

**CORPORATE AFFAIRS COMMISSION (AUDITORS AND
LIQUIDATORS) AMENDMENT BILL 1989**

NEW SOUTH WALES



EXPLANATORY NOTE

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

This Bill is cognate with the Public Accountants Registration (Repeal and Amendment) Bill 1989.

The object of this Bill is to amend the Corporate Affairs Commission Act 1981—

- (a) to rename that Act as the Companies (Administration) Act 1981; and
- (b) to make provision for the constitution and functions of the Companies Auditors and Liquidators Disciplinary Board that is currently constituted under the Public Accountants Registration Act 1945 (proposed to be repealed by the cognate Bill); and
- (c) to provide that it is an offence for a person to act as an auditor when not a registered company auditor if a law requires that the audit be carried out by a registered company auditor; and
- (d) to enact savings and transitional provisions consequent on the proposed Act and the proposed repeal of the Public Accountants Registration Act 1945.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Principal Act.

SCHEDULE 1—AMENDMENTS

Act renamed etc.

Schedule 1 (3) changes the short title of the Principal Act to the Companies (Administration) Act 1981 to reflect the fact that the Act will now contain provisions that do not concern the Corporate Affairs Commission. Schedule 1 (1) changes the long title of the Principal Act for that purpose also. Schedule 1 (2), (5) and (7) divide the Principal Act into Parts.

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

Companies Auditors and Liquidators Disciplinary Board

Schedule 1 (6) constitutes the Companies Auditors and Liquidators Disciplinary Board, currently constituted under the Public Accountants Registration Act 1945, to exercise certain disciplinary functions conferred on it by the Companies (New South Wales) Code.

Schedule 1 (9) provides for the membership and procedure of the Board. The Board will consist of 3 members appointed by the Minister—a barrister or solicitor of not less than 5 years standing, a person selected from a panel of 3 persons nominated by the Institute of Chartered Accountants in Australia and a person selected from a panel of 3 persons nominated by the Australian Society of Accountants. The Minister may appoint a deputy member to act during the illness or absence of a member. Other provisions concern such matters as the term of office of members, vacancies, remuneration of members and quorums and voting at meetings.

Schedule 1 (4) makes a consequential amendment.

Offence—unqualified auditors

Schedule 1 (8) makes it an offence (maximum penalty \$500) for a person who is not a registered company auditor to carry out an audit required by any law to be carried out by a registered company auditor. Such an offence is currently provided for in respect of audits by registered public accountants by the Public Accountants Registration Act 1945.

Savings and transitional provisions

Schedule 1 (10) enacts savings and transitional provisions that will require references in Acts, regulations etc. to a registered public accountant to be read as references to a registered company auditor and references to the old Companies Auditors and Liquidators Disciplinary Board to be read as references to the new Board.

Hearings commenced by the old Board will be able to be completed and the actions of the old Board will be regarded as the actions of the new Board.

A six month transition period is provided for in which persons who are currently registered public accountants can continue to perform audit functions.

CORPORATE AFFAIRS COMMISSION (AUDITORS AND LIQUIDATORS) AMENDMENT BILL 1989

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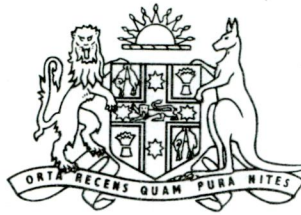
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**CORPORATE AFFAIRS COMMISSION (AUDITORS AND
LIQUIDATORS) AMENDMENT BILL 1989**

NEW SOUTH WALES



No. , 1989

A BILL FOR

An Act to amend the Corporate Affairs Commission Act 1981 to change the name of that Act and to provide for the constitution and functions of the Companies Auditors and Liquidators Disciplinary Board; and for other purposes.

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***The Legislature of New South Wales enacts:****Short title**

1. This Act may be cited as the Corporate Affairs Commission (Auditors and Liquidators) Amendment Act 1989.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Corporate Affairs Commission Act 1981 No. 64

3. The Corporate Affairs Commission Act 1981 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title—

15 After “for Corporate Affairs”, insert “and to the constitution and functions of the Companies Auditors and Liquidators Disciplinary Board”.

(2) Part 1, heading—

Before section 1, insert:

PART 1—PRELIMINARY20 (3) Section 1 (**Short title**)—

Omit the section, insert instead:

Short title

1. This Act may be cited as the Companies (Administration) Act 1981.

25 (4) Section 3 (**Definitions**)—

Section 3 (1)—

Before the definition of “Commission”, insert:

“Board” means the Companies Auditors and Liquidators Disciplinary Board constituted by Part 3;

30 (5) Part 2, heading—

Before section 4, insert:

PART 2—CORPORATE AFFAIRS COMMISSION

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued***

(6) Part 3—

After section 18, insert:

**PART 3—COMPANIES AUDITORS AND LIQUIDATORS
DISCIPLINARY BOARD**

5 **Board constituted for purposes of Companies Code**

18A. For the purposes of the Companies (New South Wales) Code, there shall be a Companies Auditors and Liquidators Disciplinary Board.

