

# CORPORATIONS (NEW SOUTH WALES) ACT 1990 No. 83

## NEW SOUTH WALES



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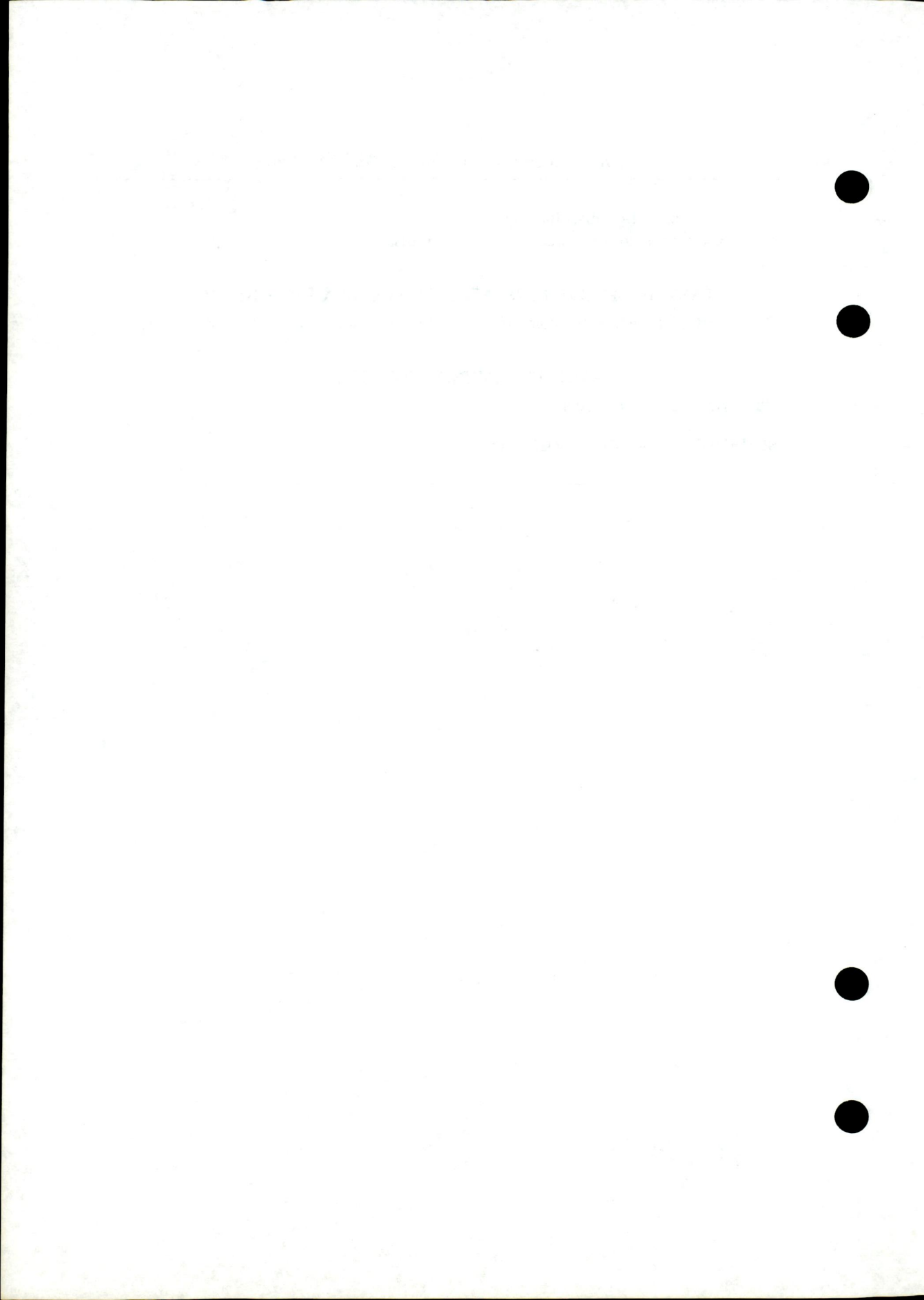
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**CORPORATIONS (NEW SOUTH WALES) ACT  
1990 No. 83**

**NEW SOUTH WALES**



**Act No. 83, 1990**

An Act to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of New South Wales and for other purposes. [Assented to 7 December 1990]

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title and purposes**

1. (1) This Act may be cited as the Corporations (New South Wales) Act 1990.

(2) The purposes of this Act are:

- (a) to apply certain provisions of the Corporations Act 1989 of the Commonwealth and the Australian Securities Commission Act 1989 of the Commonwealth and of regulations under those Acts as laws of New South Wales; and
- (b) to apply certain other laws of the Commonwealth as laws of New South Wales for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters.

**Commencement**

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

**Definitions**

3. (1) In this Act:

“**applicable provision**”, in relation to a jurisdiction, means a provision of:

- (a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or
- (b) the ASC Law, or ASC Regulations, of that jurisdiction; or
- (c) in the case of the Capital Territory - a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to:
  - (i) an offence against; or
  - (ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction; or



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(d) in the case of a jurisdiction other than the Capital Territory - a Commonwealth law as applying, because of a law of that jurisdiction, in relation to:

(i) an offence against; or

(ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction;

**“ASC Act”** means the Australian Securities Commission Act 1989 of the Commonwealth;

**“ASC Law”** has the meaning given by Part 11;

**“ASC Law of New South Wales”** means the provisions applying by reason of section 58;

**“ASC Regulations”** has the meaning given by Part 11;

**“ASC Regulations of New South Wales”** means the provisions applying by reason of section 59;

**“authority”**, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;

**“Capital Territory”** means the Australian Capital Territory and the Jervis Bay Territory;

**“Commission”** means the Australian Securities Commission established by the ASC Act;

**“Commonwealth administrative laws”** means the following:

(a) the Administrative Appeals Tribunal Act 1975 of the Commonwealth;

(b) the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth;

(c) the Freedom of Information Act 1982 of the Commonwealth;

(d) the Ombudsman Act 1976 of the Commonwealth;

(e) the Privacy Act 1988 of the Commonwealth;

**“Commonwealth law”** means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASC Law of the Capital Territory or provisions prescribed, for the purposes of the definition of “Commonwealth law” in section 4 of the Corporations Act, by regulations under section 73 of the Corporations Act;

**“Commonwealth Minister”** has the meaning given to “the Minister” by section 80A (2) of the Corporations Law;

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- “co-operative scheme law”** has the meaning given by section 84;
- “Corporations Act”** means the Corporations Act 1989 of the Commonwealth;
- “Corporations Law”** has the meaning given by Part 3;
- “Corporations Law of New South Wales”** means the provisions applying by reason of section 7;
- “Corporations Regulations”** has the meaning given by Part 3;
- “Corporations Regulations of New South Wales”** means the provisions applying by reason of section 8;
- “corresponding law”** means:
- (a) an Act of a jurisdiction (other than New South Wales) that corresponds to this Act; or
  - (b) regulations made under such an Act; or
  - (c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction; or
  - (d) rules of court made because of such an Act;
- “Full Court”**, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court;
- “jurisdiction”** means a State or the Capital Territory;
- “law”** in relation to the Capital Territory, means a law of or in force in the Capital Territory;
- “Minister for this jurisdiction”** means the Minister;
- “modifications”** includes additions, omissions and substitutions;
- “national scheme law”** has the meaning given by section 60;
- “national scheme law of this jurisdiction”** means:
- (a) this Act; or
  - (b) the Corporations Law of New South Wales; or
  - (c) the ASC Law of New South Wales;
- “NCSC”** means the National Companies and Securities Commission;
- “officer”**, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;
- “State”** includes the Northern Territory;
- “Territory”** does not include the Northern Territory;
- “this jurisdiction”** means New South Wales.

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(2) In this Act, a reference to a Commonwealth Act includes a reference to:

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

**Australian Capital Territory**

4. For the purposes of the national scheme laws of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

**This Act and applicable provisions of New South Wales not to be affected by later State laws**

5. (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of New South Wales.

(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of this Act or the applicable provisions of New South Wales.

**Operation of other New South Wales laws**

6. Except as otherwise provided in this Act, nothing in this Act or the applicable provisions of New South Wales affects the operation after the commencement of this section of an Act enacted before that commencement or of an instrument made under such an Act.

**PART 2—THE CORPORATIONS LAW, AND THE  
CORPORATIONS REGULATIONS, OF NEW SOUTH WALES**

**Application in New South Wales of the Corporations Law**

7. The Corporations Law set out in section 82 of the Corporations Act as in force for the time being:

- (a) applies as a law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Law of New South Wales.



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**Application of regulations**

8. (1) The regulations in force for the time being under section 22 of the Corporations Act:

- (a) apply as regulations in force for the purposes of the Corporations Law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Regulations of New South Wales.

(2) Subject to subsection (3) of this section, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the Commonwealth of Australia Gazette under section 48 (1) of the Acts Interpretation Act 1901 of the Commonwealth, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Corporations Act from the specified day.

(3) To the extent that a provision of the Corporations Regulations of New South Wales is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to:

- (a) affect a private person's rights as at that day so as to disadvantage that person; or
- (b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

(4) In subsection (3):

**"private person"** means a person other than:

- (a) the Commonwealth, a State or the Capital Territory; or
- (b) an authority of the Commonwealth, of a State or of the Capital Territory.

(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

**Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of New South Wales**

9. In the Corporations Law, and the Corporations Regulations, of New South Wales:

**"the Minister for this jurisdiction"** means the Minister;

**"this jurisdiction"** means New South Wales.

**Interpretation law**

10. (1) Subject to Part 1.2 of the Corporations Law of New South Wales, the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 8 of the Corporations Act, applies as a law of New South Wales in relation to the Corporations Law, and the Corporations Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders under section 111A of that Law) and so applies as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the Corporations Law, or the Corporations Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**PART 3—CITING THE CORPORATIONS LAW AND THE CORPORATIONS REGULATIONS****Simpler citation of Corporations Law, and Corporations Regulations, of New South Wales**

11. (1) The Corporations Law of New South Wales may be referred to simply as the Corporations Law.

(2) The Corporations Regulations of New South Wales may be referred to simply as the Corporations Regulations.

(3) This section has effect subject to section 13.

**References to Corporations Law, and Corporations Regulations, of other jurisdictions**

12. (1) This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than New South Wales that corresponds to section 7 of this Act provides that the Corporations Law set out in section 82 of the Corporations Act as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

(3) Where a law of a jurisdiction other than New South Wales that corresponds to section 8 of this Act provides that the regulations in force for the time being under section 22 of the Corporations Act apply for the



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purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

**References to Corporations Law and Corporations Regulations**

13. (1) The object of this section is to help ensure that the Corporations Law of New South Wales operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than New South Wales, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the Corporations Law, or to the Corporations Regulations, of New South Wales; and
- (b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than New South Wales.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

(5) In this section:

**“instrument”** means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.



**PART 4—APPLICATION OF THE CORPORATIONS LAW TO THE CROWN****Interpretation**

14. To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

**Corporations Law of New South Wales**

15. (1) Chapter 5 (except Part 5.8) of the Corporations Law of New South Wales binds the Crown not only in right of the State of New South Wales but also, so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth, of each of the other States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(2) To avoid doubt, Chapter 7 of the Corporations Law of New South Wales does not bind the Crown in right of the State of New South Wales, of the Commonwealth, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

**Corporations Law of other jurisdictions**

16. Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than New South Wales binds the Crown in right of the State of New South Wales.

**Crown not liable to prosecution**

17. Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

**This Part overrides the prerogative**

18. Where, because of this Part, a provision of a law of another jurisdiction binds the Crown in right of the State of New South Wales, the Crown in that right is subject to that provision despite any prerogative right or privilege.

**PART 5—APPLICATION ORDERS****Commonwealth Minister to obtain consent of State Minister**

19. Despite Part 1.3 of the Corporations Law of New South Wales and section 20 of this Act, the Commonwealth Minister may only make an order under section 111A of that Law, or that section as applying

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because of section 20 of this Act, with the consent of the Minister for this jurisdiction.

**Application orders for ASC Law**

20. Part 1.3 of the Corporations Law of New South Wales applies for the purposes of the ASC Law of New South Wales as if the provisions of the ASC Law of New South Wales were provisions of the Corporations Law of New South Wales.

**PART 6—ACCOUNTING STANDARDS****Accounting standards**

21. Subject to the Corporations Law, and the Corporations Regulations, of New South Wales, the instruments in force for the time being under section 32 of the Corporations Act also have effect for the purposes of Parts 3.6 and 3.7 of that Law.

**PART 7—IMPOSITION OF FEES AND TAXES****Fees (including taxes) for chargeable matters**

22. This section imposes the fees (including fees that are taxes) that the Corporations Regulations of New South Wales prescribe.

**Contributions and levies for fidelity funds of securities exchanges**

23. (1) This section imposes:

- (a) the contribution payable under section 902 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange; and
- (b) the annual contribution payable under section 902 (2) of that Law by a member of a securities exchange; and
- (c) any levy payable under section 904 of that Law by a member of a securities exchange.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of New South Wales.

**Levies for National Guarantee Fund**

24. This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of New South Wales.

**Contributions and levies for fidelity funds of futures organisations**

25. (1) This section imposes:
- (a) the contribution payable under section 1234 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a futures organisation; and
  - (b) the annual contribution payable under section 1234 (2) of that Law by a contributing member of a futures organisation; and
  - (c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.
- (2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of New South Wales.

**PART 8—NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE CORPORATIONS LAW****Division 1—Preliminary****Object**

26. The object of this Part is to help ensure that:
- (a) the Corporations Law of New South Wales, and the Corporations Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and
  - (b) the ASC Law of New South Wales, and the ASC Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

**Effect of Part**

27. (1) This Part has effect subject to this Act (in particular Part 9), the Corporations Law of New South Wales and the ASC Law of New South Wales.

- (2) Nothing in this Part limits the generality of anything else in it.

**Division 2—Offences against applicable provisions****Object**

28. (1) The object of this Division is to further the object of this Part by providing:



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- (a) for an offence against an applicable provision of New South Wales to be treated as if it were an offence against a law of the Commonwealth; and
  - (b) for an offence against an applicable provision of another jurisdiction to be treated in New South Wales as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):
- (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) liability to make reparation in connection with offences; and
  - (h) proceeds of crime; and
  - (i) spent convictions.

**Application of Commonwealth laws in relation to offences against applicable provisions**

29. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of New South Wales:

- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an offence against the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

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**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**

30. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of another jurisdiction:

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

31. (1) A Commonwealth law applying because of section 29 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against the applicable provisions of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of New South Wales.

(2) A Commonwealth law applying because of section 30 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.



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**Reference in Commonwealth law to a provision of another law**

32. A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of section 29 or 30, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

33. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**Division 3—Administrative Law**

**Object**

34. The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws:

- (a) apply to the applicable provisions of New South Wales; and
- (b) apply, in New South Wales, to the applicable provisions of another jurisdiction,

as if the applicable provisions were those of the Capital Territory.

**Application of Commonwealth administrative laws in relation to applicable provisions**

35. (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of the applicable provisions of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of the applicable provisions of New South Wales:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

**Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions**

**36.** (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken **not** to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

**37.** (1) A Commonwealth administrative law applying because of section 35 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of New South Wales.

(2) A Commonwealth administrative law applying because of section 36 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in



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performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.

**Reference in Commonwealth administrative law to a provision of another law**

38. A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken for the purposes of section 35 or 36, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

39. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**PART 9—JURISDICTION AND PROCEDURE OF COURTS**

**Division 1—Vesting and cross-vesting of civil jurisdiction**

**Operation of Division**

40. (1) This Division provides in relation to:

- (a) the jurisdiction of courts in respect of matters other than criminal matters (in this Division called “civil” matters) arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of civil matters arising under the Corporations Law of another State or the Capital Territory,

and so provides to the exclusion of the Jurisdiction of Courts (Cross-vesting) Act 1987.

(2) Nothing in this Division affects any other jurisdiction of any court.

**Interpretation**

41. (1) In this Division:

“**judgment**” means a judgment, decree or order, whether final or interlocutory.



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(2) In this Division:

(a) a reference to the **Corporations Law of New South Wales** includes a reference to:

- (i) the Corporations Regulations of New South Wales; and
- (ii) the ASC Law of New South Wales; and
- (iii) the ASC Regulations of New South Wales; and
- (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
- (v) this Act; and
- (vi) regulations made under this Act; and
- (vii) rules of court made by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and

(b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

**Jurisdiction of Federal Court and State and Territory Supreme Courts**

42. (1) Subject to section 9 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth, as it applies as a law of New South Wales, jurisdiction is conferred on the Supreme Court of New South Wales and of each other State and the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.

(2) The jurisdiction conferred on a Supreme Court by subsection (1) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(3) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales.

**Appeals**

43. (1) An appeal may not be instituted from a decision of a court of New South Wales to a court of another State or Territory or to the Federal Court.

(2) An appeal may not be instituted from a decision of the Federal Court to a court of a State or Territory.

(3) An appeal may not be instituted from a decision of the Supreme Court of another State to the Federal Court or to a court of any State or Territory, except the Full Court of that Supreme Court.

(4) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State.

**Transfer of proceedings**

44. (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of New South Wales in a court having jurisdiction under section 42.

(2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first-mentioned court may transfer the proceeding or application to that other court.

(3) In deciding whether to transfer a proceeding or application under subsection (2), the court must have regard to:

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events the subject of the proceeding or application took place.

(4) The court may transfer the proceeding or application:

- (a) on the application of a party made at any stage; or
- (b) of the court's own motion.

(5) Where, under subsection (2), a court transfers a proceeding, or an application in a proceeding, to another court:

- (a) the Registrar or other proper officer of the first-mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first-mentioned court in respect of the proceeding or application, as the case may be; and



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- (b) the other court must proceed as if:
- (i) the proceeding had been originally instituted in the other court; and
  - (ii) the same proceedings had been taken in the other court as were taken in the first-mentioned court; and
  - (iii) in a case where an application is transferred—the application had been made in the other court.

**Conduct of proceedings**

45. (1) Subject to sections 51 and 52, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with the matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) Where a proceeding is transferred or removed to a court (in this subsection called the “**transferee court**”) from another court (in this subsection called the “**transferor court**”), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section:

“**relevant jurisdiction**” means:

- (a) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales; or
- (b) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction that is being exercised by the Federal Court sitting in New South Wales; or
- (c) jurisdiction conferred on the Supreme Court of New South Wales with respect to civil matters arising under the Corporations Law of another State or the Capital Territory; or
- (d) jurisdiction conferred on the Supreme Court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.



**Courts to act in aid of each other**

46. All courts having jurisdiction in civil matters arising under the Corporations Law of New South Wales, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

**Exercise of jurisdiction pursuant to cross-vesting provisions**

47. The Supreme Court of New South Wales may:

- (a) exercise jurisdiction (whether original or appellate) conferred on that Court by a law of another State or the Capital Territory corresponding to this Division with respect to matters arising under the Corporations Law of that State or Territory; and
- (b) hear and determine a proceeding transferred to that Court under such a provision.

**Rights of appearance**

48. A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the “**transferred proceeding**”) in that court is transferred to another court under this Division or a law of another State or the Capital Territory that corresponds to this Division, the same entitlements to practise in relation to:

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding,

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

**Limitation on appeals**

49. An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to section 45 (1).

**Enforcement of judgments etc.**

50. (1) A judgment of the Federal Court or the Supreme Court of New South Wales that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of another State or the

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Capital Territory that corresponds to this Division, is enforceable in New South Wales as if the judgment had been given by that Court entirely in the exercise of the jurisdiction of that Court apart from this Division or any such law.

(2) Where:

- (a) a provision of a law of New South Wales (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court or the Supreme Court of New South Wales or of another State or of the Capital Territory; and
- (b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of another State or the Capital Territory corresponding to this Division,

the reference in that provision to the Federal Court or the Supreme Court of New South Wales or of the other State or Territory, as the case may be, is taken as a reference to that other court.

### **Rules of the Supreme Court**

**51.** (1) Rules of court, not inconsistent with the Corporations Law of New South Wales, may be made under the Supreme Court Act 1970:

- (a) with respect to proceedings, and the practice and procedure, of that Court under that Law; and
- (b) with respect to any matter or thing that is:
  - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
  - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

This subsection does not limit the rule-making powers conferred by the Supreme Court Act 1970.

(2) When the Supreme Court of New South Wales is exercising jurisdiction with respect to matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction conferred by a law of another State or the Capital Territory that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When the Supreme Court of another State or the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law



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of the State or Territory corresponding to subsection (1), with such alterations as are necessary.

(4) In this section:

“Corporations Law of another State or the Capital Territory” does not include rules of court;

“Corporations Law of New South Wales” does not include rules of court.

### Rules of the Federal Court

52. (1) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 60 of the Corporations Act, with such alterations as are necessary.

(2) In this section:

“Corporations Law of New South Wales” does not include rules of court.

### Division 2—Vesting and cross-vesting of criminal jurisdiction

#### Operation of Division

53. This Division provides in relation to:

- (a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of criminal matters arising under the Corporations Law of any jurisdiction.

#### Interpretation

54. (1) In this Division:

“magistrate” means a magistrate who is remunerated by salary or otherwise.

(2) In this Division:

- (a) a reference to the Corporations Law of New South Wales includes a reference to:
  - (i) the Corporations Regulations of New South Wales; and
  - (ii) the ASC Law of New South Wales; and
  - (iii) the ASC Regulations of New South Wales; and



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- (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
  - (v) this Act; and
  - (vi) regulations made under this Act; and
  - (vii) rules of court made by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

### **Jurisdiction of courts**

**55.** (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction:

- (a) with respect to:
  - (i) the summary conviction; or
  - (ii) the examination and commitment for trial on indictment; or
  - (iii) the trial and conviction on indictment,
 of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to:
  - (iv) their sentencing, punishment and release; or
  - (v) their liability to make reparation in connection with their offences; or
  - (vi) the forfeiture of property in connection with their offences; or
  - (vii) the proceeds of their crimes; and
- (b) with respect to the hearing and determination of:
  - (i) proceedings connected with; or
  - (ii) appeals arising out of; or
  - (iii) appeals arising out of proceedings connected with,
 any such trial or conviction or any matter of a kind referred to in paragraph (a)(iv), (v), (vi) or (vii),

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have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of New South Wales.

(2) Where a provision of a law of another State or the Capital Territory corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State or the Capital Territory upon a court of New South Wales, the court may exercise that jurisdiction.

(3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of another State or the Capital Territory, and:

- (a) the reference in subsection (1)(b) to "any such trial or conviction" includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and
- (b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned:

- (a) would be required to be prosecuted on indictment; or
- (b) would be required to be prosecuted either summarily or on indictment.

(6) For the purposes of the application of a relevant law as provided by subsection (4):

- (a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and
- (b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

(7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.

(8) Subject to subsection (9), the jurisdiction conferred on a court of New South Wales by a law of another State or the Capital Territory corresponding to subsection (1) may be exercised despite any limits as to



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locality of the jurisdiction of that court under the law of New South Wales.

(9) Where:

- (a) jurisdiction is conferred on a court of New South Wales in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of another State or of the Capital Territory; and
- (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest,

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or the Capital Territory.

(10) The jurisdiction conferred on a court of another State or the Capital Territory by subsection (1) in relation to:

- (a) the examination and commitment for trial on indictment; and
- (b) the trial and conviction on indictment,

of offenders or persons charged with offences against the Corporations Law of New South Wales is conferred only in relation to:

- (c) offences committed outside Australia; and
- (d) offences committed, begun or completed within the State or Territory concerned.

(11) In this section:

“Australia” does not include the coastal sea;

“relevant law” means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

### **Laws to be applied**

**56.** (1) Subject to this Division, the laws of New South Wales respecting:

- (a) the arrest and custody in New South Wales of offenders or persons charged with offences; and
  - (b) criminal procedure in New South Wales in relation to such persons,
- apply in New South Wales, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South



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Wales or of another State or the Capital Territory in respect of whom jurisdiction is conferred on a court of New South Wales by this Division or a corresponding law of another State or the Capital Territory.

(2) Subject to this Division, the laws of each other State and the Capital Territory respecting:

- (a) the arrest and custody in that State or Territory of offenders or persons charged with offences; and
- (b) criminal procedure in that State or Territory in relation to such persons,

apply in that State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South Wales in respect of whom jurisdiction is conferred on a court of that State or Territory by this Division.

(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of another State or the Capital Territory.

(4) In this section:

**“criminal procedure”** means the procedure for:

- (a) the summary conviction; and
  - (b) the examination and commitment for trial and indictment; and
  - (c) the trial and conviction on indictment; and
  - (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings,
- of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

**“laws of each other State and the Capital Territory”** means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State or Territory concerned.

## PART 10—COMPANIES LIQUIDATION ACCOUNT

### Companies Liquidation Account

57. (1) In this section:

**“relevant money”** means:

- (a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the Companies (New South Wales) Code; and

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- (b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the Companies (New South Wales) Code that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

(2) Relevant money is to be dealt with in accordance with section 427 of the Companies (New South Wales) Code.

