

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

New South Wales



ANNO TRICESIMO

ELIZABETHÆ II REGINÆ

Act No. 63, 1981.

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

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

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

Short title.

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

Commencement.

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

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

Interpretation.

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

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

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

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

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

Relevant Codes.

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

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

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

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

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

Act to bind Crown.

6. This Act binds the Crown.

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Interpretation of relevant Codes.

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

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

Application of interpretation law.

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

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with this Act,
as laws of New South Wales.

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

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

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

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

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

Publication of provisions of amended Code.

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

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

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

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

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

Interpretation of reference to applied provisions.

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

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

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

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

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

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

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

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SCHEDULE 1.

(Sec. 8.)

The provisions of the Commonwealth Act apply as if—

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

2. In section 8 of the Commonwealth Act—
 - (a) for paragraph (c) there were substituted the following paragraph:—
 - (c) an Act—
 - (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
 - (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,

together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;
 - (b) in paragraphs (d) and (f) for the words “an Ordinance” there were substituted the words “an Ordinance of a Territory”;
 - (c) in paragraph (c) for the words “State Act” there were substituted the words “Act of another State or of a Territory”.

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

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SCHEDULE 1—*continued.*

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

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SCHEDULE 1—*continued.*

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

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SCHEDULE 1—*continued.*

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

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SCHEDULE 1—*continued.*

4. In section 11 of the Commonwealth Act—

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

5. For section 12 of the Commonwealth Act there were substituted the following section:—

12. Where in any relevant Code—

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

6. For section 17 of the Commonwealth Act there were substituted the following section:—

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

7. For section 19 of the Commonwealth Act there were substituted the following section:—

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

- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for New South Wales; and
- (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such a locality, jurisdiction or other matter or thing in and of New South Wales.

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

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SCHEDULE 1—*continued.*

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

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

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

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

which, by reason of—

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

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

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

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

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

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

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

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

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

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

10. In section 33 of the Commonwealth Act—

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

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SCHEDULE 1—*continued.*

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

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

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

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

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

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

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

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

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

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

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SCHEDULE 2.

(Sec. 9.)

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

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

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

PART I—PRELIMINARY

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

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

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

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

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

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SCHEDULE 2—*continued.*

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