Functions of Board

10 18B. The Board shall have and may perform and exercise the functions and powers conferred on it under Division 2 of Part 2 of the Companies (New South Wales) Code and by or under any other law.

Membership, procedure etc. of Board

15 18C. Schedules 1B and 1C have effect.

(7) Part 4, heading—

Before section 19 (and proposed section 18D), insert:

PART 4—MISCELLANEOUS

(8) Section 18D—

20 Before section 19, insert:

Unqualified auditors—offence

25 18D. A person who accepts or holds appointment as, or who acts as, an auditor in respect of any matter in contravention of a requirement made by or under any law that any such auditor be a registered company auditor is guilty of an offence.

Penalty: 5 penalty units.

(9) Schedules 1B, 1C—

After Schedule 1A, insert:

30 **SCHEDULE 1B—PROVISIONS RELATING TO THE MEMBERSHIP
ETC. OF THE BOARD**

(Sec. 18C)

Membership of Board

35 1. (1) The Board shall consist of 3 members appointed by the Minister, of whom—

- (a) one shall be a barrister or solicitor of the Supreme Court of not less than 5 years standing (in either or both capacities) who is nominated by the Attorney General; and
- (b) one shall be selected from a panel of 3 persons nominated by the Institute of Chartered Accountants in Australia; and

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

(c) one shall be selected from a panel of 3 persons nominated by the Australian Society of Accountants.

(2) The member referred to in subclause (1) (a) shall be the Chairperson of the Board.

5 (3) If a body fails to nominate a panel of persons for the purposes of subclause (1) (b) or (c) within a reasonable time after being requested to do so, the Minister may appoint a person of the Minister's own choice.

Deputy members

10 2. (1) The Minister may, from time to time, appoint a person to be the deputy of any member of the Board.

(2) During the illness or absence of a member, the deputy of the member may act in the office of the member and while so acting has all the functions and powers of the member and shall be taken to be the member.

15 (3) A person appointed to be the deputy of the Chairperson must be a barrister or solicitor of the Supreme Court of not less than 5 years standing (in either or both capacities).

(4) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

20 (5) For the purposes of this clause, a vacancy in the office of a member shall be taken to be an absence from office of the member.

Term of office

3. Subject to this Schedule, a member of the Board shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

25 **Vacancy in office of member**

4. (1) The office of a member becomes vacant if the member—

(a) is absent from 3 consecutive meetings of the Board without leave of the Board; or

30 (b) becomes an insolvent under administration within the meaning of the Companies (New South Wales) Code; or

(c) is convicted of an offence involving fraud or dishonesty punishable on conviction by penal servitude or imprisonment for 3 months or more; or

35 (d) becomes incapable by reason of mental infirmity of managing his or her affairs; or

(e) is removed from office under this clause or under Part 8 of the Public Sector Management Act 1988; or

(f) resigns or dies.

40 (2) The Minister may remove a member from office for incapacity, incompetence or misbehaviour.

Filling of vacancy

5. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued*****Remuneration**

6. The members and deputies of members of the Board are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

5 **Effect of other Acts**

7. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made—

- 10 (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

15 the provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Schedule.

(3) The office of a member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

20 **SCHEDULE 1c—PROVISIONS RELATING TO PROCEDURE OF THE BOARD**

(Sec. 18c)

General procedure

25 1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Schedule, be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 2 members of whom one must be the Chairperson.

Presiding member

30 3. (1) The Chairperson shall preside at a meeting of the Board.

(2) At meetings of the Board, the Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

35 4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

5. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989*SCHEDULE 1—AMENDMENTS—*continued***First meeting**

6. The Minister shall call the first meeting of the Board in such manner as the Minister thinks fit.

(10) Schedule 2, Part 3—

5 After Part 2 of Schedule 2, insert:

**PART 3—PROVISIONS CONSEQUENT ON THE CORPORATE AFFAIRS
COMMISSION (AUDITORS AND LIQUIDATORS) AMENDMENT ACT
1989**

Definitions

10 13. In this Part—

“new Board” means the Board constituted under Part 3 of this Act;

“old Board” means the Companies Auditors and Liquidators Disciplinary Board constituted under the repealed Act immediately before its repeal;

15 “repealed Act” means the Public Accountants Registration Act 1945 as in force immediately before its repeal.