**PART 11—THE ASC LAW, AND THE ASC REGULATIONS,  
OF NEW SOUTH WALES**

**Division 1—Application of ASC Act and ASC Regulations**

**Application in New South Wales of the ASC Act**

- 58.** (1) The ASC Act, other than the excluded provisions:
- (a) applies as a law of New South Wales; and
  - (b) as so applying, may be referred to as the ASC Law of New South Wales.
- (2) The excluded provisions of the ASC Act are:
- Part 1, except section 6A
  - Part 2
  - Section 88
  - Divisions 1 and 4 of Part 4
  - Part 5
  - Part 6
  - Division 1 of Part 7
  - Part 8
  - Part 9
  - Division 1 of Part 10
  - Division 1 of Part 11
  - Part 12
  - Part 14
  - Sections 251 and 252

**Application of regulations**

- 59.** The regulations in force for the time being under section 251 of the ASC Act:
- (a) apply as regulations in force for the purposes of the ASC Law of New South Wales; and

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- (b) as so applying, may be referred to as the ASC Regulations of New South Wales.

**Interpretation of some expressions in the ASC Law, and the ASC Regulations, of New South Wales**

**60.** (1) In this Part, and in the ASC Law, and the ASC Regulations, of New South Wales:

**“Advisory Committee”** means the Companies and Securities Advisory Committee established by section 145 of the ASC Act;

**“affairs”**, in relation to a body corporate, has the same meaning as in section 260 of the Corporations Law;

**“assist”**, in relation to a Commission delegate, means:

(a) to perform functions:

(i) as a member, officer or employee of the Commission delegate; and

(ii) in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law; or

(b) to perform services for the Commission delegate in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law;

**“Australia”** includes any external Territory to which the ASC Act extends;

**“books”** includes:

(a) a register; and

(b) accounts or accounting records, however compiled, recorded or stored; and

(c) a document; and

(d) banker’s books; and

(e) any other record of information;

**“Chairperson”** means:

(a) except in Part 11 of the ASC Law or in relation to the Disciplinary Board—the Chairperson of the Commission; and

(b) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board;

**“Commission”** means the Australian Securities Commission established by section 7 of the ASC Act;



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**“Commission delegate”** means a person to whom, or a body to which, a function or power is delegated under section 102 of the ASC Law;

**“contravention”**, in relation to a law, includes an ancillary offence relating to an offence against that law;

**“court”**, except in section 248 of the ASC Law, includes a tribunal having power to require the production of documents or the answering of questions;

**“Deputy Chairperson”** means the Deputy Chairperson of the Commission;

**“Disciplinary Board”** means the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the ASC Act;

**“eligible person”**, in relation to a person, means a person who:

(a) if the first-mentioned person is a body corporate—is or has been an officer of the body within the meaning of a national scheme law or a corresponding previous law; or

(b) in any case:

(i) is or has been an employee, agent, banker, solicitor or auditor of; or

(ii) is acting, or has acted, in any other capacity on behalf of,

the first-mentioned person;

**“examination”** means:

(a) in this section and Part 3 (other than section 27 (2) and Division 9) of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of that Law; or

(b) in section 27 (2) and Division 9 of Part 3 of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of the ASC Law or a corresponding provision of the ASC Law of another jurisdiction;

**“expenses”**, in relation to an investigation under Division 1 of Part 3 of the ASC Law, includes costs and expenses incurred in relation to a proceeding begun under section 50 of the ASC Law as a result of the investigation;

**“fail”** means refuse or fail;

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**“foreign country”** means:

- (a) an external Territory to which the ASC Act does not extend;  
or
- (b) a country outside Australia and the external Territories; or
- (c) a part of such a country;

**“give”** has:

- (a) in relation to a document—a meaning affected by section 86 of the ASC Law; and
- (b) in relation to information—a meaning affected by section 61 of this Act;

**“hearing”**, in this section and Part 3 of the ASC Law, means a hearing before the Commission and, in sections 52, 54, 55 and 56 of that Law, includes a part of such a hearing;

**“information”** has a meaning affected by section 61 of this Act;

**“investigate”**, in relation to the Commission, means investigate in the course of performing or exercising any of the Commission’s functions and powers;

**“meeting”** means:

- (a) in Part 4 of the ASC Law—a meeting of the Commission; and
- (b) in Part 11 of that Law—a meeting of the Disciplinary Board;

**“member”** means:

- (a) except in Division 2 of Part 4, or in Part 10, 11, or 14, of the ASC Law, or in relation to a Division of the Commission, or in relation to the Panel or the Disciplinary Board—a member of the Commission;
- (b) in Part 10 of that Law or in relation to the Panel—a member of the Panel;
- (c) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board;

**“national scheme law”** means:

- (a) the following:
  - (i) the Corporations Law of this jurisdiction;
  - (ii) the ASC Law of this jurisdiction;
  - (iii) this Act; or

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(b) the following:

- (i) the Corporations Act;
  - (ii) the Corporations Law of the Capital Territory;
  - (iii) the ASC Act; or
- (c) a law of a jurisdiction (other than this jurisdiction or the Capital Territory) that corresponds to an Act or Law referred to in paragraph (a);

**“national scheme law of this jurisdiction”** means:

- (a) this Act; or
- (b) the Corporations Law of New South Wales; or
- (c) the ASC Law of New South Wales;

**“officer”**, in relation to a body corporate, includes:

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (c) an official manager, or a deputy official manager, of the body;
- (d) a liquidator, or a provisional liquidator, of the body; and
- (e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons;

**“Panel”** means the Corporations and Securities Panel established by section 171 of the ASC Act;

**“power”** includes an authority;

**“prescribed”** means prescribed by the ASC Law or the regulations;

**“President”** means the President of the Panel;

**“proceeding”** means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal,

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature;

**“produce”**, except in Part 3 of the ASC Law, includes permit access to;

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



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**“record”**, in relation to an examination, means the whole or a part of a record made under section 24 of the ASC Law of statements made at the examination;

**“regulations”** means the ASC Regulations of this jurisdiction;

**“report”** includes an interim report;

**“staff member”** means:

- (a) a member of the staff referred to in section 120 (1) of the ASC Act or a person employed under section 120 (3) of that Act;
- (b) a person engaged under section 121 (1) of that Act; or
- (c) any of the officers, employees and persons who under section 122 of that Act are to assist the Commission;

**“statement”**, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination;

**“Territory”** means:

- (a) the Capital Territory; or
- (b) an external Territory to which the ASC Act extends;

**“this Act”**, except in this Part, means the ASC Law, and includes the regulations;

**“this jurisdiction”** means New South Wales;

**“this Law”** includes the regulations;

**“tribunal”** means:

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;

**“witness”**, in relation to a hearing before the Commission or the Panel, means a person appearing at the hearing to give evidence;

**“written record”**, in relation to an examination, means:

- (a) a record of the examination:
  - (i) that is made in writing; or
  - (ii) as reduced to writing; or
- (b) a part of such a record.

(2) Subject to the ASC Law of this jurisdiction, an expression has the same meaning in that Law and in the ASC Regulations of this jurisdiction as in the Corporations Law of this jurisdiction.

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**Giving information**

**61.** A reference in the ASC Law, and the ASC Regulations, of New South Wales to giving information includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

**Interpretation law**

**62. (1)** Except so far as the contrary intention appears in the ASC Law of New South Wales:

- (a) Part 1.2 (except section 8) of the Corporations Law of New South Wales applies; and
- (b) subject to paragraph (a), the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 5 (5) of the ASC Act applies as law of New South Wales,

in relation to the ASC Law, and the ASC Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders made for the purposes of that Law under section 111A of the Corporations Law of this jurisdiction) and so apply as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the ASC Law, or the ASC Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**Division 2—Citing the ASC Law and the ASC Regulations**

**Alternative citations of the ASC Law, and the ASC Regulations, of New South Wales**

**63. (1)** The ASC Law of New South Wales may be referred to simply as the ASC Law.

(2) The ASC Regulations of New South Wales may be referred to simply as the ASC Regulations.

(3) This section has effect subject to section 65.

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**References to ASC Law, and ASC Regulations, of another jurisdiction**

**64. (1)** This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

**(2)** Where a law of a jurisdiction other than New South Wales contains provisions corresponding to sections 5 and 6 of the Corporations Act and also provides for provisions of the ASC Act to apply as law of that jurisdiction, those provisions of the ASC Act, as so applying, are the ASC Law of that jurisdiction.

**(3)** Where a law of a jurisdiction other than New South Wales provides for the regulations in force for the time being under section 251 of the ASC Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

**References to ASC Law and ASC Regulations**

**65. (1)** The object of this section is to help ensure that, so far as possible:

- (a) the bodies established by the ASC Act and the staff of those bodies, can perform functions and exercise powers; and
- (b) persons can have dealings with those bodies,

as if the ASC Act, the ASC Law of New South Wales and the ASC Law of each other State, constituted a single national ASC Law applying of its own force throughout Australia.

**(2)** Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the ASC Law, or to the ASC Regulations, of New South Wales; and
- (b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than New South Wales.

**(3)** Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

**(4)** Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.



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(5) In this section:

“instrument” means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.

### **Division 3—The Commission**

#### **Conferral of functions and powers on Commission**

66. (1) The Commission has the functions and powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission also has the functions and powers conferred or expressed to be conferred upon the NCSC by or under a Code that is a relevant Code for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

#### **Agreements and arrangements**

67. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commission for the performance of functions or the exercise of powers by the Commission as an agent of the State.

(2) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

(3) Such an agreement or arrangement may not be entered into without the concurrence of the Premier.

**Conferral of other functions and powers for purposes of law in New South Wales**

68. The Commission has power to do acts in New South Wales in the performance or exercise of any function or power:

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or
- (b) referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction corresponding to section 67.

**Directions by Commonwealth Minister**

69. (1) If the Commonwealth Minister:

- (a) has notified the Commission in writing that he or she is considering giving a direction under this section; and
- (b) has given the Chairperson of the Commission an adequate opportunity to discuss with the Commonwealth Minister the need for the proposed direction,

the Commonwealth Minister may give the Commission a written direction (not being a direction about a particular case) about policies it should pursue, or priorities it should follow in performing or exercising any of the functions or powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission must comply with a direction under subsection (1).

(3) A copy of an instrument under subsection (1) must be published in the Commonwealth of Australia Gazette within 21 days after the instrument is made but, if a copy is not so published, the instrument's validity is not affected.

**Division 4—The Panel****Conferral of functions and powers on the Panel**

70. (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Panel has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.

**Division 5—The Disciplinary Board****Conferral of functions and powers on the Disciplinary Board**

71. (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Disciplinary Board has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on it by a national scheme law of another jurisdiction.

**Division 6—Miscellaneous****Acting appointments**

72. Where a person is appointed under the ASC Act to act in a particular office, the law of this jurisdiction applies in relation to that person while acting in that office as if the person were the holder of the office.

**Alteration of names and constitutions**

73. (1) Where:

- (a) the name of a body established by the ASC Act is changed by law (whether or not the body is incorporated); or
- (b) the name of an office established by that Act is changed by law, then, unless the contrary intention appears, a reference in:
  - (c) any Act of this jurisdiction; or
  - (d) any instrument under such an Act; or
  - (e) any award or other industrial determination or order or any industrial agreement; or
  - (f) any other order (whether executive, judicial or otherwise); or
  - (g) any contract; or
  - (h) any pleading in, or process issued in connection with, any legal or other proceeding; or
  - (i) any other instrument,

to the body or the office under the former name, except in relation to matters that occurred before that change took place, is taken as a reference to the body or the office under the new name.

(2) Where the constitution of a body established by the ASC Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears, the alteration does not affect any functions



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or powers conferred or expressed to be conferred on that body by a national scheme law of this jurisdiction.

**Application of Commonwealth Crimes Act**

74. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part III of the Crimes Act 1914 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1), an examination or a hearing is a judicial proceeding.

(3) For the purposes of the ASC Law of New South Wales, an offence under Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1) in relation to an examination or hearing, is taken to be an offence against Part 3 of the ASC Law of New South Wales.

**Application of Commonwealth Evidence Act**

75. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part IIIA of the Evidence Act 1905 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part IIIA of the Evidence Act 1905 of the Commonwealth as applying because of subsection (1), an examination is a proceeding but is not a criminal proceeding.

**PART 12—GENERAL**

**Division 1—Arrangements**

**Definition**

76. In this Division:

“relevant State law” means:

- (a) a law of the State concerning the management or affairs of a body corporate; or
- (b) a law of the State concerning fraud or dishonesty; or
- (c) any other law of the State,  
other than a co-operative scheme law.

**Arrangements relating to applicable provisions**

77. (1) Where an arrangement between the Attorney General and the Commonwealth Minister provides:

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- (a) that an authority or officer of the Commonwealth has certain functions or powers under a relevant State law; or
- (b) that, despite section 33 or 39, an authority or officer of the State has certain functions or powers under an applicable provision of this jurisdiction,

those functions or powers are conferred on that authority or officer.

(2) Functions and powers conferred under an arrangement under subsection (1) are to be performed and exercised in accordance with the arrangement but are to be taken to have been validly performed or exercised despite any failure to comply with any condition or restriction under the arrangement.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

**Notice of arrangement**

78. Notice of each arrangement under section 77 must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

**Division 2—Penalties and fines****Application of penalties and fines**

79. All fines, penalties and other money (other than fees and taxes) which, under and by virtue of the applicable provisions of New South Wales, are authorised or directed to be imposed on any person must be paid to the Commonwealth.

**Division 3—Regulations****Regulations**

80. (1) The Governor may make regulations, not inconsistent with the national scheme laws of this jurisdiction, for or with respect to any matter that is required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, being provisions not inconsistent with the national scheme laws of this jurisdiction.

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(3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Government Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(5) Regulations containing provisions of a kind referred to in subsection (2) cease to have effect on the first anniversary of the day on which this section commences,

(6) Where regulations cease to have effect because of subsection (5), the Interpretation Act 1987 applies as if the regulations had been disallowed by the Parliament.

## **PART 13—TRANSITIONAL**

### **Division 1—Staff**

#### **Information previously acquired**

**81.** A staff member who, before the commencement of this section, was an officer or employee of the Public Service of New South Wales engaged in the administration of a co-operative scheme law may disclose to the Commission information acquired while so engaged.

#### **State superannuation schemes**

**82. (1)** The regulations under section 80 may make provision for or with respect to the rights and obligations, concerning superannuation and associated matters, of transferred officers who were, or were entitled to be, members of a State superannuation scheme.

- (2) Without limiting subsection (1), the regulations may contain:
- (a) provisions having the effect of treating a transferred officer as an employee or contributor for the purposes of a State superannuation scheme, subject to specified conditions; and
  - (b) provisions having the effect of treating the Commission as an employer or employing authority for the purposes of a State superannuation scheme, subject to specified conditions; and



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(c) provisions relating to the withdrawal of a transferred officer from a State superannuation scheme.

(3) In this section:

“**State superannuation scheme**” means a superannuation scheme established by or under an Act;

“**transferred officer**” means a person who:

- (a) is a member of the Commission’s staff appointed under the Public Service Act 1922 of the Commonwealth; and
- (b) was so appointed under section 81B of that Act; and
- (c) immediately before that appointment was an officer of the Public Service of New South Wales employed in Business and Consumer Affairs.

### **Temporary modification of superannuation legislation**

**83.** (1) For the purposes of section 82, regulations made under section 80 may provide that a Superannuation Act, or specified provisions of a Superannuation Act, has or have effect with such modifications as the regulations prescribe.

(2) Any such provisions are taken to be provisions of the kind referred to in section 80 (2).

(3) In this section:

“**Superannuation Act**” means an Act by or under which a superannuation scheme is established, and includes any legislation relating to or connected with such a scheme.

## **Division 2—Co-operative scheme laws**

### **Co-operative scheme laws**

**84.** For the purposes of this Act, the following are the co-operative scheme laws:

Companies (Application of Laws) Act 1981

Companies (New South Wales) Code

Companies (Acquisition of Shares) (Application of Laws) Act 1981

Companies (Acquisition of Shares) (New South Wales) Code

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981

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

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Securities Industry (Application of Laws) Act 1981

Securities Industry (New South Wales) Code

Futures Industry (Application of Laws) Act 1986

Futures Industry (New South Wales) Code

**National scheme laws prevail over co-operative scheme laws**

**85.** (1) This section provides for the national scheme laws of this jurisdiction to supersede the co-operative scheme laws, which are to continue to operate of their own force only in relation to:

- (a) matters arising before the commencement of this section; and
- (b) matters arising, directly or indirectly, out of such matters, in so far as the national scheme laws do not deal with those matters.

(2) Where a co-operative scheme law is inconsistent with a national scheme law of this jurisdiction, the national scheme law prevails and, to the extent of the inconsistency, the co-operative scheme law does not operate.

(3) For the purposes of subsection (2), a co-operative scheme law is inconsistent with a national scheme law if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth of Australia if the national scheme law were an Act of the Commonwealth.

**Regulations may exclude residual operation of co-operative scheme laws**

**86.** (1) Regulations under section 80 may provide that prescribed provisions of co-operative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.

(2) Regulations in force because of subsection (1) have effect accordingly.

**Effect of sections 85 and 86**

**87.** (1) To the extent that a co-operative scheme law ceases to operate because of section 85 or 86, the law is taken for the purposes of the Interpretation Act 1987 to have been repealed by this Act.

(2) Nothing in this Act revives, or otherwise affects the exclusion of, the provisions referred to in section 18 (1) of the Companies (Application of Laws) Act 1981 or section 16 (1) of the Securities Industry (Application of Laws) Act 1981.



**Regulations may modify co-operative scheme laws**

**88.** (1) Regulations under section 80 may provide that a specified co-operative scheme law, or specified provisions of a co-operative scheme law, has or have effect with such modifications as the regulations prescribe.

(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 85 or 86, the specified law does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

(3) However, a reference in section 85 (2) to a co-operative scheme law includes a reference to such a law as it has effect, or to provisions of such a law as they have effect, because of this section.

**Co-operative scheme laws not affected by certain Commonwealth regulations**

**89.** The operation or effect of a co-operative scheme law is not modified or otherwise affected because regulations of a kind referred to in section 77 or 79 of the Corporations Act modify or otherwise affect the operation of a Co-operative Scheme Act within the meaning of Part 12 of the Corporations Act.

**References to co-operative scheme laws and regulations**

**90.** (1) In this section:

“**Code regulations**” means provisions applying as regulations made under a Code by reason of a provision of an Act that is a co-operative scheme law;

“**instrument**” has the same meaning as in section 13 but does not include this Act, a co-operative scheme law, regulations under this Act or an Act that is such a law or Code regulations.

(2) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to a co-operative scheme law is to be taken to include a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of the co-operative scheme law.

(3) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to Code regulations is to be taken to include a reference to such provisions of the Corporations Regulations, or ASC Regulations, of New South Wales as correspond to provisions of the Code regulations.



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(4) Subject to any regulations in force under subsection (7), a reference in an instrument to a provision of a co-operative scheme law or of Code regulations is to be taken to include a reference to the corresponding provision of a national scheme law of this jurisdiction or of the Corporations Regulations, or ASC Regulations, of New South Wales, as the case may be.

(5) Subject to any regulations in force under subsection (7), a reference in an instrument to the NCSC is to be taken to include a reference to the Commission.

(6) Regulations under section 80 may declare that, for the purposes of this section:

- (a) prescribed provisions of national scheme laws of this jurisdiction correspond to prescribed provisions of co-operative scheme laws; and
- (b) prescribed provisions of the Corporations Regulations, or ASC Regulations, correspond to prescribed provisions of Code regulations.

(7) Regulations under section 80:

- (a) may declare that subsection (2), (3), (4) or (5) of this section does not apply in relation to prescribed references in prescribed instruments; or
- (b) may declare that subsection (2), (3), (4) or (5) of this section has effect in relation to prescribed references in prescribed instruments as if, in the subsection, the words "be taken to be" were substituted for the words "be taken to include".

(8) Regulations in force because of subsection (6) or (7) have effect accordingly.

**Conferral of functions and powers in relation to co-operative scheme laws**

91. (1) The Commonwealth Director of Public Prosecutions:

- (a) has the same enforcement powers in relation to the co-operative scheme laws as has the Director of Public Prosecutions of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the Director of Public Prosecutions Act 1983 of the Commonwealth as if the offence were an offence against a national scheme law of this jurisdiction.

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(2) The Australian Federal Police:

- (a) have the same enforcement powers in relation to the co-operative scheme laws as has the Police Service of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Australian Federal Police in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law were an offence against a national scheme law of this jurisdiction.

(3) The Commonwealth Minister has, in respect of the prosecution of offences against the co-operative scheme laws, the same functions and powers as he or she has in respect of the prosecution of offences against a national scheme law of this jurisdiction.

(4) For the purposes of the exercise of enforcement powers, and other functions and powers conferred by this section, including the obtaining of warrants to arrest, an offence against a co-operative scheme law is taken to be an offence against a national scheme law of this jurisdiction.

(5) In this section, “**enforcement power**” means a function or power relating to:

- (a) the investigation of an offence; or
- (b) the arrest and custody of persons charged with an offence; or
- (c) the institution and carrying on of a prosecution of an offence; or
- (d) matters relating to such an investigation, arrest, custody or prosecution.

**Arrangements affecting exercise of investigation powers by State authorities and officers**

92. (1) Where an arrangement between the Attorney General and the Commonwealth Minister makes provision in relation to the exercise by a State authority or officer of enforcement powers within the meaning of section 91 in relation to the co-operative scheme laws:

- (a) the State authority or officer is authorised to act in accordance with that arrangement; and
- (b) the State authority or officer must not exercise an enforcement power except in accordance with that arrangement; and
- (c) the exercise of, or failure to exercise, an enforcement power by a State authority or officer is to be taken to have been validly performed or withheld, despite any failure to comply with any conditions in the arrangement.



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(2) Notice of each arrangement under subsection (1) must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

### **Division 3—Exemptions**

#### **Exemptions from Part 7.12 and Part 7.13**

**93.** (1) Where, immediately before the commencement of this section, a company was, because of section 16 (1) of the Companies (Application of Laws) Act 1981, exempt from complying with provisions of Division 6 of Part IV of the Companies (New South Wales) Code, the company is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(2) Where, immediately before the commencement of this section, a right or interest was, because of section 16 (2) or (3) of the Companies (Application of Laws) Act 1981, an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, that right or interest is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(3) A company, right or interest to which subsection (1) or (2) applies ceases to be an exempt company, right or interest if the Governor makes regulations under this Act declaring that it so ceases.

(4) Where, immediately before the commencement of this section, a body was, because of section 16 (5) of the Companies (Application of Laws) Act 1981, a prescribed corporation for the purposes of Division 8 of Part IV of the Companies (New South Wales) Code, the body is taken not to be an eligible body for the purposes of Division 3 of Part 7.13 of the Corporations Law of New South Wales.

(5) A body to which subsection (4) applies ceases to be subject to its operation if the Governor makes regulations under this Act declaring that it so ceases.

### **Division 4—Australian Stock Exchange Limited**

#### **Saving of provisions about Australian Stock Exchange Limited**

**94.** (1) Section 85 does not apply in relation to Part IIA of the Securities Industry (New South Wales) Code.



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(2) Part IIA has effect, as provided in this section, despite the national scheme laws of this jurisdiction.

(3) A reference in Part IIA to a relevant Code, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of this jurisdiction.

(4) Subject to subsection (5), a reference in Part IIA to a particular co-operative scheme law, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of that law.

(5) A reference in Part IIA to a provision of a co-operative scheme law (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of this jurisdiction.

(6) Regulations in force because of section 90 (6) also have effect for the purposes of this section.

### **Division 5—Companies Auditors and Liquidators Disciplinary Board**

#### **Board to continue in existence for certain purposes**

95. The Companies Auditors and Liquidators Disciplinary Board established under section 18A of the Companies (Administration) Act 1981 may perform the functions and exercise the powers conferred on it under Division 2 of Part II of the Companies (New South Wales) Code in respect of applications made to it under Subdivision B of that Division before the commencement of this section.

### **Division 6—Miscellaneous**

#### **References to Corporate Affairs Commission**

96. (1) In this section:

“**function**” includes power, authority or duty;

“**instrument**” has the same meaning as in section 13, but does not include this Act, the regulations under this Act, the Companies (Administration) Act 1981 or a prescribed instrument or prescribed part of an instrument;

“**Managing Director**” means the Managing Director of Business and Consumer Affairs.

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(2) A reference in an instrument to the Corporate Affairs Commission or the Commissioner for Corporate Affairs is to be taken to be a reference to the Managing Director or to such officer or body (whether of this State or not) as is prescribed by regulations under section 80.

(3) Subsection (2) extends to a reference required by section 18 of the Companies (Administration) Act 1981 to be construed as a reference to the Corporate Affairs Commission.

(4) The Managing Director may delegate any of the functions conferred or imposed on the Managing Director because of this section.

(5) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (4) may authorise another person to perform the function so delegated.

(6) Section 80 (5) does not apply to the provisions of regulations made for the purposes of or in connection with this section.

