

Corporations (Consequential Amendments) Act 2001 No 34

[2001-34]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2003](#)

Authorisation

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Corporations (Consequential Amendments) Act 2001 No 34



New South Wales

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Corporations (Consequential Amendments) Act 2001 No 34



New South Wales

An Act to update certain references in Acts and Regulations to previous corporations legislation of this State consequent on the enactment by the Parliament of the Commonwealth of new corporations legislation and new ASIC legislation; to enact provisions to avoid inconsistency between State laws and the Commonwealth Acts; to enact certain transitional provisions; and for other purposes.

1 Name of Act

This Act is the *Corporations (Consequential Amendments) Act 2001*.

2 Commencement

- (1) Subject to subsections (2)–(4), this Act commences on the commencement of the *Corporations Act 2001* of the Commonwealth.
- (2) The following provisions of this Act commence immediately before the commencement of the *Corporations Act 2001* of the Commonwealth:
 - (a) the amendment made to the *Gas Industry Restructuring Act 1986* by Schedule 2.23 [6],
 - (b) the amendment made to the *Legal Profession Act 1987* by Schedule 2.30 [3],
 - (c) the amendments made to the *National Trust of Australia (New South Wales) Act 1990* by Schedule 2.39,
 - (d) the amendments made to the *Sydney Turf Club Act 1943* by Schedule 2.50,
 - (e) the amendment made to the *Totalizator Act 1997* by Schedule 4.66 [5],
 - (f) the amendment made to the *Totalizator Agency Board Privatisation Act 1997* by Schedule 4.67 [1].
- (3) If the *Home Building Legislation Amendment Act 2001* is enacted after the commencement of the *Corporations Act 2001* of the Commonwealth, the amendments made to the former Act by Schedule 4.22 commence on the day on which the former

Act is enacted.

- (4) If the *Sydney Olympic Park Authority Act 2001* is enacted after the commencement of the *Corporations Act 2001* of the Commonwealth, the amendment made to the former Act by Schedule 4.62 commences on the day on which the former Act is enacted.

3 Amendment of Acts and Regulations

- (1) Subject to subsection (2), each Act or Regulation specified in Schedules 1–6 is amended as set out in those Schedules.
- (2) If a provision of a relevant amending Act that inserts a corporations reference (or a provision containing such a reference) into a principal Act commences before the commencement of the *Corporations Act 2001* of the Commonwealth, any provision of this Act that amends the reference (or the provision containing the reference) in the provision of the relevant amending Act also operates to amend the reference (or the provision containing the reference) as inserted in the principal Act as if the amendment made by this Act were expressed to be an amendment to the principal Act.

- (3) In this section:

corporations reference means a reference to:

- (a) the *Corporations Law* or *ASIC Law*, or
- (b) a provision or provisions of either of those Laws.

principal Act, in relation to a relevant amending Act, means an Act that is amended by the amending Act.

relevant amending Act means any of the following Acts:

- (a) the *Home Building Legislation Amendment Act 2001*,
- (b) the *Intergovernmental Agreement Implementation (GST) Act 2000*,
- (c) the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*,
- (d) the *Legal Profession Amendment (Mortgage Practices) Act 2000*,
- (e) the *Roman Catholic Church Communities' Lands Amendment Act 2001*.

4 Corporations (Ancillary Provisions) Regulation 2001

- (1) Schedule 7 is taken to be and has effect as a regulation made under the *Corporations (Ancillary Provisions) Act 2001*.
- (2) Without limiting subsection (1), the regulation set out in Schedule 7 may be amended or repealed under the *Corporations (Ancillary Provisions) Act 2001*.

- (3) Sections 39, 40 and 41 of the *Interpretation Act 1987* do not apply to the regulation set out in Schedule 7.

5 Explanatory notes

The matter appearing under the heading “Explanatory note” in any of the Schedules does not form part of this Act.

Schedule 1 Amendment of references in Acts to Companies Acts

(Section 3)

1.1 C.B. Alexander Foundation Incorporation Act 1969 No 61

Section 11

Omit the section. Insert instead:

11 Contracts by Foundation

- (1) Contracts on behalf of the Foundation may be made as follows:
- (a) a contract that if made between private persons would be by law required to be in writing under seal may be made on behalf of the Foundation in writing under the common seal of the Foundation,
 - (b) a contract that if made between private persons would be by law required to be in writing signed by the parties to it may be made on behalf of the Foundation in writing signed by any person acting under its express or implied authority,
 - (c) a contract that if made between private persons would be valid by law although made by parol only (and not reduced into writing) may be made by parol on behalf of the Foundation by any person acting under its express or implied authority.
- (2) Any contract made in accordance with subsection (1):
- (a) is effectual in law and binds the Foundation and its successors and all other parties to the contract, and
 - (b) may be varied or discharged in the manner in which it was authorised to be made.

Explanatory note

The proposed amendment to the *C.B. Alexander Foundation Incorporation Act 1969* substantially re-enacts the provisions of section 35 (1) of the *Companies Act 1961*. Currently, section 11 provides that section 35 (1) of the *Companies Act 1961* applies to the Foundation as if it were a company within the meaning of that Act.

1.2 Election Funding Act 1981 No 78

Section 87 Political contributions that are to be disclosed

Omit “deemed to be related to each other for the purposes of the *Companies Act 1961*” from section 87 (6).

Insert instead “related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 87 of the *Election Funding Act 1981* replaces a reference to corporations that are related for the purposes of the *Companies Act 1961* with a reference to corporations that are related for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth.

1.3 Eraring Power Station Act 1981 No 107

Section 8 Partnerships etc

Omit section 8 (2) (b). Insert instead:

- (b) the partnership, joint venture or association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to section 115 of that Act.

Explanatory note

The proposed amendment to section 8 of the *Eraring Power Station Act 1981* ensures that section 115 (Restrictions on size of partnerships and associations) of the *Corporations Act 2001* of the Commonwealth does not apply to a partnership, joint venture or association to which section 8 applies. Currently, section 8 provides that the corresponding provision of the *Companies Act 1961* does not apply.

1.4 Forestry Act 1916 No 55

Section 29 Penalty for unlawfully working sawmill

Omit “an officer as defined in section 5 (1) of the *Companies Act 1961* of a corporation” from section 29 (3).

Insert instead “an officer of a corporation (within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

Explanatory note

The proposed amendment to section 29 of the *Forestry Act 1916* replaces a reference to an officer of a corporation as defined in section 5 (1) of the *Companies Act 1961* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

1.5 Funeral Funds Act 1979 No 106

Section 113 Certain debts to have priority

Omit “*Companies Act 1961*”.

Insert instead “*Corporations Act 2001* of the Commonwealth (as applied to the winding up by section 74A)”.

Explanatory note

The proposed amendment to section 113 of the *Funeral Funds Act 1979* ensures that certain debts incurred under the Act are given priority in a winding up conducted in accordance with Division 5 of Part 5 of the Act (as amended by Schedule 2.21 to the proposed Act).

1.6 Moratorium Act 1932 No 57

Section 46 Notices

Omit section 46 (1) (c). Insert instead:

- (c) if given in the manner provided by section 109X of the *Corporations Act 2001* of the Commonwealth when the person to whom notice is to be given is a company,

Explanatory note

The proposed amendment to section 46 of the *Moratorium Act 1932* replaces a reference to the giving of notices to a company under the Part 3 of the *Companies Act 1899* or Part 3 of the *Companies (Amendment) Act 1906* with a reference to giving notices to a company under section 109X of the *Corporations Act 2001* of the Commonwealth.

1.7 Oakdale State Coal Mine (Sale) Act 1968 No 66

Section 2 Definitions

Omit “a corporation that, within the meaning of subsection five of section six of the *Companies Act 1961*, as subsequently amended, is related to” from the definition of **the Company** in section 2.

Insert instead “a corporation that is related, for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth, to”.

Explanatory note

The proposed amendment to the definition of **the Company** in section 2 of the *Oakdale State Coal Mine (Sale) Act 1968* replaces a reference to corporations that are related for the purposes of the *Companies Act 1961* with a reference to corporations that are related for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth.

1.8 Suitors' Fund Act 1951 No 3

Section 2 Definitions

Omit the definition of **Corporation** from section 2 (1). Insert instead:

Corporation has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the *Suitors' Fund Act 1951* replaces a reference to a corporation within the meaning of section 5 (1) of the *Companies Act 1961* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

1.9 Valuers Registration Act 1975 No 92

Section 24A Corporations

Omit section 24A (1). Insert instead:

(1) In this section, **corporation** has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to section 24A of the *Valuers Registration Act 1975* replaces a reference to a corporation within the meaning of section 5 (1) of the *Companies Act 1961* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Schedule 2 Amendment of references in Acts to co-operative scheme laws

(Section 3)

2.1 Air Transport Act 1964 No 36

Section 8 Revocation, suspension and variation of licences

Omit "section 528 (1) of the *Companies (New South Wales) Code*" from section 8 (2) (b).

Insert instead "section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 8 of the *Air Transport Act 1964* replaces a reference to service of documents on a corporation in the manner mentioned in section 528 (1) of the *Companies (New South Wales) Code* with a reference to service as provided by section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth.

2.2 Apiaries Act 1985 No 16

Section 43 Offences by officers of corporations

Omit section 43 (4). Insert instead:

- (4) In this section, **officer** of a corporation has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to section 43 of the *Companies Act 1985* replaces a reference to an officer of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.3 Business Names Act 1962 No 11

[1] Section 4 Interpretation

Omit "*Companies (New South Wales) Code*" from the definition of **Corporation** in section 4 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 4 (1), definition of "Secretary"

Omit the definition. Insert instead:

Secretary, in relation to a corporation:

- (a) includes any person performing the duties of secretary of the corporation, and
- (b) in relation to a corporation that is a registered foreign company under Division 2 of Part 5B.2 of the *Corporations Act 2001* of the Commonwealth, includes a local agent (within the meaning of that Act) of the corporation.

[3] Section 5A Leave of District Court required in certain cases before using business name

Insert at the end of section 5A (1) (c):

, and

- (d) to a person convicted on or after the commencement of the *Corporations Act 2001* of the Commonwealth of an offence under any of the following provisions of that Act:
 - (i) section 184, 590, 592, 595, 670A, 728 or 1307,
 - (ii) Part 7.11,
 - (iii) any other provision of that Act that is prescribed by the regulations.

[4] Section 19 Cancellation of registration

Omit "*Companies (New South Wales) Code*" from section 19 (1) (d).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 26 Invitations to the public to make deposits or loans

Omit “made by a public company in conformity with the requirements of the *Companies (New South Wales) Code*” from section 26 (2).

Insert instead “made by a body in conformity with the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **Corporation** in section 4 of the *Business Names Act 1962* to replace a reference to a foreign company within the meaning of the *Companies (New South Wales) Code* with a reference to a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **Secretary** in section 4 of the Act to replace references to a registered foreign company (and the agent of that company) within the meaning of the *Companies (New South Wales) Code* with references to corresponding concepts in the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 5A of the Act so that it extends to persons convicted of certain offences under the *Corporations Act 2001* of the Commonwealth as well as to persons convicted of certain offences under the *Companies (New South Wales) Code*.

Item [4] of the proposed amendments amends section 19 of the Act to replace a reference to the striking off of a corporation from a register of corporations kept under the *Companies (New South Wales) Code* with a reference to striking off such a corporation from a register of corporations kept under the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 26 of the Act to replace a reference to an invitation to the public to lend or borrow money that is in conformity with the requirements the *Companies (New South Wales) Code* with a reference to an invitation that is in conformity with the requirements of the *Corporations Act 2001* of the Commonwealth.

2.4 Centenary Institute of Cancer Medicine and Cell Biology Act 1985 No 192

[1] Section 3 Interpretation

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

[2] Section 17 Accounts and audit

Omit “*Companies (New South Wales) Code*” from section 17 (7).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 19

Omit sections 19 and 20. Insert instead:

19 Winding up

- (1) The Institute may be wound up voluntarily or by the Supreme Court.
- (2) Subject to subsection (1), the winding up of the Institute is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4–5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the provisions apply to the Institute as if it were a company,
 - (b) the functions of winding up the Institute’s affairs may be exercised by a liquidator appointed by the Minister under subsection (3),
 - (c) references in those provisions to a corporation or company are to be read as references to the Institute,
 - (d) references in those provisions to an officer or a director of a company are to be read as including references to a governor of the Institute,
 - (e) the provisions of section 589 are to be read as if:
 - (i) section 589 (1) (d) and (2) were omitted, and
 - (ii) paragraph (c) were omitted from the definition of **appropriate officer** in section 589 (5), and
 - (iii) paragraph (c) were omitted from the definition of **relevant day** in section 589 (5),
 - (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) The Minister may appoint a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) to be a liquidator in relation to the winding up of the Institute

under this section if:

- (a) the Institute is being wound up voluntarily, and
 - (b) a vacancy occurs in the office of liquidator that, in the opinion of the Minister, is unlikely to be filled in the manner provided by the *Corporations Act 2001* of the Commonwealth.
- (4) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (2), but only if:
- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (5) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (4) as if subsection (2) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

Explanatory note

Item [2] of the proposed amendments amends section 17 of the *Centenary Institute of Cancer Medicine and Cell Biology Act 1985* to replace a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments replaces sections 19 and 20 of the Act with a new section to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the winding up of companies will apply to the winding up of the Institute as if the provisions were State laws. Currently, sections 19 and 20 of the Act provide that the winding up of the Institute's affairs is to be conducted in accordance with the provisions of Part XII of the *Companies (New South Wales) Code*, subject to such modifications as may be prescribed by the regulations under the Act. Item [1] of the proposed amendments amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [3] are not treated as forming part of the Act.

