (a) for sub-section (1) there were substituted the following sub-section:—
- 20 (1) There shall be established in the Treasury in the Special Deposits Account an account to be called the “Companies Liquidation Account”.
- (b) in sub-section (2) for the word “Minister” there were substituted the words “Treasurer of New South Wales”;
- (c) sub-section (4) were repealed.

62. In section 441 (h) of the Commonwealth Act—

- 25 (a) for the words in sub-paragraph (i) “an Act or a law of the Territory” there were substituted the words “an Act of the Commonwealth or a law of the Australian Capital Territory”;
- (b) for the words in sub-paragraphs (ii), (iii) and (v) “State Act or law of another Territory” there were substituted the words “Act or Act of any other State or law of a Territory other than the Australian Capital Territory”;
- 30 (c) for the words in sub-paragraph (iv) “an Act” there were substituted the words “an Act of the Commonwealth”.

63. In section 462 of the Commonwealth Act for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”.

35 64. In section 463 of the Commonwealth Act for the word “Commonwealth” there were substituted the word “Crown”.



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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

65. In section 465 of the Commonwealth Act for the words "with the Registrar of the Supreme Court of the Territory" there were substituted the words "in the office of the Prothonotary of the Supreme Court of the State".
- 5 66. In section 466 of the Commonwealth Act for the words "Registrar of the Supreme Court of the Territory" there were substituted the words "Prothonotary of the Supreme Court of the State".
67. In section 467 of the Commonwealth Act for the word "Registrar" there were substituted the word "Prothonotary".
- 10 68. In section 493 (5) of the Commonwealth Act for the words "State Act" there were substituted the words "Act of the Commonwealth or of another State".
69. In section 495 (1) of the Commonwealth Act for the words "State or other Territory" there were substituted the words "other State or in a Territory".
70. In section 516 (7) of the Commonwealth Act—
- 15 (a) for the words "a State, of another Territory" (where twice occurring) there were substituted the words "another State, of a Territory";
- (b) for the words "a State or another Territory" (where twice occurring) there were substituted the words "another State or a Territory";
- 20 (c) in paragraph (e) for the words "State or other Territory" there were substituted the words "other State or of the Territory".
71. Section 531 (3) of the Commonwealth Act were repealed.
72. In section 534 of the Commonwealth Act—
- (a) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*";
- 25 (b) in sub-section (5) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (6) for the words "the Commonwealth" there were substituted the words "New South Wales".
73. After section 552 (16) of the Commonwealth Act there were inserted the  
30 following sub-section:—
- (17) The provisions of this section do not apply to offers of shares in a society, association or union registered under the *Co-operation Act, 1923*, or the *Permanent Building Societies Act, 1967*, or a credit union, association of credit unions or union of associations of credit unions registered under the *Credit*  
35 *Union Act, 1969*.

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

74. In section 568 of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

5 75. In the heading preceding section 576 of the Commonwealth Act the words "and Regulations" were repealed.

76. In section 576 of the Commonwealth Act—

10 (a) for the words "The power to make rules of court conferred by section 28 of the *Australian Capital Territory Supreme Court Act* 1933 extends to making rules of court, not inconsistent with this Act" there were substituted the words "Rules of court, not inconsistent with this Code, may be made under the *Supreme Court Act*, 1970";

(b) at the end of the section there were inserted the following sub-section:—

15 (2) Sub-section (1) does not limit the rule-making powers conferred by the *Supreme Court Act*, 1970.

77. Section 577 of the Commonwealth Act were repealed.

78. In section 578 (2) (a) of the Commonwealth Act for the words "State Act or Ordinance" there were substituted the words "Act of another State or Ordinance of a Territory".

20 79. Sections 580 and 581 of the Commonwealth Act were repealed.

80. Schedule 1 to the Commonwealth Act were repealed.

81. In Schedule 3 to the Commonwealth Act—

(a) for the words "the Act" (wherever occurring) there were substituted the words "the Code";

25 (b) in regulation 1 of Table A—

(i) for the words "Act" means the *Companies Act* 1981' there were substituted the words "'Code" means the *Companies (New South Wales) Code*";

30 (ii) in sub-regulation (2) for the words "Act 1980" there were substituted the words "*(New South Wales) Code*";

(iii) in sub-regulation (2) for the words "*Companies Act* 1981" there were substituted the words "*Companies (New South Wales) Code*";



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SCHEDULE 1—continued.

(c) in regulation 1 of Table B—

- 5 (i) for the words “Act” means the *Companies Act 1981* there were substituted the words “Code” means the *Companies (New South Wales) Code*;
- (ii) in sub-regulation (2) for the words “Act 1980” there were substituted the words “(New South Wales) Code”;
- (iii) in sub-regulation (2) for the words “Companies Act 1981” there were substituted the words “Companies (New South Wales) Code”.

10

SCHEDULE 2.

(Sec. 7.)

The provisions of Regulations in force for the time being under the Commonwealth Act apply as if in those Regulations—

- 15 1. For the words “the Act” (wherever occurring) there were substituted the words “the Code”.
2. For the words “Companies Act 1981” (wherever occurring) there were substituted the words “Companies (New South Wales) Code”.
3. For the words “the Territory” (wherever occurring) there were substituted the words “the State”.
- 20 4. For the words “the Australian Capital Territory” (wherever occurring) there were substituted the words “New South Wales”.
5. For the words “a State or another Territory” or “a State or of another Territory” (wherever occurring) there were substituted the words “another State or a Territory”.
- 25 6. For the words “any other Territory or State” (wherever occurring) there were substituted the words “any other State or Territory”.
7. For the words “Companies Ordinance 1962” (wherever occurring) there were substituted the words “Companies Act, 1961” or the words “Companies Act, 1961,” whichever are applicable.

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*Companies (Application of Laws).*

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## SCHEDULE 2—continued.

8. For the words "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code*".
- 5 9. For the words "*Securities Industry Act 1980*" (wherever occurring) there were substituted the words "*Securities Industry (New South Wales) Code*".
10. For the words "Companies Regulations" (wherever occurring) there were substituted the words "Companies (New South Wales) Regulations".
11. For the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring)  
10 there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917,*" whichever are applicable.

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SCHEDULE 3.

(Sec. 8.)

15 The provisions of Regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth apply as if in those Regulations—

1. A reference in the Schedule to a section, sub-section or paragraph, without an enactment being cited, were to be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

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SCHEDULE 4.

(Sec. 10.)

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The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:—



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*Companies (Application of Laws).*

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## SCHEDULE 4—continued.

## COMPANIES (NEW SOUTH WALES) CODE

- relating to the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters.
- 5

## PART I—PRELIMINARY

1. This Code may be cited as the *Companies (New South Wales) Code*.
2. This Code comes into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
- 10 3. This Code shall be read and construed together with the agreement made on 22 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.
- 15 4. This Code has effect subject to and in accordance with—
  - (a) the *Companies (Application of Laws) Act, 1981*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 5.

20

(Sec. 11.)

The following heading and provisions shall be included in the publication under section 11 of the provisions of Regulations in force for the time being under the Commonwealth Act:—

## COMPANIES (NEW SOUTH WALES) REGULATIONS

- 25 1. (1) These Regulations may be cited as the *Companies (New South Wales) Regulations*.
- (2) These Regulations shall come into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
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*Companies (Application of Laws).*

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## SCHEDULE 6.

(Sec. 12.)

The following heading and provisions shall be included in the publication under section 12 of the provisions of Regulations in force for the time being under the 5 *Companies (Fees) Act* 1981 of the Commonwealth:—

## COMPANIES (FEES) (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the *Companies (Fees) (New South Wales) Regulations*.

(2) These Regulations shall come into operation on the day on which the 10 *Companies (Application of Laws) Act*, 1981, commences.

2. In the Schedule, a reference to a section, sub-section or paragraph, without an enactment being cited, shall be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

3. The fees payable for the purposes of section 8 of the *Companies (Application of 15 Laws) Act*, 1981, are the fees specified in the Schedule in relation to the respective matters so specified.

## SCHEDULE

## FEES

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BY AUTHORITY

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









# CONCURRENCE COPY

## COMPANIES (APPLICATION OF LAWS) BILL, 1981

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### EXPLANATORY NOTE

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

The Miscellaneous Acts (Companies) Amendment Bill, 1981, is cognate with this Bill.

The object of this Bill is to adopt as laws of the State the provisions of the Companies Act 1981 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 (New South Wales) Code".

The Bill contains the following provisions:—

Clause 1. Short title.

Clause 2. Commencement.

Clause 3. Arrangement.

Clause 4. Interpretation.

Clause 5 provides that the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Companies (New South Wales) Code.

Clause 6 applies the provisions of the Companies Act 1981 of the Commonwealth as laws of New South Wales, with amendments as set out in Schedule 1.

Clause 7 applies the provisions of the regulations in force under the Companies Act 1981 of the Commonwealth as regulations made under the provisions applying by reason of the proposed section 6, with amendments to the regulations as set out in Schedule 2.

Clause 8 requires fees to be paid to the Corporate Affairs Commission in respect of documents lodged and other matters connected with the National Companies and Securities Commission. The fees are to be those prescribed by regulations in force under the Companies (Fees) Act 1981 of the Commonwealth, with amendments as set out in Schedule 3.

Clause 9 empowers regulations to be made by the Governor-in-Council which are to have the effect of varying the provisions of regulations applying by reason of the proposed sections 7 and 8.

Clauses 10-12 authorise the publication of the applied laws, as applying in the State, in the form of documents respectively called the "Companies (New South Wales) Code", the "Companies (New South Wales) Regulations" and the "Companies (Fees) (New South Wales) Regulations".

Clause 13 authorises the publication of provisions of the applied laws following amendments made by Commonwealth legislation.

Clause 14 provides that a reference in any State law to a provision of the Code or the Regulations is to be construed as a reference to the corresponding provision of the Commonwealth Act or regulations applying by reason of the proposed sections 6, 7 and 8.

Clause 15 enables amendments to be made by regulations if the Ministerial Council agrees.

Clause 16 enables regulations to be made exempting a company from complying with all or any of the provisions of Division 6 of Part IV of the Code, if the Ministerial Council agrees.

Clauses 17-45 deal with matters of a transitional nature.

Schedule 1 contains amendments to the provisions of the Companies Act 1981 of the Commonwealth in their application to New South Wales.

Schedule 2 contains amendments to the provisions of regulations under the Commonwealth Act in their application to New South Wales.

Schedule 3 contains amendments to the provisions of regulations under the Companies (Fees) Act 1981 of the Commonwealth in their application to New South Wales.

Schedules 4, 5 and 6 set out the headings and preliminary provisions to be included in the provisions to be published under the proposed sections 10-12.

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# **COMPANIES (APPLICATION OF LAWS) BILL, 1981**

No. , 1981.

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## **A BILL FOR**

An Act to make provision for the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters, and for other purposes.

[MR WALKER—30 November, 1981.]

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See also Miscellaneous Acts (Companies) Amendment Bill, 1981.



*Companies (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

**PART I.**

**PRELIMINARY.**

**Short title.**

**1.** This Act may be cited as the "Companies (Application of Laws) Act, 1981".

**10 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 such day as may be appointed by the Governor in respect thereof and as 15 may be notified by proclamation published in the Gazette.

**Division into Parts, &c.**

**3.** This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—APPLICATION OF LAWS—ss. 6–16.

20 PART III.—TRANSITIONAL PROVISIONS—ss. 17–45.

*Companies (Application of Laws).*

**Interpretation.**

4. (1) In this Act, unless the contrary intention appears—

5 “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;

10 “Commission” or “National Commission” means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

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

15 “State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

“the applied provisions” means the provisions applying by reason of sections 6 and 7;

20 “the Commonwealth Act” means the Companies Act 1981 of the Commonwealth.

(2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

25 (3) In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

**Interpretation of Companies (New South Wales) Code.**

5. The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Companies (New South Wales) Code.

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*Companies (Application of Laws).*

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PART II.

APPLICATION OF LAWS.

**Application of Commonwealth Act.**

6. Subject to this Act, the provisions of the Commonwealth Act (other  
5 than sections 1, 2, 3 and 4) apply—

(a) as if amended as set out in Schedule 1; and

(b) subject to and in accordance with the Companies and Securities  
(Interpretation and Miscellaneous Provisions) (Application of  
Laws) Act, 1981,

10 as laws of New South Wales.

**Application of company regulations.**

7. Subject to this Act, the provisions of regulations in force for the time  
being under the Commonwealth Act (other than provisions providing for  
the citation or commencement of the regulations) apply—

15 (a) as if amended as set out in Schedule 2; and

(b) subject to and in accordance with the Companies and Securities  
(Interpretation and Miscellaneous Provisions) (Application of  
Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 6.

**20 Fees payable.**

8. (1) There shall be paid to the State Commission, for and on behalf  
of the State, for or in respect of—

(a) the lodgment of documents with the National Commission under  
the applied provisions;

25 (b) the registration of documents under the applied provisions or the  
inspection or search of registers kept by, or documents in the  
custody of, the National Commission under the applied provisions;



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*Companies (Application of Laws).*

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- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- 5 (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions;
- 10 (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Fees) Act 1981 of the Commonwealth and  
15 specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a  
20 document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving  
25 the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

30 (5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or

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*Companies (Application of Laws).*

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- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

**5 Amendment of regulations pursuant to Agreement.**

9. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Companies (Fees) Act 1981 of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 7 or the regulations referred to in section 8, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- 20 (a) a reference to provisions of regulations applying by reason of section 7 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Companies (Fees) Act 1981 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.
- 25

**Publication of Companies (New South Wales) Code.**

10. (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 and 4), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.
- 30



*Companies (Application of Laws).*

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

- (a) shall include the headings and sections set out in Schedule 4;
- (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 (New South Wales) Code".

(3) A document that is, or purports to be, a copy of the Companies (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 6 as in operation, or to come into operation, in New South Wales as notified in the document in accordance with subsection (2) (b).

**15 Publication of Companies (New South Wales) Regulations.**

11. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 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
- (d) may be cited as the "Companies (New South Wales) Regulations".



*Companies (Application of Laws).*

(3) A document that is, or purports to be, a copy of the Companies (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 7 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 Companies (Fees) (New South Wales) Regulations.**

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Companies (Fees) Act 1981 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 6;
- 15 (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
- 20 (d) may be cited as the "Companies (Fees) (New South Wales) Regulations".

(3) A document that is, or purports to be, a copy of the Companies (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in 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).

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*Companies (Application of Laws).*

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**Publication of provisions of amended Code or regulations.**

**13. (1)** The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

(a) provisions that by reason of—

- 5           (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (ii) the operation of section 6 (including the operation, if applicable, of Schedule 1),

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

10       (b) provisions that by reason of—

- (i) regulations under the Commonwealth Act; and
- (ii) the operation of section 7 (including the operation, if applicable, of Schedule 2),

15       apply, or will apply, as regulations made under the provisions applying by reason of section 6; or

(c) fees that by reason of—

- (i) regulations under the Companies (Fees) Act 1981 of the Commonwealth; and
- 20       (ii) the operation of section 8 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

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

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



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*Companies (Application of Laws).*

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**Interpretation of references to the applied provisions.**

**14. (1)** Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or 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 (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 6;
- 10 (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- (c) a reference to the Companies (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 7;
- 15 (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Companies (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees in force under the Companies (Fees) Act 1981 of the Commonwealth as referred to in section 8; and
- 20 (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 8.

(2) In subsection (1), "provision" includes Part, Division, section, 25 sub-section, paragraph, sub-paragraph, Schedule, form, regulation, clause, sub-clause or other division.

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

**15.** Where, under the Agreement, the Ministerial Council—

- 30 (a) approves—
  - (i) a proposed amendment of the Commonwealth Act;



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*Companies (Application of Laws).*

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- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
  - (iii) a proposed amendment of the Companies (Fees) Act 1981 of the Commonwealth; or
  - 5 (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),
- 10 the Governor may make regulations amending Schedule 1, 2 or 3 or section 8, as the case may be, in accordance with that approval and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 8, as the case may be, of this Act.

**Exemptions from Division 6 of Part IV of the Companies  
15 (New South Wales) Code, &c.**

16. (1) Where the Ministerial Council approves the exemption of a company from complying with all or any of the provisions of Division 6 of Part IV of the Companies (New South Wales) Code in relation to any prescribed interest, or class of prescribed interests, specified by the Ministerial
- 20 Council, the Governor may make regulations exempting that company, subject to such terms and conditions as are specified in the regulations, from so complying.