**PART 14—PROVISIONS AFFECTING CORPORATIONS LAW****Certain transfers by companies not to constitute reduction of share capital**

97. Where:

- (a) land is comprised in a strata plan registered under the Strata Titles Act 1973 or in a plan of a prescribed kind under a prescribed Act; and
- (b) at the time of registration of the plan, the proprietor of that land was a company,

the transfer by the company of a lot on the strata plan (or of a prescribed unit or other entity on a plan) in exchange for or in satisfaction of a right of the kind referred to in section 195 (13) of the Corporations Law, does not of itself constitute, and is to be taken never to have constituted, a reduction of the share capital of the company.

**PART 15—AMENDMENT OF ACTS****Amendment of Acts**

98. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 98)

**ASSOCIATIONS INCORPORATION ACT 1984 No. 143**(1) Section 3 (**Definitions**):

(a) Omit the definition of "Commission".

(b) After the definition of "incorporated association", insert:

**"Managing Director"** means the Managing Director of  
Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.

## (3) Section 72A:

After section 72, insert:

**Delegation by Managing Director**

72A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**BUSINESS NAMES ACT 1962 No. 11**(1) Section 4 (**Interpretation**):

(a) Omit the definition of "Commission".

(b) After the definition of "Machine copy", insert:

**"Managing Director"** means the Managing Director of  
Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.



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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 31A:

After section 31, insert:

**Delegation by Managing Director**

31A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**INTERPRETATION ACT 1987 No. 15**

(1) Section 21 (**Meaning of commonly used words and expressions**):

Insert in section 21 (1) in alphabetical order:

“ASC Law” and “ASC Regulations” have the meaning provided for by Part 11 of the Corporations (New South Wales) Act 1990;

“Corporations Law” and “Corporations Regulations” have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;

(2) Section 68 (**References to amended Acts and instruments**):

(a) At the end of section 68 (4) (a) (i), insert “and”.

(b) At the end of section 68 (4) (a), insert:

(iv) the Companies (New South Wales) Code, the Companies (Acquisition of Shares) (New South Wales) Code, the Securities Industry (New South Wales) Code, the Futures Industry (New South Wales) Code and the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code; and

(v) the ASC Law of New South Wales; and

(vi) the Corporations Law of New South Wales.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**REVENUE LAWS (RECIPROCAL POWERS) ACT 1987**  
**No. 86**

**Section 12 (Provision of information to certain Commonwealth and State revenue officers etc.):**

(a) At the end of section 12 (1), insert:

(f) the Australian Securities Commission, or a person authorised by that Commission, for the purposes of the administration or execution of any law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990.

(b) In section 12 (2), omit “(c) or (d)”, insert instead “(c), (d) or (f)”.

(c) At the end of section 12 (3) (b), insert:

; or

(v) a law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990;

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[*Minister's second reading speech made in—*  
*Legislative Assembly on 20 November 1990*  
*Legislative Council on 28 November 1990*]









SECOND PRINT

## CORPORATIONS (NEW SOUTH WALES) BILL 1990

NEW SOUTH WALES



### EXPLANATORY NOTE

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

1. The objects of this Bill are:

(a) to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of New South Wales; and

(b) to provide for their administration and enforcement and related matters.

2. The Bill forms part of a legislative scheme that involves the enactment of Bills by the Commonwealth, the States and the Northern Territory. The scheme is based on an agreement reached at a meeting of Ministers at Alice Springs on 29 June 1990.

3. The Northern Territory is treated as a State for the purposes of this Explanatory Note, and accordingly references to a State extend to the Northern Territory.

#### Key definitions

4. Important expressions used in the Bill or this Explanatory Note include:

**applicable provision:** a provision of the laws applied by this Bill or a corresponding law of another State or Territory. In the case of the Australian Capital Territory, the expression includes certain Commonwealth laws applying of their own force.

**ASC:** Australian Securities Commission.

**ASC Act:** Australian Securities Commission Act 1989 of the Commonwealth, as amended.

**Commonwealth Bill:** Corporations Legislation Amendment Bill 1990 of the Commonwealth.

**co-operative scheme laws:** the various Acts and Codes currently applying to companies, securities and the futures industry.

**Corporations Act:** Corporations Act 1989 of the Commonwealth, as amended.

**jurisdiction:** a State, the Northern Territory or the Australian Capital Territory (including the Jervis Bay Territory). Sometimes the expression is used in its normal sense in connection with a court: this is clear from the context.



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national scheme law: the Act, the principal laws applied by the Act, and corresponding Acts and laws of other jurisdictions.

#### **The background**

5. The Corporations Act 1989 ("the Corporations Act") and the Australian Securities Commission Act 1989 ("the ASC Act") were enacted by the Parliament of the Commonwealth as laws applying of their own force throughout Australia.

6. Following the High Court's decision in *NSW and Others v The Commonwealth* (the Corporations Case), the Commonwealth and the States agreed that the Corporations Act and the ASC Act should form the basis for future corporate regulation and that an applied law regime should be adopted by the States to enable those Acts to apply Australia-wide. This approach is also designed to overcome the constitutional uncertainty which would persist if the Commonwealth proclaimed those parts of the Corporations Act which were not affected by the decision in the Corporations Case.

#### **The Commonwealth Bill**

7. The Commonwealth component of the scheme is contained in the Corporations Legislation Amendment Bill 1990, which was introduced into the Commonwealth Parliament on 8 November 1990.

8. In giving effect to the agreement, the Commonwealth Bill provides for the Corporations Act and the ASC Act to be amended to remove the current constitutional underpinning and to be recast as laws for the Australian Capital Territory. The aim of those amendments is to produce Acts which are in a form that can be applied by each State as the law of the State.

9. The Commonwealth Bill will insert at the beginning of the Corporations Act a series of sections ("covering provisions"), and will convert the current text of the Corporations Act (with other amendments) into a document called the "Corporations Law". The Corporations Law will be capable of being applied to any State or Territory by legislation of or applying in the State or Territory.

10. The covering provisions will apply the Corporations Law to the Australian Capital Territory.

11. The Commonwealth Bill will amend the ASC Act to convert it from a Commonwealth law applying of its own force throughout Australia, into a law relating to the regulation of corporate activities and the securities and futures industries in the Australian Capital Territory. As with the Corporations Act, it has been agreed that the States will pass legislation applying the bulk of the provisions of the ASC Act to their own jurisdictions, and conferring powers on the ASC to administer the Corporations Law of their respective jurisdictions. The various bodies involved in the administration of corporations legislation will continue to be constituted under the ASC Act; these bodies are the ASC, the Companies and Securities Advisory Committee, the Corporations and Securities Panel, the Companies Auditors and Liquidators Disciplinary Board and the Australian Accounting Standards Board.

12. Other matters are dealt with by the provisions of the Commonwealth Bill. Some of these provisions have counterparts in the State Bills and are discussed below. Other provisions are necessary to the operation of the scheme, but will not be duplicated in the State Bills (eg the power to make regulations for the purposes of the Corporations Law).

13. Provisions relating to the buy-back of shares have been included in the Commonwealth Bill. These will update the Corporations Law to bring it into line with the current co-operative scheme law.

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14. The Commonwealth Bill inserts a new section 243D into the ASC Act, which imposes a duty on a cash dealer to provide the Cash Transactions Report Agency with information that may be relevant to the investigation and prosecution of persons for an offence against the ASC Law or the Corporations Law.

15. A small number of provisions have also been included in the Commonwealth Bill to clarify the operation of, and correct anomalies in, the fundraising provisions and to facilitate the operation of the ASC's national information system for computerisation of corporate affairs records.

16. Some technical amendments to provisions of the Corporations Act that are in need of correction or clarification are also included in the Commonwealth Bill.

#### The State Bill

17. This Bill applies the Corporations Law set out in the Corporations Act as a law of this State. This Law may be referred to as the Corporations Law of New South Wales. The Bill also applies the provisions of the regulations made for the purposes of the Corporations Law. These regulations will be made under the Corporations Act, and may be referred to as the Corporations Regulations of New South Wales. Provisions are included to make it clear that references in the applied laws to "this jurisdiction" will mean New South Wales.

18. The Bill also applies the substantive provisions of the ASC Act as a law of this State ("the ASC Law of New South Wales"). The provisions relate to the functions of the ASC, and in particular to its investigatory powers, and to the functions of other bodies established under the ASC Act.

19. The Bill also applies the accounting standards made by the Australian Accounting Standards Board to this State.

20. The Bill contains provisions for the vesting and cross-vesting of both civil and criminal jurisdiction in matters arising under the Corporations Law.

21. The Bill contains provisions that apply provisions of Commonwealth laws (to the exclusion of relevant State laws) relating to offences, so that for all practical purposes offences against the applied laws will be treated as if they were offences against Commonwealth law.

22. The Bill confers powers on the ASC, the Australian Federal Police and the Commonwealth Director of Public Prosecutions in connection with matters arising under the applied laws. These powers will not be exercised by State authorities, except in accordance with arrangements made between the Commonwealth and this State.

23. The Bill applies administrative law of the Commonwealth to matters arising under the applied laws. This regime will extend to the Administrative Appeals Tribunal Act, the Administrative Decisions (Judicial Review) Act, the Freedom of Information Act, the Ombudsman Act and other Commonwealth legislation, and will apply to the exclusion of relevant State laws.

24. The Bill deals with other matters, including matters of a savings or transitional nature. The existing co-operative scheme legislation will be excluded to the extent that it is inconsistent with the applied law. Otherwise, the effect of current State law will, as a general rule, be preserved. References in existing State law to the existing co-operative scheme legislation will be automatically read as including references to the new laws, subject to mechanisms to deal with inappropriate or special cases.



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**The result to be achieved by the Commonwealth and State Bills**

25. The new national scheme will involve the establishment of the Corporations Law to be the substantive law of the Australian Capital Territory providing for the regulation of companies, the securities industry and the futures industry. The national operation of the new scheme will come about by each State passing complementary application legislation. That legislation will apply the Corporations Law as the law of each of those jurisdictions. The Corporations Law will be applied in a way that ensures that any further amendments to the Corporations Law by the Commonwealth Parliament will automatically apply in the States. In this way the Corporations Law will state the uniform text of the new national law applying in all jurisdictions.

26. In a similar way, the substantive provisions of the ASC Act will also be applied in each jurisdiction. This will result in the Corporations Law being administered by the ASC on a national basis. The ASC is to be formally accountable to the Commonwealth Minister and the Commonwealth Parliament.

27. The revised Corporations Act will substantially preserve the policy of the Corporations Act and to the fullest extent possible the language of that Act. As a result of the agreement, the applied laws will have the characteristics of, and will be treated for all practical purposes within each jurisdiction as if they were, Commonwealth laws rather than State laws. The Commonwealth Bill amends the Corporations Act and the ASC Act to confer these characteristics on the applied laws regime. The Commonwealth Bill also amends the ASC Act to facilitate the conferral of full administrative authority by State Acts on the ASC.

28. The legislative scheme will enable Commonwealth and State laws regulating companies, the securities industry and the futures industry to operate, to the greatest extent possible, as national laws. By the use of citation provisions, the law governing these matters in the States and Territories will be able to be referred to as simply the "Corporations Law" (similar provisions apply for the ASC Law). There will be a uniform text of companies and securities law applying throughout Australia, and companies and persons dealing with companies will be able to operate on the basis that there is a single national law. Companies will be able to lodge documents, including an application for incorporation, with the ASC anywhere in Australia and, in effect, operate as if they were incorporated Australia-wide.

29. In most cases, the discharge of an obligation under the Corporations Law of one jurisdiction will be recognised as discharging the same obligation for the Corporations Law of each jurisdiction. In some cases, however, multiple acts will be required to ensure that a proper constitutional nexus is present: the Commonwealth Bill inserts a new section 102A into the Corporations Law to require some kinds of applications to be made and dealt with under the Corporations Law of each jurisdiction. This will not result in any practical inconvenience as an application can be made under the Law of each jurisdiction by expressing it to be made under "the Corporations Law", in which case it will be taken to be made under the Law of each jurisdiction. The proposed section provides that such an application is not to be granted unless it is granted under each of those Laws. However, in practice only a single decision will need to be made.

30. The Commonwealth and State Bills contain provisions for the cross-vesting of civil jurisdiction of the Supreme Courts of each jurisdiction and the Federal Court with respect to matters arising under the Commonwealth and State laws. The purpose of these provisions is to permit relatively simple administration and enforcement of the Corporations Laws.

31. The Bills contain provisions for the cross-vesting of the relevant State and Territory Courts with jurisdiction to deal with offences under the Corporations Law of each other jurisdiction.



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32. The Bills result in the national administration and enforcement of the Corporations Law through the "federalising" of offences under the Corporations Law of each jurisdiction, so that they are treated as if they were offences under Commonwealth law.

33. The language of the Corporations Act and the ASC Act is to be made as "neutral" as possible. The purpose of these amendments is to reduce the need for State translator provisions. Application orders will provide for local matters relevant to particular jurisdictions.

34. To enhance the national character of the Corporations Law, a State law will only be able to override the Corporations Law where it expressly purports to do so.

35. The overall objectives of the legislative arrangements are therefore to:

- (a) replace the existing co-operative companies and securities scheme laws with virtually one system of uniform law; and
- (b) to establish a single national regulatory authority (the ASC), with the capacity to effectively administer the laws throughout Australia, and to be accountable to the community through the normal principles of responsible government at a federal level.

36. The agreement contemplates that the Ministerial Council for Companies and Securities is to continue, although with a revised role in the light of the new national arrangements. The Commonwealth Attorney-General will become the permanent chairman of the Council. The Council is to have no power of direction or control over the ASC. The Council is to be consulted in relation to all legislative proposals involving amendment of corporations legislation. In respect of legislative proposals relating to matters covered by Chapters 6 to 8 of the Corporations Law (takeovers, securities, public fundraising and futures) the Ministerial Council is to have a consultative role only. In respect of other legislative proposals, the Council is to have a deliberative role.

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**PART 1—PRELIMINARY**

Clause 1 provides for the citation of the proposed Act and states its purposes.

Clause 2 provides for the proposed Act to commence on a proclaimed day or days.

Clause 3 contains definitions of expressions used in the Bill. One of the definitions is that of "applicable provision", which is defined to mean a provision of the Corporations Law, the Corporations Regulations, the ASC Law, the ASC Regulations, and certain Commonwealth laws, applying as laws of a jurisdiction. This definition refers to the laws that are to be applied by the proposed Act.

Clause 4 provides that the Jervis Bay Territory is taken to be part of the Australian Capital Territory for the purposes of the national scheme laws.

Clause 5 provides that a later Act or statutory instrument is not to be interpreted as amending, repealing or otherwise affecting the Act or the applicable provisions (ie the Corporations Law, the Corporations Regulations etc. of this State), unless it expressly so provides.

Clause 6 provides that nothing in the Act or the applicable provisions affects the operation of an Act or statutory instrument enacted or made before the commencement of the clause.

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**PART 2—THE CORPORATIONS LAW, AND THE CORPORATIONS REGULATIONS, OF NEW SOUTH WALES**

Clause 7 applies the Corporations Law (set out in section 82 of the Corporations Act as amended by the Commonwealth Bill, and as in force for the time being) as a law of this State. The applied law amounts to the bulk of the present Corporations Act, as amended by the Commonwealth Bill.

Clause 8 applies the regulations in force for the time being under the Corporations Act as regulations in force for the purposes of the Corporations Law of this State. Provision is made to protect private persons from any prejudicial effect of any retrospective regulations.

Clause 9 defines some of the basic expressions used in the Corporations Law and Corporations Regulations of this State.

Clause 10 provides that the Acts Interpretation Act of the Commonwealth, as in force at the commencement of the relevant Commonwealth legislation, applies to the interpretation of the Corporations Law and Corporations Regulations of this State. However that Act will have only a residual operation as there are extensive interpretation provisions contained in Part 1.2 of the Corporations Law, and those provisions will prevail over the Acts Interpretation Act. The clause also makes it clear that the Interpretation Act of this State does not apply.

**PART 3—CITING THE CORPORATIONS LAW AND THE CORPORATIONS REGULATIONS**

Clause 11 enables the Corporations Law of this State to be referred to simply as the Corporations Law. Similarly, the Corporations Regulations of this State may be referred to simply as the Corporations Regulations.

Clause 12 recognises references to the Corporations Law and Corporations Regulations of other jurisdictions.

Clause 13 provides that a reference in an Act of this State or an instrument of any kind to the Corporations Law is to be taken (for the purposes of the laws of this State) to be a reference to the Corporations Law of this State and to include a separate reference to the Corporations Law of each other jurisdiction. Similar provision is made for references to the Corporations Regulations. These provisions yield to a contrary intention. The object of these provisions is to help ensure that the Corporations Law and Corporations Regulations of this State, together with those of other jurisdictions, operate, so far as possible, as if they constituted a single national law operating of its own force throughout Australia. The Commonwealth Act and each State Act will have a similar provision. The interlocking of these provisions will enable in most instances persons and companies to refer to the Corporations Law without specifically identifying the Corporations Law of a particular jurisdiction.

**PART 4—APPLICATION OF THE CORPORATIONS LAW TO THE CROWN**

This Part states whether certain provisions of the Corporations Law apply to the Crown or emanations of the Crown.

Clause 14 makes it clear that a reference to the Crown includes an instrumentality or agency of the Crown.



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Clause 15 (1) provides that the Crown in all its Australian capacities (or rights) will be bound by the external administration provisions of the Corporations Law (Chapter 5), except in relation to offences committed by officers of companies that are in some form of external administration. The purpose of so binding the Crown is to displace the Crown's special priority in relation to the payment of debts, except so far as a priority is specifically preserved by other legislation, and to treat the Crown for the purposes of the insolvent administration of a company like any other creditor of a company.

Clause 15 (2) expressly provides that the securities provisions (Chapter 7) of the Corporations Law do not bind the Crown in these capacities.

Clause 16 provides that the Crown in right of this State will be bound by the external administration provisions of the Corporations Law of other jurisdictions (except in relation to offences committed by officers of companies that are in some form of external administration).

Clause 17 provides that nothing in this Part or in the Corporations Law renders the Crown liable in any right to be prosecuted for an offence.

Clause 18 makes it clear that where Chapter 5 (other than Part 5.8) of a Corporations Law of another jurisdiction binds the Crown in right of this State by virtue of this Part, that Law overrides any prerogative right or privilege of the Crown, eg in relation to the payment of debts.

### **PART 5—APPLICATION ORDERS**

The Corporations Law provides for the making by the Commonwealth Minister of application orders, which are designed to specify matters relevant to particular jurisdictions. Additionally, the Corporations Regulations may require or permit matters to be specified by or in application orders made by the Commonwealth Minister.

Clause 19 provides that an application order may only be made with the consent of the State Minister.

Clause 20 extends the provisions of the Corporations Law of the State relating to the making of applications orders, so as to enable the making of such orders for the purposes of the ASC Law of the State.

### **PART 6—ACCOUNTING STANDARDS**

Clause 21 applies the accounting standards made by the Australian Accounting Standards Board to the State.

### **PART 7—IMPOSITION OF FEES AND TAXES**

Clause 22 imposes the fees that the Corporations Regulations prescribe.

Clauses 23—25 impose contributions and levies payable under various provisions of the Corporations Laws.

### **PART 8—NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE CORPORATIONS LAW**

#### *Division 1—Preliminary*

Clause 26 states the object of this Part, which is to help ensure that the Corporations Laws and ASC Laws of this and each other jurisdiction are administered and enforced



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on a national basis, as if they together constituted a single law of the Commonwealth.

Clause 27 provides that this Part has effect subject to the Act, the Corporations Law of this State and the ASC Law of this State. Particular reference is made to Part 9 of the Act, which contains provisions for the vesting and cross-vesting of jurisdiction. That Part makes provision for the courts in which offences against applicable provisions are to be dealt with; that issue would otherwise have been dealt with by reference to the principles set out in other provisions of this Part (especially clause 29, which would have had the effect of applying the Judiciary Act of the Commonwealth), but is specifically dealt with in clause 55.

*Division 2—Offences against applicable provisions*

Clause 28 states the object of this Division, which is to further the object of this Part (as stated in clause 26) by providing that offences against the applicable provisions of this or any other jurisdiction are to be treated as if they were offences against Commonwealth law. Examples of the extent of this formula are set out in clause 28 (2), and include the investigation and prosecution of offences.

Clause 29 applies Commonwealth laws as laws of this State in relation to offences against the applicable provisions as if those provisions were laws of the Commonwealth and not laws of this State. For the purposes of the laws of this State, such an offence is taken to be an offence against Commonwealth law, except as prescribed by regulations.

Clause 30 contains similar provisions to those in clause 29, but applies to offences against the applicable provisions of other jurisdictions.

Clause 31 confers the appropriate functions and powers on officers or authorities of the Commonwealth in connection with the application of Commonwealth law under clauses 29 and 30. There is provision in the Commonwealth Bill for such functions and powers to be received by such officers or authorities.

Clause 32 deals with the technical point of how references in the applied Commonwealth laws to laws of the Commonwealth are to be construed.

Clause 33 makes it clear that officers and authorities of the State may not perform or exercise functions or powers conferred by this Division on officers and authorities of the Commonwealth. This provision is, however, subject to arrangements under Part 12.

*Division 3—Administrative law*

Clause 34 states the object of this Division, which is to further the object of this Part (as stated in clause 26) by providing that the Commonwealth administrative laws apply to the applicable provisions, as if the applicable provisions were those of the Capital Territory. This has the effect of applying the Commonwealth administrative law regime to the national scheme laws. The Commonwealth administrative laws are the Administrative Appeals Tribunal Act, the Administrative Decisions (Judicial Review) Act, the Freedom of Information Act, the Ombudsman Act and the Privacy Act of the Commonwealth.

Clause 35 applies the Commonwealth administrative laws as laws of this State in relation to anything arising in respect of an applicable provision of this State. For the purposes of the law of this State, anything arising under an applicable provision of this State is taken to arise under Commonwealth law, except as prescribed by regulations.

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Clause 36 contains similar provisions to those in clause 35, but applies in relation to the applicable provisions of other jurisdictions.

Clause 37 confers the appropriate functions and powers on officers or authorities of the Commonwealth in connection with the application of Commonwealth law under clauses 35 and 36. There is provision in the Commonwealth Bill for such functions and powers to be received by such officers or authorities.

Clause 38 deals with the technical point of how references in the applied Commonwealth laws to laws of the Commonwealth are to be construed.

Clause 39 makes it clear that officers and authorities of the State may not perform or exercise functions or powers conferred by this Division on officers and authorities of the Commonwealth. This provision is subject to arrangements under Part 12.

**PART 9—JURISDICTION AND PROCEDURE OF COURTS**

*Division 1—Vesting and cross-vesting of civil jurisdiction*

Clause 40 (1) states the operation of this Division. It applies to civil matters arising under the Corporations Law of this State and other jurisdictions. The Division operates in relation to those matters to the exclusion of the cross-vesting scheme under the Jurisdiction of Courts (Cross-vesting) Act 1987.

Clause 40 (2) provides that nothing in the Division affects any other jurisdiction of any court (eg cross-vested jurisdiction arising under the Jurisdiction of Courts (Cross-vesting) legislation in relation to a matter unconnected with the corporations legislation).

Clause 41 defines certain expressions used in the Division. The expression "Corporations Law" is defined to include the Corporations Regulations, the ASC Law, the ASC Regulations, any other applicable provisions, the Act, regulations made under the Act and certain rules of court.

Clause 42 confers jurisdictions with respect to civil matters arising under the Corporations Law on the Federal Court, the Supreme Court of this State and the Supreme Court of each other jurisdiction.

Clause 43 restricts appeals from courts, so that appeals may not be instituted in courts of different jurisdictions. The purpose of this provision is to ensure that, notwithstanding the cross-vesting of jurisdiction, the normal hierarchy of appeals will apply.

Clause 44 enables proceedings to be transferred from one superior court to another, where it appears, having regard to the interests of justice, that it is more appropriate for the proceedings to be determined by the other court. Regard however is to be had to the principal place of business of any body corporate concerned in the proceedings, and to the place where the relevant events took place.

Clause 45 (1) deals with the question of which rules of evidence and procedure should be applied in a case involving cross-vested jurisdiction. The court is empowered to apply such rules of evidence or procedure as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia.

Clause 45 (2) provides that where a proceeding is transferred from another court, the accepting court must give reciprocal recognition to the steps that had been taken for the purposes of the proceeding in the transferring court.



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Clause 46 requires courts, judges and court officials to act in aid of each other in these matters.

Clause 47 confirms that the Supreme Court of this State may exercise cross-vested jurisdiction.

Clause 48 will enable barristers and solicitors involved in transferred proceedings to have the same entitlement to practise in relation to transferred proceedings as would be available if the accepting court were a federal court exercising federal jurisdiction.

Clause 49 provides that a decision under the cross-vesting provisions as to whether a proceeding should be transferred to another court, or as to which rules of evidence and procedure are to be applied, is not subject to appeal.

Clause 50 will enable a judgment of the Federal Court or the Supreme Court of this State given in the exercise of cross-vested jurisdiction to be enforceable in this State as if it were a judgment entirely given in the court's ordinary jurisdiction.

Clause 51 empowers rules of court to be made for the Supreme Court of this State with respect to proceedings arising under the Corporations Law of this State. When the Supreme Court of this State is exercising cross-vested jurisdiction, it is required to apply its own rules of court, with such alterations as are necessary. Similarly, the Supreme Court of another jurisdiction is required, when exercising cross-vested jurisdiction in matters arising under the Corporations Law of this State, to apply its own rules of court, with such alterations as are necessary.