2.5 Commercial Agents and Private Inquiry Agents Act 1963 No 4

Section 5 Act not applicable to certain persons

Omit "*Companies (New South Wales) Code*" from section 5 (1) (e).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 5 of the *Commercial Agents and Private Inquiry Agents Act 1963* replaces a reference to a

registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.6 Confiscation of Proceeds of Crime Act 1989 No 90

Section 33 Realisable property etc

Omit “section 441 of the *Companies (New South Wales) Code*” from section 33 (6) (b).

Insert instead “section 556 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 33 of the *Confiscation of Proceeds of Crime Act 1989* replaces a reference to the priority of payments on the winding up of a company set out in section 441 of the *Companies (New South Wales) Code* with a reference to the corresponding provision in section 556 of the *Corporations Act 2001* of the Commonwealth.

2.7 Conveyancing Act 1919 No 6

[1] Section 7 Definitions

Omit “or the *Companies (New South Wales) Code*” from the definition of **Bankruptcy** in section 7 (1).

Insert instead “, the *Companies (New South Wales) Code* or the *Corporations Act 2001* of the Commonwealth”.

[2] Section 109A Saving on severance of fixtures

Insert “or under Chapter 2K of the *Corporations Act 2001* of the Commonwealth,” after “*Companies (New South Wales) Code*,” in section 109A (1) (b).

[3] Section 142 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **Dividends**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 164 Restriction on constructive notice

Omit “the Corporate Affairs Commission or the National Companies and Securities Commission” from section 164 (1A).

Insert instead “the Australian Securities and Investments Commission”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **Bankruptcy** in section 7 of the *Conveyancing Act 1919* to include a reference to the winding up of a company under the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 109A of the Act to include a reference to Chapter 2K of the *Corporations Act 2001* of the Commonwealth, which deals with charges.

Item [3] of the proposed amendments amends section 142 of the Act to replace a reference to a company within the meaning of

the *Companies (New South Wales) Code* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 164 of the Act to replace a reference to the Corporate Affairs Commission and the National Companies and Securities Commission with a reference to the Australian Securities and Investments Commission.

2.8 Credit Act 1984 No 94

[1] Section 5 Definitions

Omit “related corporation within the meaning of the *Companies (New South Wales) Code*” from paragraph (a) of the definition of **commission charge** in section 5 (1).

Insert instead “related body corporate with the meaning of the *Corporations Act 2001* of the Commonwealth”.

[2] Section 5 (1), definition of “guarantor”

Omit “related corporation within the meaning of the *Companies (New South Wales) Code*” from paragraph (a).

Insert instead “related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth”.

[3] Section 5 (1), definition of “officer”

Omit “section 5 (1) of the *Companies (New South Wales) Code*”.

Insert instead “section 82A of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Items [1] and [2] of the proposed amendments amend the definitions of **commission charge** and **guarantor** in section 5 of the *Credit Act 1984* to replace references to a related corporation within the meaning of the *Companies (New South Wales) Code* with references to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends the definition of **officer** in section 5 of the Act to replace a reference to an officer of a body corporate within the meaning of section 5 (1) of the *Companies (New South Wales) Code* with a reference to an officer of a body corporate within the meaning of section 82A of the *Corporations Act 2001* of the Commonwealth.

2.9 Crimes Act 1900 No 40

Section 185A Inducing persons to enter into certain arrangements by misleading etc statements etc

Omit “*Companies (New South Wales) Code*” from section 185A (6).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 185A of the *Crimes Act 1900* replaces a reference to marketable securities within the meaning of the *Companies (New South Wales) Code* with a reference to the same concept within the meaning of the

Corporations Act 2001 of the Commonwealth.

2.10 Dangerous Goods Act 1975 No 68

Section 4 Definitions

Omit the definition of **director**. Insert instead:

director of a corporation means a person who is a director of the corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of **director** in section 4 of the *Dangerous Goods Act 1975* ensures that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

2.11 Dust Diseases Tribunal Act 1989 No 63

[1] Section 3 Definitions

Insert after section 3 (2):

(3) Notes included in this Act do not form part of this Act.

[2] Section 10 Jurisdiction and functions of the Tribunal

Omit section 10 (6). Insert instead:

(6) The following matters are excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 471B and 500 (2) of that Act:

- (a) proceedings under section 11 of this Act,
- (b) proceedings transferred under section 12 of this Act,

being proceedings that, but for this subsection, could not be commenced or proceeded with without the leave of the Court referred to in section 471B or 500 (2) of the *Corporations Act 2001* of the Commonwealth.

Note—

In the absence of this subsection, sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth would require the leave of the Federal Court or the Supreme Court to commence or proceed with proceedings under this Act against certain companies that are being externally administered. This section ensures that section 5F of that Act will operate to ensure that those sections will not require the leave of the Court directing the external administration before proceedings can be commenced or proceeded with in the Tribunal.

- (7) Proceedings to which subsection (6) refers are declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth as if a reference in those sections to the Court were a reference to the Tribunal.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

Explanatory note

Item [2] of the proposed amendments amends section 10 of the *Dust Diseases Tribunal Act 1989* to ensure that the Tribunal is not precluded by the *Corporations Act 2001* of the Commonwealth from dealing with proceedings under section 11 or 12 of the *Dust Diseases Tribunal Act 1989* that involve certain companies that are being externally administered under the federal law. Sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth require the leave of the Supreme Court or the Federal Court before proceedings against such companies can be commenced or maintained. The amendment declares proceedings under section 11 or 12 of the *Dust Diseases Tribunal Act 1989* to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to sections 471B and 500 (2) of that Act so that they will not apply to the proceedings. The amendment then applies those provisions as laws of the State so that the Tribunal is required to grant the appropriate leave (as is currently the case). Item [1] of the proposed amendments amends section 3 of the Act to ensure that notes that are to be inserted in the Act by item [2] are not treated as forming part of the Act.

2.12 Election Funding Act 1981 No 78

Section 4 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **auditor** in section 4 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the definition of **auditor** in section 4 of the *Election Funding Act 1981* replaces a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.13 Energy Administration Act 1987 No 103

Section 33 Obstruction etc of inspectors

Omit “*Companies (New South Wales) Code*” from section 33 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 33 of the *Energy Administration Act 1987* replaces a reference to an officer of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.14 Entertainment Industry Act 1989 No 230

Section 4 Definitions

Omit the definition of **director** from section 4 (1). Insert instead:

director of a corporation means a person who is a director of a corporation within the mean of the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of **director** in section 4 of the *Entertainment Industry Act 1989* replaces a reference to a director within the meaning of the *Companies (New South Wales) Code* with a reference to a director of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.15 Essential Services Act 1988 No 41

Section 14 Obstruction etc of inspectors

Omit “*Companies (New South Wales) Code*” from section 14 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 14 of the *Essential Services Act 1988* replaces a reference to an officer of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.16 Factories, Shops and Industries Act 1962 No 43

[1] Section 78B Small shops

Omit “for the purposes of the *Companies (New South Wales) Code*” from section 78B (8) (d).

Insert instead “for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth”.

[2] Section 78B (10), definition of “shareholder”

Omit “Division 4 of Part 4 of the *Companies (New South Wales) Code*”.

Insert instead “Part 6C.1 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 78B of the *Factories, Shops and Industries Act 1962* to replace a reference to a related corporation within the meaning of the *Companies (New South Wales) Code* with a reference to a related

body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **shareholder** in section 78B of the Act to replace a reference to Division 4 of Part 4 of the *Companies (New South Wales) Code* with a reference to corresponding provisions in Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

2.17 Fair Trading Act 1987 No 68

Section 88 Service of notices etc

Omit section 88 (2). Insert instead:

(2) Subsection (1) (b) does not limit anything in section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to section 88 of the *Fair Trading Act 1987* replaces references to service of documents under provisions of the *Companies (New South Wales) Code* with references to service of documents under provisions of the *Corporations Act 2001* of the Commonwealth.

2.18 Fire Brigades Act 1989 No 192

Section 58 Returns by insurance companies

Omit “*Companies (New South Wales) Code*” from section 58 (2) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 58 of the *Fire Brigades Act 1989* replaces a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.19 Fisheries Act 1935 No 58

Section 48 Cancellation of registration

Omit section 48 (3) (f).

Explanatory note

The proposed amendment to section 48 omits a provision that provides for the winding up of acclimatisation societies in accordance with Division 6 of Part 12 of the *Companies (New South Wales) Code*.

2.20 Frustrated Contracts Act 1978 No 105

Section 6 Act does not apply to certain contracts

Omit section 6 (2) (a) and (b). Insert instead:

- (a) a company within the meaning of the *Corporations Act 2001* of the Commonwealth,
- (b) a registrable body within the meaning of the *Corporations Act 2001* of the Commonwealth,

Explanatory note

The proposed amendment to section 6 of the *Frustrated Contracts Act 1978* replaces references to a company within the meaning of the *Companies (New South Wales) Code* and a body to which Division 6 of Part XII of that Code applies with references to a company and a registrable body within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.21 Funeral Funds Act 1979 No 106

[1] Section 4 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **company** in section 4 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 4 (6)

Insert after section 4 (5):

- (6) Notes included in this Act do not form part of this Act.

[3] Section 13 Requirements for registration

Omit “may, under the *Companies (New South Wales) Code*, be appointed as the auditor of a company other than an exempt proprietary company” from section 13 (1) (f).

Insert instead “may, under the *Corporations Act 2001* of the Commonwealth, be appointed as the auditor of a company”.

[4] Section 24 Returns

Omit section 24 (2) (b). Insert instead:

- (b) all such particulars with respect to the person who, as at the date of lodgment of the return, is an executive officer of the fund (within the meaning of the *Corporations Act 2001* of the Commonwealth) and with respect to any person who, as at that date, is a director or secretary of the fund in respect of whom the fund has lodged (or should have lodged) a notice under Part 2D.5 of that Act,

[5] Section 24 (3)

Omit the subsection. Insert instead:

- (3) The documents required to accompany the return under subsection (1) are:
- (a) a copy, certified by a director or secretary of the funeral contribution fund, to be a true copy of an annual financial report relating to the fund required by Division 1 of the Commonwealth (as applying of its own force or under subsection (3A)) to be prepared for or with respect to its financial year immediately preceding the date on which the return is required to be lodged with the Registrar under subsection (1), and
 - (b) a copy of an auditor's report or reports required to be made by Division 3 of Part 2M.3 of the *Corporations Act 2001* of the Commonwealth on that financial report (as applying of its own force or under subsection (3A)).
- (3A) An exempt fund is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Division 1 of Part 2M.3 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
- (a) the provisions apply as if:
 - (i) sections 292 (2), 293 and 294 were omitted from that Part, and
 - (ii) section 296 (1) were omitted and the following subsection inserted instead:

“(1) The financial report for a financial year must comply with the accounting standards.”
 - (b) a reference to ASIC is to be read as a reference to the Registrar,
 - (c) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

[6] Section 24 (5)

Insert after section 24 (4):

- (5) In this section, **exempt fund** means a funeral contribution fund that is a small proprietary company within the meaning of the *Corporations Act 2001* of the Commonwealth that is not required to prepare a financial report and director's report under Division 1 of Part 2M.3 of the *Corporations Act 2001* of the Commonwealth.

[7] Section 68 Appointment and powers of administrator of funeral contribution fund

Omit "*Companies (New South Wales) Code*" from section 68 (1) (b).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[8] Section 68 (1) (c)

Omit "Part VII of the *Companies (New South Wales) Code*".

Insert instead "Part 3 of the *Australian Investments and Securities Commission Act 2001* of the Commonwealth".

[9] Section 68 (6) and (7)

Omit section 68 (6). Insert instead:

- (6) An administrator of a funeral contribution fund appointed under this Division is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of the *Corporations Act 2001* of the Commonwealth relating to the appointment and re-appointment of auditors and the rights and duties of auditors, subject to the following modifications:
- (a) any reference in those provisions to the directors of the fund is to be read as a reference to the administrator of the fund, and
 - (b) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (7) The following matters are declared to be excluded matters for the purposes of

section 5F of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 5 of that Act:

- (a) the appointment of an administrator of a funeral contribution fund under this Division,
- (b) the exercise of any functions by such an administrator under this Division in relation to the fund.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

[10] Section 70 Holding of meeting for appointment of directors of funeral contribution fund

Omit “Table A in Schedule 3 to the *Companies (New South Wales) Code*” from section 70 (4).

Insert instead “Part 2G.2 of the *Corporations Act 2001* of the Commonwealth”.

[11] Section 70 (7)

Insert after section 70 (6):

- (7) The appointment of a director in accordance with this section is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of Division 1 of Part 2D.3 of that Act.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

[12] Part 5, Division 5

Omit the Division. Insert instead:

Division 5 Winding up of funeral contribution funds

74 Exclusion of *Corporations Act 2001* of the Commonwealth

The winding up of a funeral contribution fund in accordance with the provisions of this Division is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of

Chapter 5 of that Act.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

74A Application of certain winding up provisions of Corporations legislation

(1) The winding up of a funeral contribution fund is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

(a) section 461 is to be read as if the following paragraph were inserted after section 461 (1) (k):

“, or

(l) in the case of a funeral contribution fund within the meaning of the *Funeral Funds Act 1979* of New South Wales, the Registrar of Funeral Funds has, after holding an inquiry under Division 2 of Part 5 of that Act, reported that the Registrar is of the opinion that the fund cannot pay its debts and should be wound up, or that it is in the interests of the public or of the creditors of the fund or of the contributors to the fund that the fund should be wound up.”

(b) section 462 is to be read as if section 462 (2) (e)-(h) and (2A) and (3) were omitted and the following subsection were inserted after section 462 (2):

“(2A) Without limiting the application of subsection (1) to a funeral contribution fund within the meaning of the *Funeral Funds Act 1979* of New South Wales, such a fund may be wound up under an order of the Court on the application of the Registrar of Funeral Funds or on the application of the Registrar of Funeral Funds and one or more of the parties specified in the subsection.”

