

[Act 2001 No 34]



New South Wales

# Corporations (Consequential Amendments) Bill 2001

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

This Bill is cognate with the *Corporations (Ancillary Provisions) Bill 2001*.

## Overview of Bill

The objects of this Bill are as follows:

- (a) to replace references in Acts and Regulations to the *Corporations Law of New South Wales*, the *ASIC Law of New South Wales* and other previous State corporations legislation with references to corresponding provisions of the new *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* of the Commonwealth (the ***new federal legislation***),
  - (b) to amend various Acts and Regulations to avoid inconsistency between the new federal legislation and State law,
  - (c) to amend various Acts and Regulations to apply the new federal legislation as a State law to certain matters to which it would otherwise not apply,
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- (d) to enact transitional provisions for the purposes of the proposed *Corporations (Ancillary Provisions) Act 2001* in the form of a proposed *Corporations (Ancillary Provisions) Regulation 2001*,
- (e) to make other consequential amendments to various Acts and Regulations.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act.

**Clause 3** gives effect to Schedules 1–6, which contain amendments to various Acts and Regulations.

**Clause 4** is a formal provision that gives effect to Schedule 7 to the proposed Act. Schedule 7 comprises the proposed *Corporations (Ancillary Provisions) Regulation 2001* that is to have effect as a regulation under the *Corporations (Ancillary Provisions) Act 2001*.

**Clause 5** provides that matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of the proposed Act.

### **Schedule 1 Amendment of references in Acts to Companies Acts**

There are still a number of references in NSW Acts to the following Acts:

- (a) the *Companies Act 1899* (which has been repealed),
- (b) the *Companies Act 1936* (which has been repealed),
- (c) the *Companies Act 1961* (which has not been repealed),
- (d) the *Companies (Transfer of Domicile) Act 1968* (which has not been repealed).

Schedule 1 amends various Acts that refer to these Acts by replacing certain of these references (where appropriate) with references to corresponding provisions of the new federal legislation or by omitting redundant references. In some cases, the amendments enact provisions in order to avoid inconsistency with the new federal legislation or to apply that legislation as a State law to matters to which it would otherwise not apply. However, references that are of purely historical significance have not been amended.

The amendments to each Act are explained in detail in the explanatory note relating to the Act concerned set out in Schedule 1.

### **Schedules 2 and 3: Amendment of references in Acts and Regulations to co-operative scheme laws**

The co-operative scheme laws (which have not been repealed) include the following:

- (a) the *Companies (Application of Laws) Act 1981*,
- (b) the *Companies (New South Wales) Code*,
- (c) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*,
- (d) the *Companies (Acquisition of Shares) (New South Wales) Code*,
- (e) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,
- (f) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (New South Wales) Code*,
- (g) the *Securities Industry (Application of Laws) Act 1981*,
- (h) the *Securities Industry (New South Wales) Code*,
- (i) the *Futures Industry (Application of Laws) Act 1986*,
- (j) the *Futures Industry (New South Wales) Code*.

The co-operative scheme laws were superseded by the national scheme laws (see below) in 1991 with the commencement of the *Corporations (New South Wales) Act 1990*.

There are still many references to the co-operative scheme laws in NSW Acts and Regulations. Most of these references currently include a reference to corresponding provisions of the national scheme laws because of the provisions of section 90 of the *Corporations (New South Wales) Act 1990*. That section provides that, subject to the regulations made under that Act, references in Acts and Regulations to a co-operative scheme law (or provisions of a co-operative scheme law) are taken to include a reference to the corresponding provisions of the national scheme laws. Clause 5 of the *Corporations (New South Wales) Regulation 1996* prescribes the following references (***excluded references***) to be references to which section 90 does not apply:

- (a) references in the *Centenary Institute of Cancer Medicine and Cell Biology Act 1985* (except section 17),
- (b) references in the *Garvan Institute of Medical Research Act 1984* (except section 13),
- (c) references in sections 40, 43 and 44 of the *Gas Industry Restructuring Act 1986*,
- (d) references in the *Legal Profession Act 1987*,

- (e) references in the *National Trust of Australia (New South Wales) Act 1990*,
- (f) references in the *Sydney Turf Club Act 1943*.

The excluded references continue to have effect according to their tenor.

Schedules 2 and 3 amend various Acts and Regulations that refer to co-operative scheme laws by replacing certain of these references (where appropriate) with references to corresponding provisions of the new federal legislation or by omitting redundant references. In some cases, the amendments enact provisions in order to avoid inconsistency with the new federal legislation or to apply that legislation as a State law to matters to which it would otherwise not apply. In other cases, certain excluded references are continued in effect with their current meanings. However, references that are of purely historical significance have not been amended.

The amendments to each Act and Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 2 or 3.

#### **Schedules 4 and 5: Amendment of references in Acts and Regulations to national scheme laws**

The national scheme laws includes the following:

- (a) the *Corporations (New South Wales) Act 1990*,
- (b) the *Corporations Law of New South Wales*,
- (c) the *ASIC Law of New South Wales* (previously known as the *ASC Law of New South Wales*).

The new federal legislation seeks to re-enact (with some changes) the *Corporations Law* and *ASIC Law* as laws of the Commonwealth. The new federal legislation is enacted pursuant to a referral of legislative power by the various *Corporations (Commonwealth Powers) Acts 2001* enacted by New South Wales and the other States.

Schedules 4 and 5 amend various Acts and Regulations that refer to the national scheme laws by replacing certain of these references (where appropriate) with references to corresponding provisions of the new federal legislation or by omitting redundant references. In some cases, the amendments enact provisions in order to avoid inconsistency with the new federal legislation or to apply that legislation as a State law to matters to which it would otherwise not apply. However, references that are of purely historical significance have not been amended.

The amendments to each Act and Regulation are explained in detail in the explanatory note relating to the Act or Regulation concerned set out in Schedule 4 or 5.

### **Schedule 6 Amendment of Acts to avoid inconsistency with Corporations legislation**

Schedule 6 amends various Acts to enable regulations made under those Acts to invoke section 5F or 5G of the *Corporations Act 2001* of the Commonwealth in order to avoid inconsistency with the new federal legislation.

Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the new federal legislation, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

Section 5G of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision, then any provision of the new federal legislation with which the State provision would otherwise be inconsistent does not apply in the State concerned to the extent necessary to avoid the inconsistency.

### **Schedule 7 Corporations (Ancillary Provisions) Regulation 2001**

Schedule 7 contains the proposed *Corporations (Ancillary Provisions) Regulation 2001*. The proposed Regulation contains certain provisions of a transitional nature relating to references to previous State corporations legislation in certain Acts and Regulations.