- (2) Where the Ministerial Council approves the declaration of a right or interest, or a right or interest included in a class or kind of rights or
- 25 interests, as an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, the Governor may make regulations declaring that right or interest, or a right or interest included in that class or kind of rights or interests, to be, subject to such terms and conditions as are
- 30 specified in the regulations, an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of that Division.

*Companies (Application of Laws).*

(3) Where, immediately before the commencement of this Act, a right or interest was, under regulations made under the Companies Act, 1961, an exempt right or interest for the purposes of section 76 (1) (g) or of Division 5 of Part IV of that Act, that right or interest shall be deemed to have been declared by regulations under this section to be an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code.

(4) A right or interest to which subsection (3) applies ceases to be an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code if the Governor makes regulations declaring that it so ceases (which regulations the Governor is hereby authorised to make).

(5) Where the Ministerial Council approves—

- (a) a body corporate incorporated in the State, not being a company within the meaning of the Companies (New South Wales) Code; or
- (b) an unincorporated society, association or other body, formed or established in the State, that has been admitted to the official list of a stock exchange that is a prescribed stock exchange for the purposes of that Code and has not been removed from that official list,

as a prescribed corporation for the purposes of Division 8 of Part IV of that Code, the Governor may make regulations prescribing that body corporate, unincorporated society, association or other body as a prescribed corporation for the purposes of that Division.

(6) Regulations under this section shall be read and construed as one with the Companies (New South Wales) Regulations.



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*Companies (Application of Laws).*

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**PART III.****TRANSITIONAL PROVISIONS.****Interpretation.**

17. Expressions used in this Part that are defined by section 5 of the Companies (New South Wales) Code or in the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code have in this Part, unless the contrary intention appears, the respective meanings given to those expressions by that section or in that Code.

**Exclusion of Companies Act, 1961, &c.**

10 18. (1) The provisions applying by reason of section 6 operate to the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, in relation to acts, matters and things in relation to which the first-mentioned provisions apply.

15 (2) The provisions of subsection (1) do not, unless the contrary intention appears—

(a) revive anything not in force or existing at the time at which the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, takes effect;

(b) affect the previous operation of any of those Acts or anything duly done or suffered under any of those Acts;

25 (c) affect any right, privilege, obligation or liability acquired or incurred under any of those Acts;

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*Companies (Application of Laws).*

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(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any of those Acts; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

(3) For the purposes of the operation of subsection (2)—

(a) the provisions of section 7 (6) to (13) of the Companies Act, 1961, of the Second Schedule to that Act and of any regulations prescribing fees for the purposes of section 7 (11) (b) of that Act; and

(b) any other provisions of that Act or regulations under that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force as if this Act had not been enacted, but it is not a contravention of section 7 (8) of the Companies Act, 1961, as so continuing in force to divulge or communicate information to the Commission or to a person authorized by the Commission to receive that information.

### **Interstate Corporate Affairs Agreement.**

19. The State of New South Wales withdraws from the Interstate Corporate Affairs Agreement and the operation of that agreement is terminated so far as relates to the State.

### **25 General provisions.**

20. Unless the contrary intention appears in this Act or in the Companies (New South Wales) Code all persons, things and circumstances appointed or created by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, or existing or continuing under either of those Acts immediately before the commencement of this Act shall, under and subject to this Act and to the Companies (New South Wales) Code, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.



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*Companies (Application of Laws).*

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**Particular provisions.**

21. Without affecting the generality of section 20, unless the contrary intention appears in this Act, or in the Companies (New South Wales) Code, neither this Act nor the Companies (New South Wales) Code disturbs  
5 the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence,  
10 certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, before the  
15 commencement of this Act.

**Proceedings by or against State Commission to be proceedings by or against National Commission.**

22. (1) Where, before the commencement of this Act, a proceeding under the Companies Act, 1961, had been commenced by or against the  
20 State Commission, the proceeding may be continued by or against the National Commission.

(2) Where, but for the enactment of this Act, a proceeding under the Companies Act, 1961, could have been commenced by or against the State Commission, the proceeding may be commenced by or against the  
25 National Commission.

**Property vested in State Commission vests in National Commission.**

23. Where, immediately before the commencement of this Act, property was vested in the State Commission by reason of the operation of section 310 of the Companies Act, 1961, the property vests by force of this section  
30 in the National Commission and sections 462, 463 and 464 of the Companies (New South Wales) Code apply in relation to the property in like manner as they would apply if the property had vested in the National Commission pursuant to section 461 of that Code.



*Companies (Application of Laws).*

**Registers, funds and accounts.**

**24.** Any register, fund or account kept immediately before the commencement of this Act under any provision of the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, shall be deemed to be  
5 part of a register, fund or account kept under the corresponding provision of the Companies (New South Wales) Code.

**Acts of Minister under Companies Act, 1961, deemed to be acts of Ministerial Council or Commission, &c.**

**25. (1)** In this section—

- 10 “the Act” means the Companies Act, 1961;  
 “the Code” means the Companies (New South Wales) Code;  
 “the Gazette” means the Commonwealth of Australia Gazette.

**(2)** Where the Minister had given consent under section 22 (1) of the Act to the registration of a company or an intended company by a  
 15 specified name and the company had not been registered by that name before the commencement of this Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under section 38 (2) of the Code.

20 **(3)** A licence issued to a company under section 24 of the Act or the corresponding provision of a previous enactment and in force immediately before the commencement of this Act continues in force as if—

- (a) the licence were a licence issued by the Commission under section 66 of the Code; and  
 25 (b) where the company was exempt from complying with provisions of the Act—the licence exempted the company from complying with the corresponding provisions of the Code,

and a reference in the Code to a licence under section 66 of the Code shall  
 be construed as including a reference to a licence to which this subsection  
 30 applies.



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*Companies (Application of Laws).*

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(4) A declaration under section 38 (7) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 97 (7) (b) or (c), as the case may be, of the Code.

5 (5) A notice under section 38 (8) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice by the Commission published under section 97 (9) of the Code.

(6) Where, under section 44 (3) of the Act, an allotment of shares or debentures had been exempted from the operation of section 44 of the  
10 Act, and that exemption was in force immediately before the commencement of this Act, that allotment of shares or debentures shall be deemed to have been exempted by the Commission, under section 105 (3) of the Code, from the operation of section 105 of the Code.

(7) A declaration under section 69A (2) (b) or (c) of the Act and  
15 in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Ministerial Council by order published in the Gazette under section 134 (2) (b) or (c), as the case may be, of the Code.

(8) An approval under section 74 (1) (e) of the Act and in force  
20 immediately before the commencement of this Act shall be deemed to be an approval given by the Commission under section 152 (1) (h) of the Code.

(9) An order under section 74D (2) of the Act and in force  
25 immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 156 (2) of the Code.

(10) Where, under section 74D (2) of the Act, the trustee for the holders of debentures had been directed to apply to the Court for an order under section 74D (4) of the Act and at the commencement of this Act the trustee had not complied with that direction, the trustee shall be deemed to  
30 have been directed by the Commission under section 156 (2) of the Code to apply to the Court for an order under section 156 (4) of the Code.

(11) A declaration under section 74F (4) (d) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 158 (10) of the Code.

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(12) A notice under section 74F (4) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice published by the Commission under section 158 (11) (a) of the Code.

5 (13) A declaration under section 80 (1A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 168 (2) of the Code.

(14) Where, before the commencement of section 4 of the Companies (Further Amendment) Act, 1974, a notice was published under section 88  
10 of the Act purporting to exempt a company, subject to such terms and conditions as were specified in the notice, from complying with the provisions of section 80 (1) of the Act in respect of a deed specified in the notice, the notice—

15 (a) shall, notwithstanding any provision of the Act or the Code, have effect and be deemed always to have had effect according to its tenor; and

(b) may, notwithstanding any provision of the Code, be varied or revoked by the Commission by notice published in the Gazette.

(15) A direction under section 84 (3) of the Act and in force  
20 immediately before the commencement of this Act shall be deemed to be a direction given by the Commission under section 172 (5) of the Code.

(16) A declaration under section 84 (3A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration given by the Commission under section 172 (6) of the Code.

25 (17) Where a company had been exempted by notice under section 88 of the Act from complying, in relation to an interest, or class of interests, specified in the notice, with all or any of the provisions of Division 5 of Part IV of the Act and that exemption was in force immediately before the commencement of this Act, that company is, subject to such terms and  
30 conditions (if any) as were specified in that notice, deemed to have been exempted from complying, in relation to that interest, or class of interests, with the provisions of Division 6 of Part IV of the Code that correspond with the provisions specified in that notice and, for the purposes of section 176 of the Code, the notice shall be deemed to have been a notice published  
35 in the Gazette under section 176 (1).



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*Companies (Application of Laws).*

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(18) An order under section 160 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission published under section 265 (2) of the Code requiring the company to comply with the provisions of Division 5 of Part V of the Code and of the regulations made for the purposes of that Division that correspond with the provisions of the Act specified in the order.

(19) An order under section 162c (1) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (1) of the Code relieving the directors of the company named in the order from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

- (a) where the order required the directors to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and
- (b) where the order was limited to a specified period—to be limited to the same period.

(20) An order under section 162c (2) of the Act in respect of a specified class of companies and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (5) of the Code relieving the directors of companies included in the specified class of companies from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

- (a) where the order required the directors of companies included in the specified class of companies to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and
- (b) where the order was limited to a specified period—to be limited to the same period.

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**(21)** A proclamation by the Governor or a declaration made by the Minister by order published in the Government Gazette under section 334 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 490 (3) of the Code.

**(22)** A proclamation by the Governor or an order by the Minister published in the Government Gazette under section 339 (b) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 495 (2) of the Code.

**(23)** A declaration under section 348 (5) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 516 (7) (b) or (c), as the case may be, of the Code.

**(24)** Where the Minister had given consent under section 353 (1) of the Act to the registration of a foreign company by a specified name and the foreign company had not been registered by that name before the commencement of this Act, the consent shall be deemed to be a consent given by the Ministerial Council under section 38 (2) of the Code.

**(25)** Where the Minister had given consent under section 353 (2) of the Act to the registration of a change in the name of a foreign company to a specified new name and the change of name had not been registered before the commencement of this Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under section 38 (2) of the Code.

**(26)** Where, under section 374 (2) of the Act, a corporation had been exempted from the provisions of section 374 (1) of the Act, and that exemption was in force immediately before the commencement of this Act, that corporation shall be deemed to have been exempted by the Commission by instrument in writing published in the Gazette under section 552 (2) of the Code from the provisions of section 552 (1) of the Code.



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**Names.**

26. (1) A name under which a company was registered under the Companies Act, 1961, immediately before the commencement of this Act shall, for the purposes of Division 2 of Part III of the Companies (New South Wales) Code be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division.

(2) A reference in subsection (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of this Act, was registered under the Companies Act, 1961, as a foreign company, whether that corporation is, for the purposes of the Companies (New South Wales) Code, a recognized company or a foreign company.

(3) Where, immediately before the commencement of this Act, a name was reserved in respect of a recognized company under section 22 (8E) of the Companies Act, 1961, that name shall be deemed to be registered under section 60 of the Companies (New South Wales) Code in respect of that recognized company.

(4) Where, within the period of two months immediately preceding the date of commencement of this Act—

(a) a name was reserved under section 22 (8) of the Companies Act, 1961; or

(b) the period for which a name was reserved under that Act was extended by the State Commission under section 22 (9) of that Act,

the name shall, for the purposes of the Companies (New South Wales) Code be deemed to be reserved under Division 2 of Part III of that Code until the date on which the reservation of that name under the Companies Act, 1961, would have ceased.

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*Companies (Application of Laws).*

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**Continued application of Table A and Table B in certain circumstances.**

27. (1) Nothing in this Act or in the Companies (New South Wales) Code affects—

- 5 (a) Table A, or any part of Table A, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act; or
- 10 (b) Table B, or any part of Table B, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act.
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- (2) This section does not prevent the articles of a company adopting, in accordance with section 75 (1) of the Companies (New South Wales) Code, all or any of the regulations contained in Table A or Table B of Schedule 3 to that Code.
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**Existing prospectuses and section 82 statements.**

28. (1) Where a prospectus was registered under the Companies Act, 1961, within the period of six months before the commencement of this Act, the prospectus shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a prospectus registered under that Code.
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- (2) Where a statement under section 82 of the Companies Act, 1961, was registered under that Act within the period of six months before the commencement of this Act, the statement shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a
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statement that has been registered under Division 1 of Part IV of the Companies (New South Wales) Code as required by section 170 (1) of that Code.

**Interests in partnership agreements.**

5    **29.** Section 169 of the Companies (New South Wales) Code does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that—

- (a) is an interest in a partnership agreement; and
- 10   (b) was subscribed for or first purchased before 1st January, 1972.

**Registration of charges.**

**30. (1)** In this section, “company” includes a foreign company that is registered as a foreign company under the Companies (New South Wales) Code.

15       **(2)** Where, before the commencement of this Act, a company created a relevant charge, or acquired property subject to a relevant charge—

- (a) if the charge was, immediately before the commencement of this Act, registered under Division 7 of Part IV of the Companies Act, 1961—
  - 20       (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
  - 25       (ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code; or

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(b) if the charge was, immediately before the commencement of this Act, registered under the provisions of a law of another State or of a Territory that corresponded with Division 7 of Part IV of the Companies Act, 1961, but was not registered under Division 7 of Part IV of that Act—

(i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and

(ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and such of the particulars mentioned in section 203 (2) of that Code as it is able to ascertain.

(3) Where all the documents relating to a relevant charge on property of a company that were required by Division 7 of Part IV of the Companies Act, 1961, or the provisions of a law of another State or of a Territory that corresponded with that Division to be lodged for registration under that Division or those provisions, as the case may be, were duly lodged not later than 30 days before the date of commencement of this Act but the charge had not been registered under that Division or those provisions before that date and registration had not been refused—

(a) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and

(b) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code.

(4) A charge is a relevant charge for the purposes of subsection (2) or (3) where—

(a) in the case of a charge created by the company—if the charge had been created after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code; or



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- (b) in the case of a charge on property acquired by the company—  
if the company had acquired the property after the commencement  
of this Act, the charge would have been required to be registered  
under Division 9 of Part IV of the Companies (New South Wales)  
5 Code.

- (5) Where two or more charges on the same property of a company  
are deemed by subsection (2) or (3) to be duly registered under Division 9  
of Part IV of the Companies (New South Wales) Code from and including  
the commencement of this Act, those charges have, as between themselves,  
10 the respective priorities that they would have had if this Act had not been  
enacted.

- (6) The time and date to be entered in the Register of Company  
Charges in relation to a charge pursuant to subsection (2) or (3) is 9.00  
a.m. on the date of commencement of this Act.

- 15 (7) Nothing in section 205 of the Companies (New South Wales)  
Code operates to render a charge to which subsection (2) or (3) applies  
void as a security on property of the company as against a liquidator or  
official manager of the company.

(8) Where—

- 20 (a) before the commencement of this Act a company created a charge  
or acquired property subject to a charge, being in either case a  
charge that was required to be registered under Division 7 of  
Part IV of the Companies Act, 1961;
- (b) at the commencement of this Act—
- 25 (i) the charge had not been registered under Division 7 of  
Part IV of the Companies Act, 1961;
- (ii) the charge had not become void under section 100 (1)  
of the Companies Act, 1961; and
- (iii) the property was still subject to the charge;
- 30 (c) if the charge had been created or the property had been acquired,  
after the commencement of this Act, the charge would have been  
required to be registered under Division 9 of Part IV of the  
Companies (New South Wales) Code; and
- (d) subsection (3) does not apply in relation to the charge,

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Division 9 of Part IV of, and Schedule 5 to, the Companies (New South Wales) Code apply as if the company had created the charge, or had acquired the property, as the case may be, at the commencement of this Act, but, where two or more charges on the same property of a company, 5 being charges to which this subsection applies, are registered under Division 9 of Part IV of the Companies (New South Wales) Code then, notwithstanding Schedule 5 to that Code, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under that Division.

10 (9) Notwithstanding the enactment of this Act, the provisions of Division 7 of Part IV of the Companies Act, 1961, as in force immediately before the commencement of this Act continue in force as if this Act had not been enacted in relation to—

- 15 (a) any charge created by a company before the commencement of this Act; or
- (b) any charge to which property acquired by a company before the commencement of this Act was subject when the property was so acquired,

where—

- 20 (c) the charge was required to be registered under Division 7 of Part IV of the Companies Act, 1961; and
- (d) if the charge had been created by the company, or the property subject to the charge had been acquired by the company, after the commencement of this Act, the charge would not have been 25 required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code.