(c) section 553 is to be read as if it were amended to insert “or a direction given under section 61 (2) of the *Funeral Funds Act 1979* of New South Wales, is served on a funeral contribution fund” after “wound up” in section 553 (2),

(d) section 556 is to be read as if the following paragraph were inserted after section 556 (1) (h):

“(i) next, any amount that is payable pursuant to a direction given under section 61 (2) of the *Funeral Funds Act 1979* of New South Wales served on a funeral contribution fund that is being wound up.”

(e) section 583 is to be read as if the following subparagraph were inserted after section 583 (c) (iii):

“(iv) if the Part 5.7 body is carrying on a contributory funeral benefit business in contravention of the *Funeral Funds Act 1979* of New South Wales.”

(f) such other modifications (within the meaning of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

[13] Section 89

Insert after section 88:

89 Relationship with Corporations legislation

- (1) The regulations may declare a matter (other than a declared matter) that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) In this section:

declared matter means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

matter includes act, omission, body, person or thing.

[14] Section 96 Certain debts of existing funeral contribution fund to have priority

Omit "*Companies (New South Wales) Code*".

Insert instead "*Corporations Act 2001* of the Commonwealth (as applied to the winding up by section 74A)".

Explanatory note

Item [1] of the proposed amendments amends the definition of **company** in section 4 of the *Funeral Funds Act 1979* so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth (rather than the meaning it has in the *Companies (New South Wales) Code*).

Item [2] of the proposed amendments amends section 4 of the Act to ensure that notes included with the proposed amendments made by Schedule 2.21 to the proposed Act are not treated as forming part of the Act.

Item [3] of the proposed amendments amends section 13 of the Act to replace a reference to an auditor appointed under the

Companies (New South Wales) Code with a reference to an auditor appointed under the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 24 of the Act to replace references to executive officers, directors and secretaries for the purposes of the *Companies (New South Wales) Code* with references to executive officers, directors and secretaries for the purposes of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 24 of the Act to replace references to certain financial accounts and statements under the *Companies (New South Wales) Code* with references to corresponding accounts and statements under the *Corporations Act 2001* of the Commonwealth. Currently, section 24 requires the accounts and statements to be lodged with the Registrar. The amendment also makes it clear that these accounts and statements need to be lodged even if the fund concerned is not required to prepare them for the purposes of the *Corporations Act 2001* of the Commonwealth. To this end, a provision is inserted to apply the relevant provisions of the *Corporations Act 2001* of the Commonwealth to those funds as a law of the State. Item [6] makes a consequential amendment to section 24.

Item [7] of the proposed amendments amends section 68 of the Act to replace a reference to a contravention of the *Companies (New South Wales) Code* with a reference to a contravention of the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 68 of the Act to replace a reference to Part VII of the *Companies (New South Wales) Code* with a reference to Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

Item [9] of the proposed amendments amends section 68 of the Act to ensure that certain provisions of the *Corporations Act 2001* of the Commonwealth relating to auditors are applied to administrators appointed under Division 4 of Part 5 as laws of the State. The amendment also declares certain matters dealt with by the Division to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments amends section 70 of the Act to replace a reference to Table A in Schedule 3 to the *Companies (New South Wales) Code* with a reference to the corresponding provision of the *Corporations Act 2001* of the Commonwealth.

Item [11] of the proposed amendments amends section 70 of the Act to declare the appointment of a director in accordance with the provisions of that section to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to Division 1 of Part 2D.3 of that Act.

Item [12] of the proposed amendments replaces Division 5 of Part 5 with a new Division. The new Division will declare the winding up of a funeral contribution fund in accordance with the Division to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It will then apply certain modified provisions of Chapter 5 of that Act to such windings up as a law of the State. The provisions seek to maintain the modifications to the *Companies (New South Wales) Code* currently contained in the Division.

Item [13] of the proposed amendments inserts a section 89 in the Act to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration.

Item [14] of the proposed amendments amends section 96 of the Act to ensure that certain debts incurred under the Act are given priority in a winding up conducted in accordance with Division 5 of Part 5 (as amended).

2.22 Garvan Institute of Medical Research Act 1984 No 106

[1] Section 3 Interpretation

Insert after section 3 (2):

(3) Notes included in this Act do not form part of this Act.

[2] Section 13 Accounts and audit

Omit “*Companies (New South Wales) Code*” from section 13 (7).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Sections 15 and 16

Omit the sections. Insert instead:

16 Winding up

- (1) The Institute may be wound up voluntarily or by the Supreme Court.
- (2) Subject to subsection (1), the winding up of the Institute is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4–5.9 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the provisions apply to the Institute as if it were a company,
 - (b) the functions of winding up the Institute’s affairs may be exercised by a liquidator appointed by the Minister under subsection (3),
 - (c) references in those provisions to a corporation or company are to be read as references to the Institute,
 - (d) references in those provisions to an officer or a director of a company are to be read as including references to a director of the Institute,
 - (e) the provisions of section 589 are to be read as if:
 - (i) section 589 (1) (d) and (2) were omitted, and
 - (ii) paragraph (c) were omitted from the definition of **appropriate officer** in section 589 (5), and
 - (iii) paragraph (c) were omitted from the definition of **relevant day** in section 589 (5),
 - (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the

purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) The Minister may appoint a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) to be a liquidator in relation to the winding up of the Institute under this section if:
 - (a) the Institute is being wound up voluntarily, and
 - (b) a vacancy occurs in the office of liquidator that, in the opinion of the Minister, is unlikely to be filled in the manner provided by the *Corporations Act 2001* of the Commonwealth.
- (4) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (2), but only if:
 - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (5) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (4) as if subsection (2) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

Explanatory note

Item [2] amends section 13 of the *Garvan Institute of Medical Research Act 1984* to replace a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] replaces sections 15 and 16 of the Act with a new section to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the winding up of companies will apply to the winding up of the Institute as if the provisions were State laws. Currently, sections 15 and 16 of the Act provide that the winding up of the Institute's affairs is to be conducted in accordance with the provisions of Part XII of the *Companies (New South Wales) Code*, subject to such modifications as may be prescribed by the regulations under the Act. Item [1] amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [3] are not treated as forming part of the Act.

2.23 Gas Industry Restructuring Act 1986 No 213

[1] Section 3 Interpretation

Omit section 3 (3) and (4). Insert instead:

- (3) Unless a contrary intention appears, expressions used in this Act have the same meanings respectively as they have in the *Corporations Act 2001* of the Commonwealth.
- (4) For the purposes of this Act (including the application or use for interpretative purposes by or under this Act of a provision of the *Corporations Act 2001* of the Commonwealth), The Australian Gas Light Company and all gas distributors that are subsidiaries of The Australian Gas Light Company are taken to be companies within the meaning of the *Corporations Act 2001* of the Commonwealth.

[2] Section 3 (6)

Insert after section 3 (5):

- (6) Notes included in this Act do not form part of this Act.

[3] Section 23 Transferee

Omit "*Companies (New South Wales) Code*" from section 23 (2) (a).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[4] Section 31 Extension of powers of AGL and certain gas companies

Omit "*Companies (New South Wales) Code*" from section 31 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[5] Section 38

Omit the section. Insert instead:

38 Application of Corporations legislation to AGL and its subsidiaries

- (1) Subject to this Act, AGL and any relevant gas distributor are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to non-applicable Commonwealth provisions, subject to the following modifications:
 - (a) a reference to a company includes a reference to AGL and a relevant gas distributor,

- (b) AGL is not required to use the word “Limited” in its name despite anything to the contrary in Part 2B.6 of the *Corporations Act 2001* of the Commonwealth,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Subsection (1) does not extend to any AGL matter.
- (3) Any AGL matter is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (4) The regulations may declare any matter relating to AGL or a relevant gas distributor (including any matter dealt with by or under Part 4) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation, or
 - (b) a specified provision of the Corporations legislation, or
 - (c) the Corporations legislation other than a specified provision, or
 - (d) the Corporations legislation other than to a specified extent.
- (5) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the Corporations legislation that is the subject of the declaration under subsection (1), but only if:
 - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of

the Commonwealth, and

(b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

(6) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (5) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

(7) In this section:

AGL means The Australian Gas Light Company.

AGL matter means a matter to the extent that it is dealt with by section 8, 10-13, 16, 17 or 19-42 of the *Australian Gas Light Company Act 1837*.

matter includes act, omission, body, person or thing.

non-applicable Commonwealth provisions means provisions of the Corporations legislation that do not apply to a matter as a law of the Commonwealth.

relevant gas distributor means a gas distributor that is a wholly owned subsidiary of AGL.

[6] Sections 40 Shareholding—interpretation

Insert after section 40 (2):

(2A) It is declared that the provisions of this Part that refer to, or apply to a matter, provisions of the *Companies (New South Wales) Code* or the *Companies (Acquisition of Shares) (New South Wales) Code* have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State.

(2B) Expressions used in this Part have, unless the contrary intention appears, the same meanings respectively as they have in the *Companies (New South Wales) Code*.

(2C) For the purposes of this Act (including the application or use for interpretative purposes by or under this Part of a provision of the *Companies (New South Wales) Code* or the *Companies (Acquisition of Shares) (New South Wales) Code*), the Australian Gas Light Company and all gas distributors that are subsidiaries of The Australian Gas Light Company are taken to be companies within the meanings of

those Codes.

[7] Section 54 Resolutions concerning management

Omit “the articles of association of a company under the *Companies (New South Wales) Code*” from section 54 (c).

Insert instead “the constitution of a company under the *Corporations Act 2001* of the Commonwealth”.

[8] Section 135 Service of documents

Omit 135 (b). Insert instead:

- (b) in the case of a company or a registered body (including The Australian Gas Light Company) under the *Corporations Act 2001* of the Commonwealth—in the manner provided by section 109X or 601CX of that Act respectively.

Explanatory note

Item [1] of the proposed amendments amends section 3 of the *Gas Industry Restructuring Act 1986* to ensure that expressions used in the Act that are defined in the *Corporations Act 2001* of the Commonwealth have the same meanings as they do in the *Corporations Act 2001* of the Commonwealth. It also provides that, for the purposes of the Act that refer to provisions of the *Corporations Act 2001* of the Commonwealth, The Australian Gas Light Company (**AGL**) and gas subsidiaries that are its wholly owned subsidiaries are taken to be companies for the purposes of the Commonwealth Act. At present, section 3 refers to definitions in the *Companies (New South Wales) Code* that, by operation of section 90 of the *Corporations (New South Wales) Act 1990* and clause 5 of the *Corporations (New South Wales) Regulation 1996*, are taken to be references to definitions in the *Corporations Law*.

Item [2] of the proposed amendments amends section 3 of the Act to ensure that notes to be inserted by the proposed amendments to the Act are not treated as forming part of the Act.

Item [3] of the proposed amendments amends section 23 of the Act to replace a reference to a company under the *Companies (New South Wales) Code* with a reference to a company under the *Corporations Act 2001* of the Commonwealth.

Item [4] amends section 31 of the Act to ensure that AGL and some of its subsidiaries constituted by statute have the same legal capacity under State law as a company does under the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments replaces section 38 of the Act. The new section will apply to AGL and its subsidiaries certain provisions of the Corporations legislation as State law that would otherwise not apply to them. It also ensures that certain matters in relation to them are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth so that the Corporations legislation will not apply to them.

Item [6] of the proposed amendments amends section 40 of the Act to make it clear that certain references in Part 4 of the Act that refer to the *Companies (New South Wales) Code* and the *Companies (Acquisition of Shares) (New South Wales) Code* continue to have effect according to their tenor. At present, certain references to those Codes in that Part continue to have the meaning they had before the commencement of the *Corporations Law* because of the combined operation of section 90 of the *Corporations (New South Wales) Act 1990* and clause 5 of the *Corporations (New South Wales) Regulation 1996*.

Item [7] of the proposed amendments amends section 54 of the Act to replace a reference to the articles of association of a company under the *Companies (New South Wales) Code* with a reference to the constitution of a company under the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 135 of the Act to replace a reference to service of documents in accordance with section 528 of the *Companies (New South Wales) Code* with a reference to service of documents in accordance with section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth.

2.24 Government Guarantees Act 1934 No 57

Section 3 Authority for Treasurer to guarantee overdraft accounts etc

Omit the definition of **company** from section 3 (5C) (b). Insert instead:

company means a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of **company** in section 3 of the *Government Guarantees Act 1934* replaces a reference to a company within the meaning of the *Companies (New South Wales) Code* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.25 Grain Marketing Act 1991 No 15

[1] Section 3 Definitions

Insert after section 3 (3):

(4) Notes included in this Act do not form part of this Act.

[2] Section 4B

Insert after section 4A:

4B Application of Corporations Law after commencement of Corporations legislation

- (1) The provisions of the *Corporations Law* and *ASIC Law* continue on and after the commencement to apply of their own force to a matter dealt with by this Act if they applied to that matter of their own force immediately before that commencement despite anything in section 6 of the *Corporations (Ancillary Provisions) Act 2001*.
- (2) Any provision of this Act or the regulations that refers to, or applies to a matter, any provision of the *Corporations Law* or *ASIC Law* (whether with or without modification) continues to have effect according to its tenor despite the provisions of sections 11 and 12 of the *Corporations (Ancillary Provisions) Act 2001*.
- (3) Subsections (1) and (2) have effect subject to any modifications to the *Corporations Law* or *ASIC Law* that may be prescribed by the regulations.
- (4) Any matter dealt with by this Act to which a provision of the *Corporations Law* or *ASIC Law* applies of its own force (or that is applied to the matter by a provision

of this Act or the regulations) is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(5) Subsection (4) does not apply to any matter excluded from the operation of that subsection by the regulations.