Clause 52 provides that when the Federal Court is exercising cross-vested jurisdiction in matters arising under the Corporations Law of this State, it is required to apply its own rules of court, with such alterations as are necessary.

*Division 2—Vesting and cross-vesting of criminal jurisdiction*

This Division provides for a cross-vesting regime for criminal jurisdiction for offences against the Corporations Law, based on Part X of the Judiciary Act of the Commonwealth. As a result of the agreement, offences against the Corporations Law are to be "federalised", ie treated as though they were offences against Commonwealth law. Jurisdiction will be conferred on the several courts of the States and Territories.

Consistently with the approach adopted in relation to the conferral and exercise of civil jurisdiction, the Bill sets out in detail the regime for the conferral and exercise of criminal jurisdiction rather than take the more complex and circuitous route of relying on the application of Part X of the Judiciary Act of the Commonwealth under the general federalising formula.

In summary, the cross-vesting of criminal jurisdiction in respect of offences against the Corporations Law provides for the following courts to exercise jurisdiction.

In respect of summary offences, the several courts of the States and Territories exercising jurisdiction with respect to the summary conviction of offenders or persons charged with offences against the laws of that State or Territory will have equivalent jurisdiction with respect to persons charged with summary offences against any Corporations Law.

However, the courts exercising jurisdiction in relation to summary offences against any Corporations Law may decline to exercise that jurisdiction, in relation to an offence committed outside the particular jurisdiction, if satisfied that it is appropriate to do so.



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In respect of indictable offences:

- (a) committed outside Australia (including offences committed in the coastal sea), the several courts of each State and Territory exercising jurisdiction with respect to the trial and conviction on indictment of offenders against the laws of that State or Territory have the equivalent jurisdiction with respect to persons charged with indictable offences against any Corporations Law;
- (b) committed partly in one jurisdiction and partly in another, the several courts of those States and Territories in which the offence was partly committed exercising jurisdiction with respect to indictable offences against the laws of those States and Territories have equivalent jurisdiction with respect to indictable offences against the Corporations Law;
- (c) committed wholly within one jurisdiction, the several courts of that State or Territory in which the offence was committed exercising jurisdiction with respect to indictable offences against the laws of that State or Territory have equivalent jurisdiction with respect to indictable offences against the Corporations Law;
- (d) wherever committed, the courts of the State or Territory against whose Corporations Law the offence was committed which exercise jurisdiction with respect to indictable offences against the laws of the State or Territory, have equivalent jurisdiction with respect to indictable offences against the Corporations Law of that jurisdiction.

The application of the Crimes Act of the Commonwealth by the general federalising formula for Corporations Law offences will govern which offences under the Corporations Law are indictable.

Clause 53 states the operation of this Division. It applies to criminal matters arising under the Corporations Law of this State and other jurisdictions.

Clause 54 defines certain expressions used in the Division. The expression "Corporations Law" is defined to include the Corporations Regulations, the ASC Law, the ASC Regulations, any other applicable provisions, the Act, regulations made under the Act and certain rules of court.

Clause 55 confers criminal jurisdiction in respect of offences arising under the applicable provisions of this State on the several courts of each State and Territory exercising criminal jurisdiction. It also accepts jurisdiction conferred on courts of this State by corresponding laws of other jurisdictions. Provisions of the clause are based on the principles contained in section 68 of the Judiciary Act of the Commonwealth.

Clause 56 provides that State laws applying to the arrest and custody of offenders or persons charged with offences, and the procedure for their summary conviction, committal for trial etc., will apply to persons charged with offences against the Corporations Law of this State.

#### PART 10—COMPANIES LIQUIDATION ACCOUNT

Clause 57 will enable money standing to the credit of the Companies Liquidation Account established by the Companies (New South Wales) Code to be dealt with in accordance with the relevant provision of the Code.

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**PART 11—THE ASC LAW, AND THE ASC REGULATIONS, OF NEW SOUTH WALES**

*Division 1—Application of ASC Act and ASC Regulations*

Clause 58 applies the ASC Act (other than the provisions listed in clause 58 (2)) as a law of this State.

Clause 59 applies the regulations in force for the time being under the ASC Act as regulations in force for the purposes of the ASC Law of this State.

Clause 60 defines some of the expressions used in the ASC Law and ASC Regulations of this State. These definitions parallel the definitions in section 5 of the ASC Act, which is one of the provisions not applied by clause 58.

Clause 61 provides a definition of "giving information", in the same terms as section 6 of the ASC Act, which is one of the provisions not applied by clause 58.

Clause 62 provides that Part 1.2 of the Corporations Law and (subject to that Part) the Acts Interpretation Act of the Commonwealth, as that Act is in force at the commencement of the relevant Commonwealth legislation, apply to the interpretation of the ASC Law and ASC Regulations of this State. However the Acts Interpretation Act of the Commonwealth will have only a residual operation as there are extensive interpretation provisions contained in clause 60 of the Bill and in Part 1.2 of the Corporations Law, and those provisions will prevail over the Acts Interpretation Act. The clause also makes it clear that the Interpretation Act of this State does not apply.

*Division 2—Citing the ASC Law and the ASC Regulations*

Clause 63 enables the ASC Law of this State to be referred to simply as the ASC Law. Similarly, the ASC Regulations of this State may be referred to simply as the ASC Regulations.

Clause 64 recognises references to the ASC Law and ASC Regulations of other jurisdictions.

Clause 65 provides that a reference in an Act of this State or an instrument of any kind to the ASC Law is to be taken (for the purposes of the laws of this State) to be a reference to the ASC Law of this State and to include a separate reference to the ASC Law of each other jurisdiction. Similar provision is made for references to the ASC Regulations. These provisions yield to a contrary intention. The object of these provisions is to help ensure that the ASC Law and ASC Regulations of this State, together with those of other jurisdictions, operate, so far as possible, as if they constituted a single national law operating of its own force throughout Australia.

*Division 3—The Commission*

Clause 66 formally confers on the ASC the functions and powers conferred on it by the national scheme laws of this State, and also the functions and powers conferred on the National Companies and Securities Commission by a co-operative scheme law.

Clause 67 empowers the State Minister to enter into agreements or arrangements with the ASC for the performance of functions by the ASC as an agent of the State.

Clause 68 formally confers on the ASC the power to do acts in this State in the exercise of functions conferred by national scheme laws of other jurisdictions.



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Clause 69 empowers the Commonwealth Minister to give directions to the ASC in relation to functions conferred on it by a national scheme law of this State. Such a direction will not relate to a particular case, and must be gazetted.

*Division 4—The Panel*

Clause 70 formally confers on the Corporations and Securities Panel the functions conferred on it under a national scheme law of this State. It also confers on the Panel the power to do acts in this State in the exercise of functions conferred by national scheme laws of other jurisdictions.

*Division 5—The Disciplinary Board*

Clause 71 formally confers on the Companies Auditors and Liquidators Disciplinary Board the functions conferred on it under a national scheme law of this State. It also confers on the Board the power to do acts in this State in the exercise of functions conferred by national scheme laws of other jurisdictions.

*Division 6—Miscellaneous*

Clause 72 provides that where a person is appointed under the ASC Act to act in an office, the law of this State applies as if the person were the holder of the office. This provision supplements a similar provision in the ASC Law. The provision is necessary to deal with cases where acting appointments are made under provisions of the ASC Act that are not applied by the Bill.

Clause 73 is a formal provision that deals with future possible changes of names of bodies or offices established under the ASC Act.

Clause 74 applies Part III of the Crimes Act of the Commonwealth for the purposes of the investigation and information-gathering provisions of the ASC Law. That Part relates to offences relating to the administration of justice, and applies for this purpose as if an examination or hearing by the ASC were a judicial proceeding.

Clause 75 applies Part IIIA of the Evidence Act of the Commonwealth for the purposes of the investigation and information-gathering provisions of the ASC Law. That Part relates to the admissibility of business records.

**PART 12—GENERAL**

*Division 1—Arrangements*

Clause 76 defines “relevant State law” for the purposes of the Division. It includes matters of the kind referred to in section 13 (1) (b) of the ASC Act as well as other State law, but excludes a co-operative scheme law.

Clause 77 provides for arrangements for the conferral of functions under a relevant State law on Commonwealth authorities or officers, and for the conferral of functions under applicable laws on State authorities or officers. Such an arrangement would be made between the Attorney General and the Commonwealth Minister.

Clause 78 provides for notice of such arrangements to be gazetted.



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*Division 2—Penalties and fines*

Clause 79 requires fines, penalties and other money payable under the applicable provisions of this State to be paid to the Commonwealth.

*Division 3—Regulations*

Clause 80 empowers the making of regulations for the purposes of the Act. It also empowers the making of regulations of a savings or transitional nature, but any such regulations expire 12 months after the commencement of the clause. Provision is made to protect private persons from any prejudicial effect of any retrospective regulations.

**PART 13—TRANSITIONAL**

*Division 1—Staff*

Clause 81 provides that a member of the staff of the ASC who was a public servant of this State engaged in the administration of the co-operative scheme laws is authorised to disclose to the ASC any information acquired while so engaged. This would override any existing inappropriate secrecy provision.

Clause 82 confers a limited power to make regulations relating to transitional superannuation arrangements for certain staff who transfer to the ASC. The regulations will be able to supplement laws establishing State superannuation schemes so as to enable arrangements agreed to between State and Commonwealth authorities to be given effect to.

Clause 83 confers a limited power to make regulations modifying superannuation legislation for the purposes of clause 82. The period during which such regulations have effect is limited to 12 months after the commencement of clause 80, after which legislation may have to be enacted to deal with the matter.

*Division 2—Co-operative scheme laws*

Clause 84 defines the co-operative scheme laws. They include the various Acts and Codes that regulate corporate activity at present.

Clause 85 provides that the national scheme laws prevail over the co-operative scheme laws. The co-operative scheme laws continue to operate of their own force only in relation to matters arising before the commencement of the clause and incidental matters.

Clause 86 enables regulations to be made excluding the residual operation of co-operative scheme laws.

Clause 87 contains a technical provision as to how the Interpretation Act applies in relation to co-operative scheme laws affected by clauses 85 and 86.

Clause 88 enables regulations to be made modifying co-operative scheme laws.

Clause 89 is a technical provision that preserves the operation of co-operative scheme laws that might be affected by certain Commonwealth regulations.

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Clause 90 provides a mechanism for dealing with references to co-operative scheme laws in existing legislation and other instruments.

Clause 91 confers enforcement powers on the Commonwealth Director of Public Prosecutions and the Australian Federal Police in connection with offences against the co-operative scheme laws. The Commonwealth Minister is also given the same functions and powers in relation to such offences as he or she would have if they were offences against the national scheme laws.

Clause 92 enables arrangements to be made between the Attorney General and the Commonwealth Minister regarding the exercise of enforcement powers by State authorities and officers in connection with the co-operative scheme laws.

*Division 3—Exemptions*

Clause 93 preserves the effect of any current exemptions in force under section 16 of the Companies (Application of Laws) Act 1981.

*Division 4—Australian Stock Exchange Limited*

Clause 94 contains savings provisions regarding the Australian Stock Exchange, which is dealt with under Part IIA of the Securities Industry (New South Wales) Code.

*Division 5—Companies Auditors and Liquidators Disciplinary Board*

Clause 95 continues the old Disciplinary Board in existence for the purpose of dealing with certain applications made before the commencement of the clause.

*Division 6—Miscellaneous provisions*

Clause 96 provides that references in other Acts of this State and in instruments of any kind to the Corporate Affairs Commission are to be read as references to the Managing Director of Business and Consumer Affairs or to a prescribed officer or body. The Managing Director is empowered to delegate functions arising under this clause.

**PART 14—PROVISIONS AFFECTING CORPORATIONS LAW**

Clause 97 preserves the effect of section 123 (15) of the Companies (New South Wales) Code. The provision prevents certain transfers by a company of lots in a strata plan from being regarded as a reduction of the share capital of the company.

**PART 15—AMENDMENT OF ACTS**

Clause 98 is a formal provision that gives effect to the Schedule of amendments.

**SCHEDULE 1—AMENDMENT OF ACTS**

The Associations Incorporation Act and the Business Names Act are amended to replace references to the Corporate Affairs Commission with references to the Managing Director of Business and Consumer Affairs. The Managing Director is empowered to delegate functions conferred under these Acts.

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The Interpretation Act is amended to include definitions of the ASC Law, ASC Regulations, Corporations Law and Corporations Regulations. The Act is also amended to make it clear that the provisions of those Laws and Regulations, together with the existing Codes, can be applied, as in force for the time being, by other laws.

The Revenue Laws (Reciprocal Enforcement) Act is amended to include the ASC among the bodies to which information is able to be divulged. The National Companies and Securities Commission is already such a body.

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SECOND PRINT

**CORPORATIONS (NEW SOUTH WALES) BILL 1990**

NEW SOUTH WALES



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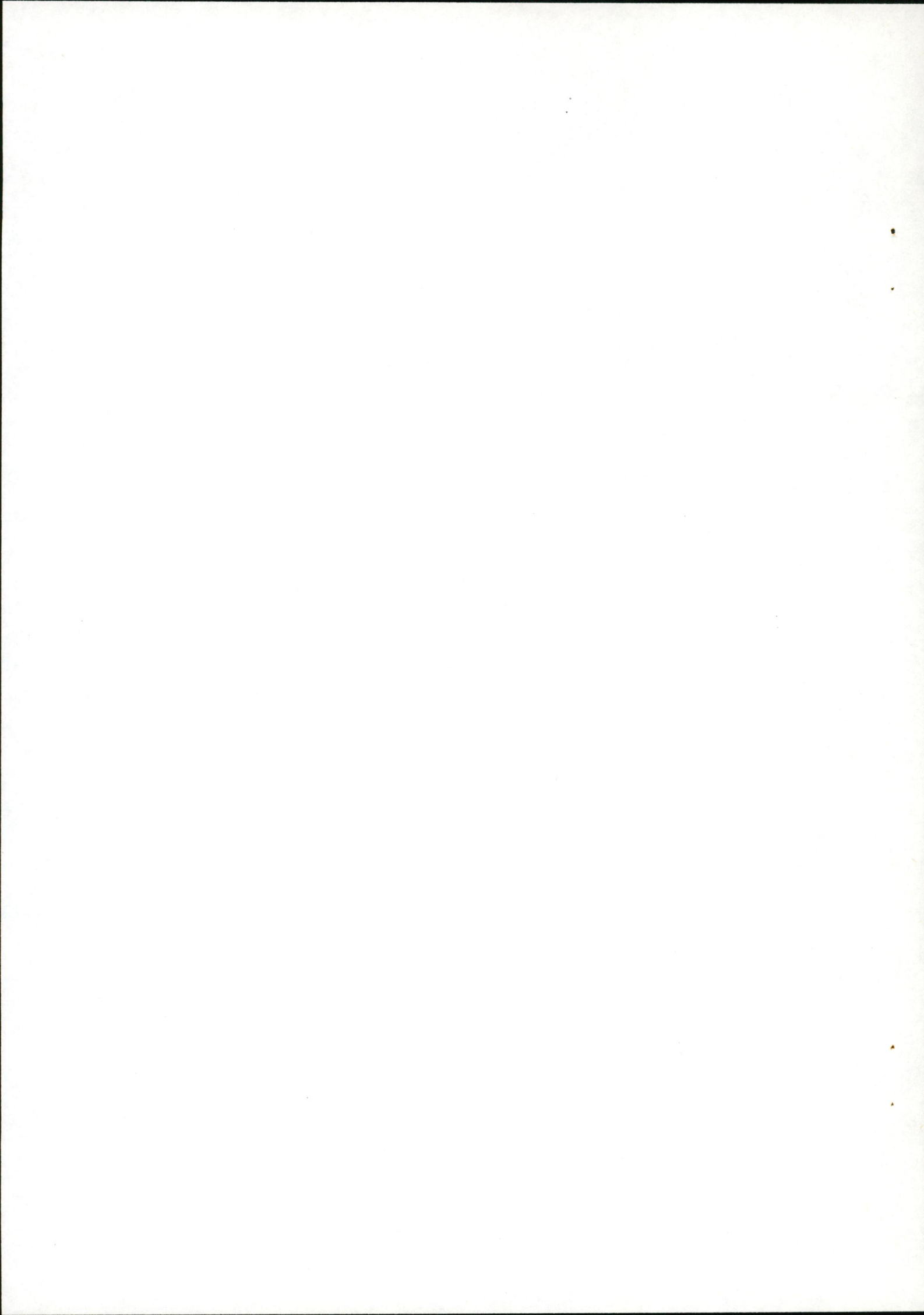
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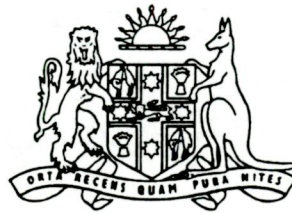
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**CORPORATIONS (NEW SOUTH WALES) BILL 1990**

NEW SOUTH WALES



No. , 1990

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**A BILL FOR**

An Act to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of New South Wales and for other purposes.

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**The Legislature of New South Wales enacts:**

**PART 1—PRELIMINARY**

**Short title and purposes**

1. (1) This Act may be cited as the Corporations (New South Wales) Act 1990.

(2) The purposes of this Act are:

- (a) to apply certain provisions of the Corporations Act 1989 of the Commonwealth and the Australian Securities Commission Act 1989 of the Commonwealth and of regulations under those Acts as laws of New South Wales; and
- (b) to apply certain other laws of the Commonwealth as laws of New South Wales for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters.

**Commencement**

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

**Definitions**

3. (1) In this Act:

“**applicable provision**”, in relation to a jurisdiction, means a provision of:

- (a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or
- (b) the ASC Law, or ASC Regulations, of that jurisdiction; or
- (c) in the case of the Capital Territory - a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to:
  - (i) an offence against; or
  - (ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction; or

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(d) in the case of a jurisdiction other than the Capital Territory - a Commonwealth law as applying, because of a law of that jurisdiction, in relation to:

(i) an offence against; or

(ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction;

**"ASC Act"** means the Australian Securities Commission Act 1989 of the Commonwealth;

**"ASC Law"** has the meaning given by Part 11;

**"ASC Law of New South Wales"** means the provisions applying by reason of section 58;

**"ASC Regulations"** has the meaning given by Part 11;

**"ASC Regulations of New South Wales"** means the provisions applying by reason of section 59;

**"authority"**, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;

**"Capital Territory"** means the Australian Capital Territory and the Jervis Bay Territory;

**"Commission"** means the Australian Securities Commission established by the ASC Act;

**"Commonwealth administrative laws"** means the following:

(a) the Administrative Appeals Tribunal Act 1975 of the Commonwealth;

(b) the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth;

(c) the Freedom of Information Act 1982 of the Commonwealth;

(d) the Ombudsman Act 1976 of the Commonwealth;

(e) the Privacy Act 1988 of the Commonwealth;

**"Commonwealth law"** means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASC Law of the Capital Territory or provisions prescribed, for the purposes of the definition of "Commonwealth law" in section 4 of the Corporations Act, by regulations under section 73 of the Corporations Act;

**"Commonwealth Minister"** has the meaning given to "the Minister" by section 80A (2) of the Corporations Law;



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- “co-operative scheme law”** has the meaning given by section 84;
- “Corporations Act”** means the Corporations Act 1989 of the Commonwealth;
- “Corporations Law”** has the meaning given by Part 3;
- “Corporations Law of New South Wales”** means the provisions applying by reason of section 7;
- “Corporations Regulations”** has the meaning given by Part 3;
- “Corporations Regulations of New South Wales”** means the provisions applying by reason of section 8;
- “corresponding law”** means:
- (a) an Act of a jurisdiction (other than New South Wales) that corresponds to this Act; or
  - (b) regulations made under such an Act; or
  - (c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction; or
  - (d) rules of court made because of such an Act;
- “Full Court”**, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court;
- “jurisdiction”** means a State or the Capital Territory;
- “law”** in relation to the Capital Territory, means a law of or in force in the Capital Territory;
- “Minister for this jurisdiction”** means the Minister;
- “modifications”** includes additions, omissions and substitutions;
- “national scheme law”** has the meaning given by section 60;
- “national scheme law of this jurisdiction”** means:
- (a) this Act; or
  - (b) the Corporations Law of New South Wales; or
  - (c) the ASC Law of New South Wales;
- “NCSC”** means the National Companies and Securities Commission;
- “officer”**, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;
- “State”** includes the Northern Territory;
- “Territory”** does not include the Northern Territory;
- “this jurisdiction”** means New South Wales.

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(2) In this Act, a reference to a Commonwealth Act includes a reference to:

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

**Australian Capital Territory**

4. For the purposes of the national scheme laws of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

**This Act and applicable provisions of New South Wales not to be affected by later State laws**

5. (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of New South Wales.

(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of this Act or the applicable provisions of New South Wales.

**Operation of other New South Wales laws**

6. Except as otherwise provided in this Act, nothing in this Act or the applicable provisions of New South Wales affects the operation after the commencement of this section of an Act enacted before that commencement or of an instrument made under such an Act.

**PART 2—THE CORPORATIONS LAW, AND THE  
CORPORATIONS REGULATIONS, OF NEW SOUTH WALES**

**Application in New South Wales of the Corporations Law**

7. The Corporations Law set out in section 82 of the Corporations Act as in force for the time being:

- (a) applies as a law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Law of New South Wales.



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**Application of regulations**

8. (1) The regulations in force for the time being under section 22 of the Corporations Act:

- (a) apply as regulations in force for the purposes of the Corporations Law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Regulations of New South Wales.

(2) Subject to subsection (3) of this section, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the Commonwealth of Australia Gazette under section 48 (1) of the Acts Interpretation Act 1901 of the Commonwealth, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Corporations Act from the specified day.

(3) To the extent that a provision of the Corporations Regulations of New South Wales is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to:

- (a) affect a private person's rights as at that day so as to disadvantage that person; or
- (b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

(4) In subsection (3):

“private person” means a person other than:

- (a) the Commonwealth, a State or the Capital Territory; or
- (b) an authority of the Commonwealth, of a State or of the Capital Territory.

(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

**Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of New South Wales**

9. In the Corporations Law, and the Corporations Regulations, of New South Wales:

“the Minister for this jurisdiction” means the Minister;

“this jurisdiction” means New South Wales.



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**Interpretation law**

10. (1) Subject to Part 1.2 of the Corporations Law of New South Wales, the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 8 of the Corporations Act, applies as a law of New South Wales in relation to the Corporations Law, and the Corporations Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders under section 111A of that Law) and so applies as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the Corporations Law, or the Corporations Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**PART 3—CITING THE CORPORATIONS LAW AND THE  
CORPORATIONS REGULATIONS**

**Simpler citation of Corporations Law, and Corporations Regulations,  
of New South Wales**

11. (1) The Corporations Law of New South Wales may be referred to simply as the Corporations Law.

(2) The Corporations Regulations of New South Wales may be referred to simply as the Corporations Regulations.

(3) This section has effect subject to section 13.

**References to Corporations Law, and Corporations Regulations, of  
other jurisdictions**

12. (1) This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than New South Wales that corresponds to section 7 of this Act provides that the Corporations Law set out in section 82 of the Corporations Act as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

(3) Where a law of a jurisdiction other than New South Wales that corresponds to section 8 of this Act provides that the regulations in force for the time being under section 22 of the Corporations Act apply for the

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purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

**References to Corporations Law and Corporations Regulations**

13. (1) The object of this section is to help ensure that the Corporations Law of New South Wales operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than New South Wales, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the Corporations Law, or to the Corporations Regulations, of New South Wales; and
- (b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than New South Wales.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

(5) In this section:

**“instrument”** means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.



**PART 4—APPLICATION OF THE CORPORATIONS LAW TO THE CROWN****Interpretation**

14. To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

**Corporations Law of New South Wales**

15. (1) Chapter 5 (except Part 5.8) of the Corporations Law of New South Wales binds the Crown not only in right of the State of New South Wales but also, so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth, of each of the other States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(2) To avoid doubt, Chapter 7 of the Corporations Law of New South Wales does not bind the Crown in right of the State of New South Wales, of the Commonwealth, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

**Corporations Law of other jurisdictions**

16. Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than New South Wales binds the Crown in right of the State of New South Wales.

**Crown not liable to prosecution**

17. Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

**This Part overrides the prerogative**

18. Where, because of this Part, a provision of a law of another jurisdiction binds the Crown in right of the State of New South Wales, the Crown in that right is subject to that provision despite any prerogative right or privilege.

**PART 5—APPLICATION ORDERS****Commonwealth Minister to obtain consent of State Minister**

19. Despite Part 1.3 of the Corporations Law of New South Wales and section 20 of this Act, the Commonwealth Minister may only make an order under section 111A of that Law, or that section as applying



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because of section 20 of this Act, with the consent of the Minister for this jurisdiction.

**Application orders for ASC Law**

20. Part 1.3 of the Corporations Law of New South Wales applies for the purposes of the ASC Law of New South Wales as if the provisions of the ASC Law of New South Wales were provisions of the Corporations Law of New South Wales.