(10) Where a charge referred to in subsection (8) (a) had, before the commencement of this Act, become void under section 100 (1) of the Companies Act, 1961, and the Court, being satisfied that it is just and 30 equitable to do so, makes an order that subsection (8) is to apply in relation to that charge—

- (a) subsection (8) has effect as if the charge had not become void; and
- (b) section 100 (1) of the Companies Act, 1961, shall be deemed not to have rendered the charge void in any respect.



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*Companies (Application of Laws).*

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**Certificate that person is an executive officer of a company.**

31. Where it appears from a return lodged with the Registrar of Companies, the Commissioner for Corporate Affairs or the State Commission pursuant to a previous law of the State with which the Companies  
5 (New South Wales) Code corresponds that a person was at a particular time a manager of a company, the Commission may give a certificate under section 238 (10) of that Code that the person was at that time a principal executive officer of the company.

**Application of Companies (New South Wales) Code to financial years  
10 ending before commencement of this Act.**

32. (1) The provisions of Division 2 of Part VI of the Companies (New South Wales) Code (other than sections 267, 268, 273 and 275) apply in relation to a company, being a company incorporated under the Companies Act, 1961, or a corresponding previous enactment, and to the directors of  
15 such a company, in relation to a financial year or financial years of the company that ended before the commencement of this Act and so apply as if—

- (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than fourteen days before  
20 an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than fourteen days before the end of that period were a requirement that that act or thing be done within the period of five months (or, in the case of an exempt  
25 proprietary company, the period of six months) after the commencement of this Act;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of this Act;
- 30 (c) the reference in section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by subsection (2) of this section to be laid before the company;

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5 (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by subsection (2) of this section to be laid before a company at an annual general meeting; and

(e) a reference in section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of subsection (2) of this section.

10 (2) The directors of a company to which subsection (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of five months or six months, as the case requires, referred to in subsection (1) (a), in respect of each financial year of the company that ended before the commencement of this Act—

15 (a) a copy of the profit and loss account made out in accordance with section 269 (1) of the Companies (New South Wales) Code;

(b) a copy of the balance sheet made out in accordance with section 269 (2) of that Code;

20 (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with section 270 (1) of that Code;

25 (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with section 269 (3) of that Code and a copy of the directors' report made out in accordance with section 270 (2) of that Code in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;

30 (e) a copy of any auditor's report required by section 269 (5) of that Code to be attached to the accounts or group accounts of the company; and

(f) a copy of the statement by the directors required by section 269 (9) or (10) of that Code to be attached to the accounts or group accounts of the company.

35 (3) A reference in subsection (2) to a provision of the Companies (New South Wales) Code shall be read as a reference to that provision of that Code as it applies by virtue of subsection (1).



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(4) For the purposes of this section, an order under section 162c (1) or (2) of the Companies Act, 1961, in relation to the directors of a company or the directors of companies included in a specified class of companies that is, by section 25 (19) or (20) of this Act, deemed to be  
5 an order made by the Commission under section 273 (1) or (5), as the case may be, of the Companies (New South Wales) Code has the same effect unless and until the order is revoked under section 273 (8) of that Code in relation to accounts, group accounts and reports required, by the provisions of Division 2 of Part VI of that Code as applied by subsection (1)  
10 of this section, to be made out by those directors as the order has, by virtue of section 25 (19) or (20), as the case may be, of this Act, in relation to accounts, group accounts and reports required to be made out in accordance with the provisions of that Division.

(5) In this section, "financial year", in relation to a company in  
15 relation to which this section applies, has the same meaning as it has in relation to such a company under the Companies (New South Wales) Code by virtue of paragraph (a) of the definition of "financial year" in section 5 (1) of that Code.

**Annual general meeting held before commencement of this Act.**

20 33. Where, before the commencement of this Act, an annual general meeting of a company was held and at the commencement of this Act the company had not complied with section 158 or 159 of the Companies Act, 1961, in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting  
25 as if this Act had not been enacted.

**Special investigations.**

34. (1) Part VII of the Companies (New South Wales) Code applies to and in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act and so  
30 applies as if—

(a) where an inspector was appointed to carry out the investigation pursuant to an application under section 169 (1) of the Companies Act, 1961—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given pursuant to section  
25 290 (4) of that Code; and

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(b) where an inspector was appointed under section 170 (1) of the Companies Act, 1961, to carry out the investigation—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given in the exercise of a power under section 291 (1) of that Code otherwise than in response to a request made by the Commission under section 291 (4) of that Code.

(2) Where, before the commencement of this Act, an act, matter or thing had been done or had arisen in the course of an investigation to which Part VIA of the Companies Act, 1961, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

**Lodging of accounts by person administering compromise or arrangement.****35. Where—**

(a) section 330 of the Companies (New South Wales) Code applies, by virtue of section 315 (11) of that Code, in relation to a person or persons appointed to administer a compromise or arrangement; and

(b) that person or those persons was or were so appointed before the commencement of this Act,  
references in section 330 of that Code to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of this Act.



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**Winding up.**

36. (1) The provisions of the Companies (New South Wales) Code with respect to winding up other than the provisions of Subdivision F of Division 4 of Part XII do not apply to any company the winding up of which was  
5 commenced before the commencement of this Act and any such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted and, for the purposes of the winding up, the provisions of the Companies Act, 1961, shall apply.

(2) In this section, "company" includes an unregistered company  
10 within the meaning of Division 5 of Part X of the Companies Act, 1961.

**Registered auditors and liquidators.**

37. (1) For the purposes of the Companies (New South Wales) Code, a person who was, immediately before the date of commencement of this Act, registered as an auditor or as a liquidator or appointed as an official liquidator  
15 under the Companies Act, 1961, shall, subject to section 27 of that Code, be deemed to be registered under Division 2 of Part II of that Code as an auditor, as a liquidator or as an official liquidator, as the case may be, for the period of six months commencing on the date of commencement of this Act.

**(2) Where—**

20 (a) a person who is deemed by reason of subsection (1) to be registered under Division 2 of Part II of the Companies (New South Wales) Code as an auditor or as a liquidator for the period of six months commencing on the date of commencement of this Act has applied to be registered under that Division as an auditor or as a  
25 liquidator, as the case may be, within that period of six months; and

(b) at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Code, be deemed to be  
30 registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph (a) and ending—

(c) in the case of an application for registration as an auditor—on the day on which the application is granted or refused; and

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(d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application.

(3) Where the registration as a liquidator of a person to whom subsection (2) applies comes into force under Division 2 of Part II of the Companies (New South Wales) Code, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in paragraph (d) of subsection (2) and ending at the expiration of the day before the day on which that registration comes into force.

(4) A person who is deemed to be registered as an auditor, as a liquidator or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with subsection (1) shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under the Companies (New South Wales) Code.

**Power of Minister to consent to institution of proceeding.****38. Where—**

- (a) the institution of a particular proceeding under the Companies Act, 1961, was subject to the consent of the Minister; and
- (b) the proceeding was not instituted before the commencement of this Act but may be instituted after the commencement of this Act by reason of the operation of section 18 (2) of this Act,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

**Recognized companies.**

39. (1) Where a corporation that is a recognized company for the purposes of the Companies (New South Wales) Code was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, the registered office of that corporation in the State the situation of which was specified—

- (a) in a case to which paragraph (b) does not apply—in a notice lodged under section 346 (1) of that Act; or



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(b) if a notice or notices have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices, shall be deemed to be the principal office within the State of the corporation  
5 for the purposes of section 507 of the Companies (New South Wales) Code.

**(2) Where—**

- 10 (a) before the commencement of this Act, an act, matter or thing had been done or commenced under the Companies Act, 1961, in relation to a corporation that was a foreign company for the purposes of that Act;
- (b) the corporation is a recognized company for the purposes of the Companies (New South Wales) Code; and
- 15 (c) that act, matter or thing could have been done or commenced under the Companies (New South Wales) Code after the commencement of this Act in relation to a recognized company,
- that act, matter or thing shall be deemed to have been done or commenced, as the case may be, and, in the case of an act, matter or thing that has been commenced, may be continued or completed under the Companies (New South Wales) Code, in relation to that corporation as a recognized company.

**20 Recognized companies under corresponding laws.**

**40. (1)** Section 501 of the Companies (New South Wales) Code applies in relation to a company that, immediately before the commencement of this Act, had a place of business or carried on business in a State or Territory that is a participating State or participating Territory as if the company had  
25 established a place of business or commenced to carry on business, as the case may be, in that State or Territory at the commencement of this Act.

**(2)** Where a company had, before the commencement of this Act, lodged under the provisions of a law of a State or Territory that is a participating State or participating Territory that corresponds with section  
30 346 (1A) or 347 (1A) of the Companies Act, 1961, a notice or notices that specified the days and hours during which the registered office of the company in that State or Territory was open and accessible to the public, the company

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shall, for the purposes of section 502 (2) of the Companies (New South Wales) Code, be deemed to have lodged a notice under section 501 (2) of that Code in relation to that State or Territory.

(3) Where, immediately before the commencement of this Act, a company maintained a branch register in a State or Territory that is a participating State or participating Territory in accordance with the provision of the law of that State or Territory that corresponded with section 354 of the Companies Act, 1961, that register shall be deemed to be a branch register of the company kept under section 262 of the Companies (New South Wales) Code and section 262 of that Code applies in relation to that register as if it had been established, and as if the office where it is kept had been opened, on the date of commencement of this Act.

**Foreign companies.**

41. (1) A corporation formed outside the State, other than a corporation that is a recognised company for the purposes of the Companies (New South Wales) Code, that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, shall be deemed to be registered, as from the commencement of this Act, as a foreign company for the purposes of the Companies (New South Wales) Code.

20 (2) A corporation formed outside Australia and the external Territories that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, may within one month after the date of commencement of this Act, or within such further period as the Commission allows, lodge with the Commission a notice in the 25 prescribed form—

- (a) stating whether the corporation wishes to continue to be registered as a foreign company under the Companies (New South Wales) Code; and
- (b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Code—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of this Act and which is a



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participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.

(3) A corporation is not entitled pursuant to subsection (2) (b)—

- 5 (a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory; or
- 10 (b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.

(4) Where a corporation to which subsection (2) applies lodges with the Commission a notice under that subsection specifying pursuant to  
15 subsection (2) (b) a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—

- (a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the Companies (New South Wales) Code; and
- 20 (b) the registered office of the corporation in the State the situation of which was specified—
- (i) in a case to which subparagraph (ii) does not apply—in a notice lodged under section 346 (1) of the Companies Act, 1961; or
- 25 (ii) if a notice or notices has or have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the  
30 corporation for the purposes of section 507 of the Companies (New South Wales) Code.

(5) In this section, “external Territory” means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a  
35 Territory provision is made by an Act of the Commonwealth.

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**Commission may destroy or dispose of documents.**

42. (1) Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that is a recognized company for the purposes of that Code was, immediately before the commencement of this Act, a recognized company under the Companies Act, 1961, or was registered as a foreign company under that Act, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

(2) Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, becomes a recognized foreign company for the purposes of that Code, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

**Marketable Securities Act, 1970.**

43. (1) A sufficient instrument of transfer under the Marketable Securities Act, 1970, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of this Act has the same effect, and may be used and dealt with, as if this Act had not been enacted.

(2) An agreement, application, acceptance, warranty or indemnity deemed by the Marketable Securities Act, 1970, to have been made or given by a person continues to operate and has the same force and effect as if this Act had not been enacted.

**Court may resolve difficulties.**

44. (1) Where any difficulty arises in the application to a particular matter of this Part, or in the application to a particular matter of any of the provisions of the Companies (New South Wales) Code, the Companies Act, 1961, or the Marketable Securities Act, 1970, by reason of the operation of



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this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order made under subsection (1) has effect notwithstanding anything contained in this Act or in the Companies (New South Wales) 5 Code, the Companies Act, 1961, or the Marketable Securities Act, 1970.

(3) In subsection (1), "Court" means the Supreme Court of New South Wales.

**Regulations.**

45. (1) The Governor may make regulations, not inconsistent with this 10 Part, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Regulations prescribing matters for the purposes of this Part may prescribe those matters by reference to regulations for the time being in 15 force under the Companies (Transitional Provisions) Act 1981 of the Commonwealth.

(3) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

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*Companies (Application of Laws).*

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## SCHEDULE 1.

(Sec. 6.)

The provisions of the Commonwealth Act apply as if—

## 1. Unless inconsistent with another provision of this Schedule—

- 5 (a) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
- 10 (b) for the words “of a State or of another Territory” and “of a State or another Territory” in the Commonwealth Act (wherever occurring otherwise than immediately after the word “law”) there were substituted the words “of another State or of a Territory”;
- 15 (c) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the words “commencement of the *Companies (Application of Laws) Act, 1981*” or the words “commencement of the *Companies (Application of Laws) Act, 1981*,” whichever are applicable;
- (d) for the words “*Companies (Acquisition of Shares) Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies (Acquisition of Shares) (New South Wales) Code*”;
- 20 (e) for the words “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961*,” whichever are applicable;
- 25 (f) for the words “*Securities Industry Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Securities Industry (New South Wales) Code*”;
- (g) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “the State”;
- 30 (h) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”.

## 2. In section 5 (1) of the Commonwealth Act—

- (a) after the definition of “banker’s books” there were inserted the following definition:—
- 35 “*Banking Act 1959*” means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being;
- (b) after the definition of “banking corporation” there were inserted the following definition:—
- “*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;



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## SCHEDULE 1—continued.

- (c) for the definition of "*Companies Ordinance 1962*" there were substituted the following definitions:—
- 5       "Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the *Companies Act 1981* of the Commonwealth as amended and in force for the time being;
- "*Companies (New South Wales) Code*" or "Code" means the provisions applying by reason of section 6 of the *Companies (Application of Laws) Act, 1981*;
- 10     (d) in the definition of "corporation" for paragraphs (c) and (d) there were substituted the following paragraphs:—
- (c) any society, association or union registered under the *Co-operation Act, 1923*;
- 15       (d) any society or association registered under the *Permanent Building Societies Act, 1967*;
- (e) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the *Credit Union Act, 1969*; or
- 20       (f) any foreign company or recognized company in respect of which an exemption from compliance with—
- (i) section 61 (1) of the *Co-operation Act, 1923*;
- (ii) section 35 (1) of the *Permanent Building Societies Act, 1967*;
- or
- (iii) section 28 (1) of the *Credit Union Act, 1969*,
- 25       is for the time being in force;
- (e) after the definition of "insolvent under administration" there were inserted the following definition:—
- "*Insurance Act 1973*" means the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being;
- 30     (f) after the definition of "leave of absence" there were inserted the following definition:—
- "*Life Insurance Act 1945*" means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;
- 35     (g) in the definition of "lodged" for paragraph (b) there were substituted the following paragraph:—
- (b) in relation to a prescribed State authority—lodged or filed with that authority under any corresponding previous law of the State;
- (h) after the definition of "mining purposes" there were inserted the following definitions:—
- 40       "Minister" means the Minister of State for New South Wales for the time being administering the *Companies (Application of Laws) Act, 1981*;

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

“National Companies and Securities Commission Act 1979” means the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being;

- 5 (i) after the definition of “prescribed interest” there were inserted the following definition:—

“prescribed State authority” means—

- 10 (a) the Registrar of Companies;  
(b) the Commissioner for Corporate Affairs; or  
(c) the Corporate Affairs Commission;

- (j) the definition of “Registrar of Companies” were repealed;

- (k) before the definition of “related corporation” there were inserted the following definition:—

15 “regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the *Companies (Application of Laws) Act, 1981*;

- (l) for the definition of “rules” there were substituted the following definition:—

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

- 20 (m) after the definition of “special resolution” there were inserted the following definition:—

“State Commission” means the Corporate Affairs Commission continued in existence by the *Corporate Affairs Commission Act, 1981*;

3. After section 5 (9) of the Commonwealth Act there were inserted the following sub-section:—

- 25 (10) In this Code—

- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of New South Wales or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the *Companies Act, 1961*; and  
30 (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the *Companies Act, 1961*.