(6) In this section:

commencement means the commencement of the *Corporations Act 2001* of the Commonwealth.

matter includes act, omission, body, person or thing.

modification includes addition, exception, omission or substitution.

4C Application of Corporations legislation to certain matters

(1) The regulations may declare a matter dealt with by this Act or the regulations to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to:

- (a) the whole of the Corporations legislation, or
- (b) an Act, regulations or other instrument forming part of the Corporations legislation, or
- (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

(2) Any such regulations may:

- (a) specify modifications to the definitions and other interpretative provisions of

the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and

- (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
 - (d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
 - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.
- (4) In this section:
- matter** includes act, omission, body, person or thing.
 - modification** includes addition, exception, omission or substitution.

[3] Section 77 Definitions

Omit “*Corporations Law*” from the definition of **registered liquidator**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [2] of the proposed amendments inserts sections 4B and 4C in the *Grain Marketing Act 1991* to ensure that the provisions of the *Corporations Law* and *ASIC Law* will continue to apply in relation to the Grain Marketing Board and facilitate the application of provisions of the Corporations legislation as laws of the State should the need arise. Item [1] of the proposed amendments amends section 3 of the Act to ensure that notes that are to be inserted in the Act by item [2] are not treated as forming part of the Act.

Item [3] of the proposed amendments amends section 77 of the Act to replace a reference to a registered liquidator within the

meaning of the *Corporations Law* with a reference to a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.26 Human Tissue Act 1983 No 164

Section 21Q Powers of inspectors

Omit “*Companies (New South Wales) Code*” from section 21Q (7).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 21Q of the *Human Tissue Act 1983* replaces a reference to an officer of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.27 Insurance Act 1902 No 49

Section 20 Repairs to motor vehicle carried out by insurer

Omit “a company which is a subsidiary company or by a related company within the meaning of the *Companies (New South Wales) Code* of the insurer”.

Insert instead “a company that is a subsidiary or by a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth of the insurer”.

Explanatory note

The proposed amendment to section 20 of the *Insurance Act 1902* replaces references to a subsidiary company or a related company within the meaning of the *Companies (New South Wales) Code* with references to a subsidiary or related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.28 Land Development Contribution Management Act 1970 No 22

Section 68 Service of notices

Omit “sections 528, 529 and 530 of the *Companies (New South Wales) Code*” from section 68 (3).

Insert instead “sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 68 of the *Land Development Contribution Management Act 1970* replaces a reference to service of documents in the manner mentioned in sections 528, 529 and 530 of the *Companies (New South Wales) Code* with a reference to service of documents as provided by sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth.

2.29 Land Tax Management Act 1956 No 26

Section 29 Related companies

Omit “the *Companies (New South Wales) Code*” from section 29 (2) (e).

Insert instead “Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 29 of the *Land Tax Management Act 1956* replaces a reference to an associate within the meaning of the *Companies (New South Wales) Code* with a reference to an associate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.30 Legal Profession Act 1987 No 109

[1] Section 3 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **accountant** in section 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 60 Definitions

Omit “*Companies (New South Wales) Code*” from section 60 (2) (f).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 172K Application of Companies Code etc to solicitor corporations

Insert after section 172K (4):

(5) It is declared that:

- (a) the provisions of this Part that apply provisions of the *Companies (New South Wales) Code* to a matter have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State, and
 - (b) a solicitor corporation is not (and is taken never to have been) a company for the purposes of the *Corporations Law*.
- (6) The regulations may declare a matter that is dealt with by this Part or the regulations made under this Part to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or

- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(7) In this section:

matter includes act, omission, body, person or thing.

[4] Section 209A Qualifications of auditors

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Items [1] and [4] of the proposed amendments amend the definition of **accountant** in sections 3 and 209A of the *Legal Profession Act 1987* to replace references to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with references to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 60 of the Act to replace a reference to a subsidiary within the meaning of the *Companies (New South Wales) Code* with a reference to a subsidiary within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 172K of the Act to make it clear that solicitor corporations formed under Part 10A are (and have since 1991 been) subject to the provisions of the *Companies (New South Wales) Code*. The amendment also confirms that references to that Code in the Act continue to have effect according to their tenor. At present, references to the Code in the Act continue to have the meaning they had before the commencement of the *Corporations Law* because of the combined operation of section 90 of the *Corporations (New South Wales) Act 1990* and clause 5 of the *Corporations (New South Wales) Regulation 1996*. The amendment also enables the regulations to declare a matter dealt with by Part 10A of the Act or the regulations made under that Part to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

2.31 Liquor Act 1982 No 147

[1] Section 69 Disciplinary powers of court

Omit “*Companies (New South Wales) Code*, is a related corporation” from section 69 (1A) (a) (iii).

Insert instead “*Corporations Act 2001* of the Commonwealth, is a related body corporate”.

[2] Section 69 (1A) (c) (ii)

Omit “*Companies (New South Wales) Code*, is a related corporation”.

Insert instead “*Corporations Act 2001* of the Commonwealth, is a related body corporate”.

Explanatory note

The proposed amendments to section 69 of the *Liquor Act 1982* replace references to a related corporation within the meaning of the *Companies (New South Wales) Code* with references to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.32 Long Service Leave Act 1955 No 38

Section 4 Long service leave

Omit the definition of ***Holding company*** and ***subsidiary*** from section 4 (13) (a).

Insert instead:

Holding company and ***subsidiary*** have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of ***Holding company*** and ***subsidiary*** in section 4 of the *Long Service Leave Act 1955* ensures that those terms have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth rather than the meanings they have in the *Companies (New South Wales) Code*.

2.33 Long Service Leave (Metalliferous Mining Industry) Act 1963 No 48

Section 4 Long service leave

Omit the definition of ***Holding company*** and ***subsidiary*** from section 4 (13) (a).

Insert instead:

Holding company and ***subsidiary*** have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of ***Holding company*** and ***subsidiary*** in section 4 of the *Long Service Leave (Metalliferous Mining Industry) Act 1963* ensures that those terms have the same meanings as they have in the *Corporations Act 2001* of the Commonwealth rather than the meanings they have in the *Companies (New South Wales) Code*.

2.34 Marketing of Primary Products Act 1983 No 176

[1] Section 4 Definitions

Insert after section 4 (8):

(9) Notes included in this Act do not form part of this Act.

[2] Section 141 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **registered liquidator**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 143

Omit the section. Insert instead:

143 Application of Part 5.7 of *Corporations Act 2001* of the Commonwealth

- (1) The winding up of the affairs of an authority in New South Wales is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the provisions of the Part are to be read as if that Part extended to the winding up of the affairs of an authority in New South Wales,
 - (b) the functions of winding up an authority’s affairs may be exercised by a liquidator appointed by the Minister under subsection (2),
 - (c) such modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The Minister may appoint a person (whether or not the person is a registered liquidator) to be a liquidator in relation to the winding up of an authority’s affairs for the purposes of subsection (1).
- (3) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
 - (a) the Australian Securities and Investments Commission is to exercise that

function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and

(b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

(4) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

[4] Section 144 Power to compromise with creditors

Omit section 144 (7). Insert instead:

(7) Any person or persons so appointed to administer a compromise or arrangement referred to in this section (whether by the terms of a compromise or arrangement or pursuant to a power given by the terms of a compromise or arrangement) are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of sections 425, 428, 432, 434 and 536 the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:

(a) in relation the provisions of sections 425, 428, 432 and 434—the provisions apply in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a receiver and manager, or as receiver and managers, of the property of the authority, and

(ii) a reference in any of those provisions to a receiver or controller, or to a receiver or controller of the property, of a corporation were a reference to that person or to those persons, and

(iii) a reference in any of those provisions to ASIC were a reference to the Minister for Agriculture, and

(b) in relation to the provisions of section 536—the provisions apply in relation to that person or those persons as if:

(i) the appointment of the person or persons to administer the compromise or arrangement were an appointment of the person or persons as a liquidator of the authority, and

- (ii) a reference in that section to a liquidator were a reference to that person or to those persons, and
- (iii) a reference in that section to ASIC were a reference to the Minister for Agriculture.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

[5] Section 145 Information as to compromise with creditors

Insert after section 145 (1):

- (1A) An explanatory statement is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Regulation 5.1.01 of, and Part 2 of Schedule 8 to, the *Corporations Regulations* of the Commonwealth, subject to the following modifications:
 - (a) a reference in those provisions to a company is to be read as a reference to an authority,
 - (b) a reference in those provisions to directors of a company is to be read as a reference to members of an authority,
 - (c) a reference in those provisions to the registered office of a company is to be read as a reference to the principal place of business of an authority,
 - (d) a reference in those provisions to ASIC is to be read as a reference to the Minister for Agriculture,
 - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that

Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

[6] Section 146 Regulations and rules

Omit section 146 (1) and (5).

Explanatory note

Item [2] of the proposed amendments amends the definition of **registered liquidator** in section 141 of the *Marketing of Primary Products Act 1983* to replace a reference to a registered liquidator within the meaning of the *Companies (New South Wales) Code* with a reference to a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments re-enacts section 143 of the Act to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the winding up of bodies other than companies will apply to the conduct of a winding up of an authority as if the provisions were State laws. Currently, section 143 of the Act provides that the winding up of an authority's affairs is to be conducted in accordance with the provisions of Division 6 (Winding up of bodies other than companies) of Part XII of the *Companies (New South Wales) Code*. Item [1] of the proposed amendments amends section 4 of the Act to ensure that notes included with the proposed amendment made by items [3] and [4] are not treated as forming part of the Act.

Item [4] of the proposed amendments amends section 144 of the Act to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to arrangements and compromises apply to persons appointed under that section as if the provisions were laws of the State. The amendment updates references to corresponding provisions in the *Companies (New South Wales) Code*.

Item [5] of the proposed amendments amends section 145 of the Act to ensure that (subject to certain modifications) certain provisions of the *Corporations Regulations* of the Commonwealth relating to the content of explanatory statements for arrangements and compromises apply to explanatory statements issued under section 145. This amendment continues in effect the corresponding requirement presently contained in section 146 (1) of the Act. Item [6] of the proposed amendments makes a consequential amendment to section 146.

2.35 Mine Subsidence Compensation Act 1961 No 22

Section 11 Contributions to be paid by colliery proprietors to Fund

Omit "authorised under the *Companies (New South Wales) Code*" from section 11 (3) (b).

Insert instead "provided by section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth".

Explanatory note

The amendment to section 11 of the *Mine Subsidence Compensation Act 1961* replaces a reference to service of documents on a body corporate in a manner authorised by the *Companies (New South Wales) Code* with a reference to service of documents as provided by section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth.

2.36 Mock Auctions Act 1973 No 17

Section 5 Liability of directors etc of corporations

Omit "*Companies (New South Wales) Code*".

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 5 of the *Mock Auctions Act 1973* replaces a reference to a director of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to a director of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.37 Motor Vehicles (Third Party Insurance) Act 1942 No 15

Section 37 Service of notices etc

Omit section 37 (c). Insert instead:

- (c) if given or made by service in accordance with section 109X of the *Corporations Act 2001* of the Commonwealth, where the person to whom the notice, notification or request is to be given or made is a company within the meaning of that Act.

Explanatory note

The proposed amendment to section 37 of the *Motor Vehicles (Third Party Insurance) Act 1942* replaces a reference to the delivery of documents to a company in the manner prescribed by the *Companies (New South Wales) Code* with a reference to the service of such documents on a company in accordance with section 109X of the *Corporations Act 2001* of the Commonwealth.

2.38 Murray Valley Citrus Marketing Act 1989 No 155

[1] Section 19 Joint ventures involving the Board

Omit “memorandum and articles of association of which provide” from section 19 (6) (b).

Insert instead “constitution of which provides”.

[2] Section 20 Requirements to be observed where the Board has a controlling interest in a company

Omit “*Companies (New South Wales) Code* from section 20 (1) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth that is taken by that Act to be registered in New South Wales”.

[3] Section 20 (1) (d)

Omit “with the National Companies and Securities Commission under the *Companies (New South Wales) Code*”.

Insert instead “with the Australian Securities and Investments Commission under the *Corporations Act 2001* of the Commonwealth”.

[4] Section 20 (2)

Omit section 20 (2) and (3). Insert instead:

- (2) The Board has a controlling interest in a company if the Board would have a substantial holding in the company as defined in section 9 of the *Corporations Act 2001* of the Commonwealth if the reference to 5% in paragraph (a) of the definition of **substantial holding** in that section were replaced by a reference to 50%.

[5] Section 20 (5)

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 80 Service of notices etc

Omit “sections 528, 529 and 530 of the *Companies (New South Wales) Code*” from section 80 (2).

Insert instead “sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 19 of the *Murray Valley Citrus Marketing Act 1989* to replace a reference to the memorandum and articles of a corporation with a reference to the constitution of a corporation. This terminology is more in keeping with the terminology used in the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 20 of the Act to replace a reference to the formation of a limited company under the *Companies (New South Wales) Code* with a reference to the formation of such a company under the *Corporations Act 2001* of the Commonwealth (being a company that is taken to be registered in New South Wales).

Item [3] of the proposed amendments amends section 20 of the Act to replace a reference to the lodging of any report, statement or return in respect of a company with the National Companies and Securities Commission under the *Companies (New South Wales) Code* with a reference to lodging such a report, statement or return with the Australian Securities and Investments Commission under the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 20 of the Act to replace a reference to a substantial shareholder in a company within the meaning of the *Companies (New South Wales) Code* with a reference to a substantial holding in a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 20 of the Act to replace a reference to requirements under the *Companies (New South Wales) Code* with a reference to requirements under the *Corporations Act 2001* of the Commonwealth.

Item [6] of the proposed amendments amends section 80 of the Act to replace a reference to service of documents under the *Companies (New South Wales) Code* with a reference to service of documents under sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth.