**PART 6—ACCOUNTING STANDARDS**

**Accounting standards**

21. Subject to the Corporations Law, and the Corporations Regulations, of New South Wales, the instruments in force for the time being under section 32 of the Corporations Act also have effect for the purposes of Parts 3.6 and 3.7 of that Law.

**PART 7—IMPOSITION OF FEES AND TAXES**

**Fees (including taxes) for chargeable matters**

22. This section imposes the fees (including fees that are taxes) that the Corporations Regulations of New South Wales prescribe.

**Contributions and levies for fidelity funds of securities exchanges**

23. (1) This section imposes:

- (a) the contribution payable under section 902 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange; and
- (b) the annual contribution payable under section 902 (2) of that Law by a member of a securities exchange; and
- (c) any levy payable under section 904 of that Law by a member of a securities exchange.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of New South Wales.

**Levies for National Guarantee Fund**

24. This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of New South Wales.

**Contributions and levies for fidelity funds of futures organisations**

25. (1) This section imposes:

- (a) the contribution payable under section 1234 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a futures organisation; and
- (b) the annual contribution payable under section 1234 (2) of that Law by a contributing member of a futures organisation; and
- (c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of New South Wales.

**PART 8—NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE CORPORATIONS LAW****Division 1—Preliminary****Object**

26. The object of this Part is to help ensure that:

- (a) the Corporations Law of New South Wales, and the Corporations Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and
- (b) the ASC Law of New South Wales, and the ASC Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

**Effect of Part**

27. (1) This Part has effect subject to this Act (in particular Part 9), the Corporations Law of New South Wales and the ASC Law of New South Wales.

(2) Nothing in this Part limits the generality of anything else in it.

**Division 2—Offences against applicable provisions****Object**

28. (1) The object of this Division is to further the object of this Part by providing:



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- (a) for an offence against an applicable provision of New South Wales to be treated as if it were an offence against a law of the Commonwealth; and
  - (b) for an offence against an applicable provision of another jurisdiction to be treated in New South Wales as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):
- (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) liability to make reparation in connection with offences; and
  - (h) proceeds of crime; and
  - (i) spent convictions.

**Application of Commonwealth laws in relation to offences against applicable provisions**

29. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of New South Wales:

- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an offence against the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.



**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**

30. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of another jurisdiction:

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

31. (1) A Commonwealth law applying because of section 29 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against the applicable provisions of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of New South Wales.

(2) A Commonwealth law applying because of section 30 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.

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**Reference in Commonwealth law to a provision of another law**

32. A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of section 29 or 30, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

33. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**Division 3—Administrative Law**

**Object**

34. The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws:

- (a) apply to the applicable provisions of New South Wales; and
- (b) apply, in New South Wales, to the applicable provisions of another jurisdiction,

as if the applicable provisions were those of the Capital Territory.

**Application of Commonwealth administrative laws in relation to applicable provisions**

35. (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of an applicable provision of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of an applicable provision of New South Wales:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.



**Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions**

36. (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of an applicable provision of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

37. (1) A Commonwealth administrative law applying because of section 35 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of New South Wales.

(2) A Commonwealth administrative law applying because of section 36 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in



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performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.

**Reference in Commonwealth administrative law to a provision of another law**

38. A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken for the purposes of section 35 or 36, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

39. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**PART 9—JURISDICTION AND PROCEDURE OF COURTS**

**Division 1—Vesting and cross-vesting of civil jurisdiction**

**Operation of Division**

40. (1) This Division provides in relation to:

- (a) the jurisdiction of courts in respect of matters other than criminal matters (in this Division called “civil” matters) arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of civil matters arising under the Corporations Law of another State or the Capital Territory,

and so provides to the exclusion of the Jurisdiction of Courts (Cross-vesting) Act 1987.

(2) Nothing in this Division affects any other jurisdiction of any court.

**Interpretation**

41. (1) In this Division:

“judgment” means a judgment, decree or order, whether final or interlocutory.

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(2) In this Division:

- (a) a reference to the **Corporations Law of New South Wales** includes a reference to:
- (i) the Corporations Regulations of New South Wales; and
  - (ii) the ASC Law of New South Wales; and
  - (iii) the ASC Regulations of New South Wales; and
  - (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
  - (v) this Act; and
  - (vi) regulations made under this Act; and
  - (vii) rules of court made by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

**Jurisdiction of Federal Court and State and Territory Supreme Courts**

42. (1) Subject to section 9 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth, as it applies as a law of New South Wales, jurisdiction is conferred on the Supreme Court of New South Wales and of each other State and the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.

(2) The jurisdiction conferred on a Supreme Court by subsection (1) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(3) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales.



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**Appeals**

**43. (1)** An appeal may not be instituted from a decision of a court of New South Wales to a court of another State or Territory or to the Federal Court.

**(2)** An appeal may not be instituted from a decision of the Federal Court to a court of a State or Territory.

**(3)** An appeal may not be instituted from a decision of the Supreme Court of another State to the Federal Court or to a court of any State or Territory, except the Full Court of that Supreme Court.

**(4)** An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State.

**Transfer of proceedings**

**44. (1)** This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of New South Wales in a court having jurisdiction under section 42.

**(2)** Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first-mentioned court may transfer the proceeding or application to that other court.

**(3)** In deciding whether to transfer a proceeding or application under subsection (2), the court must have regard to:

- (a)** the principal place of business of any body corporate concerned in the proceeding or application; and
- (b)** the place or places where the events the subject of the proceeding or application took place.

**(4)** The court may transfer the proceeding or application:

- (a)** on the application of a party made at any stage; or
- (b)** of the court's own motion.

**(5)** Where, under subsection (2), a court transfers a proceeding, or an application in a proceeding, to another court:

- (a)** the Registrar or other proper officer of the first-mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first-mentioned court in respect of the proceeding or application, as the case may be; and



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- (b) the other court must proceed as if:
- (i) the proceeding had been originally instituted in the other court; and
  - (ii) the same proceedings had been taken in the other court as were taken in the first-mentioned court; and
  - (iii) in a case where an application is transferred—the application had been made in the other court.

**Conduct of proceedings**

45. (1) Subject to sections 51 and 52, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with the matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) Where a proceeding is transferred or removed to a court (in this subsection called the “**transferee court**”) from another court (in this subsection called the “**transferor court**”), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section:

“**relevant jurisdiction**” means:

- (a) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales; or
- (b) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction that is being exercised by the Federal Court sitting in New South Wales; or
- (c) jurisdiction conferred on the Supreme Court of New South Wales with respect to civil matters arising under the Corporations Law of another State or the Capital Territory; or
- (d) jurisdiction conferred on the Supreme Court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.

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**Courts to act in aid of each other**

46. All courts having jurisdiction in civil matters arising under the Corporations Law of New South Wales, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

**Exercise of jurisdiction pursuant to cross-vesting provisions**

47. The Supreme Court of New South Wales may:

- (a) exercise jurisdiction (whether original or appellate) conferred on that Court by a law of another State or the Capital Territory corresponding to this Division with respect to matters arising under the Corporations Law of that State or Territory; and
- (b) hear and determine a proceeding transferred to that Court under such a provision.

**Rights of appearance**

48. A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the "transferred proceeding") in that court is transferred to another court under this Division or a law of another State or the Capital Territory that corresponds to this Division, the same entitlements to practise in relation to:

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding,

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

**Limitation on appeals**

49. An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to section 45 (1).

**Enforcement of judgments etc.**

50. (1) A judgment of the Federal Court or the Supreme Court of New South Wales that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of another State or the



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Capital Territory that corresponds to this Division, is enforceable in New South Wales as if the judgment had been given by that Court entirely in the exercise of the jurisdiction of that Court apart from this Division or any such law.

(2) Where:

- (a) a provision of a law of New South Wales (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court or the Supreme Court of New South Wales or of another State or of the Capital Territory; and
- (b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of another State or the Capital Territory corresponding to this Division,

the reference in that provision to the Federal Court or the Supreme Court of New South Wales or of the other State or Territory, as the case may be, is taken as a reference to that other court.

#### **Rules of the Supreme Court**

51. (1) Rules of court, not inconsistent with the Corporations Law of New South Wales, may be made under the Supreme Court Act 1970:

- (a) with respect to proceedings, and the practice and procedure, of that Court under that Law; and
- (b) with respect to any matter or thing that is:
  - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
  - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

This subsection does not limit the rule-making powers conferred by the Supreme Court Act 1970.

(2) When the Supreme Court of New South Wales is exercising jurisdiction with respect to matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction conferred by a law of another State or the Capital Territory that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When the Supreme Court of another State or the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law



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of the State or Territory corresponding to subsection (1), with such alterations as are necessary.

(4) In this section:

“Corporations Law of another State or the Capital Territory” does not include rules of court;

“Corporations Law of New South Wales” does not include rules of court.

#### **Rules of the Federal Court**

52. (1) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 60 of the Corporations Act, with such alterations as are necessary.

(2) In this section:

“Corporations Law of New South Wales” does not include rules of court.

#### **Division 2—Vesting and cross-vesting of criminal jurisdiction**

##### **Operation of Division**

53. This Division provides in relation to:

- (a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of criminal matters arising under the Corporations Law of any jurisdiction.

##### **Interpretation**

54. (1) In this Division:

“magistrate” means a magistrate who is remunerated by salary or otherwise.

(2) In this Division:

- (a) a reference to the **Corporations Law of New South Wales** includes a reference to:
  - (i) the Corporations Regulations of New South Wales; and
  - (ii) the ASC Law of New South Wales; and
  - (iii) the ASC Regulations of New South Wales; and

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- (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
  - (v) this Act; and
  - (vi) regulations made under this Act; and
  - (vii) rules of court applied by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

**Jurisdiction of courts**

55. (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction:

- (a) with respect to:
  - (i) the summary conviction; or
  - (ii) the examination and commitment for trial on indictment; or
  - (iii) the trial and conviction on indictment,
 of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to:
  - (iv) their sentencing, punishment and release; or
  - (v) their liability to make reparation in connection with their offences; or
  - (vi) the forfeiture of property in connection with their offences; or
  - (vii) the proceeds of their crimes; and
- (b) with respect to the hearing and determination of:
  - (i) proceedings connected with; or
  - (ii) appeals arising out of; or
  - (iii) appeals arising out of proceedings connected with,
 any such trial or conviction or any matter of a kind referred to in paragraph (a)(iv), (v), (vi) or (vii),



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have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of New South Wales.

(2) Where a provision of a law of another State or the Capital Territory corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State or the Capital Territory upon a court of New South Wales, the court may exercise that jurisdiction.

(3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of another State or the Capital Territory, and:

- (a) the reference in subsection (1)(b) to "any such trial or conviction" includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and
- (b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned:

- (a) would be required to be prosecuted on indictment; or
- (b) would be required to be prosecuted either summarily or on indictment.

(6) For the purposes of the application of a relevant law as provided by subsection (4):

- (a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and
- (b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

(7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.

(8) Subject to subsection (9), the jurisdiction conferred on a court of New South Wales by a law of another State or the Capital Territory corresponding to subsection (1) may be exercised despite any limits as to



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locality of the jurisdiction of that court under the law of New South Wales.

(9) Where:

- (a) jurisdiction is conferred on a court of New South Wales in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of another State or of the Capital Territory; and
- (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest,

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or the Capital Territory.

(10) The jurisdiction conferred on a court of another State or the Capital Territory by subsection (1) in relation to:

- (a) the examination and commitment for trial on indictment; and
- (b) the trial and conviction on indictment,

of offenders or persons charged with offences against the Corporations Law of New South Wales is conferred only in relation to:

- (c) offences committed outside Australia; and
- (d) offences committed, begun or completed within the State or Territory concerned.

(11) In this section:

“Australia” does not include the coastal sea;

“relevant law” means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

**Laws to be applied**

56. (1) Subject to this Division, the laws of New South Wales respecting:

- (a) the arrest and custody in New South Wales of offenders or persons charged with offences; and
- (b) criminal procedure in New South Wales in relation to such persons,

apply in New South Wales, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South

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Wales or of another State or the Capital Territory in respect of whom jurisdiction is conferred on a court of New South Wales by this Division or a corresponding law of another State or the Capital Territory.

(2) Subject to this Division, the laws of each other State and the Capital Territory respecting:

- (a) the arrest and custody in that State or Territory of offenders or persons charged with offences; and
- (b) criminal procedure in that State or Territory in relation to such persons,

apply in that State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South Wales in respect of whom jurisdiction is conferred on a court of that State or Territory by this Division.

(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 9 or the corresponding law of another State or the Capital Territory.

(4) In this section:

“**criminal procedure**” means the procedure for:

- (a) the summary conviction; and
- (b) the examination and commitment for trial and indictment; and
- (c) the trial and conviction on indictment; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings, of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

“**laws of each other State and the Capital Territory**” means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State or Territory concerned.

## PART 10—COMPANIES LIQUIDATION ACCOUNT

### Companies Liquidation Account

57. (1) In this section:

“**relevant money**” means:

- (a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the Companies (New South Wales) Code; and

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- (b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the Companies (New South Wales) Code that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

(2) Relevant money is to be dealt with in accordance with section 427 of the Companies (New South Wales) Code.

**PART 11—THE ASC LAW, AND THE ASC REGULATIONS,  
OF NEW SOUTH WALES**

**Division 1—Application of ASC Act and ASC Regulations**

**Application in New South Wales of the ASC Act**

58. (1) The ASC Act, other than the excluded provisions:
- (a) applies as a law of New South Wales; and
  - (b) as so applying, may be referred to as the ASC Law of New South Wales.
- (2) The excluded provisions of the ASC Act are:
- Part 1, except section 6A
  - Part 2
  - Section 88
  - Divisions 1 and 4 of Part 4
  - Part 5
  - Part 6
  - Division 1 of Part 7
  - Part 8
  - Part 9
  - Division 1 of Part 10
  - Division 1 of Part 11
  - Part 12
  - Part 14
  - Sections 251 and 252

**Application of regulations**

59. The regulations in force for the time being under section 251 of the ASC Act:

- (a) apply as regulations in force for the purposes of the ASC Law of New South Wales; and



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- (b) as so applying, may be referred to as the ASC Regulations of New South Wales.

**Interpretation of some expressions in the ASC Law, and the ASC Regulations, of New South Wales**

**60.** (1) In this Part, and in the ASC Law, and the ASC Regulations, of New South Wales:

“**Advisory Committee**” means the Companies and Securities Advisory Committee established by section 145 of the ASC Act;

“**affairs**”, in relation to a body corporate, has the same meaning as in section 260 of the Corporations Law;

“**assist**”, in relation to a Commission delegate, means:

(a) to perform functions:

(i) as a member, officer or employee of the Commission delegate; and

(ii) in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law; or

(b) to perform services for the Commission delegate in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law;

“**Australia**” includes any external Territory to which the ASC Act extends;

“**books**” includes:

(a) a register; and

(b) accounts or accounting records, however compiled, recorded or stored; and

(c) a document; and

(d) banker’s books; and

(e) any other record of information;

“**Chairperson**” means:

(a) except in Part 11 of the ASC Law or in relation to the Disciplinary Board—the Chairperson of the Commission; and

(b) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board;

“**Commission**” means the Australian Securities Commission established by section 7 of the ASC Act;

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**“Commission delegate”** means a person to whom, or a body to which, a function or power is delegated under section 102 of the ASC Law;

**“contravention”**, in relation to a law, includes an ancillary offence relating to an offence against that law;

**“court”**, except in section 248 of the ASC Law, includes a tribunal having power to require the production of documents or the answering of questions;

**“Deputy Chairperson”** means the Deputy Chairperson of the Commission;

**“Disciplinary Board”** means the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the ASC Act;

**“eligible person”**, in relation to a person, means a person who:

(a) if the first-mentioned person is a body corporate—is or has been an officer of the body within the meaning of a national scheme law or a corresponding previous law; or

(b) in any case:

(i) is or has been an employee, agent, banker, solicitor or auditor of; or

(ii) is acting, or has acted, in any other capacity on behalf of,

the first-mentioned person;

**“examination”** means:

(a) in this section and Part 3 (other than section 27 (2) and Division 9) of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of that Law; or

(b) in section 27 (2) and Division 9 of Part 3 of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of the ASC Law or a corresponding provision of the ASC Law of another jurisdiction;

**“expenses”**, in relation to an investigation under Division 1 of Part 3 of the ASC Law, includes costs and expenses incurred in relation to a proceeding begun under section 50 of the ASC Law as a result of the investigation;

**“fail”** means refuse or fail;

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**“foreign country”** means:

- (a) an external Territory to which the ASC Act does not extend;  
or
- (b) a country outside Australia and the external Territories; or
- (c) a part of such a country;

**“give”** has:

- (a) in relation to a document—a meaning affected by section 86 of the ASC Law; and
- (b) in relation to information—a meaning affected by section 61 of this Act;

**“hearing”**, in this section and Part 3 of the ASC Law, means a hearing before the Commission and, in sections 52, 54, 55 and 56 of that Law, includes a part of such a hearing;

**“information”** has a meaning affected by section 61 of this Act;

**“investigate”**, in relation to the Commission, means investigate in the course of performing or exercising any of the Commission’s functions and powers;

**“meeting”** means:

- (a) in Part 4 of the ASC Law—a meeting of the Commission; and
- (b) in Part 11 of that Law—a meeting of the Disciplinary Board;

**“member”** means:

- (a) except in Division 2 of Part 4, or in Part 10, 11, or 14, of the ASC Law, or in relation to a Division of the Commission, or in relation to the Panel or the Disciplinary Board—a member of the Commission;
- (b) in Part 10 of that Law or in relation to the Panel—a member of the Panel;
- (c) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board;

**“national scheme law”** means:

- (a) the following:
  - (i) the Corporations Law of this jurisdiction;
  - (ii) the ASC Law of this jurisdiction;
  - (iii) this Act; or



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(b) the following:

- (i) the Corporations Act;
- (ii) the Corporations Law of the Capital Territory;
- (iii) the ASC Act; or

(c) a law of a jurisdiction (other than this jurisdiction or the Capital Territory) that corresponds to an Act or Law referred to in paragraph (a);

**“national scheme law of this jurisdiction”** means:

- (a) this Act; or
- (b) the Corporations Law of New South Wales; or
- (c) the ASC Law of New South Wales;

**“officer”**, in relation to a body corporate, includes:

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (c) an official manager, or a deputy official manager, of the body;
- (d) a liquidator, or a provisional liquidator, of the body; and
- (e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons;

**“Panel”** means the Corporations and Securities Panel established by section 171 of the ASC Act;

**“power”** includes an authority;

**“prescribed”** means prescribed by the ASC Law or the regulations;

**“President”** means the President of the Panel;

**“proceeding”** means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal,

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature;

**“produce”**, except in Part 3 of the ASC Law, includes permit access to;

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

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**“record”**, in relation to an examination, means the whole or a part of a record made under section 24 of the ASC Law of statements made at the examination;

**“regulations”** means the ASC Regulations of this jurisdiction;

**“report”** includes an interim report;

**“staff member”** means:

- (a) a member of the staff referred to in section 120 (1) of the ASC Act or a person employed under section 120 (3) of that Act;
- (b) a person engaged under section 121 (1) of that Act; or
- (c) any of the officers, employees and persons who under section 122 of that Act are to assist the Commission;

**“statement”**, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination;

**“Territory”** means:

- (a) the Capital Territory; or
- (b) an external Territory to which the ASC Act extends;

**“this Act”**, except in this Part, means the ASC Law, and includes the regulations;

**“this jurisdiction”** means New South Wales;

**“this Law”** includes the regulations;

**“tribunal”** means:

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;

**“witness”**, in relation to a hearing before the Commission or the Panel, means a person appearing at the hearing to give evidence;

**“written record”**, in relation to an examination, means:

- (a) a record of the examination:
  - (i) that is made in writing; or
  - (ii) as reduced to writing; or
- (b) a part of such a record.

(2) Subject to the ASC Law of this jurisdiction, an expression has the same meaning in that Law and in the ASC Regulations of this jurisdiction as in the Corporations Law of this jurisdiction.

**Giving information**

61. A reference in the ASC Law, and the ASC Regulations, of New South Wales to giving information includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

**Interpretation law**

62. (1) Except so far as the contrary intention appears in the ASC Law of New South Wales:

- (a) Part 1.2 (except section 8) of the Corporations Law of New South Wales applies; and
- (b) subject to paragraph (a), the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 5 (5) of the ASC Act applies as law of New South Wales,

in relation to the ASC Law, and the ASC Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders made for the purposes of that Law under section 111A of the Corporations Law of this jurisdiction) and so apply as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the ASC Law, or the ASC Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**Division 2—Citing the ASC Law and the ASC Regulations****Alternative citations of the ASC Law, and the ASC Regulations, of New South Wales**

63. (1) The ASC Law of New South Wales may be referred to simply as the ASC Law.

(2) The ASC Regulations of New South Wales may be referred to simply as the ASC Regulations.

(3) This section has effect subject to section 65.



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**References to ASC Law, and ASC Regulations, of another jurisdiction**

64. (1) This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than New South Wales contains provisions corresponding to sections 5 and 6 of the Corporations Act and also provides for provisions of the ASC Act to apply as law of that jurisdiction, those provisions of the ASC Act, as so applying, are the ASC Law of that jurisdiction.

(3) Where a law of a jurisdiction other than New South Wales provides for the regulations in force for the time being under section 251 of the ASC Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

**References to ASC Law and ASC Regulations**

65. (1) The object of this section is to help ensure that, so far as possible:

- (a) the bodies established by the ASC Act and the staff of those bodies, can perform functions and exercise powers; and
- (b) persons can have dealings with those bodies,

as if the ASC Act, the ASC Law of New South Wales and the ASC Law of each other State, constituted a single national ASC Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the ASC Law, or to the ASC Regulations, of New South Wales; and
- (b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than New South Wales.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.

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(5) In this section:

“instrument” means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.

### **Division 3—The Commission**

#### **Conferral of functions and powers on Commission**

66. (1) The Commission has the functions and powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission also has the functions and powers conferred or expressed to be conferred upon the NCSC by or under a Code that is a relevant Code for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

#### **Agreements and arrangements**

67. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commission for the performance of functions or the exercise of powers by the Commission as an agent of the State.

(2) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

(3) Such an agreement or arrangement may not be entered into without the concurrence of the Premier.



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**Conferral of other functions and powers for purposes of law in New South Wales**

**68.** The Commission has power to do acts in New South Wales in the performance or exercise of any function or power:

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or
- (b) referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction corresponding to section 67.

**Directions by Commonwealth Minister**

**69.** (1) If the Commonwealth Minister:

- (a) has notified the Commission in writing that he or she is considering giving a direction under this section; and
- (b) has given the Chairperson of the Commission an adequate opportunity to discuss with the Commonwealth Minister the need for the proposed direction,

the Commonwealth Minister may give the Commission a written direction (not being a direction about a particular case) about policies it should pursue, or priorities it should follow in performing or exercising any of the functions or powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission must comply with a direction under subsection (1).

(3) A copy of an instrument under subsection (1) must be published in the Commonwealth of Australia Gazette within 21 days after the instrument is made but, if a copy is not so published, the instrument's validity is not affected.

**Division 4—The Panel**

**Conferral of functions and powers on the Panel**

**70.** (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Panel has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.



**Division 5—The Disciplinary Board****Conferral of functions and powers on the Disciplinary Board**

71. (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Disciplinary Board has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on it by a national scheme law of another jurisdiction.

**Division 6—Miscellaneous****Acting appointments**

72. Where a person is appointed under the ASC Act to act in a particular office, the law of this jurisdiction applies in relation to that person while acting in that office as if the person were the holder of the office.

**Alteration of names and constitutions**

73. (1) Where:

- (a) the name of a body established by the ASC Act is changed by law (whether or not the body is incorporated); or
- (b) the name of an office established by that Act is changed by law, then, unless the contrary intention appears, a reference in:
  - (c) any Act of this jurisdiction; or
  - (d) any instrument under such an Act; or
  - (e) any award or other industrial determination or order or any industrial agreement; or
  - (f) any other order (whether executive, judicial or otherwise); or
  - (g) any contract; or
  - (h) any pleading in, or process issued in connection with, any legal or other proceeding; or
  - (i) any other instrument,

to the body or the office under the former name, except in relation to matters that occurred before that change took place, is taken as a reference to the body or the office under the new name.

(2) Where the constitution of a body established by the ASC Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears, the alteration does not affect any functions

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or powers conferred or expressed to be conferred on that body by a national scheme law of this jurisdiction.

**Application of Commonwealth Crimes Act**

74. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part III of the Crimes Act 1914 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1), an examination or a hearing is a judicial proceeding.

(3) For the purposes of the ASC Law of New South Wales, an offence under Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1) in relation to an examination or hearing, is taken to be an offence against Part 3 of the ASC Law of New South Wales.

**Application of Commonwealth Evidence Act**

75. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part IIIA of the Evidence Act 1905 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part IIIA of the Evidence Act 1905 of the Commonwealth as applying because of subsection (1), an examination is a proceeding but is not a criminal proceeding.

**PART 12—GENERAL**

**Division 1—Arrangements**

**Definition**

76. In this Division:

“relevant State law” means:

- (a) a law of the State concerning the management or affairs of a body corporate; or
- (b) a law of the State concerning fraud or dishonesty; or
- (c) any other law of the State,  
other than a co-operative scheme law.