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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

4. For paragraphs (a) and (b) of section 12 (1) of the Commonwealth Act there were substituted the following paragraphs:—

- 5 (a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act*, 1981, or under a law of a participating State or of a participating Territory that corresponds with such a relevant Code; or
- 10 (b) where the requirement relates to a matter that constitutes or may constitute—
- (i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);
- (ii) a contravention of, or failure to comply with, a provision of the *Companies Act*, 1961, as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act; or
- 15 (iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.

5. In section 13 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”.

6. In section 18 (7) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act*, 1945”.

7. In section 19 of the Commonwealth Act after the words “Auditor-General” there were inserted the words “of New South Wales”.

8. In section 20 (8) (a) and (9) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act*, 1945”.

9. For section 22 (4) of the Commonwealth Act there were substituted the following sub-section:—

(4) In this section, “local authority” means the State Commission.

10. In section 27 (21), (22) and (23) of the Commonwealth Act for the words “debt due to the Commonwealth” there were substituted the words “debt due to the Crown”.

11. In section 27 (28) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act*, 1945”.

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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

12. In section 30 of the Commonwealth Act—

- 5 (a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- 10 (b) in sub-section (2) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- (c) in sub-section (3) for the words “an action” there were substituted the word “proceedings”.

13. In section 31 (2) and (5) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State  
15 authority”.

14. In section 32 (1) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State authority”.

15. In section 33 of the Commonwealth Act—

- 20 (a) in paragraph (a) of sub-section (3) for the words “under this Act or is formed pursuant to another Act” there were substituted the words “under this Code or is formed pursuant to an Act”;
- (b) in sub-section (4) for the words “under this Act and is not formed pursuant to another Act” there were substituted the words “under this Code and is not formed pursuant to an Act”.

25 16. In section 46 (9) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

17. In section 52 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

30 18. In section 55 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

19. In section 59 of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

20. In section 65 (4) of the Commonwealth Act for the words “that Ordinance” there were substituted the words “that Act”.



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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

21. In section 77 (1) and (2) of the Commonwealth Act for the matter "1 October 1954" there were substituted the matter "1 January 1937".
22. In section 85 (6) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".
23. In section 90 (6) of the Commonwealth Act—
- 10 (a) for the words "the *Companies (Transitional Provisions) Act 1981*" there were substituted the words "Part III of the *Companies (Application of Laws) Act, 1981*";
- (b) for the words "as if this Act" there were substituted the words "as if that Act".
24. In section 99 (5) for the words "or any other Act" there were substituted the words "Code or any Act".
- 15 25. In section 122 (1) (a) of the Commonwealth Act for the words "this or any other Act" there were substituted the words "this Code or of any Act".
26. (1) In section 123 (15) of the Commonwealth Act for the words "*Companies (Acquisition of Shares) Act 1980* or a corresponding law of a participating State or participating Territory, or of regulations made under that Act or under such a corresponding law," there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law,".
- 20 (2) After section 123 (15) of the Commonwealth Act there were inserted the following sub-section:—
- 25 (16) Where land is comprised in a strata plan registered under the *Strata Titles Act, 1973*, and at the time of registration of the strata plan the proprietor of that land was a company, the transfer by the company of any lot on the strata plan in exchange for or in satisfaction of a right of a kind referred to in sub-section (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.
- 30 27. In section 129 (6) (a) of the Commonwealth Act for the words "*Act 1980*" there were substituted the words "*(New South Wales) Code*".
28. In section 129 (17) of the Commonwealth Act for the words "if this Act" there were substituted the words "if that Act".
- 35 29. In section 152 (7) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".
30. In section 154 (5) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

31. In paragraph (b) of the definition of "company" in section 164 (1) of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".

- 5 32. In section 172 (5) (a) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

10 33. In the definition of "prescribed corporation" in section 189 (1) of the Commonwealth Act for the words "that is under the regulations a prescribed corporation" there were substituted the words "that is, by reason of section 16 (2) of the *Companies (Application of Laws) Act*, 1981, a prescribed corporation".

34. In section 199 (5) of the Commonwealth Act for the words "an office of the Commission" there were substituted the words "the office of the State Commission".

35. Section 204 (5) of the Commonwealth Act were repealed.

- 15 36. In section 209 (1) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".

37. In section 211 of the Commonwealth Act—

- 20 (a) in sub-section (1) for the words "personal chattel or book debt within the meaning of the *Instruments Ordinance* 1933" there were substituted the words "personal chattel within the meaning of the *Bills of Sale Act of 1898*";
- (b) in sub-section (1) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (2) for the words "*Instruments Ordinance* 1933" (wherever occurring) there were substituted the words "*Bills of Sale Act of 1898*".

- 25 38. In section 213 of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".

39. In the definition of "exempt benefit" in section 233 (7) of the Commonwealth Act—

- 30 (a) for the matter "1 October 1954" (wherever occurring) there were substituted the matter "1 July 1962";
- (b) in paragraph (b) for the words "if this Act had not been enacted" there were substituted the words "if the *Companies (Application of Laws) Act*, 1981, had not been enacted".

40. In section 238 (10) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".

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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

41. In section 265 (1) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".
- 5 42. In section 267 (2) of the Commonwealth Act for the words "A company shall" there were substituted the words "Subject to section 9 of the *Evidence (Reproductions) Act*, 1967, a company shall".
43. In section 277 (2) (e) of the Commonwealth Act for the words "*Business Names Ordinance* 1963" there were substituted the words "*Business Names Act*, 10 1962".
44. In section 285 (3) (b) of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".
45. In section 289 of the Commonwealth Act—
- 15 (a) for paragraph (a) of the definition of "relevant authority" in sub-section (1) there were substituted the following paragraphs:—
- (a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Commonwealth Minister;
- 20 (aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Minister; or
- (b) for sub-section (7) there were substituted the following sub-section:—
- (7) An investigation under this Part shall, for the purposes of Part IV 25 of the *Evidence Act*, 1898, be deemed to be a legal proceeding.
46. In section 291 of the Commonwealth Act—
- (a) in sub-section (2) for the words "the Minister" (where twice occurring) there were substituted the words "the Commonwealth Minister";
- (b) in sub-section (4) for the words "the Minister" there were substituted the 30 words "the Minister or the Commonwealth Minister";
- (c) in sub-section (6) for the expression "or under sub-section (1) or (2) of this section" there were substituted the expression "or under sub-section (1) of this section or by the Commonwealth Minister under sub-section (2) of this section".
- 35 47. Section 295 (4) of the Commonwealth Act were repealed.

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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

48. In section 306 of the Commonwealth Act—

- (a) in sub-section (6) (a) the word “and” (where lastly occurring) were repealed;
- 5 (b) in sub-section (6) (b) for the word “Commonwealth.” there were substituted the words “State; and”;
- (c) after sub-section (6) (b) there were inserted the following paragraph:—
  - 10 (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.
- (d) in sub-section (7) for the words “Ministerial Council or the Minister” (where four times occurring) there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”;
- 15 (e) after sub-section (13) there were inserted the following sub-section:—
  - (14) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act*, 1898.

49. For section 314 of the Commonwealth Act there were substituted the following section:—

- 20 314. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

50. In section 315 of the Commonwealth Act—

- 25 (a) in sub-section (3) for the words “a State or another Territory” there were substituted the words “another State or in a Territory”;
- (b) in sub-section (19) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;
- 30 (c) in sub-section (19) for the words “in the Australian Capital Territory” there were substituted the words “in New South Wales”;
- (d) in sub-section (20) for the words “the Australian Capital Territory” there were substituted the words “New South Wales”.

51. In section 317 (4) of the Commonwealth Act—

- 35 (a) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;



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## SCHEDULE 1—continued.

- (b) for the words "in the Australian Capital Territory" there were substituted the words "in New South Wales".

52. In section 318 of the Commonwealth Act—

- 5 (a) in sub-sections (11), (12), (13) and (15) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917*," whichever are applicable;
- 10 (b) in sub-section (15) for the word "Commonwealth" there were substituted the word "State".

53. For section 322 of the Commonwealth Act there were substituted the following section:—

322. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

- 15 54. For section 334 of the Commonwealth Act there were substituted the following section:—

334. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

- 20 55. In section 335 (9) (b) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".

- 25 56. For section 358 of the Commonwealth Act there were substituted the following section:—

358. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

- 30 57. In section 398 (2) (d) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

58. In section 419 of the Commonwealth Act—

(a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;

(b) in sub-section (2) for the words “an action” there were substituted the word “proceedings”.

59. In section 425 (2) of the Commonwealth Act after the matter “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”.

60. In section 427 of the Commonwealth Act—

(a) for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”;

(b) for the matter “6 years” in sub-section (6) there were substituted the matter “2 years”.

61. In section 428 of the Commonwealth Act—

(a) for sub-section (1) there were substituted the following sub-section:—

(1) There shall be established in the Treasury in the Special Deposits Account an account to be called the “Companies Liquidation Account”.

(b) in sub-section (2) for the word “Minister” there were substituted the words “Treasurer of New South Wales”;

(c) sub-section (4) were repealed.

62. In section 441 (h) of the Commonwealth Act—

(a) for the words in sub-paragraph (i) “an Act or a law of the Territory” there were substituted the words “an Act of the Commonwealth or a law of the Australian Capital Territory”;

(b) for the words in sub-paragraphs (ii), (iii) and (v) “State Act or law of another Territory” there were substituted the words “Act or Act of any other State or law of a Territory other than the Australian Capital Territory”;

(c) for the words in sub-paragraph (iv) “an Act” there were substituted the words “an Act of the Commonwealth”.

63. In section 462 of the Commonwealth Act for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”.

64. In section 463 of the Commonwealth Act for the word “Commonwealth” there were substituted the word “Crown”.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

65. In section 465 of the Commonwealth Act for the words "with the Registrar of the Supreme Court of the Territory" there were substituted the words "in the office of the Prothonotary of the Supreme Court of the State".

- 5 66. In section 466 of the Commonwealth Act for the words "Registrar of the Supreme Court of the Territory" there were substituted the words "Prothonotary of the Supreme Court of the State".

67. In section 467 of the Commonwealth Act for the word "Registrar" there were substituted the word "Prothonotary".

- 10 68. In section 493 (5) of the Commonwealth Act for the words "State Act" there were substituted the words "Act of the Commonwealth or of another State".

69. In section 495 (1) of the Commonwealth Act for the words "State or other Territory" there were substituted the words "other State or in a Territory".

70. In section 516 (7) of the Commonwealth Act—

- 15 (a) for the words "a State, of another Territory" (where twice occurring) there were substituted the words "another State, of a Territory";
- (b) for the words "a State or another Territory" (where twice occurring) there were substituted the words "another State or a Territory";
- 20 (c) in paragraph (e) for the words "State or other Territory" there were substituted the words "other State or of the Territory".

71. Section 531 (3) of the Commonwealth Act were repealed.

72. In section 534 of the Commonwealth Act—

- (a) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*";
- 25 (b) in sub-section (5) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (6) for the words "the Commonwealth" there were substituted the words "New South Wales".

73. After section 552 (16) of the Commonwealth Act there were inserted the 30 following sub-section:—

- (17) The provisions of this section do not apply to offers of shares in a society, association or union registered under the *Co-operation Act, 1923*, or the *Permanent Building Societies Act, 1967*, or a credit union, association of credit unions or union of associations of credit unions registered under the *Credit*
- 35 *Union Act, 1969*.

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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

74. In section 568 of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

5 75. In the heading preceding section 576 of the Commonwealth Act the words "and Regulations" were repealed.

76. In section 576 of the Commonwealth Act—

10 (a) for the words "The power to make rules of court conferred by section 28 of the *Australian Capital Territory Supreme Court Act* 1933 extends to making rules of court, not inconsistent with this Act" there were substituted the words "Rules of court, not inconsistent with this Code, may be made under the *Supreme Court Act*, 1970";

(b) at the end of the section there were inserted the following sub-section:—  
15 (2) Sub-section (1) does not limit the rule-making powers conferred by the *Supreme Court Act*, 1970.

77. Section 577 of the Commonwealth Act were repealed.

78. In section 578 (2) (a) of the Commonwealth Act for the words "State Act or Ordinance" there were substituted the words "Act of another State or Ordinance of a Territory".

20 79. Sections 580 and 581 of the Commonwealth Act were repealed.

80. Schedule 1 to the Commonwealth Act were repealed.

81. In Schedule 3 to the Commonwealth Act—

- (a) for the words "the Act" (wherever occurring) there were substituted the words "the Code";
- 25 (b) in regulation 1 of Table A—
- (i) for the words "Act" means the *Companies Act* 1981' there were substituted the words "Code" means the *Companies (New South Wales) Code*;
- (ii) in sub-regulation (2) for the words "Act 1980" there were substituted the words "(*New South Wales*) Code";
- 30 (iii) in sub-regulation (2) for the words "*Companies Act* 1981" there were substituted the words "*Companies (New South Wales) Code*";



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*Companies (Application of Laws).*

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## SCHEDULE 1—continued.

(c) in regulation 1 of Table B—

- 5 (i) for the words ‘“Act” means the *Companies Act 1981*’ there were substituted the words ‘“Code” means the *Companies (New South Wales) Code*’;
- (ii) in sub-regulation (2) for the words “Act 1980” there were substituted the words “(New South Wales) Code”;
- (iii) in sub-regulation (2) for the words “Companies Act 1981” there were substituted the words “Companies (New South Wales) Code”.

10

## SCHEDULE 2.

(Sec. 7.)

The provisions of Regulations in force for the time being under the Commonwealth Act apply as if in those Regulations—

- 15 1. For the words “the Act” (wherever occurring) there were substituted the words “the Code”.
2. For the words “Companies Act 1981” (wherever occurring) there were substituted the words “Companies (New South Wales) Code”.
3. For the words “the Territory” (wherever occurring) there were substituted the words “the State”.
- 20 4. For the words “the Australian Capital Territory” (wherever occurring) there were substituted the words “New South Wales”.
5. For the words “a State or another Territory” or “a State or of another Territory” (wherever occurring) there were substituted the words “another State or a Territory”.
- 25 6. For the words “any other Territory or State” (wherever occurring) there were substituted the words “any other State or Territory”.
7. For the words “Companies Ordinance 1962” (wherever occurring) there were substituted the words “Companies Act, 1961” or the words “Companies Act, 1961,” whichever are applicable.

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*Companies (Application of Laws).*

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## SCHEDULE 2—continued.

8. For the words "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code*".

5 9. For the words "*Securities Industry Act 1980*" (wherever occurring) there were substituted the words "*Securities Industry (New South Wales) Code*".

10. For the words "*Companies Regulations*" (wherever occurring) there were substituted the words "*Companies (New South Wales) Regulations*".

11. For the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) 10 there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917*," whichever are applicable.

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SCHEDULE 3.

(Sec. 8.)

15 The provisions of Regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth apply as if in those Regulations—

1. A reference in the Schedule to a section, sub-section or paragraph, without an enactment being cited, were to be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

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SCHEDULE 4.

(Sec. 10.)

20 The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:—



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*Companies (Application of Laws).*

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## SCHEDULE 4—continued.

## COMPANIES (NEW SOUTH WALES) CODE

- relating to the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters.

## PART I—PRELIMINARY

1. This Code may be cited as the *Companies (New South Wales) Code*.
2. This Code comes into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
- 10 3. This Code shall be read and construed together with the agreement made on 22 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.
- 15 4. This Code has effect subject to and in accordance with—
  - (a) the *Companies (Application of Laws) Act, 1981*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 5.

(Sec. 11.)

The following heading and provisions shall be included in the publication under section 11 of the provisions of Regulations in force for the time being under the Commonwealth Act:—

## COMPANIES (NEW SOUTH WALES) REGULATIONS

- 25 1. (1) These Regulations may be cited as the *Companies (New South Wales) Regulations*.
  - (2) These Regulations shall come into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
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*Companies (Application of Laws).*

SCHEDULE 6.

(Sec. 12.)

The following heading and provisions shall be included in the publication under section 12 of the provisions of Regulations in force for the time being under the 5 *Companies (Fees) Act* 1981 of the Commonwealth:—

COMPANIES (FEES) (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the *Companies (Fees) (New South Wales) Regulations*.

(2) These Regulations shall come into operation on the day on which the 10 *Companies (Application of Laws) Act*, 1981, commences.

2. In the Schedule, a reference to a section, sub-section or paragraph, without an enactment being cited, shall be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

3. The fees payable for the purposes of section 8 of the *Companies (Application of 15 Laws) Act*, 1981, are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEES

BY AUTHORITY

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

(\$1.80)









**COMPANIES (APPLICATION OF LAWS) ACT, 1981, No. 122**

**New South Wales**



ANNO TRICESIMO

**ELIZABETHÆ II REGINÆ**

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**Act No. 122, 1981.**

An Act to make provision for the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters, and for other purposes. [Assented to, 30th December, 1981.]