2.39 National Trust of Australia (New South Wales) Act 1990 No 92

[1] Section 3 Definitions

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Section 36 Application of provisions of the Companies Code

Insert after section 36 (2):

- (3) It is declared that the provisions of this Act that refer to, or apply to a matter, provisions of the *Companies (New South Wales) Code* have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State.
- (4) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (5) In this section:

matter includes act, omission, body, person or thing.

Explanatory note

Item [2] of the proposed amendments amends section 36 of the *National Trust of Australia (New South Wales) Act 1990* to make it clear that certain references in the Act that refer to the *Companies (New South Wales) Code* continue to have effect according to their tenor. At present, certain references to that Code in the Act continue to have the meaning they had before the commencement of the *Corporations Law* because of the combined operation of section 90 of the *Corporations (New South Wales) Act 1990* and clause 5 of the *Corporations (New South Wales) Regulation 1996*. The amendment also enables the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. Item [1] of the proposed amendments amends section 3 in the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

2.40 Necropolis Act 1901 (1902 No 20)

Third Schedule Additional terms and conditions of section 8B lease

Omit “related corporation of the lessee (within the meaning of the *Companies (New South Wales) Code*)” from clause 2 (1) (b).

Insert instead “related body corporate of the lessee (within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

Explanatory note

The proposed amendment to clause 2 of the Third Schedule to the *Necropolis Act 1901* replaces a reference to a related corporation within the meaning of the *Companies (New South Wales) Code* with a reference to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.41 Petroleum Products Subsidy Act 1965 No 1

Section 15 Offences

Omit “*Companies (New South Wales) Code*” from section 15 (3A).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The amendment to section 15 of the *Petroleum Products Subsidy Act 1965* replaces a reference to an officer within the meaning of the *Companies (New South Wales) Code* with a reference to an officer within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.42 Petroleum (Submerged Lands) Act 1982 No 23

[1] Section 81 Approval of dealings creating etc interests etc in existing titles

Omit “National Companies and Securities Commission relating to the creation of that charge pursuant to section 201 of the *Companies (New South Wales) Code* or pursuant to the corresponding provision of a law of another State or of a Territory” from section 81 (8).

Insert instead “Australian Securities and Investments Commission relating to the creation of that charge under section 263 of the *Corporations Act 2001* of the Commonwealth”.

[2] Section 81 (15)

Omit “section 201 of the *Companies (New South Wales) Code*”.

Insert instead “section 263 of the *Corporations Act 2001* of the Commonwealth”.

[3] Section 92 Imposition of registration fees

Omit section 92 (4) (a) (i). Insert instead:

- (i) those parties are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth,

[4] Section 92 (6A) (a) (i)

Omit the subparagraph. Insert instead:

- (i) those parties are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth,

Explanatory note

Item [1] of the proposed amendments amends section 81 of the *Petroleum (Submerged Lands) Act 1982* to replace a reference to documents required to be lodged with the National Companies and Securities Commission relating to the creation of a charge pursuant to section 201 of the *Companies (New South Wales) Code* with a reference to the corresponding documents required to be lodged with the Australian Securities and Investments Commission under the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 81 of the Act so that the terms **charge** and **debenture** have the same meanings as they do in the *Corporations Act 2001* of the Commonwealth rather than the meanings they have in section 201 of the *Companies (New South Wales) Code*.

Items [3] and [4] of the proposed amendments amend section 92 of the Act to replace references to a related corporation within the meaning of the *Companies (New South Wales) Code* with references to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.43 Printing and Newspapers Act 1973 No 46

Section 6 Liability of directors etc of corporations

Omit "*Companies (New South Wales) Code*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 6 of the *Printing and Newspapers Act 1973* replaces a reference to a director of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to a director of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.44 Public Finance and Audit Act 1983 No 152

Section 47 Appointment and functions of auditor

Omit "*Companies (New South Wales) Code*" from section 47 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 47 of the *Public Finance and Audit Act 1983* replaces a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.45 Real Property Act 1900 No 25

Section 74M Withdrawal of caveats

Omit section 74M (1) (e). Insert instead:

- (e) where, after a company has been dissolved or deregistered, the estate or interest claimed by the caveator has become vested in the Australian Securities and

Investments Commission by force of section 588 or 601AD of the *Corporations Act 2001* of the Commonwealth—by the Australian Securities and Investments Commission,

Explanatory note

The proposed amendment to section 74M of the *Real Property Act 1900* replaces a reference to section 461 (Outstanding property of defunct company to vest in Commission) of the *Companies (New South Wales) Code* with references to corresponding provisions in the *Corporations Act 2001* of the Commonwealth.

2.46 Rural Lands Protection Act 1989 No 197

[1] Section 37 Board to have qualified auditor to audit its accounts

Omit “*Companies (New South Wales) Code*” from section 37 (7).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 215 Service of notices

Omit “section 528, 529 or 530 of the *Companies (New South Wales) Code* (which relate to the service of documents on a company)” from section 215 (3).

Insert instead “section 109X or 601CX of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 37 of the *Rural Lands Protection Act 1989* to replace a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 215 of the Act to replace a reference to service of documents under the *Companies (New South Wales) Code* with a reference to service of documents under the *Corporations Act 2001* of the Commonwealth.

2.47 Sporting Injuries Insurance Act 1978 No 141

Section 18A Adjustment of certain premiums

Omit “*Companies (New South Wales) Code*” from section 18A (4) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 18A of the *Sporting Injuries Insurance Act 1978* replaces a reference to a director of a body corporate within the meaning of the *Companies (New South Wales) Code* with a reference to a director of a body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.48 State Owned Corporations Act 1989 No 134

[1] Section 3 Definitions

Omit “*Companies (New South Wales) Code* or any other applicable law” from the definition of **subsidiary** in section 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 24 Annual reports and accounts: company SOCs

Omit “*Companies (New South Wales) Code*” from section 24 (1) (b).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 24 (3)

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 24 (4)

Omit “*Companies (New South Wales) Code*” and “the Code”.

Insert instead “*Corporations Act 2001* of the Commonwealth” and “that Act” respectively.

[5] Section 24 (5)

Omit “all the powers of an auditor under the *Companies (New South Wales) Code*, and the Code applies accordingly”.

Insert instead “all the powers of a registered company auditor under the *Corporations Act 2001* of the Commonwealth”.

[6] Section 24 (9)

Omit the subsection. Insert instead:

- (9) This section does not require the board of a subsidiary of a company SOC to deliver an annual report of its operations or financial statements conforming to the requirements of the *Corporations Act 2001* of the Commonwealth if:
- (a) the SOC has complied with all requirements of that Act concerning consolidated financial statements in respect of the subsidiary, and
 - (b) that Act relieves or otherwise exempts the board from compliance with the requirement to prepare the financial statements.

Explanatory note

Item [1] of the proposed amendments amends the definition of **subsidiary** in section 3 of the *State Owned Corporations Act 1989* to replace a reference to a subsidiary within the meaning of the *Companies (New South Wales) Code* with a reference to a subsidiary within the meaning of the *Corporations Act 2001* of the Commonwealth.

Items [2] and [3] of the proposed amendments amend section 24 of the Act to replace references to a financial statements and reports prepared in conformity with the *Companies (New South Wales) Code* with references to financial statements and reports prepared in conformity with the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 24 of the Act to make it clear that its requirements are in addition to those in the *Corporations Act 2001* of the Commonwealth. Currently, it provides that they are in addition to those in the *Companies (New South Wales) Code*.

Item [5] of the proposed amendments amends section 24 (5) of the Act to ensure that, for the purposes of that section, the Auditor-General has the same powers as a registered company auditor under the *Corporations Act 2001* of the Commonwealth. Currently, the section provides that the Auditor-General has the same powers as a registered company auditor has under the *Companies (New South Wales) Code*.

Item [6] of the proposed amendments re-enacts section 24 (9) of the Act to replace references to complying with the requirements of the *Companies (New South Wales) Code* in relation to financial statements with references to compliance with corresponding requirements of the *Corporations Act 2001* of the Commonwealth.

2.49 Suitors' Fund Act 1951 No 3

[1] Section 6 Costs of certain appeals

Omit "within the meaning of section 7 (5) of the *Companies (New South Wales) Code*, is related to a corporation" from section 6 (7) (c).

Insert instead "within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate".

[2] Section 6A Costs of proceedings not completed by reason of death of judge etc

Omit "within the meaning of section 7 (5) of the *Companies (New South Wales) Code*, is related to a corporation" from section 6A (2) (c).

Insert instead "within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate".

[3] Section 6B Costs of certain appeals on ground that damages were excessive or inadequate

Omit "within the meaning of section 7 (5) of the *Companies (New South Wales) Code*, is related to a corporation" from section 6B (6) (c).

Insert instead "within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth, is related to a body corporate".

Explanatory note

The proposed amendments to sections 6, 6A and 6B of the *Suitors' Fund Act 1951* replace references to a corporation that is related to another corporation within the meaning of section 7 (5) of the *Companies (New South Wales) Code* with references to a corporation that is related to a body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

2.50 Sydney Turf Club Act 1943 No 22

[1] Section 3A

Insert after section 3:

3A Notes

Notes included in this Act do not form part of this Act.

[2] Section 4 Constitution etc

Insert after section 4 (8):

(9) It is declared that:

- (a) subsection (4) operates (and is taken at all times on or after its commencement to have operated) to apply the provisions of the *Companies (New South Wales) Code* to the Club, subject to this Act, as if it were a company within the meaning of that Code that did not have share capital, and
- (b) the provisions of this Act that apply provisions of the *Companies (New South Wales) Code* to a matter have effect (and are taken at all times on or after their commencement to have had effect) according to their tenor and despite any provision of the *Corporations (New South Wales) Act 1990* or the applicable provisions (as defined in that Act) of the State, and
- (c) the Club is not (and is taken never to have been) a company for the purposes of the *Corporations Law*.

(10) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration

will not apply in relation to that matter in the State concerned.

(11) In this section:

matter includes act, omission, body, person or thing.

Explanatory note

Item [2] of the proposed amendments amends section 4 of the *Sydney Turf Club Act 1943* to make it clear that the Club is (and has since 1991 been) subject to the provisions of the *Companies (New South Wales) Code*. The proposed amendment also confirms that references to that Code in the Act continue to have effect according to their tenor. At present, references to the Code in the Act continue to have the meaning they had before the commencement of the *Corporations Law* because of the combined operation of section 90 of the *Corporations (New South Wales) Act 1990* and clause 5 of the *Corporations (New South Wales) Regulation 1996*. The proposed amendment also enables the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. Item [1] of the proposed amendments inserts a section 3A in the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

2.51 Teacher Housing Authority Act 1975 No 27

Section 11 Vacation of office

Omit section 11 (3) (a). Insert instead:

- (a) a member has, for the purposes of the *Corporations Act 2001* of the Commonwealth, a relevant interest in a share in a company all or any of the shares in which are listed for quotation on the official list of a stock exchange in Australia, and

Explanatory note

The proposed amendment to section 11 of the *Teacher Housing Authority Act 1975* replaces a reference to a relevant interest in shares for the purposes of the *Companies (Acquisition of Shares) (New South Wales) Code* with a reference to a relevant interest in shares under the *Corporations Act 2001* of the Commonwealth.

2.52 Timber Marketing Act 1977 No 72

[1] Section 4 Definitions

Omit “*Companies (New South Wales) Code*” from the definition of **corporation** in section 4 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 32 Evidence against corporations

Omit “*Companies (New South Wales) Code*” from section 32 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **corporation** in section 4 of the *Timber Marketing Act 1977* so

that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

Item [2] of the proposed amendments amends section 32 of the Act to replace a reference to an officer of a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.53 Transport Administration Act 1988 No 109

[1] Section 18 Private subsidiary corporations etc

Omit “*Companies (New South Wales) Code*” from the definition of **private corporation** in section 18 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 34 Private subsidiary corporations etc

Omit “*Companies (New South Wales) Code*” from the definition of **private corporation** in section 34 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 52 Private subsidiary corporations etc

Omit “*Companies (New South Wales) Code*” from the definition of **private corporation** in section 52 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendments to sections 18, 34 and 52 of the *Transport Administration Act 1988* replace references to a corporation within the meaning of the *Companies (New South Wales) Code* with references to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.54 Travel Agents Act 1986 No 5

Section 3 Definitions

Omit the definition of **officer** from section 3 (1). Insert instead:

officer of a body corporate has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the definition of **officer** in section 3 of the *Travel Agents Act 1986* ensures that the term has the same meaning as it has in section 9 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

2.55 Trustee Act 1925 No 14

Section 22 New shares in a company

Omit “section 114 (2) of the *Companies (New South Wales) Code*” from section 22 (2A).

Insert instead “section 254N of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 22 of the *Trustee Act 1925* replaces a reference to section 114 of the *Companies (New South Wales) Code* (which deals with the reserve liability of a shareholder in the case of the winding up of a company) with a reference to the corresponding provision in the *Corporations Act 2001* of the Commonwealth.

2.56 Trustee Companies Act 1964 No 6

[1] Section 3 Definitions

Omit the definition of **Commission** from section 3 (1). Insert instead:

Commission means:

- (a) the Director-General of the Attorney General’s Department, or
- (b) such other person or body as may be prescribed by the regulations.

[2] Section 3 (1), definition of “Corporation”

Omit “*Companies (New South Wales) Code*” from the definition.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 3 (1), definition of “Nominee corporation”

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 3 (1), definition of “Related corporation”

Omit the definition. Insert instead:

Related corporation of a body corporate means a body corporate that is related to that body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

[5] Section 3 (1), definition of “Voting share”

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 3 (5)

Omit the subsection. Insert instead:

- (5) A person is an associate of another person for the purposes of this Act if the person would be an associate of the other person under Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth.