**Arrangements relating to applicable provisions**

77. (1) Where an arrangement between the Attorney General and the Commonwealth Minister provides:

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- (a) that an authority or officer of the Commonwealth has certain functions or powers under a relevant State law; or
- (b) that, despite section 33 or 39, an authority or officer of the State has certain functions or powers under an applicable provision of this jurisdiction,

those functions or powers are conferred on that authority or officer.

(2) Functions and powers conferred under an arrangement under subsection (1) are to be performed and exercised in accordance with the arrangement but are to be taken to have been validly performed or exercised despite any failure to comply with any condition or restriction under the arrangement.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

**Notice of arrangement**

78. Notice of each arrangement under section 77 must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

**Division 2—Penalties and fines**

**Application of penalties and fines**

79. All fines, penalties and other money (other than fees and taxes) which, under and by virtue of the applicable provisions of New South Wales, are authorised or directed to be imposed on any person must be paid to the Commonwealth.

**Division 3—Regulations**

**Regulations**

80. (1) The Governor may make regulations, not inconsistent with the national scheme laws of this jurisdiction, for or with respect to any matter that is required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, being provisions not inconsistent with the national scheme laws of this jurisdiction.



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(3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Government Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(5) Regulations containing provisions of a kind referred to in subsection (2) cease to have effect on the first anniversary of the day on which this section commences,

(6) Where regulations cease to have effect because of subsection (5), the Interpretation Act 1987 applies as if the regulations had been disallowed by the Parliament.

## PART 13—TRANSITIONAL

### Division 1—Staff

#### Information previously acquired

81. A staff member who, before the commencement of this section, was an officer or employee of the Public Service of New South Wales engaged in the administration of a co-operative scheme law may disclose to the Commission information acquired while so engaged.

#### State superannuation schemes

82. (1) The regulations under section 80 may make provision for or with respect to the rights and obligations, concerning superannuation and associated matters, of transferred officers who were, or were entitled to be, members of a State superannuation scheme.

(2) Without limiting subsection (1), the regulations may contain:

- (a) provisions having the effect of treating a transferred officer as an employee or contributor for the purposes of a State superannuation scheme, subject to specified conditions; and
- (b) provisions having the effect of treating the Commission as an employer or employing authority for the purposes of a State superannuation scheme, subject to specified conditions; and

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(c) provisions relating to the withdrawal of a transferred officer from a State superannuation scheme.

(3) In this section:

“**State superannuation scheme**” means a superannuation scheme established by or under an Act;

“**transferred officer**” means a person who:

- (a) is a member of the Commission’s staff appointed under the Public Service Act 1922 of the Commonwealth; and
- (b) was so appointed under section 81B of that Act; and
- (c) immediately before that appointment was an officer of the Public Service of New South Wales employed in Business and Consumer Affairs.

**Temporary modification of superannuation legislation**

83. (1) For the purposes of section 82, regulations made under section 80 may provide that a Superannuation Act, or specified provisions of a Superannuation Act, has or have effect with such modifications as the regulations prescribe.

(2) Any such provisions are taken to be provisions of the kind referred to in section 80 (2).

(3) In this section:

“**Superannuation Act**” means an Act by or under which a superannuation scheme is established, and includes any legislation relating to or connected with such a scheme.

**Division 2—Co-operative scheme laws**

**Co-operative scheme laws**

84. For the purposes of this Act, the following are the co-operative scheme laws:

Companies (Application of Laws) Act 1981

Companies (New South Wales) Code

Companies (Acquisition of Shares) (Application of Laws) Act 1981

Companies (Acquisition of Shares) (New South Wales) Code

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981

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



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Securities Industry (Application of Laws) Act 1981

Securities Industry (New South Wales) Code

Futures Industry (Application of Laws) Act 1986

Futures Industry (New South Wales) Code

**National scheme laws prevail over co-operative scheme laws**

**85.** (1) This section provides for the national scheme laws of this jurisdiction to supersede the co-operative scheme laws, which are to continue to operate of their own force only in relation to:

- (a) matters arising before the commencement of this section; and
- (b) matters arising, directly or indirectly, out of such matters, in so far as the national scheme laws do not deal with those matters.

(2) Where a co-operative scheme law is inconsistent with a national scheme law of this jurisdiction, the national scheme law prevails and, to the extent of the inconsistency, the co-operative scheme law does not operate.

(3) For the purposes of subsection (2), a co-operative scheme law is inconsistent with a national scheme law if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth of Australia if the national scheme law were an Act of the Commonwealth.

**Regulations may exclude residual operation of co-operative scheme laws**

**86.** (1) Regulations under section 80 may provide that prescribed provisions of co-operative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.

(2) Regulations in force because of subsection (1) have effect accordingly.

**Effect of sections 85 and 86**

**87.** (1) To the extent that a co-operative scheme law ceases to operate because of section 85 or 86, the law is taken for the purposes of the Interpretation Act 1987 to have been repealed by this Act.

(2) Nothing in this Act revives, or otherwise affects the exclusion of, the provisions referred to in section 18 (1) of the Companies (Application of Laws) Act 1981 or section 16 (1) of the Securities Industry (Application of Laws) Act 1981.



**Regulations may modify co-operative scheme laws**

88. (1) Regulations under section 80 may provide that a specified co-operative scheme law, or specified provisions of a co-operative scheme law, has or have effect with such modifications as the regulations prescribe.

(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 85 or 86, the specified law does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

(3) However, a reference in section 85 (2) to a co-operative scheme law includes a reference to such a law as it has effect, or to provisions of such a law as they have effect, because of this section.

**Co-operative scheme laws not affected by certain Commonwealth regulations**

89. The operation or effect of a co-operative scheme law is not modified or otherwise affected because regulations of a kind referred to in section 77 or 79 of the Corporations Act modify or otherwise affect the operation of a Co-operative Scheme Act within the meaning of Part 12 of the Corporations Act.

**References to co-operative scheme laws and regulations**

90. (1) In this section:

“Code regulations” means provisions applying as regulations made under a Code by reason of a provision of an Act that is a co-operative scheme law;

“instrument” has the same meaning as in section 13 but does not include this Act, a co-operative scheme law, regulations under this Act or an Act that is such a law or Code regulations.

(2) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to a co-operative scheme law is to be taken to include a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of the co-operative scheme law.

(3) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to Code regulations is to be taken to include a reference to such provisions of the Corporations Regulations, or ASC Regulations, of New South Wales as correspond to provisions of the Code regulations.

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(4) Subject to any regulations in force under subsection (7), a reference in an instrument to a provision of a co-operative scheme law or of Code regulations is to be taken to include a reference to the corresponding provision of a national scheme law of this jurisdiction or of the Corporations Regulations, or ASC Regulations, of New South Wales, as the case may be.

(5) Subject to any regulations in force under subsection (7), a reference in an instrument to the NCSC is to be taken to include a reference to the Commission.

(6) Regulations under section 80 may declare that, for the purposes of this section:

- (a) prescribed provisions of national scheme laws of this jurisdiction correspond to prescribed provisions of co-operative scheme laws; and
- (b) prescribed provisions of the Corporations Regulations, or ASC Regulations, correspond to prescribed provisions of Code regulations.

(7) Regulations under section 80:

- (a) may declare that subsection (2), (3), (4) or (5) of this section does not apply in relation to prescribed references in prescribed instruments; or
- (b) may declare that subsection (2), (3), (4) or (5) of this section has effect in relation to prescribed references in prescribed instruments as if, in the subsection, the words "be taken to be" were substituted for the words "be taken to include".

(8) Regulations in force because of subsection (6) or (7) have effect accordingly.

**Conferral of functions and powers in relation to co-operative scheme laws**

**91. (1) The Commonwealth Director of Public Prosecutions:**

- (a) has the same enforcement powers in relation to the co-operative scheme laws as has the Director of Public Prosecutions of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the Director of Public Prosecutions Act 1983 of the Commonwealth as if the offence were an offence against a national scheme law of this jurisdiction.



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(2) The Australian Federal Police:

- (a) have the same enforcement powers in relation to the co-operative scheme laws as has the Police Service of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Australian Federal Police in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law were an offence against a national scheme law of this jurisdiction.

(3) The Commonwealth Minister has, in respect of the prosecution of offences against the co-operative scheme laws, the same functions and powers as he or she has in respect of the prosecution of offences against a national scheme law of this jurisdiction.

(4) For the purposes of the exercise of enforcement powers, and other functions and powers conferred by this section, including the obtaining of warrants to arrest, an offence against a co-operative scheme law is taken to be an offence against a national scheme law of this jurisdiction.

(5) In this section, “**enforcement power**” means a function or power relating to:

- (a) the investigation of an offence; or
- (b) the arrest and custody of persons charged with an offence; or
- (c) the institution and carrying on of a prosecution of an offence; or
- (d) matters relating to such an investigation, arrest, custody or prosecution.

**Arrangements affecting exercise of investigation powers by State authorities and officers**

92. (1) Where an arrangement between the Attorney General and the Commonwealth Minister makes provision in relation to the exercise by a State authority or officer of enforcement powers within the meaning of section 91 in relation to the co-operative scheme laws:

- (a) the State authority or officer is authorised to act in accordance with that arrangement; and
- (b) the State authority or officer must not exercise an enforcement power except in accordance with that arrangement; and
- (c) the exercise of, or failure to exercise, an enforcement power by a State authority or officer is to be taken to have been validly performed or withheld, despite any failure to comply with any conditions in the arrangement.



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(2) Notice of each arrangement under subsection (1) must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

**Division 3—Exemptions**

**Exemptions from Part 7.12 and Part 7.13**

93. (1) Where, immediately before the commencement of this section, a company was, because of section 16 (1) of the Companies (Application of Laws) Act 1981, exempt from complying with provisions of Division 6 of Part IV of the Companies (New South Wales) Code, the company is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(2) Where, immediately before the commencement of this section, a right or interest was, because of section 16 (2) or (3) of the Companies (Application of Laws) Act 1981, an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, that right or interest is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(3) A company, right or interest to which subsection (1) or (2) applies ceases to be an exempt company, right or interest if the Governor makes regulations under this Act declaring that it so ceases.

(4) Where, immediately before the commencement of this section, a body was, because of section 16 (5) of the Companies (Application of Laws) Act 1981, a prescribed corporation for the purposes of Division 8 of Part IV of the Companies (New South Wales) Code, the body is taken not to be an eligible body for the purposes of Division 3 of Part 7.13 of the Corporations Law of New South Wales.

(5) A body to which subsection (4) applies ceases to be subject to its operation if the Governor makes regulations under this Act declaring that it so ceases.

**Division 4—Australian Stock Exchange Limited**

**Saving of provisions about Australian Stock Exchange Limited**

94. (1) Section 85 does not apply in relation to Part IIA of the Securities Industry (New South Wales) Code.

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(2) Part IIA has effect, as provided in this section, despite the national scheme laws of this jurisdiction.

(3) A reference in Part IIA to a relevant Act, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of this jurisdiction.

(4) Subject to subsection (5), a reference in Part IIA to a particular co-operative scheme law, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of that Act.

(5) A reference in Part IIA to a provision of a co-operative scheme law (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of this jurisdiction.

(6) Regulations in force because of section 90 (6) also have effect for the purposes of this section.

**Division 5—Companies Auditors and Liquidators Disciplinary Board**

**Board to continue in existence for certain purposes**

95. The Companies Auditors and Liquidators Disciplinary Board established under section 18A of the Companies (Administration) Act 1981 may perform the functions and exercise the powers conferred on it under Division 2 of Part II of the Companies (New South Wales) Code in respect of applications made to it under Subdivision B of that Division before the commencement of this section.

**Division 6—Miscellaneous**

**References to Corporate Affairs Commission**

96. (1) In this section:

“function” includes power, authority or duty;

“instrument” has the same meaning as in section 13, but does not include this Act, the regulations under this Act, the Companies (Administration) Act 1981 or a prescribed instrument or prescribed part of an instrument;

“Managing Director” means the Managing Director of Business and Consumer Affairs.



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(2) A reference in an instrument to the Corporate Affairs Commission or the Commissioner for Corporate Affairs is to be taken to be a reference to the Managing Director or to such officer or body (whether of this State or not) as is prescribed by regulations under section 80.

(3) Subsection (2) extends to a reference required by section 18 of the Companies (Administration) Act 1981 to be construed as a reference to the Corporate Affairs Commission.

(4) The Managing Director may delegate any of the functions conferred or imposed on the Managing Director because of this section.

(5) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (4) may authorise another person to perform the function so delegated.

(6) Section 80 (5) does not apply to the provisions of regulations made for the purposes of or in connection with this section.

#### **PART 14—PROVISIONS AFFECTING CORPORATIONS LAW**

##### **Certain transfers by companies not to constitute reduction of share capital**

97. Where:

- (a) land is comprised in a strata plan registered under the Strata Titles Act 1973 or in a plan of a prescribed kind under a prescribed Act; and
- (b) at the time of registration of the plan, the proprietor of that land was a company,

the transfer by the company of a lot on the strata plan (or of a prescribed unit or other entity on a plan) in exchange for or in satisfaction of a right of the kind referred to in section 195 (13) of the Corporations Law, does not of itself constitute, and is to be taken never to have constituted, a reduction of the share capital of the company.

#### **PART 15—AMENDMENT OF ACTS**

##### **Amendment of Acts**

98. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 98)

**ASSOCIATIONS INCORPORATION ACT 1984 No. 143**(1) Section 3 (**Definitions**):

(a) Omit the definition of "Commission".

(b) After the definition of "incorporated association", insert:

**"Managing Director"** means the Managing Director of Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.

## (3) Section 72A:

After section 72, insert:

**Delegation by Managing Director**

72A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**BUSINESS NAMES ACT 1962 No. 11**(1) Section 4 (**Interpretation**):

(a) Omit the definition of "Commission".

(b) After the definition of "Machine copy", insert:

**"Managing Director"** means the Managing Director of Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.

*Corporations (New South Wales) 1990*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 31A:

After section 31, insert:

**Delegation by Managing Director**

31A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**INTERPRETATION ACT 1987 No. 15**

(1) Section 21 (**Meaning of commonly used words and expressions**):

Insert in section 21 (1) in alphabetical order:

“ASC Law” and “ASC Regulations” have the meaning provided for by Part 11 of the Corporations (New South Wales) Act 1990;

“Corporations Law” and “Corporations Regulations” have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;

(2) Section 68 (**References to amended Acts and instruments**):

(a) At the end of section 68 (4) (a) (i), insert “and”.

(b) At the end of section 68 (4) (a), insert:

(iv) the Companies (New South Wales) Code, the Companies (Acquisition of Shares) (New South Wales) Code, the Securities Industry (New South Wales) Code, the Futures Industry (New South Wales) Code and the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code; and

(v) the ASC Law of New South Wales; and

(vi) the Corporations Law of New South Wales.

*Corporations (New South Wales) 1990*

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**REVENUE LAWS (RECIPROCAL POWERS) ACT 1987**  
**No. 86**

**Section 12 (Provision of information to certain Commonwealth and State revenue officers etc.):**

(a) At the end of section 12 (1), insert:

(f) the Australian Securities Commission, or a person authorised by that Commission, for the purposes of the administration or execution of any law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990.

(b) In section 12 (2), omit “(c) or (d)”, insert instead “(c), (d) or (f)”.

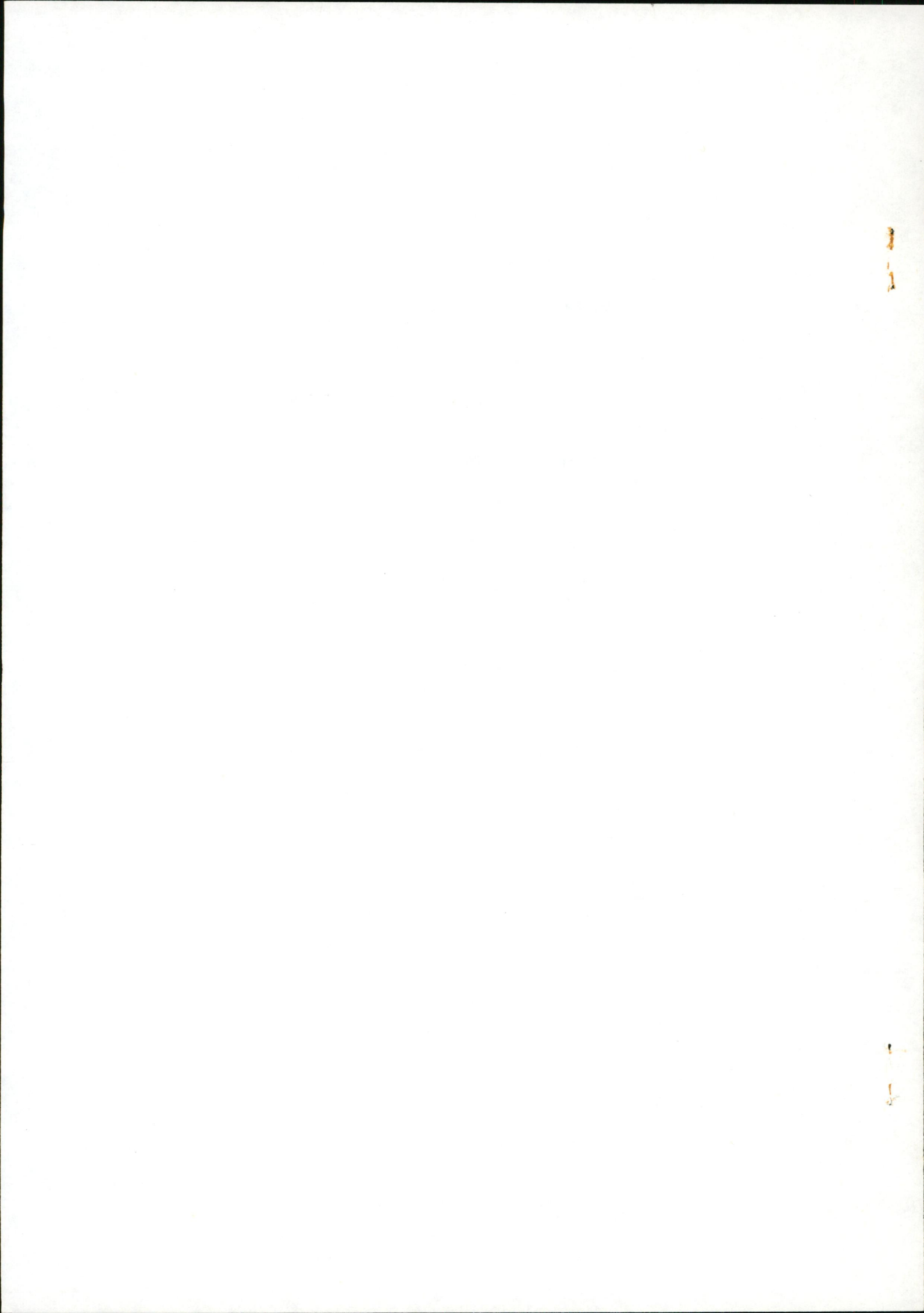
(c) At the end of section 12 (3) (b), insert:

; or

(v) a law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990;

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THIRD PRINT

**CORPORATIONS (NEW SOUTH WALES) BILL 1990**

NEW SOUTH WALES



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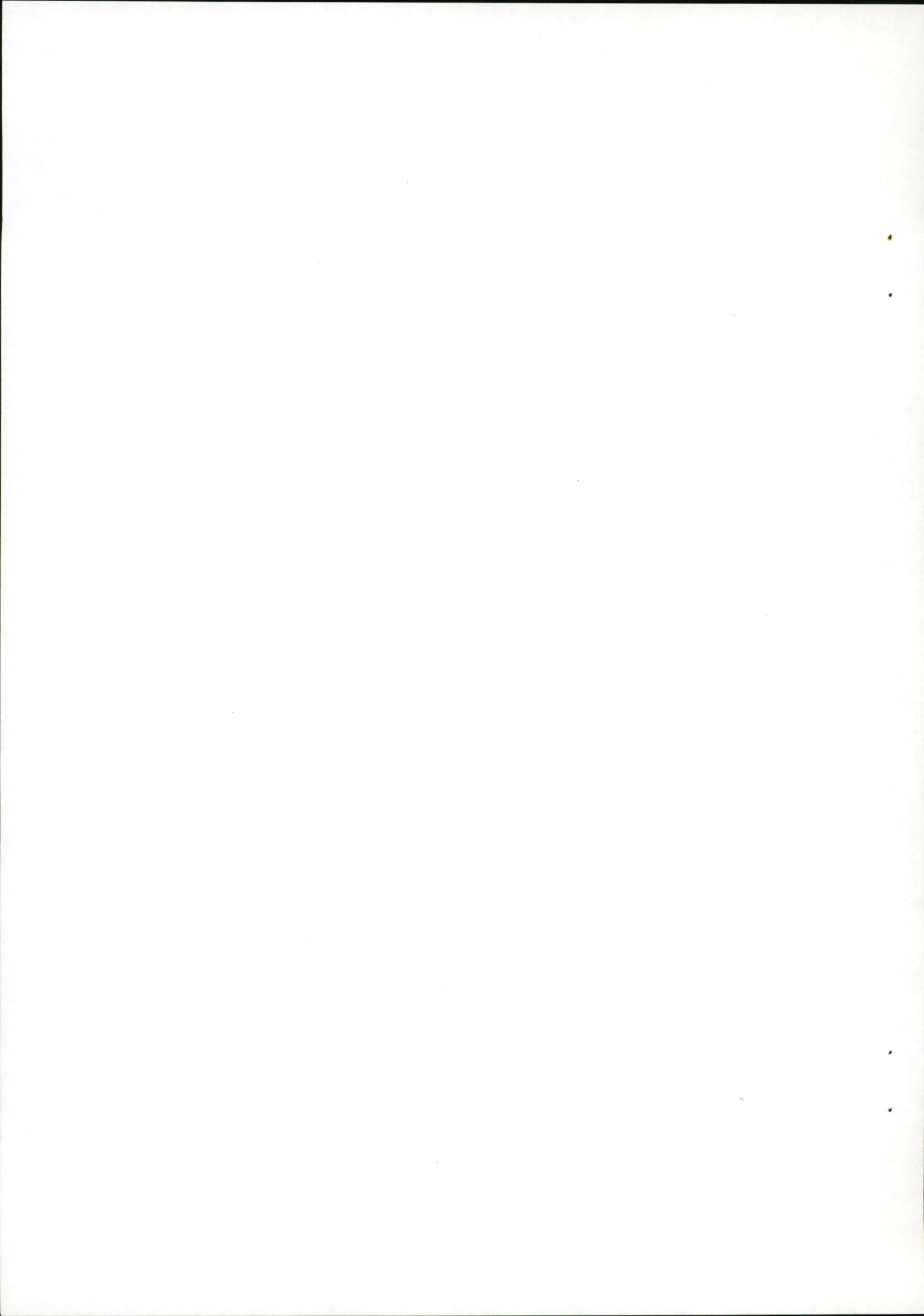
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SCHEDULE 1—AMENDMENT OF ACTS

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*This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.*

*Clerk of the Legislative Assembly.*  
*Legislative Assembly Chamber,*  
*Sydney, , 1990*

NEW SOUTH WALES



Act No. , 1990

An Act to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of New South Wales and for other purposes.

*Corporations (New South Wales) 1990*

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The Legislature of New South Wales enacts:

**PART 1—PRELIMINARY**

**Short title and purposes**

1. (1) This Act may be cited as the Corporations (New South Wales) Act 1990.

(2) The purposes of this Act are:

- (a) to apply certain provisions of the Corporations Act 1989 of the Commonwealth and the Australian Securities Commission Act 1989 of the Commonwealth and of regulations under those Acts as laws of New South Wales; and
- (b) to apply certain other laws of the Commonwealth as laws of New South Wales for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters.