Six month transition period

20 14. (1) A provision in any Act that requires anything to be done by a registered company auditor shall be regarded as also permitting that thing to be done by a person who was, immediately before the repeal of the repealed Act, a registered public accountant under the repealed Act.

(2) This clause applies—

(a) only for 6 months after the repeal of the repealed Act; and

(b) only if the thing required to be done was, immediately before that repeal, required to be done by a registered public accountant.

Construction of obsolete references

25 15. After the repeal of the repealed Act, a reference in any other Act, in any instrument made under an Act or in any other instrument of any kind to—

30 (a) a registered public accountant shall be read as a reference to a registered company auditor within the meaning of the Companies (New South Wales) Code; or

(b) the Companies Auditors and Liquidators Disciplinary Board constituted under the Public Accountants Registration Act 1945 shall be read as a reference to that Board constituted under this Act.

Completion of hearings

35 16. (1) A hearing by the old Board commenced but not completed immediately before the repeal of the repealed Act may be completed by the old Board as if the repealed Act had not been repealed and this Act had not been enacted.

40 (2) A decision of the old Board in such a hearing shall be regarded as a decision of the new Board.

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Actions of old Board

17. Any action taken by or in relation to the old Board under any law before the repeal of the repealed Act shall, on that repeal, be regarded as having been taken by or in relation to the new Board.



**CORPORATE AFFAIRS COMMISSION (AUDITORS AND
LIQUIDATORS) AMENDMENT ACT 1989 No. 35**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Corporate Affairs Commission Act 1981 No. 64

SCHEDULE 1—AMENDMENTS

**CORPORATE AFFAIRS COMMISSION (AUDITORS AND
LIQUIDATORS) AMENDMENT ACT 1989 No. 35**

NEW SOUTH WALES



Act No. 35, 1989

An Act to amend the Corporate Affairs Commission Act 1981 to change the name of that Act and to provide for the constitution and functions of the Companies Auditors and Liquidators Disciplinary Board; and for other purposes. [Assented to 10 May 1989]

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Corporate Affairs Commission (Auditors and Liquidators) Amendment Act 1989.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Corporate Affairs Commission Act 1981 No. 64

3. The Corporate Affairs Commission Act 1981 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title—

After “for Corporate Affairs”, insert “and to the constitution and functions of the Companies Auditors and Liquidators Disciplinary Board”.

(2) Part 1, heading—

Before section 1, insert:

PART 1—PRELIMINARY

(3) Section 1 (**Short title**)—

Omit the section, insert instead:

Short title

1. This Act may be cited as the Companies (Administration) Act 1981.

(4) Section 3 (**Definitions**)—

Section 3 (1)—

Before the definition of “Commission”, insert:

“Board” means the Companies Auditors and Liquidators Disciplinary Board constituted by Part 3;

(5) Part 2, heading—

Before section 4, insert:

PART 2—CORPORATE AFFAIRS COMMISSION

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***SCHEDULE 1—AMENDMENTS—continued****(6) Part 3—**

After section 18, insert:

**PART 3—COMPANIES AUDITORS AND LIQUIDATORS
DISCIPLINARY BOARD**

Board constituted for purposes of Companies Code

18A. For the purposes of the Companies (New South Wales) Code, there shall be a Companies Auditors and Liquidators Disciplinary Board.

Functions of Board

18B. The Board shall have and may perform and exercise the functions and powers conferred on it under Division 2 of Part 2 of the Companies (New South Wales) Code and by or under any other law.

Membership, procedure etc. of Board

18C. Schedules 1B and 1C have effect.

(7) Part 4, heading—

Before section 19 (and proposed section 18D), insert:

PART 4—MISCELLANEOUS

(8) Section 18D—

Before section 19, insert:

Unqualified auditors—offence

18D. A person who accepts or holds appointment as, or who acts as, an auditor in respect of any matter in contravention of a requirement made by or under any law that any such auditor be a registered company auditor is guilty of an offence.

Penalty: 5 penalty units.

(9) Schedules 1B, 1C—

After Schedule 1A, insert:

**SCHEDULE 1B—PROVISIONS RELATING TO THE MEMBERSHIP
ETC. OF THE BOARD**

(Sec. 18C)

Membership of Board

1. (1) The Board shall consist of 3 members appointed by the Minister, of whom—

- (a) one shall be a barrister or solicitor of the Supreme Court of not less than 5 years standing (in either or both capacities) who is nominated by the Attorney General; and
- (b) one shall be selected from a panel of 3 persons nominated by the Institute of Chartered Accountants in Australia; and

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued***

(c) one shall be selected from a panel of 3 persons nominated by the Australian Society of Accountants.

(2) The member referred to in subclause (1) (a) shall be the Chairperson of the Board.