[7] Section 3 (8) (b)

Omit the paragraph. Insert instead:

- (b) a person has a relevant interest in a share in a trustee company if, by reason of sections 608 and 609 of the *Corporations Act 2001* of the Commonwealth, the person has a relevant interest in the share for the purposes of that Act.

[8] Section 3 (10)

Omit “*Companies (Acquisition of Shares) (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[9] Section 3 (11)

Insert after section 3 (10):

- (11) A note included in this Act does not form part of this Act.

[10] Section 29 Borrowing by trustee company

Omit “Notwithstanding anything in the *Companies (New South Wales) Code* or in the memorandum or articles of association of a trustee company, a trustee company” from section 29 (1).

Insert instead “A trustee company”.

[11] Section 29E Trustee company to give information to Minister or Commission

Omit section 29E (2). Insert instead:

- (2) The Commission may inspect without charge any book kept by a trustee company, including any book relating to estates managed or administered by the trustee company.

[12] Section 31A Restriction on acquisition of shares

Omit “take-over scheme or a take-over announcement in relation to that trustee company as provided in the *Companies (Acquisition of Shares) (New South Wales) Code*” from section 31A (3) (d).

Insert instead “takeover bid in relation to that trustee company in accordance with the *Corporations Act 2001* of the Commonwealth”.

[13] Section 31A (14)

Omit “*Companies (New South Wales) Code*”.

Insert instead “*Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales for the purposes of that Act”.

[14] Section 31B

Omit section. Insert instead:

31B Acquisitions to which sec 31A does not apply

Section 31A does not apply to or in relation to an acquisition of shares in accordance with the *Corporations Act 2001* of the Commonwealth that is:

- (a) an exempt acquisition under Part 6.2 of the *Corporations Act 2001* of the Commonwealth, other than an acquisition referred to in item 1, 2, 7, 9, 10, 11, 19 or 20 of the table to section 611 of that Act, or
- (b) an acquisition of any other kind and is made in a prescribed manner or in prescribed circumstances, or
- (c) an acquisition approved by the Minister in writing.

[15] Section 32B

Insert after section 32A:

32B Excluded matters under section 5F of *Corporations Act 2001* of the Commonwealth

- (1) The regulations may declare any relevant matter (other than a declared matter) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or

- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

declared matter means a matter that is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth by another provision of this Act.

matter includes act, omission, body, person or thing.

relevant matter means:

- (a) any matter that is prohibited, required, authorised or permitted by or under this Act or the regulations, or
- (b) any other matter that is dealt with by this Act or the regulations.

[16] Section 36 Provisions continued in force

Omit section 36 (2). Insert instead:

- (2) The minimum issued capital requirement for Perpetual Trustees Australia Limited set out in the Second Schedule under the heading “Perpetual Trustees Australia Limited” is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 254N of that Act.
- (3) The provisions set out in the Second Schedule under the heading “Perpetual Trustees Australia Limited” have effect despite any special resolution passed by the Company or anything contained in the constitution of the Company.

[17] Section 36B

Omit the section. Insert instead:

36B Unpaid capital of Permanent Trustee Company Limited

- (1) A variation matter is declared to be an excluded matter for the purposes of

section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of section 254N of that Act.

- (2) In this section, **variation matter** means any variation, by special resolution of Permanent Trustee Company Limited, of the portion of its unpaid share capital that is not capable of being called up.

Explanatory note

Item [1] of the proposed amendments replaces the definition of **Commission** in section 3 of the *Trustee Companies Act 1964*. It defines the term as meaning the Director-General of the Attorney General's Department or any other person prescribed by the regulations. Currently, the definition refers to the Corporate Affairs Commission (which no longer exists).

Item [2] of the proposed amendments amends the definition of **Corporation** in section 3 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

Item [3] of the proposed amendments amends the definition of **Nominee corporation** in section 3 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

Item [4] of the proposed amendments amends the definition of **Related corporation** in section 3 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (New South Wales) Code*.

Item [5] of the proposed amendments amends the definition of **Voting share** in section 3 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Companies (Acquisition of Shares) (New South Wales) Code*.

Item [6] of the proposed amendments amends section 3 of the Act to ensure that, for the purposes of the Act, a person is an associate of another person if the person is an associate of that other person for the purposes of Division 2 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth. Currently, the section defines the concept of associate in terms of provisions in the *Companies (Acquisition of Shares) (New South Wales) Code*.

Item [7] of the proposed amendments amends section 3 of the Act to ensure that, for the purposes of the Act, a person has a relevant interest in a share if the person has an relevant interest in the share for the purposes of sections 608 and 609 of the *Corporations Act 2001* of the Commonwealth. Currently, the section defines the concept of relevant interest in terms of provisions in the *Companies (Acquisition of Shares) (New South Wales) Code*.

Item [8] of the proposed amendments amends section 3 of the Act to ensure that words and expressions used in that section that are defined in the *Corporations Act 2001* of the Commonwealth have the same meanings as in that Act. Currently, the section provides that they have the same meanings as in the *Companies (Acquisition of Shares) (New South Wales) Code*.

Item [9] of the proposed amendments amends section 3 of the Act to ensure that notes that are to be inserted in the Act by Schedule 2.56 to the proposed Act are not treated as forming part of the Act.

Item [10] of the proposed amendments amends section 29 of the Act to remove a reference to the *Companies (New South Wales) Code* and the memorandum or articles of association of a trustee company that will not be necessary with the enactment of the *Corporations Act 2001* of the Commonwealth.

Item [11] of the proposed amendments amends section 29E of the Act to enable the Commission to inspect without charge any book kept by a trustee company, including any book relating to estates managed or administered by the trustee company. This amendment re-enacts in substance the current provisions that confer this power by reference to the terms of the *Companies (New South Wales) Code*.

Item [12] of the proposed amendments amends section 31A of the Act to replace a reference to a take-over of a trustee company as provided by the *Companies (New South Wales) Code* with a reference to a takeover as provided by the *Corporations Act 2001* of the Commonwealth. Item [14] of the proposed amendments makes similar amendments to section 31B.

Item [13] of the proposed amendments amends section 31A to replace a reference to a company within the meaning of the *Companies (New South Wales) Code* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [15] of the proposed amendments inserts section 32B in the Act to enable the regulations to declare certain matters arising under the Act or regulations to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Items [16] and [17] of the proposed amendments amend sections 36 and 36B of the Act to ensure that certain share capital requirements applying to certain trustee companies set out in the Act are excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

2.57 Uniting Church in Australia Act 1977 No 47

Schedule 4 Provisions affecting particular instruments, etc

Omit “*Companies (New South Wales) Code*” from clause 5.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 5 of Schedule 4 to the *Uniting Church in Australia Act 1977* replaces a reference to the alteration of a memorandum of association and articles of association in accordance with *Companies (New South Wales) Code* with a reference to such an alteration in accordance with the *Corporations Act 2001* of the Commonwealth.

2.58 Valuers Registration Act 1975 No 92

Section 24 Practice by certain persons prohibited

Omit “section 5 (1) of the *Companies (New South Wales) Code*” from section 24 (5).

Insert instead “section 57A of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 24 of the *Valuers Registration Act 1975* replaces a reference to a corporation within the meaning of the *Companies (New South Wales) Code* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

2.59 West Scholarships Act 1930 No 19

Section 12 Audit of accounts

Omit “*Companies (New South Wales) Code*” from section 12 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 12 of the *West Scholarships Act 1930* replaces a reference to a registered company auditor within the meaning of the *Companies (New South Wales) Code* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Schedule 3 Amendment of references in Regulations to co-operative

scheme laws

(Section 3)

Constitution (Disclosures by Members) Regulation 1983

[1] Clause 7 Interpretation: Part 3

Omit “(within the meaning of section 5 of the *Securities Industry (New South Wales) Code*)” from paragraph (b) of the definition of **interest** in clause 7 (1).

Insert instead “(within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

[2] Clause 7 (1), definition of “securities”

Omit the definition. Insert instead:

securities has the same meaning as it has in section 92 (1) of the *Corporations Act 2001* of the Commonwealth.

[3] Clause 7 (3)

Omit “deemed to be related to each other for the purposes of the *Companies (New South Wales) Code*”.

Insert instead “are related to each other for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **interest** in clause 7 of the *Constitution (Disclosures by Members) Regulation 1983* to replace a reference to a relevant interest in securities within the meaning of section 5 of the *Securities Industry (New South Wales) Code* with a reference to a relevant interest in securities within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments replaces the definition of **securities** in clause 7 of the Regulation so that it has the same meaning as that term has in section 92 (1) of the *Corporations Act 2001* of the Commonwealth rather than the meaning it has in section 5 of the *Securities Industry (New South Wales) Code*.

Item [3] of the proposed amendments amends clause 7 of the Regulation to replace a reference to corporations that are related for the purposes of the *Companies (New South Wales) Code* with a reference to corporations that are related for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth.

Schedule 4 Amendment of references in Acts to national scheme laws

(Section 3)

4.1 Agricultural Industry Services Act 1998 No 45

[1] Section 3A

Insert after section 3:

3A Notes

Notes included in this Act do not form part of this Act.

[2] Section 21 Conduct of winding up

Omit section 21 (1) and (2). Insert instead:

- (1) The winding up of a committee's affairs is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Division 4 of Part 5.5 (Voluntary winding up) and Part 5.6 (Winding up generally) of the *Corporations Act 2001* of the Commonwealth (the **Commonwealth Act**), subject to the following modifications to the provisions of Parts 5.5 and 5.6:
 - (a) the functions of winding up a committee's affairs may be exercised by a liquidator appointed by the Minister under subsection (2),
 - (b) a reference in Division 4 of Part 5.5 of the Commonwealth Act to a company is to be read as a reference to a committee,
 - (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The Minister may appoint a person (whether or not the person is a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth) to be a liquidator in relation to the winding up of a committee's affairs for the purposes of subsection (1).
- (3) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:

- (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.
- (4) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

Explanatory note

Item [2] of the proposed amendments amends section 21 of the *Agricultural Industry Services Act 1998* to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the voluntary winding up of companies will apply to the conduct of a winding up of a committee as if the provisions were State laws. Currently, section 21 of the Act provides that the winding up of a committee's affairs is to be conducted in accordance with the provisions of the *Corporations Law* relating to a members' voluntary winding up of a company, subject to such modifications as may be prescribed by the regulations under the Act. Item [1] of the proposed amendments inserts section 3A in the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

4.2 Anti-Discrimination Act 1977 No 48

[1] Section 4 Definitions

Omit "*Corporations Law*" from the definition of **corporation** in section 4 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 25 Discrimination against applicants and employees

Omit "related corporation within the meaning of the *Corporations Law*" from section 25 (4).

Insert instead "related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth".

[3] Section 38C Discrimination against applicants and employees

Omit "*Corporations Law*" from section 38C (4).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[4] Section 40 Discrimination against applicants and employees

Omit "related corporation within the meaning of the *Corporations Law*" from section 40 (4).

Insert instead “related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth”.

[5] Section 49D Discrimination against applicants and employees

Omit “taken to be a related corporation within the meaning of the *Corporations Law*” from 49D (5).

Insert instead “a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth”.

[6] Section 49V Discrimination against applicants and employees

Omit “*Corporations Law*” from section 49V (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[7] Section 49ZH Discrimination against applicants and employees

Omit “related corporation within the meaning of the *Corporations Law*” from section 49ZH (4).

Insert instead “related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments updates the definition of **corporation** in section 4 of the *Anti-Discrimination Act 1977* so that it refers to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth rather than within the meaning of the *Corporations Law*.

Item [2] of the proposed amendments amends section 25 so that a reference to a related corporation within the meaning of the *Corporations Law* is updated to a reference to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth. At present, section 25 provides that a corporation will be regarded for the purposes of that section as being the employer of employees of a related corporation.

Items [3]-[7] of the proposed amendments make similar amendments to item [2] in relation to other references to related corporations in the Act.

4.3 Associations Incorporation Act 1984 No 143

[1] Section 3A

Insert after section 3:

3A Notes

Notes included in this Act do not form part of this Act.

[2] Section 6

Omit the section. Insert instead:

6 Commonwealth Corporations legislation excluded from applying to incorporated associations

- (1) An incorporated association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation the whole of the Corporations legislation other than to the extent referred to in subsection (2).
- (2) Subsection (1) does not apply:
 - (a) to the extent specified by section 49 (1), and
 - (b) to the extent necessary for an association that is a company under the *Corporations Act 2001* of the Commonwealth to be deregistered as a company under Chapter 5A of that Act, and
 - (c) if the association is authorised or required by or under section 56 to become registered as a company under that Act—to the extent necessary for an association to be registered as a company under Chapter 5B of that Act.

Note—

This section ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to an incorporated association. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to that Act or Part, then the provisions of that Act or Part will not apply in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Commonwealth legislation to incorporated associations as laws of this State.

- (3) Subsection (1) extends to a company within the meaning of the *Corporations Act 2001* of the Commonwealth as soon as it becomes an incorporated association under this Act.
- (4) Subsection (1) has effect only for so long as a body is an incorporated association under this Act.