**Commencement**

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

**Definitions**

3. (1) In this Act:

“**applicable provision**”, in relation to a jurisdiction, means a provision of:

- (a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or
- (b) the ASC Law, or ASC Regulations, of that jurisdiction; or
- (c) in the case of the Capital Territory - a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to:
  - (i) an offence against; or
  - (ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction; or



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- (d) in the case of a jurisdiction other than the Capital Territory - a Commonwealth law as applying, because of a law of that jurisdiction, in relation to:
- (i) an offence against; or
  - (ii) an act, matter or thing arising under or in respect of, a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction;
- “**ASC Act**” means the Australian Securities Commission Act 1989 of the Commonwealth;
- “**ASC Law**” has the meaning given by Part 11;
- “**ASC Law of New South Wales**” means the provisions applying by reason of section 58;
- “**ASC Regulations**” has the meaning given by Part 11;
- “**ASC Regulations of New South Wales**” means the provisions applying by reason of section 59;
- “**authority**”, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;
- “**Capital Territory**” means the Australian Capital Territory and the Jervis Bay Territory;
- “**Commission**” means the Australian Securities Commission established by the ASC Act;
- “**Commonwealth administrative laws**” means the following:
- (a) the Administrative Appeals Tribunal Act 1975 of the Commonwealth;
  - (b) the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth;
  - (c) the Freedom of Information Act 1982 of the Commonwealth;
  - (d) the Ombudsman Act 1976 of the Commonwealth;
  - (e) the Privacy Act 1988 of the Commonwealth;
- “**Commonwealth law**” means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASC Law of the Capital Territory or provisions prescribed, for the purposes of the definition of “Commonwealth law” in section 4 of the Corporations Act, by regulations under section 73 of the Corporations Act;
- “**Commonwealth Minister**” has the meaning given to “the Minister” by section 80A (2) of the Corporations Law;

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- “co-operative scheme law”** has the meaning given by section 84;
- “Corporations Act”** means the Corporations Act 1989 of the Commonwealth;
- “Corporations Law”** has the meaning given by Part 3;
- “Corporations Law of New South Wales”** means the provisions applying by reason of section 7;
- “Corporations Regulations”** has the meaning given by Part 3;
- “Corporations Regulations of New South Wales”** means the provisions applying by reason of section 8;
- “corresponding law”** means:
- (a) an Act of a jurisdiction (other than New South Wales) that corresponds to this Act; or
  - (b) regulations made under such an Act; or
  - (c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction; or
  - (d) rules of court made because of such an Act;
- “Full Court”**, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court;
- “jurisdiction”** means a State or the Capital Territory;
- “law”** in relation to the Capital Territory, means a law of or in force in the Capital Territory;
- “Minister for this jurisdiction”** means the Minister;
- “modifications”** includes additions, omissions and substitutions;
- “national scheme law”** has the meaning given by section 60;
- “national scheme law of this jurisdiction”** means:
- (a) this Act; or
  - (b) the Corporations Law of New South Wales; or
  - (c) the ASC Law of New South Wales;
- “NCSC”** means the National Companies and Securities Commission;
- “officer”**, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;
- “State”** includes the Northern Territory;
- “Territory”** does not include the Northern Territory;
- “this jurisdiction”** means New South Wales.



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(2) In this Act, a reference to a Commonwealth Act includes a reference to:

- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

**Australian Capital Territory**

4. For the purposes of the national scheme laws of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

**This Act and applicable provisions of New South Wales not to be affected by later State laws**

5. (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of New South Wales.

(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of this Act or the applicable provisions of New South Wales.

**Operation of other New South Wales laws**

6. Except as otherwise provided in this Act, nothing in this Act or the applicable provisions of New South Wales affects the operation after the commencement of this section of an Act enacted before that commencement or of an instrument made under such an Act.

**PART 2—THE CORPORATIONS LAW, AND THE  
CORPORATIONS REGULATIONS, OF NEW SOUTH WALES**

**Application in New South Wales of the Corporations Law**

7. The Corporations Law set out in section 82 of the Corporations Act as in force for the time being:

- (a) applies as a law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Law of New South Wales.



**Application of regulations**

8. (1) The regulations in force for the time being under section 22 of the Corporations Act:

- (a) apply as regulations in force for the purposes of the Corporations Law of New South Wales; and
- (b) as so applying, may be referred to as the Corporations Regulations of New South Wales.

(2) Subject to subsection (3) of this section, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the Commonwealth of Australia Gazette under section 48 (1) of the Acts Interpretation Act 1901 of the Commonwealth, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Corporations Act from the specified day.

(3) To the extent that a provision of the Corporations Regulations of New South Wales is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to:

- (a) affect a private person's rights as at that day so as to disadvantage that person; or
- (b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

(4) In subsection (3):

**“private person”** means a person other than:

- (a) the Commonwealth, a State or the Capital Territory; or
- (b) an authority of the Commonwealth, of a State or of the Capital Territory.

(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

**Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of New South Wales**

9. In the Corporations Law, and the Corporations Regulations, of New South Wales:

**“the Minister for this jurisdiction”** means the Minister;

**“this jurisdiction”** means New South Wales.

*Corporations (New South Wales) 1990*

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**Interpretation law**

10. (1) Subject to Part 1.2 of the Corporations Law of New South Wales, the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 8 of the Corporations Act, applies as a law of New South Wales in relation to the Corporations Law, and the Corporations Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders under section 111A of that Law) and so applies as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the Corporations Law, or the Corporations Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**PART 3—CITING THE CORPORATIONS LAW AND THE  
CORPORATIONS REGULATIONS**

**Simpler citation of Corporations Law, and Corporations Regulations,  
of New South Wales**

11. (1) The Corporations Law of New South Wales may be referred to simply as the Corporations Law.

(2) The Corporations Regulations of New South Wales may be referred to simply as the Corporations Regulations.

(3) This section has effect subject to section 13.

**References to Corporations Law, and Corporations Regulations, of  
other jurisdictions**

12. (1) This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than New South Wales that corresponds to section 7 of this Act provides that the Corporations Law set out in section 82 of the Corporations Act as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

(3) Where a law of a jurisdiction other than New South Wales that corresponds to section 8 of this Act provides that the regulations in force for the time being under section 22 of the Corporations Act apply for the



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purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

**References to Corporations Law and Corporations Regulations**

13. (1) The object of this section is to help ensure that the Corporations Law of New South Wales operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than New South Wales, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the Corporations Law, or to the Corporations Regulations, of New South Wales; and
- (b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than New South Wales.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

(5) In this section:

“**instrument**” means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.



**PART 4—APPLICATION OF THE CORPORATIONS LAW TO THE CROWN****Interpretation**

14. To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

**Corporations Law of New South Wales**

15. (1) Chapter 5 (except Part 5.8) of the Corporations Law of New South Wales binds the Crown not only in right of the State of New South Wales but also, so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth, of each of the other States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(2) To avoid doubt, Chapter 7 of the Corporations Law of New South Wales does not bind the Crown in right of the State of New South Wales, of the Commonwealth, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

**Corporations Law of other jurisdictions**

16. Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than New South Wales binds the Crown in right of the State of New South Wales.

**Crown not liable to prosecution**

17. Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

**This Part overrides the prerogative**

18. Where, because of this Part, a provision of a law of another jurisdiction binds the Crown in right of the State of New South Wales, the Crown in that right is subject to that provision despite any prerogative right or privilege.

**PART 5—APPLICATION ORDERS****Commonwealth Minister to obtain consent of State Minister**

19. Despite Part 1.3 of the Corporations Law of New South Wales and section 20 of this Act, the Commonwealth Minister may only make an order under section 111A of that Law, or that section as applying

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because of section 20 of this Act, with the consent of the Minister for this jurisdiction.

**Application orders for ASC Law**

20. Part 1.3 of the Corporations Law of New South Wales applies for the purposes of the ASC Law of New South Wales as if the provisions of the ASC Law of New South Wales were provisions of the Corporations Law of New South Wales.

**PART 6—ACCOUNTING STANDARDS**

**Accounting standards**

21. Subject to the Corporations Law, and the Corporations Regulations, of New South Wales, the instruments in force for the time being under section 32 of the Corporations Act also have effect for the purposes of Parts 3.6 and 3.7 of that Law.

**PART 7—IMPOSITION OF FEES AND TAXES**

**Fees (including taxes) for chargeable matters**

22. This section imposes the fees (including fees that are taxes) that the Corporations Regulations of New South Wales prescribe.

**Contributions and levies for fidelity funds of securities exchanges**

23. (1) This section imposes:

- (a) the contribution payable under section 902 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange; and
- (b) the annual contribution payable under section 902 (2) of that Law by a member of a securities exchange; and
- (c) any levy payable under section 904 of that Law by a member of a securities exchange.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of New South Wales.

**Levies for National Guarantee Fund**

24. This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of New South Wales.



**Contributions and levies for fidelity funds of futures organisations**

25. (1) This section imposes:

- (a) the contribution payable under section 1234 (1) of the Corporations Law of New South Wales by a person who wishes to be admitted to membership of a futures organisation; and
- (b) the annual contribution payable under section 1234 (2) of that Law by a contributing member of a futures organisation; and
- (c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of New South Wales.

**PART 8—NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE CORPORATIONS LAW****Division 1—Preliminary****Object**

26. The object of this Part is to help ensure that:

- (a) the Corporations Law of New South Wales, and the Corporations Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and
- (b) the ASC Law of New South Wales, and the ASC Law of each jurisdiction other than New South Wales, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

**Effect of Part**

27. (1) This Part has effect subject to this Act (in particular Part 9), the Corporations Law of New South Wales and the ASC Law of New South Wales.

(2) Nothing in this Part limits the generality of anything else in it.

**Division 2—Offences against applicable provisions****Object**

28. (1) The object of this Division is to further the object of this Part by providing:



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- (a) for an offence against an applicable provision of New South Wales to be treated as if it were an offence against a law of the Commonwealth; and
  - (b) for an offence against an applicable provision of another jurisdiction to be treated in New South Wales as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation):
- (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (e) the sentencing, punishment and release of persons convicted of offences; and
  - (f) fines, penalties and forfeitures; and
  - (g) liability to make reparation in connection with offences; and
  - (h) proceeds of crime; and
  - (i) spent convictions.

**Application of Commonwealth laws in relation to offences against applicable provisions**

29. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of New South Wales:

- (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an offence against the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**

30. (1) The Commonwealth laws apply as laws of New South Wales in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth.

(2) For the purposes of a law of New South Wales, an offence against the applicable provisions of another jurisdiction:

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

31. (1) A Commonwealth law applying because of section 29 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against the applicable provisions of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of New South Wales.

(2) A Commonwealth law applying because of section 30 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.



**Reference in Commonwealth law to a provision of another law**

32. A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of section 29 or 30, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

33. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**Division 3—Administrative Law****Object**

34. The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws:

- (a) apply to the applicable provisions of New South Wales; and
- (b) apply, in New South Wales, to the applicable provisions of another jurisdiction,

as if the applicable provisions were those of the Capital Territory.

**Application of Commonwealth administrative laws in relation to applicable provisions**

35. (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of the applicable provisions of New South Wales as if those provisions were laws of the Commonwealth and were not laws of New South Wales.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of the applicable provisions of New South Wales:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of New South Wales.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.



**Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions**

36. (1) The Commonwealth administrative laws apply as laws of New South Wales in relation to any act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(2) For the purposes of a law of New South Wales, an act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction:

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of New South Wales except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for the doing of an act outside New South Wales.

**Functions and powers conferred on Commonwealth authorities**

37. (1) A Commonwealth administrative law applying because of section 35 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of New South Wales.

(2) A Commonwealth administrative law applying because of section 36 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in New South Wales.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in

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performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.

**Reference in Commonwealth administrative law to a provision of another law**

38. A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken for the purposes of section 35 or 36, to be a reference to that provision as applying because of that section.

**Restriction of functions and powers of State authorities and officers**

39. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

**PART 9—JURISDICTION AND PROCEDURE OF COURTS**

**Division 1—Vesting and cross-vesting of civil jurisdiction**

**Operation of Division**

40. (1) This Division provides in relation to:

- (a) the jurisdiction of courts in respect of matters other than criminal matters (in this Division called “civil” matters) arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of civil matters arising under the Corporations Law of another State or the Capital Territory,

and so provides to the exclusion of the Jurisdiction of Courts (Cross-vesting) Act 1987.

(2) Nothing in this Division affects any other jurisdiction of any court.

**Interpretation**

41. (1) In this Division:

“judgment” means a judgment, decree or order, whether final or interlocutory.



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- (2) In this Division:
- (a) a reference to the **Corporations Law of New South Wales** includes a reference to:
- (i) the Corporations Regulations of New South Wales; and
  - (ii) the ASC Law of New South Wales; and
  - (iii) the ASC Regulations of New South Wales; and
  - (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
  - (v) this Act; and
  - (vi) regulations made under this Act; and
  - (vii) rules of court made by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

**Jurisdiction of Federal Court and State and Territory Supreme Courts**

42. (1) Subject to section 9 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth, as it applies as a law of New South Wales, jurisdiction is conferred on the Supreme Court of New South Wales and of each other State and the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.

(2) The jurisdiction conferred on a Supreme Court by subsection (1) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(3) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales.



**Appeals**

43. (1) An appeal may not be instituted from a decision of a court of New South Wales to a court of another State or Territory or to the Federal Court.

(2) An appeal may not be instituted from a decision of the Federal Court to a court of a State or Territory.

(3) An appeal may not be instituted from a decision of the Supreme Court of another State to the Federal Court or to a court of any State or Territory, except the Full Court of that Supreme Court.

(4) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State.

**Transfer of proceedings**

44. (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of New South Wales in a court having jurisdiction under section 42.

(2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first-mentioned court may transfer the proceeding or application to that other court.

(3) In deciding whether to transfer a proceeding or application under subsection (2), the court must have regard to:

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events the subject of the proceeding or application took place.

(4) The court may transfer the proceeding or application:

- (a) on the application of a party made at any stage; or
- (b) of the court's own motion.

(5) Where, under subsection (2), a court transfers a proceeding, or an application in a proceeding, to another court:

- (a) the Registrar or other proper officer of the first-mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first-mentioned court in respect of the proceeding or application, as the case may be; and

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- (b) the other court must proceed as if:
- (i) the proceeding had been originally instituted in the other court; and
  - (ii) the same proceedings had been taken in the other court as were taken in the first-mentioned court; and
  - (iii) in a case where an application is transferred—the application had been made in the other court.

**Conduct of proceedings**

45. (1) Subject to sections 51 and 52, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with the matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) Where a proceeding is transferred or removed to a court (in this subsection called the “**transferee court**”) from another court (in this subsection called the “**transferor court**”), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section:

“**relevant jurisdiction**” means:

- (a) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of New South Wales; or
- (b) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction that is being exercised by the Federal Court sitting in New South Wales; or
- (c) jurisdiction conferred on the Supreme Court of New South Wales with respect to civil matters arising under the Corporations Law of another State or the Capital Territory; or
- (d) jurisdiction conferred on the Supreme Court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of New South Wales.



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**Courts to act in aid of each other**

46. All courts having jurisdiction in civil matters arising under the Corporations Law of New South Wales, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

**Exercise of jurisdiction pursuant to cross-vesting provisions**

47. The Supreme Court of New South Wales may:

- (a) exercise jurisdiction (whether original or appellate) conferred on that Court by a law of another State or the Capital Territory corresponding to this Division with respect to matters arising under the Corporations Law of that State or Territory; and
- (b) hear and determine a proceeding transferred to that Court under such a provision.

**Rights of appearance**

48. A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the "**transferred proceeding**") in that court is transferred to another court under this Division or a law of another State or the Capital Territory that corresponds to this Division, the same entitlements to practise in relation to:

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding,

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

**Limitation on appeals**

49. An appeal does not lie from a decision of a court:

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to section 45 (1).

**Enforcement of judgments etc.**

50. (1) A judgment of the Federal Court or the Supreme Court of New South Wales that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of another State or the



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Capital Territory that corresponds to this Division, is enforceable in New South Wales as if the judgment had been given by that Court entirely in the exercise of the jurisdiction of that Court apart from this Division or any such law.

(2) Where:

- (a) a provision of a law of New South Wales (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court or the Supreme Court of New South Wales or of another State or of the Capital Territory; and
- (b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of another State or the Capital Territory corresponding to this Division,

the reference in that provision to the Federal Court or the Supreme Court of New South Wales or of the other State or Territory, as the case may be, is taken as a reference to that other court.

### **Rules of the Supreme Court**

51. (1) Rules of court, not inconsistent with the Corporations Law of New South Wales, may be made under the Supreme Court Act 1970:

- (a) with respect to proceedings, and the practice and procedure, of that Court under that Law; and
- (b) with respect to any matter or thing that is:
  - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
  - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law; and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

This subsection does not limit the rule-making powers conferred by the Supreme Court Act 1970.

(2) When the Supreme Court of New South Wales is exercising jurisdiction with respect to matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction conferred by a law of another State or the Capital Territory that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When the Supreme Court of another State or the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law

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of the State or Territory corresponding to subsection (1), with such alterations as are necessary.

(4) In this section:

“Corporations Law of another State or the Capital Territory” does not include rules of court;

“Corporations Law of New South Wales” does not include rules of court.

#### **Rules of the Federal Court**

52. (1) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 60 of the Corporations Act, with such alterations as are necessary.

(2) In this section:

“Corporations Law of New South Wales” does not include rules of court.

#### **Division 2—Vesting and cross-vesting of criminal jurisdiction**

##### **Operation of Division**

53. This Division provides in relation to:

- (a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of New South Wales; and
- (b) the jurisdiction of the courts of New South Wales in respect of criminal matters arising under the Corporations Law of any jurisdiction.

##### **Interpretation**

54. (1) In this Division:

“magistrate” means a magistrate who is remunerated by salary or otherwise.

(2) In this Division:

- (a) a reference to the **Corporations Law of New South Wales** includes a reference to:
  - (i) the Corporations Regulations of New South Wales; and
  - (ii) the ASC Law of New South Wales; and
  - (iii) the ASC Regulations of New South Wales; and



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- (iv) any other applicable provisions (as defined in section 3) of New South Wales; and
  - (v) this Act; and
  - (vi) regulations made under this Act; and
  - (vii) rules of court made by the Supreme Court of New South Wales, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph); and
- (b) a reference to the **Corporations Law of another State or of the Capital Territory** is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

**Jurisdiction of courts**

**55.** (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction:

- (a) with respect to:
  - (i) the summary conviction; or
  - (ii) the examination and commitment for trial on indictment; or
  - (iii) the trial and conviction on indictment,
 of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to:
  - (iv) their sentencing, punishment and release; or
  - (v) their liability to make reparation in connection with their offences; or
  - (vi) the forfeiture of property in connection with their offences; or
  - (vii) the proceeds of their crimes; and
- (b) with respect to the hearing and determination of:
  - (i) proceedings connected with; or
  - (ii) appeals arising out of; or
  - (iii) appeals arising out of proceedings connected with,
 any such trial or conviction or any matter of a kind referred to in paragraph (a)(iv), (v), (vi) or (vii),



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have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of New South Wales.

(2) Where a provision of a law of another State or the Capital Territory corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State or the Capital Territory upon a court of New South Wales, the court may exercise that jurisdiction.

(3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of another State or the Capital Territory, and:

- (a) the reference in subsection (1)(b) to "any such trial or conviction" includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and
- (b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned:

- (a) would be required to be prosecuted on indictment; or
- (b) would be required to be prosecuted either summarily or on indictment.

(6) For the purposes of the application of a relevant law as provided by subsection (4):

- (a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and
- (b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

(7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.

(8) Subject to subsection (9), the jurisdiction conferred on a court of New South Wales by a law of another State or the Capital Territory corresponding to subsection (1) may be exercised despite any limits as to

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locality of the jurisdiction of that court under the law of New South Wales.

(9) Where:

- (a) jurisdiction is conferred on a court of New South Wales in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of another State or of the Capital Territory; and
- (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest,

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or the Capital Territory.

(10) The jurisdiction conferred on a court of another State or the Capital Territory by subsection (1) in relation to:

- (a) the examination and commitment for trial on indictment; and
- (b) the trial and conviction on indictment,

of offenders or persons charged with offences against the Corporations Law of New South Wales is conferred only in relation to:

- (c) offences committed outside Australia; and
- (d) offences committed, begun or completed within the State or Territory concerned.

(11) In this section:

“Australia” does not include the coastal sea;

“relevant law” means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

**Laws to be applied**

56. (1) Subject to this Division, the laws of New South Wales respecting:

- (a) the arrest and custody in New South Wales of offenders or persons charged with offences; and
- (b) criminal procedure in New South Wales in relation to such persons, apply in New South Wales, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South



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Wales or of another State or the Capital Territory in respect of whom jurisdiction is conferred on a court of New South Wales by this Division or a corresponding law of another State or the Capital Territory.

(2) Subject to this Division, the laws of each other State and the Capital Territory respecting:

- (a) the arrest and custody in that State or Territory of offenders or persons charged with offences; and
- (b) criminal procedure in that State or Territory in relation to such persons,

apply in that State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of New South Wales in respect of whom jurisdiction is conferred on a court of that State or Territory by this Division.

(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of another State or the Capital Territory.

(4) In this section:

“**criminal procedure**” means the procedure for:

- (a) the summary conviction; and
- (b) the examination and commitment for trial and indictment; and
- (c) the trial and conviction on indictment; and
- (d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings, of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

“**laws of each other State and the Capital Territory**” means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State or Territory concerned.

## PART 10—COMPANIES LIQUIDATION ACCOUNT

### Companies Liquidation Account

57. (1) In this section:

“**relevant money**” means:

- (a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the Companies (New South Wales) Code; and



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(b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the Companies (New South Wales) Code that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

(2) Relevant money is to be dealt with in accordance with section 427 of the Companies (New South Wales) Code.

**PART 11—THE ASC LAW, AND THE ASC REGULATIONS,  
OF NEW SOUTH WALES**

**Division 1—Application of ASC Act and ASC Regulations**

**Application in New South Wales of the ASC Act**

- 58.** (1) The ASC Act, other than the excluded provisions:
- (a) applies as a law of New South Wales; and
  - (b) as so applying, may be referred to as the ASC Law of New South Wales.
- (2) The excluded provisions of the ASC Act are:
- Part 1, except section 6A
  - Part 2
  - Section 88
  - Divisions 1 and 4 of Part 4
  - Part 5
  - Part 6
  - Division 1 of Part 7
  - Part 8
  - Part 9
  - Division 1 of Part 10
  - Division 1 of Part 11
  - Part 12
  - Part 14
  - Sections 251 and 252

**Application of regulations**

**59.** The regulations in force for the time being under section 251 of the ASC Act:

- (a) apply as regulations in force for the purposes of the ASC Law of New South Wales; and

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- (b) as so applying, may be referred to as the ASC Regulations of New South Wales.

**Interpretation of some expressions in the ASC Law, and the ASC Regulations, of New South Wales**

**60.** (1) In this Part, and in the ASC Law, and the ASC Regulations, of New South Wales:

“**Advisory Committee**” means the Companies and Securities Advisory Committee established by section 145 of the ASC Act;

“**affairs**”, in relation to a body corporate, has the same meaning as in section 260 of the Corporations Law;

“**assist**”, in relation to a Commission delegate, means:

(a) to perform functions:

(i) as a member, officer or employee of the Commission delegate; and

(ii) in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law; or

(b) to perform services for the Commission delegate in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASC Law;

“**Australia**” includes any external Territory to which the ASC Act extends;

“**books**” includes:

(a) a register; and

(b) accounts or accounting records, however compiled, recorded or stored; and

(c) a document; and

(d) banker’s books; and

(e) any other record of information;

“**Chairperson**” means:

(a) except in Part 11 of the ASC Law or in relation to the Disciplinary Board—the Chairperson of the Commission; and

(b) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board;

“**Commission**” means the Australian Securities Commission established by section 7 of the ASC Act;

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- “Commission delegate”** means a person to whom, or a body to which, a function or power is delegated under section 102 of the ASC Law;
- “contravention”**, in relation to a law, includes an ancillary offence relating to an offence against that law;
- “court”**, except in section 248 of the ASC Law, includes a tribunal having power to require the production of documents or the answering of questions;
- “Deputy Chairperson”** means the Deputy Chairperson of the Commission;
- “Disciplinary Board”** means the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the ASC Act;
- “eligible person”**, in relation to a person, means a person who:
- (a) if the first-mentioned person is a body corporate—is or has been an officer of the body within the meaning of a national scheme law or a corresponding previous law; or
  - (b) in any case:
    - (i) is or has been an employee, agent, banker, solicitor or auditor of; or
    - (ii) is acting, or has acted, in any other capacity on behalf of,the first-mentioned person;
- “examination”** means:
- (a) in this section and Part 3 (other than section 27 (2) and Division 9) of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of that Law; or
  - (b) in section 27 (2) and Division 9 of Part 3 of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of the ASC Law or a corresponding provision of the ASC Law of another jurisdiction;
- “expenses”**, in relation to an investigation under Division 1 of Part 3 of the ASC Law, includes costs and expenses incurred in relation to a proceeding begun under section 50 of the ASC Law as a result of the investigation;
- “fail”** means refuse or fail;



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**“foreign country”** means:

- (a) an external Territory to which the ASC Act does not extend;  
or
- (b) a country outside Australia and the external Territories; or
- (c) a part of such a country;

**“give”** has:

- (a) in relation to a document—a meaning affected by section 86 of the ASC Law; and
- (b) in relation to information—a meaning affected by section 61 of this Act;

**“hearing”**, in this section and Part 3 of the ASC Law, means a hearing before the Commission and, in sections 52, 54, 55 and 56 of that Law, includes a part of such a hearing;

**“information”** has a meaning affected by section 61 of this Act;

**“investigate”**, in relation to the Commission, means investigate in the course of performing or exercising any of the Commission’s functions and powers;

**“meeting”** means:

- (a) in Part 4 of the ASC Law—a meeting of the Commission; and
- (b) in Part 11 of that Law—a meeting of the Disciplinary Board;

**“member”** means:

- (a) except in Division 2 of Part 4, or in Part 10, 11, or 14, of the ASC Law, or in relation to a Division of the Commission, or in relation to the Panel or the Disciplinary Board—a member of the Commission;
- (b) in Part 10 of that Law or in relation to the Panel—a member of the Panel;
- (c) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board;

**“national scheme law”** means:

- (a) the following:
  - (i) the Corporations Law of this jurisdiction;
  - (ii) the ASC Law of this jurisdiction;
  - (iii) this Act; or

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(b) the following:

- (i) the Corporations Act;
- (ii) the Corporations Law of the Capital Territory;
- (iii) the ASC Act; or

(c) a law of a jurisdiction (other than this jurisdiction or the Capital Territory) that corresponds to an Act or Law referred to in paragraph (a);

**“national scheme law of this jurisdiction”** means:

- (a) this Act; or
- (b) the Corporations Law of New South Wales; or
- (c) the ASC Law of New South Wales;

**“officer”**, in relation to a body corporate, includes:

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (c) an official manager, or a deputy official manager, of the body;
- (d) a liquidator, or a provisional liquidator, of the body; and
- (e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons;

**“Panel”** means the Corporations and Securities Panel established by section 171 of the ASC Act;

**“power”** includes an authority;

**“prescribed”** means prescribed by the ASC Law or the regulations;

**“President”** means the President of the Panel;

**“proceeding”** means:

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal,

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature;

**“produce”**, except in Part 3 of the ASC Law, includes permit access to;

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

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**“record”**, in relation to an examination, means the whole or a part of a record made under section 24 of the ASC Law of statements made at the examination;

**“regulations”** means the ASC Regulations of this jurisdiction;

**“report”** includes an interim report;

**“staff member”** means:

- (a) a member of the staff referred to in section 120 (1) of the ASC Act or a person employed under section 120 (3) of that Act;
- (b) a person engaged under section 121 (1) of that Act; or
- (c) any of the officers, employees and persons who under section 122 of that Act are to assist the Commission;

**“statement”**, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination;

**“Territory”** means:

- (a) the Capital Territory; or
- (b) an external Territory to which the ASC Act extends;

**“this Act”**, except in this Part, means the ASC Law, and includes the regulations;

**“this jurisdiction”** means New South Wales;

**“this Law”** includes the regulations;

**“tribunal”** means:

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;

**“witness”**, in relation to a hearing before the Commission or the Panel, means a person appearing at the hearing to give evidence;

**“written record”**, in relation to an examination, means:

- (a) a record of the examination:
  - (i) that is made in writing; or
  - (ii) as reduced to writing; or
- (b) a part of such a record.