(3) If a body fails to nominate a panel of persons for the purposes of subclause (1) (b) or (c) within a reasonable time after being requested to do so, the Minister may appoint a person of the Minister's own choice.

Deputy members

2. (1) The Minister may, from time to time, appoint a person to be the deputy of any member of the Board.

(2) During the illness or absence of a member, the deputy of the member may act in the office of the member and while so acting has all the functions and powers of the member and shall be taken to be the member.

(3) A person appointed to be the deputy of the Chairperson must be a barrister or solicitor of the Supreme Court of not less than 5 years standing (in either or both capacities).

(4) The Minister may, at any time, remove a person from any office to which the person was appointed under this clause.

(5) For the purposes of this clause, a vacancy in the office of a member shall be taken to be an absence from office of the member.

Term of office

3. Subject to this Schedule, a member of the Board shall hold office for such period (not exceeding 3 years) as may be specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Vacancy in office of member

4. (1) The office of a member becomes vacant if the member—

(a) is absent from 3 consecutive meetings of the Board without leave of the Board; or

(b) becomes an insolvent under administration within the meaning of the Companies (New South Wales) Code; or

(c) is convicted of an offence involving fraud or dishonesty punishable on conviction by penal servitude or imprisonment for 3 months or more; or

(d) becomes incapable by reason of mental infirmity of managing his or her affairs; or

(e) is removed from office under this clause or under Part 8 of the Public Sector Management Act 1988; or

(f) resigns or dies.

(2) The Minister may remove a member from office for incapacity, incompetence or misbehaviour.

Filling of vacancy

5. If the office of any member becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Remuneration

6. The members and deputies of members of the Board are entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Effect of other Acts

7. (1) The Public Sector Management Act 1988 does not apply to the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made—

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member of the Board or from accepting and retaining any remuneration payable to the person under this Schedule.

(3) The office of a member of the Board is not, for the purposes of any Act, an office or place of profit under the Crown.

SCHEDULE 1c—PROVISIONS RELATING TO PROCEDURE OF THE BOARD

(Sec. 18c)

General procedure

1. The procedure for the calling of meetings of the Board and for the conduct of business at those meetings shall, subject to this Schedule, be as determined by the Board.

Quorum

2. The quorum for a meeting of the Board is 2 members of whom one must be the Chairperson.

Presiding member

3. (1) The Chairperson shall preside at a meeting of the Board.

(2) At meetings of the Board, the Chairperson has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

4. A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

Minutes

5. The Board must cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

*Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989***SCHEDULE 1—AMENDMENTS—*continued*****First meeting**

6. The Minister shall call the first meeting of the Board in such manner as the Minister thinks fit.

(10) Schedule 2, Part 3—

After Part 2 of Schedule 2, insert:

**PART 3—PROVISIONS CONSEQUENTIAL ON THE CORPORATE AFFAIRS
COMMISSION (AUDITORS AND LIQUIDATORS) AMENDMENT ACT
1989**

Definitions

13. In this Part—

“new Board” means the Board constituted under Part 3 of this Act;

“old Board” means the Companies Auditors and Liquidators Disciplinary Board constituted under the repealed Act immediately before its repeal;

“repealed Act” means the Public Accountants Registration Act 1945 as in force immediately before its repeal.

Six month transition period

14. (1) A provision in any Act that requires anything to be done by a registered company auditor shall be regarded as also permitting that thing to be done by a person who was, immediately before the repeal of the repealed Act, a registered public accountant under the repealed Act.

(2) This clause applies—

(a) only for 6 months after the repeal of the repealed Act; and

(b) only if the thing required to be done was, immediately before that repeal, required to be done by a registered public accountant.

Construction of obsolete references

15. After the repeal of the repealed Act, a reference in any other Act, in any instrument made under an Act or in any other instrument of any kind to—

(a) a registered public accountant shall be read as a reference to a registered company auditor within the meaning of the Companies (New South Wales) Code; or

(b) the Companies Auditors and Liquidators Disciplinary Board constituted under the Public Accountants Registration Act 1945 shall be read as a reference to that Board constituted under this Act.

Completion of hearings

16. (1) A hearing by the old Board commenced but not completed immediately before the repeal of the repealed Act may be completed by the old Board as if the repealed Act had not been repealed and this Act had not been enacted.

(2) A decision of the old Board in such a hearing shall be regarded as a decision of the new Board.

Corporate Affairs Commission (Auditors and Liquidators) Amendment 1989

SCHEDULE 1—AMENDMENTS—*continued*

Actions of old Board

17. Any action taken by or in relation to the old Board under any law before the repeal of the repealed Act shall, on that repeal, be regarded as having been taken by or in relation to the new Board.

[*Minister's second reading speech made in—
Legislative Assembly on 4 April 1989
Legislative Council on 2 May 1989*]