[3] Section 7 Eligibility for incorporation

Omit section 7 (2) (f). Insert instead:

- (f) is a company within the meaning of the *Corporations Act 2001* of the Commonwealth, other than a company limited by guarantee within the meaning of that Act, or

[4] Section 48 Application to bring company or co-operative under Act

Omit “*Corporations Law*” from section 48 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 49

Omit the section. Insert instead:

49 Effect of transfer of incorporation

- (1) **Incorporation of company** Subject to this section, if a company is incorporated as an incorporated association under section 48, section 6 does not operate to declare a company to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* in relation such provisions of the Corporations legislation as are necessary:
 - (a) to continue in existence any right, privilege, obligation or liability acquired or incurred under that Act or any other law before the incorporation, or
 - (b) to preserve any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act or any other law before the incorporation, or
 - (c) to enable any investigation, legal proceeding or remedy to be instituted, continued or enforced in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.
- (2) **Incorporation of co-operative** Subject to this section, if a co-operative is incorporated as an incorporated association under section 48:
 - (a) the co-operative is dissolved and none of the provisions of the *Co-operatives Act 1992* apply to the co-operative after its incorporation, and
 - (b) the Registrar of Co-operatives must cancel the registration of the co-operative.
- (3) **Identity of company or co-operative** The incorporation of a company or co-operative as an incorporated association under section 48 does not affect the identity of the company or co-operative. Any such association is taken to be the same body before and after the incorporation.
- (4) **Proceedings against company or co-operative** No act, matter or thing is affected or abated by the incorporation under section 48 of a company or co-operative. In particular, any claim by or against the company or co-operative immediately before its incorporation under that section may be:

- (a) continued by or against the incorporated association in the name of the company or co-operative, or
 - (b) commenced by or against the incorporated association in the name of the incorporated association.
- (5) **Preservation of existing rights liabilities etc** Without limiting the generality of subsections (3) and (4), nothing in section 6 or subsection (2):
- (a) affects any right, privilege, obligation or liability acquired or incurred under the Act referred to in subsection (2) or under any other law, or
 - (b) affects any penalty, forfeiture or punishment incurred in respect of any offence committed against that Act or any other law, or
 - (c) affects any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,
- and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if section 6 or subsection (2) had not been enacted.
- (6) **Application of subsections (3)–(5) to companies** Subsections (3)–(5) have effect in relation to a matter concerning a company only to extent that the matter is not dealt with by the *Corporations Act 2001* of the Commonwealth.

[6] Section 50 Voluntary winding up

Omit section 50 (2). Insert instead:

- (2) The voluntary winding up of an incorporated association is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.5 (Voluntary winding up) and 5.6 (Winding up generally) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications referred to in section 52, and
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates

to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

[7] Section 51 Winding up by the Court

Omit “*Corporations Law*” from section 51 (1) (h).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Section 51 (3)

Omit the subsection. Insert instead:

- (3) The winding up of an incorporated association (other than by a voluntary winding up) by the Court in New South Wales is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 (Winding up bodies other than companies) of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
- (a) the modifications referred to in section 52,
 - (b) the provisions of the Part are to be read as if that Part extended to the winding up of the affairs of an incorporated association in New South Wales,
 - (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

[9] Section 52

Omit the section. Insert instead:

52 Modifications to text of applied *Corporations Act 2001* of the

Commonwealth

The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of sections 50 (2) and 51 (3):

- (a) a reference to a company or body is to be read as a reference to an incorporated association,
- (b) a reference to the directors of a company is to be read as a reference to the members of the committee of an incorporated association,
- (c) a reference to the secretary of a company is to be read as a reference to the public officer of an incorporated association,
- (d) a reference to ASIC is to be read as a reference to the Commissioner,
- (e) a reference to the principal place of business of a company is to be read as a reference to the address of the public officer of an incorporated association last notified under this Act to the Commissioner.

[10] Section 56 Registration of incorporated association as company or co-operative

Omit "*Corporations Law*" wherever occurring from section 56 (1) (a) and (2) (c).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[11] Section 57 Effect of transfer of incorporation

Omit "*Corporations Law*" from section 57 (1) (a).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[12] Section 57 (5)

Insert after section 57 (4):

- (5) This section has effect in relation to a matter concerning an incorporated association that is registered as a company under the *Corporations Act 2001* of the Commonwealth only to extent that the matter is not dealt with by that Act.

Explanatory note

Item [1] of the proposed amendments inserts a new section 3A in the *Associations Incorporation Act 1984* to ensure that notes included in the Act by the amendments made to the Act do not form part of the Act.

Item [2] of the proposed amendments replaces section 6 of the Act. Currently, that section provides that, except as otherwise expressly provided by the Act, nothing in the *Corporations Law* applies to or in respect of an incorporated association. The new section ensures that incorporated associations will be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of that Act and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth except to a specified extent. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts except to a

specified extent, then the provisions of those Acts will not apply in relation to that matter in the State concerned except to the specified extent.

Item [3] of the proposed amendments amends section 7 of the Act to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 48 of the Act to replace a reference to a company limited by guarantee within the meaning of the *Corporations Law* with a reference to a company limited by guarantee within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments replaces section 49 of the Act. Currently, section 49 provides for the dissolution, and savings and transitional matters consequent on the incorporation as an incorporated association of, a company under the *Corporations Law* or a co-operative under the *Co-operatives Act 1992*. The new section 49 will make similar provision in relation to companies under the *Corporations Act 2001* of the Commonwealth.

Item [6] of the proposed amendments amends section 50 of the Act to declare the voluntary winding up of an incorporated association to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.5 and 5.6 of the *Corporations Act 2001* of the Commonwealth. This will ensure that those provisions of the *Corporations Act 2001* of the Commonwealth will apply (with certain modifications) to any such winding up as if they were State laws. Currently, section 50 provides that the provisions of the *Corporations Law* relating to the voluntary winding up of companies apply, so far as they are applicable and with such modifications as may be prescribed, to and in relation to the voluntary winding up of an incorporated association.

Item [7] of the proposed amendments amends section 51 of the Act to replace a reference to registration of a company under the *Corporations Law* with a reference to registration of a company under the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 51 of the Act to declare the winding up of an incorporated association (other than by a voluntary winding up) by the Supreme Court to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.7 of the *Corporations Act 2001* of the Commonwealth. This will ensure that those provisions of the *Corporations Act 2001* of the Commonwealth will apply (with certain modifications) to any such winding up as if they were State laws. Currently, section 51 provides that the provisions of the *Corporations Law* relating to the winding up of bodies other than companies apply, so far as they are applicable and with such modifications as may be prescribed, to and in relation to the winding up by the Supreme Court of an incorporated association.

Item [9] of the proposed amendments replaces section 52 of the Act to specify certain modifications to the text of the *Corporations Act 2001* of the Commonwealth as it is applied as a State law by sections 50 and 51. The modifications are based on those currently contained in section 52 in relation to the *Corporations Law*.

Items [10] and [11] of the proposed amendments amend sections 56 and 57 of the Act to replace references to registration as a company under the *Corporations Law* with references to registration as a company under the *Corporations Act 2001* of the Commonwealth.

Item [12] of the proposed amendments amends section 57 of the Act to ensure that its savings and transitional provisions have effect subject to any provisions to the contrary in the *Corporations Act 2001* of the Commonwealth.

4.4 Charitable Fundraising Act 1991 No 69

[1] Section 24 Audit

Omit "*Corporations Law*" from section 24 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 24 (5) and (6)

Omit "*Corporations Law*" wherever occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Section 24 (7)

Insert after section 24 (6):

- (7) Nothing in subsection (6) is intended to provide for the inclusion of any matter in an auditor's report for the purposes of the *Corporations Act 2001* of the Commonwealth or any other law of the Commonwealth if the inclusion of that matter would be contrary to the provisions of that Act or law.

Explanatory note

Item [1] of the proposed amendments amends section 24 of the *Charitable Fundraising Act 1991* to replace a reference to a person qualified to audit accounts for the purposes of the *Corporations Law* with a reference to a person so qualified for the purposes of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 24 of the Act to replace general references to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 24 of the Act to make it clear that nothing in section 24 (6) operates to permit the inclusion of matter in an auditor's report for the purposes of a Commonwealth law if the Commonwealth law does not permit its inclusion. At present section 24 (6) provides that the whole or any part of a report prepared for the purposes of section 24 in respect of a corporation may be included in an auditor's report prepared for the purposes of the *Corporations Law* or any other law in respect of the corporation.

4.5 Community Justice Centres Act 1983 No 127

Section 25 Representation by agent

Omit "*Corporations Law*" from section 25 (2) (a).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 25 of the *Community Justice Centres Act 1983* replaces a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth. At present, section 25 provides that an officer of a corporation within the meaning of the *Corporations Law* is not precluded by that section from representing the corporation at a mediation session.

4.6 Community Land Management Act 1989 No 202

[1] Section 5 Community association

Omit section 5 (4). Insert instead:

- (4) A community association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to a community

association. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

[2] Section 6 Precinct association

Omit section 6 (4). Insert instead:

- (4) A precinct association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to a precinct association. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

[3] Section 7 Neighbourhood association

Omit section 7 (4). Insert instead:

- (4) A neighbourhood association is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to a neighbourhood association. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

Explanatory note

At present, the *Community Land Management Act 1989* provides that community associations, precinct associations and neighbourhood associations under that Act are not corporations within the meaning of the *Corporations Law*. The proposed amendments to the Act ensure that such associations will be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of that Act and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

4.7 Consumer Claims Act 1998 No 162

[1] Section 3 Definitions

Omit “a foreign company, a recognised company or” from section 3 (3).

[2] Section 3 (3)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [2] of the proposed amendments amends section 3 (3) of the *Consumer Claims Act 1998* to replace a reference to a small proprietary company within the meaning of the *Corporations Law* with a reference to the same type of company within the meaning of the *Corporations Act 2001* of the Commonwealth. Item [1] of the proposed amendments makes an amendment in the nature of statute law revision.

4.8 Consumer Credit Administration Act 1995 No 69

[1] Section 3 Definitions

Omit “*Corporations Law*” from the definition of **director** in section 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 3 (1), definition of “officer”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **director** of a corporation in section 3 of the *Consumer Credit Administration Act 1995* so that it has the same meaning as that term has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

Item [2] of the proposed amendments amends the definition of **officer** of a corporation in section 3 of the Act so that it has the same meaning as that term has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

4.9 Contaminated Land Management Act 1997 No 140

[1] Section 63 Director of body corporate that is wound up

Omit “*Corporations Law*” from section 63 (4) (a) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 64 Director of body corporate that disposed of land

Omit “*Corporations Law*” from section 64 (4) (b).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 65 Holding company of body corporate that is wound up

Omit “*Corporations Law*” from section 65 (4) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 65 (5) (a)

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Items [1] and [4] of the proposed amendments amend sections 63 and 65 of the *Contaminated Land Management Act 1997* to replace certain references to the external administration of a body corporate under the *Corporations Law* with references to the corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 64 of the Act to replace a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 65 of the Act to replace a reference to a contravention of section 588V of the *Corporations Law* with a reference to a contravention of the corresponding provision of the *Corporations Act 2001* of the Commonwealth.

4.10 Conveyancers Licensing Act 1995 No 57

[1] Section 41 Associate

Omit “*Corporations Law*” from section 41 (1) (e).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 86 Auditors

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 41 of the *Conveyancers Licensing Act 1995* to replace a reference to a subsidiary within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 86 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.11 Co-operative Housing and Starr-Bowkett Societies Act 1998 No 11

[1] Section 3 Definitions

Omit “*Corporations Law*” from the definition of **accounting standard** in section 3 (1).

Insert instead “Corporations Act”.

[2] Section 3 (1), definition of “affairs”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[3] Section 3 (1), definition of “company”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[4] Section 3 (1)

Insert in alphabetical order:

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

[5] Section 3 (1), definition of “national business names register”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[6] Section 3 (1), definition of “registered company auditor”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[7] Section 3 (1), definition of “securities”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[8] Section 3 (4)

Insert after section 3 (3):

- (4) A reference in this Act to a provision of the Corporations Act that is applied by or under this Act (or a part of this Act) is a reference to that provision to the extent that it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* as a law of this State.

[9] Section 11 Interpretation—meaning of “subsidiary”

Omit “*Corporations Law*” from section 11 (6).

Insert instead “Corporations Act”.

[10] Part 1, Division 4

Omit the Division. Insert instead:

Division 4 Application of Corporations Act to co-operative

housing bodies

15 Definition

In this Division:

excluded Corporations legislation provision means any provision of the Corporations legislation that does not apply to a co-operative housing body or its securities as a law of the Commonwealth.

16 Excluded matter

(1) The following matters are declared to be excluded matters for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified by this section:

- (a) co-operative housing bodies,
- (b) securities of such bodies.

Note—

This section ensures that neither the Corporations Act nor Part 3 of the [Australian Securities and Investments Commission Act 2001](#) of the Commonwealth will apply to co-operative housing bodies, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

(2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to co-operative housing bodies and the securities of such bodies to the extent they would otherwise be applicable to such bodies and securities:

- (a) provisions applying to, or about, the following:
 - (i) bodies,
 - (ii) bodies corporate,
 - (iii) disclosing entities,
 - (iv) eligible bodies,
 - (v) persons,
 - (vi) securities, including securities of a particular type,
 - (vii) securities, including securities of a particular type (for example, shares or debentures) of a body corporate,

- (b) provisions applying to or about bodies or bodies corporate included in the official list of a securities exchange (including provisions of Chapter 6) applying to or about a company as defined for that Chapter),
 - (c) Chapter 2L (Debentures),
 - (d) Chapter 6D (Fundraising),
 - (e) Part 7.11 (Conduct in relation to securities),
 - (f) provisions:
 - (i) about the interpretation of a provision mentioned in paragraphs (a)–(e) (**non-excluded Corporations Act provision**), including a provision defining a word used in the non-excluded Corporations Act provision, or
 - (ii) vesting power in the Australian Securities and Investments Commission, but only to the extent that they vest power for the purposes of a non-excluded Corporations Act provision, or
 - (iii) empowering a court to make an order (including an order curing a procedural irregularity), but only to the extent that they empower the court to make an order for the purposes of a non-excluded Corporations Act provision, or
 - (iv) otherwise about the administration of a non-excluded Corporations Act provision.
- (3) The expressions used in subsection (2) (a), (b) and (f) have the meanings given by the Corporations Act.