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See also Miscellaneous Acts (Companies) Amendment Act, 1981.

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*Companies (Application of Laws).*

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**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:—

**PART I.**

**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the "Companies (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 such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

**Division into Parts, &c.**

3. This Act is divided into Parts as follows:—

PART I.—PRELIMINARY—ss. 1–5.

PART II.—APPLICATION OF LAWS—ss. 6–16.

PART III.—TRANSITIONAL PROVISIONS—ss. 17–45.



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*Companies (Application of Laws).*

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**Interpretation.**

**4. (1)** 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;

“Commission” or “National Commission” means the National Companies and Securities Commission established by the National Companies and Securities Commission Act 1979 of the Commonwealth;

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

“State Commission” means the Corporate Affairs Commission continued in existence by the Corporate Affairs Commission Act, 1981;

“the applied provisions” means the provisions applying by reason of sections 6 and 7;

“the Commonwealth Act” means the Companies Act 1981 of the Commonwealth.

**(2)** In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.

**(3)** In this Act, a reference to the commencement of this Act is a reference to the commencement of this Act except sections 1 and 2.

**Interpretation of Companies (New South Wales) Code.**

**5.** The Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981, applies to the Companies (New South Wales) Code.

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*Companies (Application of Laws).*

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**PART II.****APPLICATION OF LAWS.****Application of Commonwealth Act.**

**6.** Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2, 3 and 4) apply—

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as laws of New South Wales.

**Application of company regulations.**

**7.** Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply—

- (a) as if amended as set out in Schedule 2; and
- (b) subject to and in accordance with the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981,

as regulations made under the provisions applying by reason of section 6.

**Fees payable.**

**8. (1)** There shall be paid to the State Commission, for and on behalf of the State, for or in respect of—

- (a) the lodgment of documents with the National Commission under the applied provisions;
- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the National Commission under the applied provisions;



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*Companies (Application of Laws).*

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- (c) the production by the National Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the National Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of licences, consents or approvals or the doing of other acts or things by the Ministerial Council or the National Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Ministerial Council or the National Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the National Commission of documents for examination by the National Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the Companies (Fees) Act 1981 of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, the expressions used had the same respective meanings as in the applied provisions.

(2) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the National Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.

(3) Where a fee is payable to the State Commission for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Ministerial Council or the National Commission, the Ministerial Council or the National Commission shall not do that act or thing until the fee has been paid.

(4) This section has effect notwithstanding anything contained in the applied provisions.

(5) Nothing in this section prevents the State Commission for and on behalf of the State from—

- (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or



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*Companies (Application of Laws).*

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- (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.

(6) In this section, unless the contrary intention appears, expressions used have the same respective meanings as in the applied provisions.

**Amendment of regulations pursuant to Agreement.**

9. (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Commonwealth Act or the Companies (Fees) Act 1981 of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 7 or the regulations referred to in section 8, as the case may be.

(2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as so amended shall be Schedule 2 or 3, as the case may be, to this Act.

(3) In this Act—

- (a) a reference to provisions of regulations applying by reason of section 7 includes a reference to provisions as so applying as amended in accordance with this section; and
- (b) a reference to fees prescribed by regulations under the Companies (Fees) Act 1981 of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

**Publication of Companies (New South Wales) Code.**

10. (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 and 4), amended as set out in Schedule 1 and in operation, or to come into operation, in New South Wales.



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*Companies (Application of Laws).*

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

- (a) shall include the headings and sections set out in Schedule 4;
- (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 (New South Wales) Code”.

**(3)** A document that is, or purports to be, a copy of the Companies (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 6 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 Companies (New South Wales) Regulations.**

**11. (1)** The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 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
- (d) may be cited as the “Companies (New South Wales) Regulations”.

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*Companies (Application of Laws).*

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(3) A document that is, or purports to be, a copy of the Companies (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions applying by reason of section 7 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 Companies (Fees) (New South Wales) Regulations.**

12. (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the Companies (Fees) Act 1981 of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation, in New South Wales.

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

- (a) shall include the headings and provisions set out in Schedule 6;
- (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 (Fees) (New South Wales) Regulations".

(3) A document that is, or purports to be, a copy of the Companies (Fees) (New South Wales) Regulations that has been, or purports to have been, published in accordance with this section is prima facie evidence of the provisions of the Schedule to regulations referred to in 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).



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*Companies (Application of Laws).*

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**Publication of provisions of amended Code or regulations.**

**13. (1)** The Minister may from time to time authorize the publication by the Government Printer of a document setting out—

(a) provisions that by reason of—

- (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and
- (ii) the operation of section 6 (including the operation, if applicable, of Schedule 1),

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

(b) provisions that by reason of—

- (i) regulations under the Commonwealth Act; and
- (ii) the operation of section 7 (including the operation, if applicable, of Schedule 2),

apply, or will apply, as regulations made under the provisions applying by reason of section 6; or

(c) fees that by reason of—

- (i) regulations under the Companies (Fees) Act 1981 of the Commonwealth; and
- (ii) the operation of section 8 (including the operation, if applicable, of Schedule 3),

are, or will be, payable under that section.

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

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

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*Companies (Application of Laws).*

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**Interpretation of references to the applied provisions.**

**14. (1)** Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or 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 (New South Wales) Code is a reference to the provisions of the Commonwealth Act applying by reason of section 6;
- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
- (c) a reference to the Companies (New South Wales) Regulations is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 7;
- (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
- (e) a reference to the Companies (Fees) (New South Wales) Regulations is a reference to the Schedule to regulations prescribing fees in force under the Companies (Fees) Act 1981 of the Commonwealth as referred to in section 8; and
- (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations prescribing fees in force under that Act as referred to in section 8.

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

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

**15.** Where, under the Agreement, the Ministerial Council—

- (a) approves—
  - (i) a proposed amendment of the Commonwealth Act;



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*Companies (Application of Laws).*

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- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
  - (iii) a proposed amendment of the Companies (Fees) Act 1981 of the Commonwealth; or
  - (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations amending Schedule 1, 2 or 3 or section 8, as the case may be, in accordance with that approval and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 8, as the case may be, of this Act.

**Exemptions from Division 6 of Part IV of the Companies  
(New South Wales) Code, &c.**

**16. (1)** Where the Ministerial Council approves the exemption of a company from complying with all or any of the provisions of Division 6 of Part IV of the Companies (New South Wales) Code in relation to any prescribed interest, or class of prescribed interests, specified by the Ministerial Council, the Governor may make regulations exempting that company, subject to such terms and conditions as are specified in the regulations, from so complying.

**(2)** Where the Ministerial Council approves the declaration of a right or interest, or a right or interest included in a class or kind of rights or interests, as an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, the Governor may make regulations declaring that right or interest, or a right or interest included in that class or kind of rights or interests, to be, subject to such terms and conditions as are specified in the regulations, an exempt right or interest, or a class or kind of exempt rights or interests, for the purposes of that Division.

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*Companies (Application of Laws).*

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(3) Where, immediately before the commencement of this Act, a right or interest was, under regulations made under the Companies Act, 1961, an exempt right or interest for the purposes of section 76 (1) (g) or of Division 5 of Part IV of that Act, that right or interest shall be deemed to have been declared by regulations under this section to be an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code.

(4) A right or interest to which subsection (3) applies ceases to be an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code if the Governor makes regulations declaring that it so ceases (which regulations the Governor is hereby authorised to make).

(5) Where the Ministerial Council approves—

- (a) a body corporate incorporated in the State, not being a company within the meaning of the Companies (New South Wales) Code; or
- (b) an unincorporated society, association or other body, formed or established in the State, that has been admitted to the official list of a stock exchange that is a prescribed stock exchange for the purposes of that Code and has not been removed from that official list,

as a prescribed corporation for the purposes of Division 8 of Part IV of that Code, the Governor may make regulations prescribing that body corporate, unincorporated society, association or other body as a prescribed corporation for the purposes of that Division.

(6) Regulations under this section shall be read and construed as one with the Companies (New South Wales) Regulations.

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*Companies (Application of Laws).*

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**PART III.****TRANSITIONAL PROVISIONS.****Interpretation.**

**17.** Expressions used in this Part that are defined by section 5 of the Companies (New South Wales) Code or in the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code have in this Part, unless the contrary intention appears, the respective meanings given to those expressions by that section or in that Code.

**Exclusion of Companies Act, 1961, &c.**

**18. (1)** The provisions applying by reason of section 6 operate to the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, in relation to acts, matters and things in relation to which the first-mentioned provisions apply.

**(2)** The provisions of subsection (1) do not, unless the contrary intention appears—

- (a) revive anything not in force or existing at the time at which the exclusion of the provisions of the Companies Act, 1961, the Companies (Transfer of Domicile) Act, 1968, the Marketable Securities Act, 1970, and the Securities Industry Act, 1975, takes effect;
- (b) affect the previous operation of any of those Acts or anything duly done or suffered under any of those Acts;
- (c) affect any right, privilege, obligation or liability acquired or incurred under any of those Acts;

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*Companies (Application of Laws).*

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- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any of those Acts; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

(3) For the purposes of the operation of subsection (2)—

- (a) the provisions of section 7 (6) to (13) of the Companies Act, 1961, of the Second Schedule to that Act and of any regulations prescribing fees for the purposes of section 7 (11) (b) of that Act; and
- (b) any other provisions of that Act or regulations under that Act that are necessary for the effectual operation of the provisions mentioned in paragraph (a),

continue in force as if this Act had not been enacted, but it is not a contravention of section 7 (8) of the Companies Act, 1961, as so continuing in force to divulge or communicate information to the Commission or to a person authorized by the Commission to receive that information.

### **Interstate Corporate Affairs Agreement.**

19. The State of New South Wales withdraws from the Interstate Corporate Affairs Agreement and the operation of that agreement is terminated so far as relates to the State.

### **General provisions.**

20. Unless the contrary intention appears in this Act or in the Companies (New South Wales) Code all persons, things and circumstances appointed or created by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, or existing or continuing under either of those Acts immediately before the commencement of this Act shall, under and subject to this Act and to the Companies (New South Wales) Code, continue to have the same status, operation and effect as they respectively would have had if this Act had not been enacted.



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*Companies (Application of Laws).*

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**Particular provisions.**

**21.** Without affecting the generality of section 20, unless the contrary intention appears in this Act, or in the Companies (New South Wales) Code, neither this Act nor the Companies (New South Wales) Code disturbs the continuity of status, operation or effect of any order, rule, regulation, scale of fees, appointment, conveyance, mortgage, charge, deed, agreement, resolution, direction, approval, application, requisition, instrument, document, memorandum, articles, incorporation, nomination, affidavit, call, forfeiture, minute, assignment, register, registration, transfer, list, licence, certificate, security, notice, compromise, arrangement, right, priority, liability, duty, obligation, proceeding, matter or thing made, done, effected, given, issued, passed, taken, validated, entered into, executed, lodged, filed, accrued, incurred, existing, pending or acquired by or under the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, before the commencement of this Act.

**Proceedings by or against State Commission to be proceedings by or against National Commission.**

**22. (1)** Where, before the commencement of this Act, a proceeding under the Companies Act, 1961, had been commenced by or against the State Commission, the proceeding may be continued by or against the National Commission.

**(2)** Where, but for the enactment of this Act, a proceeding under the Companies Act, 1961, could have been commenced by or against the State Commission, the proceeding may be commenced by or against the National Commission.

**Property vested in State Commission vests in National Commission.**

**23.** Where, immediately before the commencement of this Act, property was vested in the State Commission by reason of the operation of section 310 of the Companies Act, 1961, the property vests by force of this section in the National Commission and sections 462, 463 and 464 of the Companies (New South Wales) Code apply in relation to the property in like manner as they would apply if the property had vested in the National Commission pursuant to section 461 of that Code.

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*Companies (Application of Laws).*

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**Registers, funds and accounts.**

**24.** Any register, fund or account kept immediately before the commencement of this Act under any provision of the Companies Act, 1961, or the Companies (Transfer of Domicile) Act, 1968, shall be deemed to be part of a register, fund or account kept under the corresponding provision of the Companies (New South Wales) Code.

**Acts of Minister under Companies Act, 1961, deemed to be acts of Ministerial Council or Commission, &c.**

**25. (1)** In this section—

“the Act” means the Companies Act, 1961;

“the Code” means the Companies (New South Wales) Code;

“the Gazette” means the Commonwealth of Australia Gazette.

**(2)** Where the Minister had given consent under section 22 (1) of the Act to the registration of a company or an intended company by a specified name and the company had not been registered by that name before the commencement of this Act, the consent shall be deemed to have been a consent to the reservation or registration of that name in respect of that company or intended company given by the Ministerial Council under section 38 (2) of the Code.

**(3)** A licence issued to a company under section 24 of the Act or the corresponding provision of a previous enactment and in force immediately before the commencement of this Act continues in force as if—

- (a) the licence were a licence issued by the Commission under section 66 of the Code; and
- (b) where the company was exempt from complying with provisions of the Act—the licence exempted the company from complying with the corresponding provisions of the Code,

and a reference in the Code to a licence under section 66 of the Code shall be construed as including a reference to a licence to which this subsection applies.



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(4) A declaration under section 38 (7) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 97 (7) (b) or (c), as the case may be, of the Code.

(5) A notice under section 38 (8) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice by the Commission published under section 97 (9) of the Code.

(6) Where, under section 44 (3) of the Act, an allotment of shares or debentures had been exempted from the operation of section 44 of the Act, and that exemption was in force immediately before the commencement of this Act, that allotment of shares or debentures shall be deemed to have been exempted by the Commission, under section 105 (3) of the Code, from the operation of section 105 of the Code.

(7) A declaration under section 69A (2) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Ministerial Council by order published in the Gazette under section 134 (2) (b) or (c), as the case may be, of the Code.

(8) An approval under section 74 (1) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be an approval given by the Commission under section 152 (1) (h) of the Code.

(9) An order under section 74D (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 156 (2) of the Code.

(10) Where, under section 74D (2) of the Act, the trustee for the holders of debentures had been directed to apply to the Court for an order under section 74D (4) of the Act and at the commencement of this Act the trustee had not complied with that direction, the trustee shall be deemed to have been directed by the Commission under section 156 (2) of the Code to apply to the Court for an order under section 156 (4) of the Code.

(11) A declaration under section 74F (4) (d) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 158 (10) of the Code.



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(12) A notice under section 74F (4) (e) of the Act and in force immediately before the commencement of this Act shall be deemed to be a notice published by the Commission under section 158 (11) (a) of the Code.

(13) A declaration under section 80 (1A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission under section 168 (2) of the Code.

(14) Where, before the commencement of section 4 of the Companies (Further Amendment) Act, 1974, a notice was published under section 88 of the Act purporting to exempt a company, subject to such terms and conditions as were specified in the notice, from complying with the provisions of section 80 (1) of the Act in respect of a deed specified in the notice, the notice—

- (a) shall, notwithstanding any provision of the Act or the Code, have effect and be deemed always to have had effect according to its tenor; and
- (b) may, notwithstanding any provision of the Code, be varied or revoked by the Commission by notice published in the Gazette.

(15) A direction under section 84 (3) of the Act and in force immediately before the commencement of this Act shall be deemed to be a direction given by the Commission under section 172 (5) of the Code.

(16) A declaration under section 84 (3A) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration given by the Commission under section 172 (6) of the Code.

(17) Where a company had been exempted by notice under section 88 of the Act from complying, in relation to an interest, or class of interests, specified in the notice, with all or any of the provisions of Division 5 of Part IV of the Act and that exemption was in force immediately before the commencement of this Act, that company is, subject to such terms and conditions (if any) as were specified in that notice, deemed to have been exempted from complying, in relation to that interest, or class of interests, with the provisions of Division 6 of Part IV of the Code that correspond with the provisions specified in that notice and, for the purposes of section 176 of the Code, the notice shall be deemed to have been a notice published in the Gazette under section 176 (1).



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**(18)** An order under section 160 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission published under section 265 (2) of the Code requiring the company to comply with the provisions of Division 5 of Part V of the Code and of the regulations made for the purposes of that Division that correspond with the provisions of the Act specified in the order.

**(19)** An order under section 162c (1) of the Act and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (1) of the Code relieving the directors of the company named in the order from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

- (a) where the order required the directors to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and
- (b) where the order was limited to a specified period—to be limited to the same period.