(2) Subject to the ASC Law of this jurisdiction, an expression has the same meaning in that Law and in the ASC Regulations of this jurisdiction as in the Corporations Law of this jurisdiction.



**Giving information**

**61.** A reference in the ASC Law, and the ASC Regulations, of New South Wales to giving information includes a reference to:

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or
- (c) disclosing information; or
- (d) answering a question.

**Interpretation law**

**62. (1)** Except so far as the contrary intention appears in the ASC Law of New South Wales:

- (a) Part 1.2 (except section 8) of the Corporations Law of New South Wales applies; and
- (b) subject to paragraph (a), the Acts Interpretation Act 1901 of the Commonwealth as in force at the commencement of section 5 (5) of the ASC Act applies as law of New South Wales,

in relation to the ASC Law, and the ASC Regulations, of New South Wales and any instrument made, granted or issued under that Law or those Regulations (other than application orders made for the purposes of that Law under section 111A of the Corporations Law of this jurisdiction) and so apply as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The Interpretation Act 1987 does not apply in relation to the ASC Law, or the ASC Regulations, of New South Wales or an application order or any other instrument made, granted or issued under that Law or those Regulations.

**Division 2—Citing the ASC Law and the ASC Regulations****Alternative citations of the ASC Law, and the ASC Regulations, of New South Wales**

**63. (1)** The ASC Law of New South Wales may be referred to simply as the ASC Law.

(2) The ASC Regulations of New South Wales may be referred to simply as the ASC Regulations.

(3) This section has effect subject to section 65.

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**References to ASC Law, and ASC Regulations, of another jurisdiction**

**64.** (1) This section has effect for the purposes of an Act, a law of New South Wales or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than New South Wales contains provisions corresponding to sections 5 and 6 of the Corporations Act and also provides for provisions of the ASC Act to apply as law of that jurisdiction, those provisions of the ASC Act, as so applying, are the ASC Law of that jurisdiction.

(3) Where a law of a jurisdiction other than New South Wales provides for the regulations in force for the time being under section 251 of the ASC Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

**References to ASC Law and ASC Regulations**

**65.** (1) The object of this section is to help ensure that, so far as possible:

- (a) the bodies established by the ASC Act and the staff of those bodies, can perform functions and exercise powers; and
- (b) persons can have dealings with those bodies,

as if the ASC Act, the ASC Law of New South Wales and the ASC Law of each other State, constituted a single national ASC Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of New South Wales:

- (a) to be a reference to the ASC Law, or to the ASC Regulations, of New South Wales; and
- (b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than New South Wales.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.



(5) In this section:

“instrument” means:

- (a) an Act or an instrument made under an Act; or
- (b) a law of New South Wales or an instrument made under such a law; or
- (c) an award or other industrial determination or order, or an industrial agreement; or
- (d) any other order (whether executive, judicial or otherwise); or
- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.

### **Division 3—The Commission**

#### **Conferral of functions and powers on Commission**

66. (1) The Commission has the functions and powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission also has the functions and powers conferred or expressed to be conferred upon the NCSC by or under a Code that is a relevant Code for the purposes of the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code.

#### **Agreements and arrangements**

67. (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with the Commission for the performance of functions or the exercise of powers by the Commission as an agent of the State.

(2) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

(3) Such an agreement or arrangement may not be entered into without the concurrence of the Premier.



**Conferral of other functions and powers for purposes of law in New South Wales**

**68.** The Commission has power to do acts in New South Wales in the performance or exercise of any function or power:

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or
- (b) referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction corresponding to section 67.

**Directions by Commonwealth Minister**

**69.** (1) If the Commonwealth Minister:

- (a) has notified the Commission in writing that he or she is considering giving a direction under this section; and
- (b) has given the Chairperson of the Commission an adequate opportunity to discuss with the Commonwealth Minister the need for the proposed direction,

the Commonwealth Minister may give the Commission a written direction (not being a direction about a particular case) about policies it should pursue, or priorities it should follow in performing or exercising any of the functions or powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission must comply with a direction under subsection (1).

(3) A copy of an instrument under subsection (1) must be published in the Commonwealth of Australia Gazette within 21 days after the instrument is made but, if a copy is not so published, the instrument's validity is not affected.

**Division 4—The Panel****Conferral of functions and powers on the Panel**

**70.** (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Panel has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.

**Division 5—The Disciplinary Board****Conferral of functions and powers on the Disciplinary Board**

71. (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Disciplinary Board has power to do acts in New South Wales in the performance or exercise of any function or power expressed to be conferred on it by a national scheme law of another jurisdiction.

**Division 6—Miscellaneous****Acting appointments**

72. Where a person is appointed under the ASC Act to act in a particular office, the law of this jurisdiction applies in relation to that person while acting in that office as if the person were the holder of the office.

**Alteration of names and constitutions**

73. (1) Where:

- (a) the name of a body established by the ASC Act is changed by law (whether or not the body is incorporated); or
- (b) the name of an office established by that Act is changed by law, then, unless the contrary intention appears, a reference in:
  - (c) any Act of this jurisdiction; or
  - (d) any instrument under such an Act; or
  - (e) any award or other industrial determination or order or any industrial agreement; or
  - (f) any other order (whether executive, judicial or otherwise); or
  - (g) any contract; or
  - (h) any pleading in, or process issued in connection with, any legal or other proceeding; or
  - (i) any other instrument,

to the body or the office under the former name, except in relation to matters that occurred before that change took place, is taken as a reference to the body or the office under the new name.

(2) Where the constitution of a body established by the ASC Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears, the alteration does not affect any functions

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or powers conferred or expressed to be conferred on that body by a national scheme law of this jurisdiction.

**Application of Commonwealth Crimes Act**

74. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part III of the Crimes Act 1914 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1), an examination or a hearing is a judicial proceeding.

(3) For the purposes of the ASC Law of New South Wales, an offence under Part III of the Crimes Act 1914 of the Commonwealth as applying because of subsection (1) in relation to an examination or hearing, is taken to be an offence against Part 3 of the ASC Law of New South Wales.

**Application of Commonwealth Evidence Act**

75. (1) For the purposes of Part 3 of the ASC Law of New South Wales, Part IIIA of the Evidence Act 1905 of the Commonwealth applies as a law of New South Wales.

(2) For the purposes of Part IIIA of the Evidence Act 1905 of the Commonwealth as applying because of subsection (1), an examination is a proceeding but is not a criminal proceeding.

**PART 12—GENERAL**

**Division 1—Arrangements**

**Definition**

76. In this Division:

“relevant State law” means:

- (a) a law of the State concerning the management or affairs of a body corporate; or
- (b) a law of the State concerning fraud or dishonesty; or
- (c) any other law of the State,  
other than a co-operative scheme law.

**Arrangements relating to applicable provisions**

77. (1) Where an arrangement between the Attorney General and the Commonwealth Minister provides:



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- (a) that an authority or officer of the Commonwealth has certain functions or powers under a relevant State law; or
- (b) that, despite section 33 or 39, an authority or officer of the State has certain functions or powers under an applicable provision of this jurisdiction,

those functions or powers are conferred on that authority or officer.

(2) Functions and powers conferred under an arrangement under subsection (1) are to be performed and exercised in accordance with the arrangement but are to be taken to have been validly performed or exercised despite any failure to comply with any condition or restriction under the arrangement.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

**Notice of arrangement**

78. Notice of each arrangement under section 77 must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

**Division 2—Penalties and fines****Application of penalties and fines**

79. All fines, penalties and other money (other than fees and taxes) which, under and by virtue of the applicable provisions of New South Wales, are authorised or directed to be imposed on any person must be paid to the Commonwealth.

**Division 3—Regulations****Regulations**

80. (1) The Governor may make regulations, not inconsistent with the national scheme laws of this jurisdiction, for or with respect to any matter that is required or permitted by this Act to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, being provisions not inconsistent with the national scheme laws of this jurisdiction.

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(3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Government Gazette, the provision does not operate so as:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication; or
- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.

(5) Regulations containing provisions of a kind referred to in subsection (2) cease to have effect on the first anniversary of the day on which this section commences,

(6) Where regulations cease to have effect because of subsection (5), the Interpretation Act 1987 applies as if the regulations had been disallowed by the Parliament.

## **PART 13—TRANSITIONAL**

### **Division 1—Staff**

#### **Information previously acquired**

81. A staff member who, before the commencement of this section, was an officer or employee of the Public Service of New South Wales engaged in the administration of a co-operative scheme law may disclose to the Commission information acquired while so engaged.

#### **State superannuation schemes**

82. (1) The regulations under section 80 may make provision for or with respect to the rights and obligations, concerning superannuation and associated matters, of transferred officers who were, or were entitled to be, members of a State superannuation scheme.

- (2) Without limiting subsection (1), the regulations may contain:
  - (a) provisions having the effect of treating a transferred officer as an employee or contributor for the purposes of a State superannuation scheme, subject to specified conditions; and
  - (b) provisions having the effect of treating the Commission as an employer or employing authority for the purposes of a State superannuation scheme, subject to specified conditions; and



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(c) provisions relating to the withdrawal of a transferred officer from a State superannuation scheme.

(3) In this section:

“**State superannuation scheme**” means a superannuation scheme established by or under an Act;

“**transferred officer**” means a person who:

- (a) is a member of the Commission’s staff appointed under the Public Service Act 1922 of the Commonwealth; and
- (b) was so appointed under section 81B of that Act; and
- (c) immediately before that appointment was an officer of the Public Service of New South Wales employed in Business and Consumer Affairs.

**Temporary modification of superannuation legislation**

83. (1) For the purposes of section 82, regulations made under section 80 may provide that a Superannuation Act, or specified provisions of a Superannuation Act, has or have effect with such modifications as the regulations prescribe.

(2) Any such provisions are taken to be provisions of the kind referred to in section 80 (2).

(3) In this section:

“**Superannuation Act**” means an Act by or under which a superannuation scheme is established, and includes any legislation relating to or connected with such a scheme.

**Division 2—Co-operative scheme laws**

**Co-operative scheme laws**

84. For the purposes of this Act, the following are the co-operative scheme laws:

Companies (Application of Laws) Act 1981

Companies (New South Wales) Code

Companies (Acquisition of Shares) (Application of Laws) Act 1981

Companies (Acquisition of Shares) (New South Wales) Code

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981

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



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Securities Industry (Application of Laws) Act 1981

Securities Industry (New South Wales) Code

Futures Industry (Application of Laws) Act 1986

Futures Industry (New South Wales) Code

**National scheme laws prevail over co-operative scheme laws**

**85.** (1) This section provides for the national scheme laws of this jurisdiction to supersede the co-operative scheme laws, which are to continue to operate of their own force only in relation to:

- (a) matters arising before the commencement of this section; and
- (b) matters arising, directly or indirectly, out of such matters, in so far as the national scheme laws do not deal with those matters.

(2) Where a co-operative scheme law is inconsistent with a national scheme law of this jurisdiction, the national scheme law prevails and, to the extent of the inconsistency, the co-operative scheme law does not operate.

(3) For the purposes of subsection (2), a co-operative scheme law is inconsistent with a national scheme law if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth of Australia if the national scheme law were an Act of the Commonwealth.

**Regulations may exclude residual operation of co-operative scheme laws**

**86.** (1) Regulations under section 80 may provide that prescribed provisions of co-operative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.

(2) Regulations in force because of subsection (1) have effect accordingly.

**Effect of sections 85 and 86**

**87.** (1) To the extent that a co-operative scheme law ceases to operate because of section 85 or 86, the law is taken for the purposes of the Interpretation Act 1987 to have been repealed by this Act.

(2) Nothing in this Act revives, or otherwise affects the exclusion of, the provisions referred to in section 18 (1) of the Companies (Application of Laws) Act 1981 or section 16 (1) of the Securities Industry (Application of Laws) Act 1981.

**Regulations may modify co-operative scheme laws**

**88.** (1) Regulations under section 80 may provide that a specified co-operative scheme law, or specified provisions of a co-operative scheme law, has or have effect with such modifications as the regulations prescribe.

(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 85 or 86, the specified law does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

(3) However, a reference in section 85 (2) to a co-operative scheme law includes a reference to such a law as it has effect, or to provisions of such a law as they have effect, because of this section.

**Co-operative scheme laws not affected by certain Commonwealth regulations**

**89.** The operation or effect of a co-operative scheme law is not modified or otherwise affected because regulations of a kind referred to in section 77 or 79 of the Corporations Act modify or otherwise affect the operation of a Co-operative Scheme Act within the meaning of Part 12 of the Corporations Act.

**References to co-operative scheme laws and regulations**

**90.** (1) In this section:

“**Code regulations**” means provisions applying as regulations made under a Code by reason of a provision of an Act that is a co-operative scheme law;

“**instrument**” has the same meaning as in section 13 but does not include this Act, a co-operative scheme law, regulations under this Act or an Act that is such a law or Code regulations.

(2) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to a co-operative scheme law is to be taken to include a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of the co-operative scheme law.

(3) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to Code regulations is to be taken to include a reference to such provisions of the Corporations Regulations, or ASC Regulations, of New South Wales as correspond to provisions of the Code regulations.



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(4) Subject to any regulations in force under subsection (7), a reference in an instrument to a provision of a co-operative scheme law or of Code regulations is to be taken to include a reference to the corresponding provision of a national scheme law of this jurisdiction or of the Corporations Regulations, or ASC Regulations, of New South Wales, as the case may be.

(5) Subject to any regulations in force under subsection (7), a reference in an instrument to the NCSC is to be taken to include a reference to the Commission.

(6) Regulations under section 80 may declare that, for the purposes of this section:

- (a) prescribed provisions of national scheme laws of this jurisdiction correspond to prescribed provisions of co-operative scheme laws; and
- (b) prescribed provisions of the Corporations Regulations, or ASC Regulations, correspond to prescribed provisions of Code regulations.

(7) Regulations under section 80:

- (a) may declare that subsection (2), (3), (4) or (5) of this section does not apply in relation to prescribed references in prescribed instruments; or
- (b) may declare that subsection (2), (3), (4) or (5) of this section has effect in relation to prescribed references in prescribed instruments as if, in the subsection, the words "be taken to be" were substituted for the words "be taken to include".

(8) Regulations in force because of subsection (6) or (7) have effect accordingly.

**Conferral of functions and powers in relation to co-operative scheme laws**

**91. (1) The Commonwealth Director of Public Prosecutions:**

- (a) has the same enforcement powers in relation to the co-operative scheme laws as has the Director of Public Prosecutions of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the Director of Public Prosecutions Act 1983 of the Commonwealth as if the offence were an offence against a national scheme law of this jurisdiction.



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(2) The Australian Federal Police:

- (a) have the same enforcement powers in relation to the co-operative scheme laws as has the Police Service of New South Wales; and
- (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Australian Federal Police in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law were an offence against a national scheme law of this jurisdiction.

(3) The Commonwealth Minister has, in respect of the prosecution of offences against the co-operative scheme laws, the same functions and powers as he or she has in respect of the prosecution of offences against a national scheme law of this jurisdiction.

(4) For the purposes of the exercise of enforcement powers, and other functions and powers conferred by this section, including the obtaining of warrants to arrest, an offence against a co-operative scheme law is taken to be an offence against a national scheme law of this jurisdiction.

(5) In this section, “**enforcement power**” means a function or power relating to:

- (a) the investigation of an offence; or
- (b) the arrest and custody of persons charged with an offence; or
- (c) the institution and carrying on of a prosecution of an offence; or
- (d) matters relating to such an investigation, arrest, custody or prosecution.

**Arrangements affecting exercise of investigation powers by State authorities and officers**

92. (1) Where an arrangement between the Attorney General and the Commonwealth Minister makes provision in relation to the exercise by a State authority or officer of enforcement powers within the meaning of section 91 in relation to the co-operative scheme laws:

- (a) the State authority or officer is authorised to act in accordance with that arrangement; and
- (b) the State authority or officer must not exercise an enforcement power except in accordance with that arrangement; and
- (c) the exercise of, or failure to exercise, an enforcement power by a State authority or officer is to be taken to have been validly performed or withheld, despite any failure to comply with any conditions in the arrangement.

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(2) Notice of each arrangement under subsection (1) must be published in the Government Gazette and in the Commonwealth of Australia Gazette within 21 days after it is made.

(3) Such an arrangement may not be entered into without the concurrence of the Premier.

**Division 3—Exemptions**

**Exemptions from Part 7.12 and Part 7.13**

93. (1) Where, immediately before the commencement of this section, a company was, because of section 16 (1) of the Companies (Application of Laws) Act 1981, exempt from complying with provisions of Division 6 of Part IV of the Companies (New South Wales) Code, the company is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(2) Where, immediately before the commencement of this section, a right or interest was, because of section 16 (2) or (3) of the Companies (Application of Laws) Act 1981, an exempt right or interest for the purposes of Division 6 of Part IV of the Companies (New South Wales) Code, that right or interest is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of New South Wales.

(3) A company, right or interest to which subsection (1) or (2) applies ceases to be an exempt company, right or interest if the Governor makes regulations under this Act declaring that it so ceases.

(4) Where, immediately before the commencement of this section, a body was, because of section 16 (5) of the Companies (Application of Laws) Act 1981, a prescribed corporation for the purposes of Division 8 of Part IV of the Companies (New South Wales) Code, the body is taken not to be an eligible body for the purposes of Division 3 of Part 7.13 of the Corporations Law of New South Wales.

(5) A body to which subsection (4) applies ceases to be subject to its operation if the Governor makes regulations under this Act declaring that it so ceases.

**Division 4—Australian Stock Exchange Limited**

**Saving of provisions about Australian Stock Exchange Limited**

94. (1) Section 85 does not apply in relation to Part IIA of the Securities Industry (New South Wales) Code.



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(2) Part IIA has effect, as provided in this section, despite the national scheme laws of this jurisdiction.

(3) A reference in Part IIA to a relevant Code, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of this jurisdiction.

(4) Subject to subsection (5), a reference in Part IIA to a particular co-operative scheme law, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of that law.

(5) A reference in Part IIA to a provision of a co-operative scheme law (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of this jurisdiction.

(6) Regulations in force because of section 90 (6) also have effect for the purposes of this section.

#### **Division 5—Companies Auditors and Liquidators Disciplinary Board**

##### **Board to continue in existence for certain purposes**

95. The Companies Auditors and Liquidators Disciplinary Board established under section 18A of the Companies (Administration) Act 1981 may perform the functions and exercise the powers conferred on it under Division 2 of Part II of the Companies (New South Wales) Code in respect of applications made to it under Subdivision B of that Division before the commencement of this section.

#### **Division 6—Miscellaneous**

##### **References to Corporate Affairs Commission**

96. (1) In this section:

“**function**” includes power, authority or duty;

“**instrument**” has the same meaning as in section 13, but does not include this Act, the regulations under this Act, the Companies (Administration) Act 1981 or a prescribed instrument or prescribed part of an instrument;

“**Managing Director**” means the Managing Director of Business and Consumer Affairs.



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(2) A reference in an instrument to the Corporate Affairs Commission or the Commissioner for Corporate Affairs is to be taken to be a reference to the Managing Director or to such officer or body (whether of this State or not) as is prescribed by regulations under section 80.

(3) Subsection (2) extends to a reference required by section 18 of the Companies (Administration) Act 1981 to be construed as a reference to the Corporate Affairs Commission.

(4) The Managing Director may delegate any of the functions conferred or imposed on the Managing Director because of this section.

(5) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (4) may authorise another person to perform the function so delegated.

(6) Section 80 (5) does not apply to the provisions of regulations made for the purposes of or in connection with this section.

**PART 14—PROVISIONS AFFECTING CORPORATIONS LAW****Certain transfers by companies not to constitute reduction of share capital**

97. Where:

- (a) land is comprised in a strata plan registered under the Strata Titles Act 1973 or in a plan of a prescribed kind under a prescribed Act; and
- (b) at the time of registration of the plan, the proprietor of that land was a company,

the transfer by the company of a lot on the strata plan (or of a prescribed unit or other entity on a plan) in exchange for or in satisfaction of a right of the kind referred to in section 195 (13) of the Corporations Law, does not of itself constitute, and is to be taken never to have constituted, a reduction of the share capital of the company.

**PART 15—AMENDMENT OF ACTS****Amendment of Acts**

98. The Acts specified in Schedule 1 are amended as set out in that Schedule.

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**SCHEDULE 1—AMENDMENT OF ACTS**

(Sec. 98)

**ASSOCIATIONS INCORPORATION ACT 1984 No. 143**(1) Section 3 (**Definitions**):

- (a) Omit the definition of "Commission".
- (b) After the definition of "incorporated association", insert:  
**"Managing Director"** means the Managing Director of Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.

## (3) Section 72A:

After section 72, insert:

**Delegation by Managing Director**

72A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**BUSINESS NAMES ACT 1962 No. 11**(1) Section 4 (**Interpretation**):

- (a) Omit the definition of "Commission".
- (b) After the definition of "Machine copy", insert:  
**"Managing Director"** means the Managing Director of Business and Consumer Affairs;

## (2) The whole Act:

Omit "Commission" and "Commission's" wherever occurring, insert instead "Managing Director" and "Managing Director's" respectively.

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SCHEDULE 1—AMENDMENT OF ACTS—*continued*

(3) Section 31A:

After section 31, insert:

**Delegation by Managing Director**

31A. (1) The Managing Director may delegate any of the Managing Director's functions, other than this power of delegation.

(2) Except in so far as the instrument of delegation otherwise provides, a person to whom a function has been delegated under subsection (1) may authorise another person to perform the function so delegated.

**INTERPRETATION ACT 1987 No. 15**

(1) Section 21 (**Meaning of commonly used words and expressions**):

Insert in section 21 (1) in alphabetical order:

“ASC Law” and “ASC Regulations” have the meaning provided for by Part 11 of the Corporations (New South Wales) Act 1990;

“Corporations Law” and “Corporations Regulations” have the meaning provided for by Part 3 of the Corporations (New South Wales) Act 1990;

(2) Section 68 (**References to amended Acts and instruments**):

(a) At the end of section 68 (4) (a) (i), insert “and”.

(b) At the end of section 68 (4) (a), insert:

(iv) the Companies (New South Wales) Code, the Companies (Acquisition of Shares) (New South Wales) Code, the Securities Industry (New South Wales) Code, the Futures Industry (New South Wales) Code and the Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code; and

(v) the ASC Law of New South Wales; and

(vi) the Corporations Law of New South Wales.



SCHEDULE 1—AMENDMENT OF ACTS—*continued*

**REVENUE LAWS (RECIPROCAL POWERS) ACT 1987**  
**No. 86**

**Section 12 (Provision of information to certain Commonwealth and State revenue officers etc.):**

(a) At the end of section 12 (1), insert:

(f) the Australian Securities Commission, or a person authorised by that Commission, for the purposes of the administration or execution of any law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990.

(b) In section 12 (2), omit “(c) or (d)”, insert instead “(c), (d) or (f)”.

(c) At the end of section 12 (3) (b), insert:

; or

(v) a law that is a national scheme law within the meaning of the Corporations (New South Wales) Act 1990;

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