**(20)** An order under section 162c (2) of the Act in respect of a specified class of companies and in force immediately before the commencement of this Act shall be deemed to be an order made by the Commission under section 273 (5) of the Code relieving the directors of companies included in the specified class of companies from compliance with the requirements of the Code that correspond with the requirements of the Act specified in the order and shall be deemed—

- (a) where the order required the directors of companies included in the specified class of companies to comply with other requirements relating to the form and content of accounts, group accounts or reports—to have been made on condition that the directors comply with those requirements; and
- (b) where the order was limited to a specified period—to be limited to the same period.



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(21) A proclamation by the Governor or a declaration made by the Minister by order published in the Government Gazette under section 334 (2) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 490 (3) of the Code.

(22) A proclamation by the Governor or an order by the Minister published in the Government Gazette under section 339 (b) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 495 (2) of the Code.

(23) A declaration under section 348 (5) (b) or (c) of the Act and in force immediately before the commencement of this Act shall be deemed to be a declaration made by the Commission by order published in the Gazette under section 516 (7) (b) or (c), as the case may be, of the Code.

(24) Where the Minister had given consent under section 353 (1) of the Act to the registration of a foreign company by a specified name and the foreign company had not been registered by that name before the commencement of this Act, the consent shall be deemed to be a consent given by the Ministerial Council under section 38 (2) of the Code.

(25) Where the Minister had given consent under section 353 (2) of the Act to the registration of a change in the name of a foreign company to a specified new name and the change of name had not been registered before the commencement of this Act, the consent shall be deemed to be a consent to the reservation or registration of that name in respect of that foreign company given by the Ministerial Council under section 38 (2) of the Code.

(26) Where, under section 374 (2) of the Act, a corporation had been exempted from the provisions of section 374 (1) of the Act, and that exemption was in force immediately before the commencement of this Act, that corporation shall be deemed to have been exempted by the Commission by instrument in writing published in the Gazette under section 552 (2) of the Code from the provisions of section 552 (1) of the Code.



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**Names.**

**26. (1)** A name under which a company was registered under the Companies Act, 1961, immediately before the commencement of this Act shall, for the purposes of Division 2 of Part III of the Companies (New South Wales) Code be deemed to be registered under that Division in respect of that company unless and until the registration of the name is cancelled, or ceases to be in force, under that Division.

**(2)** A reference in subsection (1) to a company shall be construed as including a reference to a corporation that, immediately before the commencement of this Act, was registered under the Companies Act, 1961, as a foreign company, whether that corporation is, for the purposes of the Companies (New South Wales) Code, a recognized company or a foreign company.

**(3)** Where, immediately before the commencement of this Act, a name was reserved in respect of a recognized company under section 22 (8E) of the Companies Act, 1961, that name shall be deemed to be registered under section 60 of the Companies (New South Wales) Code in respect of that recognized company.

**(4)** Where, within the period of two months immediately preceding the date of commencement of this Act—

- (a) a name was reserved under section 22 (8) of the Companies Act, 1961; or
- (b) the period for which a name was reserved under that Act was extended by the State Commission under section 22 (9) of that Act,

the name shall, for the purposes of the Companies (New South Wales) Code be deemed to be reserved under Division 2 of Part III of that Code until the date on which the reservation of that name under the Companies Act, 1961, would have ceased.



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**Continued application of Table A and Table B in certain circumstances.**

**27. (1)** Nothing in this Act or in the Companies (New South Wales) Code affects—

- (a) Table A, or any part of Table A, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act; or
- (b) Table B, or any part of Table B, of the Fourth Schedule to the Companies Act, 1961 (either as originally enacted or as amended from time to time) or the corresponding Table, or any part of the corresponding Table, in any corresponding previous law of the State (either as originally enacted or as so amended) so far as it applies to a company existing immediately before the commencement of this Act.

**(2)** This section does not prevent the articles of a company adopting, in accordance with section 75 (1) of the Companies (New South Wales) Code, all or any of the regulations contained in Table A or Table B of Schedule 3 to that Code.

**Existing prospectuses and section 82 statements.**

**28. (1)** Where a prospectus was registered under the Companies Act, 1961, within the period of six months before the commencement of this Act, the prospectus shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a prospectus registered under that Code.

**(2)** Where a statement under section 82 of the Companies Act, 1961, was registered under that Act within the period of six months before the commencement of this Act, the statement shall, for the purposes of the Companies (New South Wales) Code, until the expiration of the period of six months after the date on which it was registered, be deemed to be a



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statement that has been registered under Division 1 of Part IV of the Companies (New South Wales) Code as required by section 170 (1) of that Code.

**Interests in partnership agreements.**

**29.** Section 169 of the Companies (New South Wales) Code does not apply to or in relation to an issue to the public of an interest, an offer to the public for purchase of an interest, or an invitation to the public to purchase an interest, that—

- (a) is an interest in a partnership agreement; and
- (b) was subscribed for or first purchased before 1st January, 1972.

**Registration of charges.**

**30. (1)** In this section, “company” includes a foreign company that is registered as a foreign company under the Companies (New South Wales) Code.

**(2)** Where, before the commencement of this Act, a company created a relevant charge, or acquired property subject to a relevant charge—

- (a) if the charge was, immediately before the commencement of this Act, registered under Division 7 of Part IV of the Companies Act, 1961—
  - (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
  - (ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code; or

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(b) if the charge was, immediately before the commencement of this Act, registered under the provisions of a law of another State or of a Territory that corresponded with Division 7 of Part IV of the Companies Act, 1961, but was not registered under Division 7 of Part IV of that Act—

- (i) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
- (ii) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and such of the particulars mentioned in section 203 (2) of that Code as it is able to ascertain.

(3) Where all the documents relating to a relevant charge on property of a company that were required by Division 7 of Part IV of the Companies Act, 1961, or the provisions of a law of another State or of a Territory that corresponded with that Division to be lodged for registration under that Division or those provisions, as the case may be, were duly lodged not later than 30 days before the date of commencement of this Act but the charge had not been registered under that Division or those provisions before that date and registration had not been refused—

- (a) the charge shall be deemed to be duly registered under Division 9 of Part IV of the Companies (New South Wales) Code from and including the commencement of this Act; and
- (b) the Commission shall cause to be entered in the Register of Company Charges kept under section 203 (1) of the Companies (New South Wales) Code, in relation to the charge, the time and date determined in accordance with subsection (6) of this section and the particulars mentioned in section 203 (2) of that Code.

(4) A charge is a relevant charge for the purposes of subsection (2) or (3) where—

- (a) in the case of a charge created by the company—if the charge had been created after the commencement of this Act, the charge would have been required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code; or



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- (b) in the case of a charge on property acquired by the company—  
if the company had acquired the property after the commencement  
of this Act, the charge would have been required to be registered  
under Division 9 of Part IV of the Companies (New South Wales)  
Code.

(5) Where two or more charges on the same property of a company  
are deemed by subsection (2) or (3) to be duly registered under Division 9  
of Part IV of the Companies (New South Wales) Code from and including  
the commencement of this Act, those charges have, as between themselves,  
the respective priorities that they would have had if this Act had not been  
enacted.

(6) The time and date to be entered in the Register of Company  
Charges in relation to a charge pursuant to subsection (2) or (3) is 9.00  
a.m. on the date of commencement of this Act.

(7) Nothing in section 205 of the Companies (New South Wales)  
Code operates to render a charge to which subsection (2) or (3) applies  
void as a security on property of the company as against a liquidator or  
official manager of the company.

(8) Where—

- (a) before the commencement of this Act a company created a charge  
or acquired property subject to a charge, being in either case a  
charge that was required to be registered under Division 7 of  
Part IV of the Companies Act, 1961;
- (b) at the commencement of this Act—
- (i) the charge had not been registered under Division 7 of  
Part IV of the Companies Act, 1961;
  - (ii) the charge had not become void under section 100 (1)  
of the Companies Act, 1961; and
  - (iii) the property was still subject to the charge;
- (c) if the charge had been created or the property had been acquired,  
after the commencement of this Act, the charge would have been  
required to be registered under Division 9 of Part IV of the  
Companies (New South Wales) Code; and
- (d) subsection (3) does not apply in relation to the charge,

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Division 9 of Part IV of, and Schedule 5 to, the Companies (New South Wales) Code apply as if the company had created the charge, or had acquired the property, as the case may be, at the commencement of this Act, but, where two or more charges on the same property of a company, being charges to which this subsection applies, are registered under Division 9 of Part IV of the Companies (New South Wales) Code then, notwithstanding Schedule 5 to that Code, those charges have, as between themselves, the respective priorities that they would have had if they had not been registered under that Division.

(9) Notwithstanding the enactment of this Act, the provisions of Division 7 of Part IV of the Companies Act, 1961, as in force immediately before the commencement of this Act continue in force as if this Act had not been enacted in relation to—

- (a) any charge created by a company before the commencement of this Act; or
- (b) any charge to which property acquired by a company before the commencement of this Act was subject when the property was so acquired,

where—

- (c) the charge was required to be registered under Division 7 of Part IV of the Companies Act, 1961; and
- (d) if the charge had been created by the company, or the property subject to the charge had been acquired by the company, after the commencement of this Act, the charge would not have been required to be registered under Division 9 of Part IV of the Companies (New South Wales) Code.

(10) Where a charge referred to in subsection (8) (a) had, before the commencement of this Act, become void under section 100 (1) of the Companies Act, 1961, and the Court, being satisfied that it is just and equitable to do so, makes an order that subsection (8) is to apply in relation to that charge—

- (a) subsection (8) has effect as if the charge had not become void; and
- (b) section 100 (1) of the Companies Act, 1961, shall be deemed not to have rendered the charge void in any respect.



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**Certificate that person is an executive officer of a company.**

**31.** Where it appears from a return lodged with the Registrar of Companies, the Commissioner for Corporate Affairs or the State Commission pursuant to a previous law of the State with which the Companies (New South Wales) Code corresponds that a person was at a particular time a manager of a company, the Commission may give a certificate under section 238 (10) of that Code that the person was at that time a principal executive officer of the company.

**Application of Companies (New South Wales) Code to financial years ending before commencement of this Act.**

**32. (1)** The provisions of Division 2 of Part VI of the Companies (New South Wales) Code (other than sections 267, 268, 273 and 275) apply in relation to a company, being a company incorporated under the Companies Act, 1961, or a corresponding previous enactment, and to the directors of such a company, in relation to a financial year or financial years of the company that ended before the commencement of this Act and so apply as if—

- (a) a requirement in any of those provisions (other than section 274) that an act or thing be done not less than fourteen days before an annual general meeting of a company or, if no annual general meeting is held within the period within which it is required by section 240 to be held, not less than fourteen days before the end of that period were a requirement that that act or thing be done within the period of five months (or, in the case of an exempt proprietary company, the period of six months) after the commencement of this Act;
- (b) a reference in those provisions to the last financial year of a company were a reference to each financial year of the company that ended before the commencement of this Act;
- (c) the reference in section 274 (1) to each annual general meeting of the company were a reference to the annual general meeting at which accounts or group accounts are required by subsection (2) of this section to be laid before the company;



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- (d) a reference in those provisions to accounts or group accounts required by section 275 to be laid before a company at its annual general meeting were a reference to accounts or group accounts, as the case may be, required by subsection (2) of this section to be laid before a company at an annual general meeting; and
- (e) a reference in section 276 (1) to the preceding provisions of Division 2 included a reference to the provisions of subsection (2) of this section.

(2) The directors of a company to which subsection (1) applies shall cause to be laid before the first annual general meeting of the company held after the expiration of the period of five months or six months, as the case requires, referred to in subsection (1) (a), in respect of each financial year of the company that ended before the commencement of this Act—

- (a) a copy of the profit and loss account made out in accordance with section 269 (1) of the Companies (New South Wales) Code;
- (b) a copy of the balance sheet made out in accordance with section 269 (2) of that Code;
- (c) in the case of a company that, at the end of the relevant financial year, was not a holding company—a copy of the directors' report made out in accordance with section 270 (1) of that Code;
- (d) in the case of a company that, at the end of the relevant financial year, was a holding company—a copy of the group accounts made out in accordance with section 269 (3) of that Code and a copy of the directors' report made out in accordance with section 270 (2) of that Code in respect of the profit or loss and the state of affairs of the group of companies of the holding company as at the end of that financial year;
- (e) a copy of any auditor's report required by section 269 (5) of that Code to be attached to the accounts or group accounts of the company; and
- (f) a copy of the statement by the directors required by section 269 (9) or (10) of that Code to be attached to the accounts or group accounts of the company.

(3) A reference in subsection (2) to a provision of the Companies (New South Wales) Code shall be read as a reference to that provision of that Code as it applies by virtue of subsection (1).



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(4) For the purposes of this section, an order under section 162C (1) or (2) of the Companies Act, 1961, in relation to the directors of a company or the directors of companies included in a specified class of companies that is, by section 25 (19) or (20) of this Act, deemed to be an order made by the Commission under section 273 (1) or (5), as the case may be, of the Companies (New South Wales) Code has the same effect unless and until the order is revoked under section 273 (8) of that Code in relation to accounts, group accounts and reports required, by the provisions of Division 2 of Part VI of that Code as applied by subsection (1) of this section, to be made out by those directors as the order has, by virtue of section 25 (19) or (20), as the case may be, of this Act, in relation to accounts, group accounts and reports required to be made out in accordance with the provisions of that Division.

(5) In this section, "financial year", in relation to a company in relation to which this section applies, has the same meaning as it has in relation to such a company under the Companies (New South Wales) Code by virtue of paragraph (a) of the definition of "financial year" in section 5 (1) of that Code.

**Annual general meeting held before commencement of this Act.**

33. Where, before the commencement of this Act, an annual general meeting of a company was held and at the commencement of this Act the company had not complied with section 158 or 159 of the Companies Act, 1961, in relation to that annual general meeting, that section continues to apply in relation to that company in relation to that annual general meeting as if this Act had not been enacted.

**Special investigations.**

34. (1) Part VII of the Companies (New South Wales) Code applies to and in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act and so applies as if—

- (a) where an inspector was appointed to carry out the investigation pursuant to an application under section 169 (1) of the Companies Act, 1961—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given pursuant to section 290 (4) of that Code; and



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- (b) where an inspector was appointed under section 170 (1) of the Companies Act, 1961, to carry out the investigation—the inspector was appointed, and the investigation is being carried out, pursuant to a direction given in the exercise of a power under section 291 (1) of that Code otherwise than in response to a request made by the Commission under section 291 (4) of that Code.

(2) Where, before the commencement of this Act, an act, matter or thing had been done or had arisen in the course of an investigation to which Part VIA of the Companies Act, 1961, applied immediately before that commencement, that act, matter or thing shall have the same status, operation and effect in relation to the investigation after that commencement as if that act, matter or thing had been done or had arisen after that commencement.

(3) In particular and without affecting the generality of subsection (2), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Part VIA of the Companies Act, 1961, applied immediately before the commencement of this Act shall have the same status, operation and effect in relation to the investigation after that commencement as if the order, application, examination, deposition, writ, summons, proceeding, record, note or report had been made, effected, issued or given after that commencement.

**Lodging of accounts by person administering compromise or arrangement.**

**35. Where—**

- (a) section 330 of the Companies (New South Wales) Code applies, by virtue of section 315 (11) of that Code, in relation to a person or persons appointed to administer a compromise or arrangement; and
- (b) that person or those persons was or were so appointed before the commencement of this Act,

references in section 330 of that Code to the date of appointment of that person or of those persons shall be deemed to be references to the date of commencement of this Act.



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**Winding up.**

**36. (1)** The provisions of the Companies (New South Wales) Code with respect to winding up other than the provisions of Subdivision F of Division 4 of Part XII do not apply to any company the winding up of which was commenced before the commencement of this Act and any such company shall be wound up in the same manner and with the same incidents as if this Act had not been enacted and, for the purposes of the winding up, the provisions of the Companies Act, 1961, shall apply.

**(2)** In this section, "company" includes an unregistered company within the meaning of Division 5 of Part X of the Companies Act, 1961.

**Registered auditors and liquidators.**

**37. (1)** For the purposes of the Companies (New South Wales) Code, a person who was, immediately before the date of commencement of this Act, registered as an auditor or as a liquidator or appointed as an official liquidator under the Companies Act, 1961, shall, subject to section 27 of that Code, be deemed to be registered under Division 2 of Part II of that Code as an auditor, as a liquidator or as an official liquidator, as the case may be, for the period of six months commencing on the date of commencement of this Act.

**(2) Where—**

- (a)** a person who is deemed by reason of subsection (1) to be registered under Division 2 of Part II of the Companies (New South Wales) Code as an auditor or as a liquidator for the period of six months commencing on the date of commencement of this Act has applied to be registered under that Division as an auditor or as a liquidator, as the case may be, within that period of six months; and
- (b)** at the expiration of that period, the person has not been notified of the results of his application,

the person shall, subject to section 27 of that Code, be deemed to be registered as an auditor or liquidator, as the case may be, for a further period commencing at the expiration of the period referred to in paragraph **(a)** and ending—

- (c)** in the case of an application for registration as an auditor—on the day on which the application is granted or refused; and



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- (d) in the case of an application for registration as a liquidator—on the day on which the person is notified of the results of his application.

(3) Where the registration as a liquidator of a person to whom subsection (2) applies comes into force under Division 2 of Part II of the Companies (New South Wales) Code, that person shall be deemed to have been registered as a liquidator under that Division for the period commencing at the expiration of the day referred to in paragraph (d) of subsection (2) and ending at the expiration of the day before the day on which that registration comes into force.

(4) A person who is deemed to be registered as an auditor, as a liquidator or as an official liquidator under the provision of a law of a participating State or participating Territory that corresponds with subsection (1) shall be deemed to be registered as an auditor, as a liquidator or as an official liquidator, as the case may be, under the Companies (New South Wales) Code.

**Power of Minister to consent to institution of proceeding.**

**38. Where—**

- (a) the institution of a particular proceeding under the Companies Act, 1961, was subject to the consent of the Minister; and
- (b) the proceeding was not instituted before the commencement of this Act but may be instituted after the commencement of this Act by reason of the operation of section 18 (2) of this Act,

the enactment of this Act does not affect the power of the Minister to consent to the institution of the proceeding.

**Recognized companies.**

**39. (1)** Where a corporation that is a recognized company for the purposes of the Companies (New South Wales) Code was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, the registered office of that corporation in the State the situation of which was specified—

- (a) in a case to which paragraph (b) does not apply—in a notice lodged under section 346 (1) of that Act; or



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(b) if a notice or notices have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices, shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the Companies (New South Wales) Code.

**(2) Where—**

- (a) before the commencement of this Act, an act, matter or thing had been done or commenced under the Companies Act, 1961, in relation to a corporation that was a foreign company for the purposes of that Act;
- (b) the corporation is a recognized company for the purposes of the Companies (New South Wales) Code; and
- (c) that act, matter or thing could have been done or commenced under the Companies (New South Wales) Code after the commencement of this Act in relation to a recognized company,

that act, matter or thing shall be deemed to have been done or commenced, as the case may be, and, in the case of an act, matter or thing that has been commenced, may be continued or completed under the Companies (New South Wales) Code, in relation to that corporation as a recognized company.

**Recognized companies under corresponding laws.**

**40. (1)** Section 501 of the Companies (New South Wales) Code applies in relation to a company that, immediately before the commencement of this Act, had a place of business or carried on business in a State or Territory that is a participating State or participating Territory as if the company had established a place of business or commenced to carry on business, as the case may be, in that State or Territory at the commencement of this Act.

**(2)** Where a company had, before the commencement of this Act, lodged under the provisions of a law of a State or Territory that is a participating State or participating Territory that corresponds with section 346 (1A) or 347 (1A) of the Companies Act, 1961, a notice or notices that specified the days and hours during which the registered office of the company in that State or Territory was open and accessible to the public, the company

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shall, for the purposes of section 502 (2) of the Companies (New South Wales) Code, be deemed to have lodged a notice under section 501 (2) of that Code in relation to that State or Territory.

(3) Where, immediately before the commencement of this Act, a company maintained a branch register in a State or Territory that is a participating State or participating Territory in accordance with the provision of the law of that State or Territory that corresponded with section 354 of the Companies Act, 1961, that register shall be deemed to be a branch register of the company kept under section 262 of the Companies (New South Wales) Code and section 262 of that Code applies in relation to that register as if it had been established, and as if the office where it is kept had been opened, on the date of commencement of this Act.

**Foreign companies.**

41. (1) A corporation formed outside the State, other than a corporation that is a recognised company for the purposes of the Companies (New South Wales) Code, that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, shall be deemed to be registered, as from the commencement of this Act, as a foreign company for the purposes of the Companies (New South Wales) Code.

(2) A corporation formed outside Australia and the external Territories that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, may within one month after the date of commencement of this Act, or within such further period as the Commission allows, lodge with the Commission a notice in the prescribed form—

- (a) stating whether the corporation wishes to continue to be registered as a foreign company under the Companies (New South Wales) Code; and
- (b) if the corporation states that it does not wish to continue to be registered as a foreign company under that Code—specifying one State or Territory (being a State or Territory under the law of which the corporation was registered as a foreign company immediately before the commencement of this Act and which is a



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participating State or a participating Territory) as the State or Territory under the law of which the corporation wishes to be registered as a foreign company.

(3) A corporation is not entitled pursuant to subsection (2) (b)—

- (a) to specify a State in a notice if the corporation has specified a different State or a Territory in a notice under a corresponding provision of the law of a participating State or participating Territory; or
- (b) to specify a Territory in a notice if the corporation has specified a State or another Territory in a notice under a corresponding provision of the law of a participating State or participating Territory.

(4) Where a corporation to which subsection (2) applies lodges with the Commission a notice under that subsection specifying pursuant to subsection (2) (b) a State or Territory as the State or Territory under the law of which the corporation wishes to be registered as a foreign company—

- (a) the corporation shall, as from the date on which the notice is so lodged, cease to be registered as a foreign company for the purposes of the Companies (New South Wales) Code; and
- (b) the registered office of the corporation in the State the situation of which was specified—
  - (i) in a case to which subparagraph (ii) does not apply—in a notice lodged under section 346 (1) of the Companies Act, 1961; or
  - (ii) if a notice or notices has or have been lodged under section 347 (1) of that Act in relation to the situation of the registered office of the corporation—in that notice or in the later or latest of those notices,

shall be deemed to be the principal office within the State of the corporation for the purposes of section 507 of the Companies (New South Wales) Code.

(5) In this section, “external Territory” means a Territory of the Commonwealth, other than the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory, for the government of which as a Territory provision is made by an Act of the Commonwealth.

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**Commission may destroy or dispose of documents.**

**42. (1)** Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that is a recognized company for the purposes of that Code was, immediately before the commencement of this Act, a recognized company under the Companies Act, 1961, or was registered as a foreign company under that Act, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

**(2)** Notwithstanding section 31 (10) of the Companies (New South Wales) Code, where a corporation that was, immediately before the commencement of this Act, registered as a foreign company under the Companies Act, 1961, becomes a recognized foreign company for the purposes of that Code, the Commission may, if in the opinion of the Commission it is no longer necessary or desirable to retain them, destroy or dispose of any documents lodged by or in relation to that corporation under the Companies Act, 1961, or under any corresponding previous law.

**Marketable Securities Act, 1970.**

**43. (1)** A sufficient instrument of transfer under the Marketable Securities Act, 1970, in relation to a transfer of marketable securities or a transfer of rights to marketable securities, that was duly completed before the commencement of this Act has the same effect, and may be used and dealt with, as if this Act had not been enacted.

**(2)** An agreement, application, acceptance, warranty or indemnity deemed by the Marketable Securities Act, 1970, to have been made or given by a person continues to operate and has the same force and effect as if this Act had not been enacted.

**Court may resolve difficulties.**

**44. (1)** Where any difficulty arises in the application to a particular matter of this Part, or in the application to a particular matter of any of the provisions of the Companies (New South Wales) Code, the Companies Act, 1961, or the Marketable Securities Act, 1970, by reason of the operation of



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this Part, the Court may, on the application of an interested person, make such order as it thinks proper to resolve the difficulty.

(2) An order made under subsection (1) has effect notwithstanding anything contained in this Act or in the Companies (New South Wales) Code, the Companies Act, 1961, or the Marketable Securities Act, 1970.

(3) In subsection (1), "Court" means the Supreme Court of New South Wales.

**Regulations.**

45. (1) The Governor may make regulations, not inconsistent with this Part, prescribing all matters required or permitted by this Part to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Part.

(2) Regulations prescribing matters for the purposes of this Part may prescribe those matters by reference to regulations for the time being in force under the Companies (Transitional Provisions) Act 1981 of the Commonwealth.

(3) The power of the Governor to make regulations shall be exercised only in accordance with advice that is consistent with resolutions of the Ministerial Council.

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## SCHEDULE 1.

(Sec. 6.)

The provisions of the Commonwealth Act apply as if—

## 1. Unless inconsistent with another provision of this Schedule—

- (a) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”;
- (b) for the words “of a State or of another Territory” and “of a State or another Territory” in the Commonwealth Act (wherever occurring otherwise than immediately after the word “law”) there were substituted the words “of another State or of a Territory”;
- (c) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the words “commencement of the *Companies (Application of Laws) Act, 1981*” or the words “commencement of the *Companies (Application of Laws) Act, 1981*,” whichever are applicable;
- (d) for the words “*Companies (Acquisition of Shares) Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies (Acquisition of Shares) (New South Wales) Code*”;
- (e) for the words “*Companies Ordinance 1962*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Companies Act, 1961*” or the words “*Companies Act, 1961*,” whichever are applicable;
- (f) for the words “*Securities Industry Act 1980*” in the Commonwealth Act (wherever occurring) there were substituted the words “*Securities Industry (New South Wales) Code*”;
- (g) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “the State”;
- (h) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”.

## 2. In section 5 (1) of the Commonwealth Act—

- (a) after the definition of “banker’s books” there were inserted the following definition:—

“*Banking Act 1959*” means the *Banking Act 1959* of the Commonwealth as amended and in force for the time being;
- (b) after the definition of “banking corporation” there were inserted the following definition:—

“*Bankruptcy Act 1966*” means the *Bankruptcy Act 1966* of the Commonwealth as amended and in force for the time being;



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## SCHEDULE 1—continued.

- (c) for the definition of "*Companies Ordinance 1962*" there were substituted the following definitions:—
- "Commonwealth Minister" means the Minister of State for the Commonwealth for the time being administering the *Companies Act 1981* of the Commonwealth as amended and in force for the time being;
- "*Companies (New South Wales) Code*" or "Code" means the provisions applying by reason of section 6 of the *Companies (Application of Laws) Act, 1981*;
- (d) in the definition of "corporation" for paragraphs (c) and (d) there were substituted the following paragraphs:—
- (c) any society, association or union registered under the *Co-operation Act, 1923*;
- (d) any society or association registered under the *Permanent Building Societies Act, 1967*;
- (e) a credit union, or an association of credit unions, or a union of associations of credit unions, registered under the *Credit Union Act, 1969*; or
- (f) any foreign company or recognized company in respect of which an exemption from compliance with—
- (i) section 61 (1) of the *Co-operation Act, 1923*;
- (ii) section 35 (1) of the *Permanent Building Societies Act, 1967*;
- or
- (iii) section 28 (1) of the *Credit Union Act, 1969*,
- is for the time being in force;
- (e) after the definition of "insolvent under administration" there were inserted the following definition:—
- "*Insurance Act 1973*" means the *Insurance Act 1973* of the Commonwealth as amended and in force for the time being;
- (f) after the definition of "leave of absence" there were inserted the following definition:—
- "*Life Insurance Act 1945*" means the *Life Insurance Act 1945* of the Commonwealth as amended and in force for the time being;
- (g) in the definition of "lodged" for paragraph (b) there were substituted the following paragraph:—
- (b) in relation to a prescribed State authority—lodged or filed with that authority under any corresponding previous law of the State;
- (h) after the definition of "mining purposes" there were inserted the following definitions:—
- "Minister" means the Minister of State for New South Wales for the time being administering the *Companies (Application of Laws) Act, 1981*;

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SCHEDULE 1—*continued.*

“*National Companies and Securities Commission Act 1979*” means the *National Companies and Securities Commission Act 1979* of the Commonwealth as amended and in force for the time being;

- (i) after the definition of “prescribed interest” there were inserted the following definition:—

“prescribed State authority” means—

- (a) the Registrar of Companies;
- (b) the Commissioner for Corporate Affairs; or
- (c) the Corporate Affairs Commission;

- (j) the definition of “Registrar of Companies” were repealed;

- (k) before the definition of “related corporation” there were inserted the following definition:—

“regulations” means the provisions applying as regulations made under this Code by reason of section 7 of the *Companies (Application of Laws) Act, 1981*;

- (l) for the definition of “rules” there were substituted the following definition:—

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

- (m) after the definition of “special resolution” there were inserted the following definition:—

“State Commission” means the Corporate Affairs Commission continued in existence by the *Corporate Affairs Commission Act, 1981*;

3. After section 5 (9) of the Commonwealth Act there were inserted the following sub-section:—

- (10) In this Code—

- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of New South Wales or of the State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the *Companies Act, 1961*; and
- (b) a reference to a previous law, or provision of a previous law, or previous enactment, of another State or of a Territory corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, the law of that State or Territory corresponding to the *Companies Act, 1961*.



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SCHEDULE 1—*continued.*

4. For paragraphs (a) and (b) of section 12 (1) of the Commonwealth Act there were substituted the following paragraphs:—

- (a) for the purpose of the performance of a function or the exercise of a power by the Commission under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*, or under a law of a participating State or of a participating Territory that corresponds with such a relevant Code; or
- (b) where the requirement relates to a matter that constitutes or may constitute—
  - (i) a contravention of, or failure to comply with, a provision of a relevant Code or corresponding law referred to in paragraph (a);
  - (ii) a contravention of, or failure to comply with, a provision of the *Companies Act, 1961*, as in force at any time or of a previous law of a participating State or participating Territory that corresponded with that Act; or
  - (iii) an offence relating to a company that involves fraud or dishonesty or concerns the management of affairs of the company.

5. In section 13 (1) of the Commonwealth Act for the words “Australian Federal Police” there were substituted the words “police force of New South Wales”.

6. In section 18 (7) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.

7. In section 19 of the Commonwealth Act after the words “Auditor-General” there were inserted the words “of New South Wales”.

8. In section 20 (8) (a) and (9) (a) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.

9. For section 22 (4) of the Commonwealth Act there were substituted the following sub-section:—

(4) In this section, “local authority” means the State Commission.

10. In section 27 (21), (22) and (23) of the Commonwealth Act for the words “debt due to the Commonwealth” there were substituted the words “debt due to the Crown”.

11. In section 27 (28) of the Commonwealth Act after the words “Companies Auditors and Liquidators Disciplinary Board” there were inserted the words “constituted under the *Public Accountants Registration Act, 1945*”.



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SCHEDULE 1—*continued.*

## 12. In section 30 of the Commonwealth Act—

- (a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- (b) in sub-section (2) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
- (c) in sub-section (3) for the words “an action” there were substituted the word “proceedings”.

13. In section 31 (2) and (5) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State authority”.

14. In section 32 (1) of the Commonwealth Act for the words “the Registrar of Companies” there were substituted the words “a prescribed State authority”.

## 15. In section 33 of the Commonwealth Act—

- (a) in paragraph (a) of sub-section (3) for the words “under this Act or is formed pursuant to another Act” there were substituted the words “under this Code or is formed pursuant to an Act”;
- (b) in sub-section (4) for the words “under this Act and is not formed pursuant to another Act” there were substituted the words “under this Code and is not formed pursuant to an Act”.

16. In section 46 (9) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

17. In section 52 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

18. In section 55 (8) of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

19. In section 59 of the Commonwealth Act for the words “in a State or another Territory” there were substituted the words “in another State or in a Territory”.

20. In section 65 (4) of the Commonwealth Act for the words “that Ordinance” there were substituted the words “that Act”.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

21. In section 77 (1) and (2) of the Commonwealth Act for the matter "1 October 1954" there were substituted the matter "1 January 1937".

22. In section 85 (6) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

23. In section 90 (6) of the Commonwealth Act—

(a) for the words "the *Companies (Transitional Provisions) Act 1981*" there were substituted the words "Part III of the *Companies (Application of Laws) Act, 1981*";

(b) for the words "as if this Act" there were substituted the words "as if that Act".

24. In section 99 (5) for the words "or any other Act" there were substituted the words "Code or any Act".

25. In section 122 (1) (a) of the Commonwealth Act for the words "this or any other Act" there were substituted the words "this Code or of any Act".

26. (1) In section 123 (15) of the Commonwealth Act for the words "*Companies (Acquisition of Shares) Act 1980* or a corresponding law of a participating State or participating Territory, or of regulations made under that Act or under such a corresponding law," there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code* or a corresponding law in force in a participating State or participating Territory, or of regulations applying under that Code or applying or made under such a corresponding law,".

(2) After section 123 (15) of the Commonwealth Act there were inserted the following sub-section:—

(16) Where land is comprised in a strata plan registered under the *Strata Titles Act, 1973*, and at the time of registration of the strata plan the proprietor of that land was a company, the transfer by the company of any lot on the strata plan in exchange for or in satisfaction of a right of a kind referred to in sub-section (13) shall not of itself constitute, and shall be deemed never to have constituted, a reduction of the share capital of the company.

27. In section 129 (6) (a) of the Commonwealth Act for the words "*Act 1980*" there were substituted the words "*(New South Wales) Code*".

28. In section 129 (17) of the Commonwealth Act for the words "if this Act" there were substituted the words "if that Act".

29. In section 152 (7) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".

30. In section 154 (5) of the Commonwealth Act for the matter "1 September 1966" there were substituted the matter "1 July 1964".



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

31. In paragraph (b) of the definition of "company" in section 164 (1) of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".

32. In section 172 (5) (a) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

33. In the definition of "prescribed corporation" in section 189 (1) of the Commonwealth Act for the words "that is under the regulations a prescribed corporation" there were substituted the words "that is, by reason of section 16 (2) of the *Companies (Application of Laws) Act*, 1981, a prescribed corporation".

34. In section 199 (5) of the Commonwealth Act for the words "an office of the Commission" there were substituted the words "the office of the State Commission".

35. Section 204 (5) of the Commonwealth Act were repealed.

36. In section 209 (1) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".

37. In section 211 of the Commonwealth Act—

- (a) in sub-section (1) for the words "personal chattel or book debt within the meaning of the *Instruments Ordinance* 1933" there were substituted the words "personal chattel within the meaning of the *Bills of Sale Act* of 1898";
- (b) in sub-section (1) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (2) for the words "*Instruments Ordinance* 1933" (wherever occurring) there were substituted the words "*Bills of Sale Act* of 1898".

38. In section 213 of the Commonwealth Act for the words "the Australian Capital Territory" there were substituted the words "New South Wales".

39. In the definition of "exempt benefit" in section 233 (7) of the Commonwealth Act—

- (a) for the matter "1 October 1954" (wherever occurring) there were substituted the matter "1 July 1962";
- (b) in paragraph (b) for the words "if this Act had not been enacted" there were substituted the words "if the *Companies (Application of Laws) Act*, 1981, had not been enacted".

40. In section 238 (10) of the Commonwealth Act for the words "the Registrar of Companies" there were substituted the words "a prescribed State authority".



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

41. In section 265 (1) (b) of the Commonwealth Act for the words "Corporate Affairs Commission for the Territory" there were substituted the words "State Commission".

42. In section 267 (2) of the Commonwealth Act for the words "A company shall" there were substituted the words "Subject to section 9 of the *Evidence (Reproductions) Act, 1967*, a company shall".

43. In section 277 (2) (e) of the Commonwealth Act for the words "*Business Names Ordinance 1963*" there were substituted the words "*Business Names Act, 1962*".

44. In section 285 (3) (b) of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

45. In section 289 of the Commonwealth Act—

(a) for paragraph (a) of the definition of "relevant authority" in sub-section (1) there were substituted the following paragraphs:—

(a) in the case of a direction given by the Commonwealth Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Commonwealth Minister;

(aa) in the case of a direction given by the Minister other than a direction that has been approved by the Ministerial Council under sub-section 291 (6)—the Minister; or

(b) for sub-section (7) there were substituted the following sub-section:—

(7) An investigation under this Part shall, for the purposes of Part IV of the *Evidence Act, 1898*, be deemed to be a legal proceeding.

46. In section 291 of the Commonwealth Act—

(a) in sub-section (2) for the words "the Minister" (where twice occurring) there were substituted the words "the Commonwealth Minister";

(b) in sub-section (4) for the words "the Minister" there were substituted the words "the Minister or the Commonwealth Minister";

(c) in sub-section (6) for the expression "or under sub-section (1) or (2) of this section" there were substituted the expression "or under sub-section (1) of this section or by the Commonwealth Minister under sub-section (2) of this section".

47. Section 295 (4) of the Commonwealth Act were repealed.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

## 48. In section 306 of the Commonwealth Act—

- (a) in sub-section (6) (a) the word “and” (where lastly occurring) were repealed;
- (b) in sub-section (6) (b) for the word “Commonwealth.” there were substituted the words “State; and”;
- (c) after sub-section (6) (b) there were inserted the following paragraph:—
  - (c) the Commonwealth Minister may cause to be printed and published the whole or any part of a report under this Part that relates to an investigation the expenses of which are, under the Agreement, to be borne by the Commonwealth.
- (d) in sub-section (7) for the words “Ministerial Council or the Minister” (where four times occurring) there were substituted the words “Ministerial Council, the Minister or the Commonwealth Minister”;
- (e) after sub-section (13) there were inserted the following sub-section:—
  - (14) Nothing in this section operates to diminish the protection afforded to witnesses by the *Evidence Act*, 1898.

## 49. For section 314 of the Commonwealth Act there were substituted the following section:—

314. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## 50. In section 315 of the Commonwealth Act—

- (a) in sub-section (3) for the words “a State or another Territory” there were substituted the words “another State or in a Territory”;
- (b) in sub-section (19) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;
- (c) in sub-section (19) for the words “in the Australian Capital Territory” there were substituted the words “in New South Wales”;
- (d) in sub-section (20) for the words “the Australian Capital Territory” there were substituted the words “New South Wales”.

## 51. In section 317 (4) of the Commonwealth Act—

- (a) for the words “filed with the Registrar of the Supreme Court of the Australian Capital Territory” there were substituted the words “filed in the office of the Prothonotary of the Supreme Court of New South Wales”;



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SCHEDULE 1—*continued.*

- (b) for the words "in the Australian Capital Territory" there were substituted the words "in New South Wales".

## 52. In section 318 of the Commonwealth Act—

- (a) in sub-sections (11), (12), (13) and (15) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917*," whichever are applicable;
- (b) in sub-section (15) for the word "Commonwealth" there were substituted the word "State".

## 53. For section 322 of the Commonwealth Act there were substituted the following section:—

322. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## 54. For section 334 of the Commonwealth Act there were substituted the following section:—

334. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## 55. In section 335 (9) (b) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".

## 56. For section 358 of the Commonwealth Act there were substituted the following section:—

358. This Part binds the Crown in right of New South Wales and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## 57. In section 398 (2) (d) of the Commonwealth Act—

- (a) for the words "in each State or other Territory" there were substituted the words "in each other State and each Territory";
- (b) for the words "that State or other Territory" there were substituted the words "that other State or in that Territory".



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

58. In section 419 of the Commonwealth Act—
- (a) in sub-section (1) for the words “is not, in the absence of malice on his part, liable to any action for defamation at the suit of any person” there were substituted the words “has qualified privilege in proceedings for defamation”;
  - (b) in sub-section (2) for the words “an action” there were substituted the word “proceedings”.
59. In section 425 (2) of the Commonwealth Act after the matter “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”.
60. In section 427 of the Commonwealth Act—
- (a) for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”;
  - (b) for the matter “6 years” in sub-section (6) there were substituted the matter “2 years”.
61. In section 428 of the Commonwealth Act—
- (a) for sub-section (1) there were substituted the following sub-section:—
    - (1) There shall be established in the Treasury in the Special Deposits Account an account to be called the “Companies Liquidation Account”.
  - (b) in sub-section (2) for the word “Minister” there were substituted the words “Treasurer of New South Wales”;
  - (c) sub-section (4) were repealed.
62. In section 441 (h) of the Commonwealth Act—
- (a) for the words in sub-paragraph (i) “an Act or a law of the Territory” there were substituted the words “an Act of the Commonwealth or a law of the Australian Capital Territory”;
  - (b) for the words in sub-paragraphs (ii), (iii) and (v) “State Act or law of another Territory” there were substituted the words “Act or Act of any other State or law of a Territory other than the Australian Capital Territory”;
  - (c) for the words in sub-paragraph (iv) “an Act” there were substituted the words “an Act of the Commonwealth”.
63. In section 462 of the Commonwealth Act for the word “Minister” (wherever occurring) there were substituted the words “Treasurer of New South Wales”.
64. In section 463 of the Commonwealth Act for the word “Commonwealth” there were substituted the word “Crown”.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

65. In section 465 of the Commonwealth Act for the words "with the Registrar of the Supreme Court of the Territory" there were substituted the words "in the office of the Prothonotary of the Supreme Court of the State".

66. In section 466 of the Commonwealth Act for the words "Registrar of the Supreme Court of the Territory" there were substituted the words "Prothonotary of the Supreme Court of the State".

67. In section 467 of the Commonwealth Act for the word "Registrar" there were substituted the word "Prothonotary".

68. In section 493 (5) of the Commonwealth Act for the words "State Act" there were substituted the words "Act of the Commonwealth or of another State".

69. In section 495 (1) of the Commonwealth Act for the words "State or other Territory" there were substituted the words "other State or in a Territory".

70. In section 516 (7) of the Commonwealth Act—

- (a) for the words "a State, of another Territory" (where twice occurring) there were substituted the words "another State, of a Territory";
- (b) for the words "a State or another Territory" (where twice occurring) there were substituted the words "another State or a Territory";
- (c) in paragraph (e) for the words "State or other Territory" there were substituted the words "other State or of the Territory".

71. Section 531 (3) of the Commonwealth Act were repealed.

72. In section 534 of the Commonwealth Act—

- (a) for the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917,*";
- (b) in sub-section (5) for the words "that Ordinance" there were substituted the words "that Act";
- (c) in sub-section (6) for the words "the Commonwealth" there were substituted the words "New South Wales".

73. After section 552 (16) of the Commonwealth Act there were inserted the following sub-section:—

(17) The provisions of this section do not apply to offers of shares in a society, association or union registered under the *Co-operation Act, 1923*, or the *Permanent Building Societies Act, 1967*, or a credit union, association of credit unions or union of associations of credit unions registered under the *Credit Union Act, 1969*.



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

74. In section 568 of the Commonwealth Act for the words "in a State or in another Territory" there were substituted the words "in another State or in a Territory".

75. In the heading preceding section 576 of the Commonwealth Act the words "*and Regulations*" were repealed.

76. In section 576 of the Commonwealth Act—

- (a) for the words "The power to make rules of court conferred by section 28 of the *Australian Capital Territory Supreme Court Act* 1933 extends to making rules of court, not inconsistent with this Act" there were substituted the words "Rules of court, not inconsistent with this Code, may be made under the *Supreme Court Act*, 1970";
- (b) at the end of the section there were inserted the following sub-section:—
  - (2) Sub-section (1) does not limit the rule-making powers conferred by the *Supreme Court Act*, 1970.

77. Section 577 of the Commonwealth Act were repealed.

78. In section 578 (2) (a) of the Commonwealth Act for the words "State Act or Ordinance" there were substituted the words "Act of another State or Ordinance of a Territory".

79. Sections 580 and 581 of the Commonwealth Act were repealed.

80. Schedule 1 to the Commonwealth Act were repealed.

81. In Schedule 3 to the Commonwealth Act—

- (a) for the words "the Act" (wherever occurring) there were substituted the words "the Code";
- (b) in regulation 1 of Table A—
  - (i) for the words "'Act' means the *Companies Act* 1981" there were substituted the words "'Code' means the *Companies (New South Wales) Code*";
  - (ii) in sub-regulation (2) for the words "*Act* 1980" there were substituted the words "*(New South Wales) Code*";
  - (iii) in sub-regulation (2) for the words "*Companies Act* 1981" there were substituted the words "*Companies (New South Wales) Code*";



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*Companies (Application of Laws).*

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SCHEDULE 1—*continued.*

(c) in regulation 1 of Table B—

- (i) for the words ‘“Act” means the *Companies Act* 1981’ there were substituted the words ‘“Code” means the *Companies (New South Wales) Code*’;
- (ii) in sub-regulation (2) for the words “Act 1980” there were substituted the words “(New South Wales) Code”;
- (iii) in sub-regulation (2) for the words “*Companies Act* 1981” there were substituted the words “*Companies (New South Wales) Code*”.

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SCHEDULE 2.

(Sec. 7.)

The provisions of Regulations in force for the time being under the Commonwealth Act apply as if in those Regulations—

- 1. For the words “the Act” (wherever occurring) there were substituted the words “the Code”.
- 2. For the words “*Companies Act* 1981” (wherever occurring) there were substituted the words “*Companies (New South Wales) Code*”.
- 3. For the words “the Territory” (wherever occurring) there were substituted the words “the State”.
- 4. For the words “the Australian Capital Territory” (wherever occurring) there were substituted the words “New South Wales”.
- 5. For the words “a State or another Territory” or “a State or of another Territory” (wherever occurring) there were substituted the words “another State or a Territory”.
- 6. For the words “any other Territory or State” (wherever occurring) there were substituted the words “any other State or Territory”.
- 7. For the words “*Companies Ordinance* 1962” (wherever occurring) there were substituted the words “*Companies Act*, 1961” or the words “*Companies Act*, 1961,” whichever are applicable.



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*Companies (Application of Laws).*

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## SCHEDULE 2—continued.

8. For the words "*Companies (Acquisition of Shares) Act 1980*" (wherever occurring) there were substituted the words "*Companies (Acquisition of Shares) (New South Wales) Code*".

9. For the words "*Securities Industry Act 1980*" (wherever occurring) there were substituted the words "*Securities Industry (New South Wales) Code*".

10. For the words "*Companies Regulations*" (wherever occurring) there were substituted the words "*Companies (New South Wales) Regulations*".

11. For the words "*Unclaimed Moneys Ordinance 1950*" (wherever occurring) there were substituted the words "*Unclaimed Moneys Act, 1917*" or the words "*Unclaimed Moneys Act, 1917*," whichever are applicable.

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SCHEDULE 3.

(Sec. 8.)

The provisions of Regulations in force for the time being under the *Companies (Fees) Act 1981* of the Commonwealth apply as if in those Regulations—

1. A reference in the Schedule to a section, sub-section or paragraph, without an enactment being cited, were to be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

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SCHEDULE 4.

(Sec. 10.)

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 10:—



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*Companies (Application of Laws).*

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SCHEDULE 4—*continued.*

## COMPANIES (NEW SOUTH WALES) CODE

relating to the formation of companies in New South Wales, the regulation of companies formed in New South Wales, the registration in New South Wales of certain other bodies and certain other matters.

## PART I—PRELIMINARY

1. This Code may be cited as the *Companies (New South Wales) Code*.
2. This Code comes into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
3. This Code shall be read and construed together with the agreement made on 22 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.
4. This Code has effect subject to and in accordance with—
  - (a) the *Companies (Application of Laws) Act, 1981*; and
  - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981*.

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SCHEDULE 5.

(Sec. 11.)

The following heading and provisions shall be included in the publication under section 11 of the provisions of Regulations in force for the time being under the Commonwealth Act:—

## COMPANIES (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the *Companies (New South Wales) Regulations*.
  - (2) These Regulations shall come into operation on the day on which the *Companies (Application of Laws) Act, 1981*, commences.
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*Companies (Application of Laws).*

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## SCHEDULE 6.

(Sec. 12.)

The following heading and provisions shall be included in the publication under section 12 of the provisions of Regulations in force for the time being under the *Companies (Fees) Act* 1981 of the Commonwealth:—

## COMPANIES (FEES) (NEW SOUTH WALES) REGULATIONS

1. (1) These Regulations may be cited as the *Companies (Fees) (New South Wales) Regulations*.

(2) These Regulations shall come into operation on the day on which the *Companies (Application of Laws) Act*, 1981, commences.

2. In the Schedule, a reference to a section, sub-section or paragraph, without an enactment being cited, shall be taken as a reference to that section, sub-section or paragraph of the *Companies (New South Wales) Code*.

3. The fees payable for the purposes of section 8 of the *Companies (Application of Laws) Act*, 1981, are the fees specified in the Schedule in relation to the respective matters so specified.

## SCHEDULE

## FEES

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

L. W. STREET,  
*By Deputation from  
His Excellency the Governor.*

*Government House,  
Sydney, 30th December, 1981.*