17 Applying the Corporations legislation to co-operative housing bodies

- (1) The regulations may declare any matter relating to a co-operative housing body to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration).

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the

declaration will affect its continued operation as a law of the Commonwealth.

- (2) Without limiting subsection (1), any such regulations may:
- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
 - (b) provide for ASIC to exercise a function under any excluded Corporations legislation provision that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and
 - (d) identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
 - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any excluded Corporations legislation provision to which the declaration relates.
- (3) However, a regulation may not declare a matter to be an applied Corporations legislation matter in relation to an excluded Corporations legislation provision to the extent that the application of the provision would be inconsistent with a provision of this Act.
- (4) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

[11] Section 81 Requirements for and restrictions on names

Omit "*Corporations Law*" from section 81 (5) (c).

Insert instead "Corporations Act".

[12] Section 88

Omit the section. Insert instead:

88 Registration of charges

Subject to this Division, a co-operative housing body is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Chapter 2K of the Corporations Act, subject to the following modifications to the provisions of that Chapter:

- (a) a reference to a company is to be read as a reference to a co-operative housing body,
- (b) a reference to ASIC is to be read as a reference to the Registrar,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 17 (1).

[13] Section 97 Qualifications of directors

Omit “*Corporations Law*” from section 97 (e).

Insert instead “Corporations Act”.

[14] Section 118 Register of directors

Omit section 118 (2). Insert instead:

(2) For the purposes of this section:

- (a) a person has a relevant interest in securities if the person has a relevant interest in securities for the purposes of the Corporations Act, and
- (b) bodies are related to each other if they are related to each other for the purposes of that Act.

[15] Section 173

Omit the section. Insert instead:

173 Schemes of arrangement and reconstruction

A society is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.1 of the Corporations Act, subject to the following modifications to the provisions of Part 5.1:

- (a) a reference to a company is to be read as a reference to a society,
- (b) a reference to ASIC is to be read as a reference to the Registrar,
- (c) a reference to a shareholder is to be read as a reference to a member,
- (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 17 (1).

[16] Section 174

Omit the section. Insert instead:

174 Receivers and managers

A society is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 5.2 of the Corporations Act, subject to the following modifications to the provisions of Part 5.2:

- (a) a reference to ASIC is to be read as a reference to the Registrar,
- (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 17 (1).

[17] Section 175 Winding-up

Omit "*Corporations Law*" from section 175 (2).

Insert instead "Corporations Act".

[18] Section 176 Winding-up on certificate of Registrar

Omit "*Corporations Law*" from section 176 (4).

Insert instead "Corporations Act".

[19] Section 177

Omit the section. Insert instead:

177 Application of Corporations Act to winding-up of societies

- (1) Subject to this Division, a society matter is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the Commonwealth winding-up and deregistration provisions, subject to the following modifications to those provisions:
- (a) a reference to a special resolution is to be read as a reference to a special resolution under this Act,
 - (b) a reference to ASIC is to be read as a reference to the Registrar,
 - (c) a reference to a voluntary winding-up includes a reference to a winding-up of a society on a certificate of the Registrar,
 - (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See note to section 17 (1).

- (2) In this section:

Commonwealth winding-up and deregistration provisions means:

- (a) the provisions of Parts 5.4, 5.4A, 5.4B, 5.5, 5.6, 5.7B (other than section 588G) and 5.9 of the Corporations Act, or
- (b) the provisions of Part 5A.1 of the Corporations Act.

society matter means:

- (a) the winding-up or dissolution of a society, or
- (b) a defunct or dissolved society.

[20] Section 178 Voluntary winding-up

Omit “*Corporations Law*” from section 178 (4).

Insert instead “Corporations Act”.

[21] Section 179 Vacancy in office of liquidator on voluntary winding-up

Omit “in the way provided by Part 5.5 of the *Corporations Law*” from section 179 (c).

Insert instead “in the way provided by Part 5.5 of the Corporations Act (as applied to a voluntary winding-up by reason of section 177)”.

[22] Section 180 Remuneration of liquidator on voluntary winding-up

Omit “*Corporations Law*”.

Insert instead “Corporations Act (as applied by reason of section 177)”.

[23] Section 207 Offences by officers

Omit section 207 (2).

Explanatory note

Item [1] of the proposed amendments amends the definition of **accounting standard** in section 3 of the *Co-operative Housing and Starr-Bowkett Societies Act 1998* so that the term has the same meaning as it has in section 9 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in section 9 of the *Corporations Law* (as the definition currently provides).

Item [2] of the proposed amendments amends the definition of **affairs** of a body corporate in section 3 of the Act so that the term has the same meaning as it has in section 53 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in section 53 of the *Corporations Law* (as the definition currently provides).

Item [3] of the proposed amendments replaces the definition of **company** in section 3 of the Act so that it refers to a company incorporated, or taken to be incorporated, under the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

Item [4] of the proposed amendments inserts a definition of **Corporations Act** in section 3 of the Act. It defines the term to mean the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends the definition of **national business names register** in section 3 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law* (as the definition currently provides).

Item [6] of the proposed amendments amends the definition of **registered company auditor** in section 3 of the Act so that it means a person registered, or taken to be registered, as an auditor under Part 9.2 of the *Corporations Act 2001* of the Commonwealth rather than under Part 9.2 of the *Corporations Law* (as the definition currently provides).

Item [7] of the proposed amendments amends the definition of **securities** in section 3 of the Act so that the term has the same meaning as it has in section 92 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in section 92 of the *Corporations Law* (as the definition currently provides).

Item [8] of the proposed amendments inserts a subsection in section 3 of the Act that provides that a reference in the Act to a provision of the Corporations Act applying under the Act (or a part of the Act) is a reference to that provision to the extent that it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* as a law of this State. Part 3 of that Act operates to apply provisions of the Corporations legislation that are the subject of a declaration as laws of the State in relation to the declared matter.

Item [9] of the proposed amendments amends section 11 of the Act to replace a reference to a subsidiary of a body corporate within the meaning of the *Corporations Law* with a reference to a subsidiary of a body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments re-enacts Division 4 of Part 1. That Division currently provides that the *Corporations Law* does not apply of its own force in relation to co-operative housing bodies except in relation to certain limited matters. It also provides for the application of provisions of the *Corporations Law* to co-operatives by the regulations. The re-enacted Division will ensure that the *Corporations Act 2001* of the Commonwealth will not apply to such bodies as a law of the Commonwealth except to a limited extent. It does so by declaring a co-operative to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth except to a limited extent. It will also enable regulations to be made that declare a matter relating to co-operatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* so that certain provisions of the Corporations legislation can be applied to such matters as if they were laws of this State.

Item [11] of the proposed amendments amends section 81 of the Act to replace a reference to a name that is reserved or registered for a body corporate under the *Corporations Law* with a reference to a name that is reserved or registered for a body corporate under the *Corporations Act 2001* of the Commonwealth.

Item [12] of the proposed amendments re-enacts section 88 of the Act to apply the provisions of Chapter 2K of the *Corporations Act 2001* of the Commonwealth to co-operative housing bodies as laws of the State to the extent to which that Chapter is not otherwise applicable to them as a law of the Commonwealth. At present, the corresponding provisions of the *Corporations Law* are applied to such bodies.

Item [13] of the proposed amendments amends section 97 of the Act to replace a reference to a person prohibited from being a director of a body corporate by the *Corporations Law* for a reason other than the person's age with a reference to a person prohibited from being a director of a body corporate by the *Corporations Act 2001* of the Commonwealth for a reason other than the person's age.

Item [14] of the proposed amendments amends section 118 of the Act to replace references to a relevant interest in securities and related bodies within the meaning of the *Corporations Law* with references to the corresponding concepts in the *Corporations Act 2001* of the Commonwealth.

Item [15] of the proposed amendments re-enacts section 173 of the Act to apply the provisions of Part 5.1 of the *Corporations Act 2001* of the Commonwealth to societies as laws of the State to the extent to which that Part is not otherwise applicable to them as a law of the Commonwealth. At present, the corresponding provisions of the *Corporations Law* are applied to such societies.

Item [16] of the proposed amendments re-enacts section 174 of the Act to apply the provisions of Part 5.2 of the *Corporations Act 2001* of the Commonwealth to societies as laws of the State to the extent to which that Part is not otherwise applicable to them as a law of the Commonwealth. At present, the corresponding provisions of the *Corporations Law* are applied to such societies.

Item [17] of the proposed amendments amends section 175 of the Act to replace a reference to winding up under the *Corporations Law* with a reference to winding up under the *Corporations Act 2001* of the Commonwealth.

Items [18] and [20] of the proposed amendments amend sections 176 and 178 of the Act to replace references to a registered liquidator under the *Corporations Law* with references to a registered liquidator under the *Corporations Act 2001* of the Commonwealth.

Item [19] of the proposed amendments re-enacts section 177 of the Act to apply to societies the provisions of the *Corporations Act 2001* of the Commonwealth relating to winding-up and deregistration as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to such bodies.

Item [21] of the proposed amendments amends section 179 of the Act to replace a reference to the filling of a vacancy in the office of liquidator in the manner provided by the *Corporations Law* with a reference to filling such a vacancy in the manner provided by the *Corporations Act 2001* of the Commonwealth.

Item [22] of the proposed amendments amends section 180 of the Act to replace a reference to the remuneration of a liquidator under the *Corporations Law* with a reference to the remuneration of a liquidator under the *Corporations Act 2001* of the Commonwealth.

Item [23] of the proposed amendments omits a redundant reference to a provision of the *Corporations Law*.

4.12 Co-operatives Act 1992 No 18

[1] Section 5 Definitions

Omit the definitions of **accounting records** and **accounts** from section 5 (1).

Insert in alphabetical order:

financial records includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers, and
- (b) documents of prime entry, and
- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are made up, and
 - (ii) adjustments to be made in preparing financial statements.

financial statements means:

- (a) a profit and loss statement, and
- (b) a balance sheet, and
- (c) a statement of cash flows, and
- (d) if required by the accounting standards under the Corporations Act applying under this Act—a consolidated profit and loss statement, balance sheet and statement of cash flows.

[2] Section 5 (1)

Insert in alphabetical order:

Corporations Act means the *Corporations Act 2001* of the Commonwealth.

[3] Section 5 (1), definition of “deed of arrangement”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[4] Section 5 (1), definition of “foreign co-operative”

Omit “*Corporations Law*” from paragraph (a).

Insert instead “Corporations Act”.

[5] Section 5 (1), definition of “officer”

Omit “*Corporations Law*” from paragraph (f).

Insert instead “Corporations Act”.

[6] Section 5 (1), definition of “records”

Omit “accounts, accounting records”.

Insert instead “financial records, financial statements”.

[7] Section 5 (1), definition of “subsidiary”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[8] Section 5 (2)

Omit the subsection. Insert instead:

- (2) Words and expressions that have a defined meaning in the Corporations Act have, when used in this Act in relation to a body corporate that is not a co-operative, the same meaning as in the Corporations Act.

[9] Section 5 (5)

Insert after section 5 (4):

- (5) A reference in this Act to a provision of the Corporations Act that is applied by or under this Act (or a part of this Act) is a reference to that provision to the extent that it is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* as a law of this State.

[10] Part 1, Division 4

Omit the Division. Insert instead:

Division 4 Application of Corporations Act to co-operatives

8 Definitions (cf Vic Act s 8)

In this Division:

excluded Corporations legislation provision means any provision of the Corporations legislation that does not apply to co-operatives as a law of the Commonwealth.

9 Excluded matter (cf Vic Act s 9)

- (1) A co-operative is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to the whole of the Corporations legislation other than to the extent specified in this section.

Note—

This section ensures that neither the Corporations Act nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply to a co-operative, other than to the extent specified in this section. Section 5F of the Corporations Act provides that if a State law declares a matter to be an excluded matter in relation to the whole of the Corporations legislation other than to a specified extent, then that legislation will not apply, except to the specified extent, in

relation to that matter in the State concerned. However, other provisions of this Act apply certain provisions of the Corporations legislation to co-operatives as laws of this State.

- (2) Subsection (1) does not exclude the application of the following provisions of the Corporations legislation to co-operatives to the extent that those provisions would otherwise be applicable to them:
- (a) provisions that relate to any matter that the regulations provide is not to be excluded from the operation of the Corporations Act,
 - (b) provisions that relate to the role of a co-operative in the formation of a company,
 - (c) provisions that relate to substantial holdings of shares, by or involving a co-operative, in a company,
 - (d) provisions that confer or impose functions on a co-operative as a member, or former member, of a corporation,
 - (e) provisions that relate to dealings by a co-operative in securities of a body corporate, other than securities of the co-operative itself,
 - (f) provisions that confer or impose functions on a co-operative in its dealings with a corporation, not being dealings in securities of the co-operative,
 - (g) provisions that relate to securities of a co-operative, other than shares in, CCUs issued by, debentures of or deposits with a co-operative,
 - (h) provisions relating to the futures industry,
 - (i) provisions relating to participants in the securities industry,
 - (j) provisions relating to the conduct of a securities business,
 - (k) provisions relating to dealers' financial statements and audit,
 - (l) provisions relating to money and scrip of dealers' clients,
 - (m) provisions relating to registers of interests in securities,
 - (n) provisions relating to powers of a Court to cure procedural irregularities and to make other orders.
- (3) It is declared that subsection (1) does not operate to exclude the operation of the following provisions of the Corporations Act except in relation to shares in, CCUs issued by, debentures of or deposits with a co-operative:
- (a) Part 1.2A (Disclosing entities),
 - (b) Chapter 2L (Debentures),

- (c) Chapter 6D (Fundraising),
 - (d) Part 7.11 (Conduct in relation to securities).
- (4) Subsection (1) does not apply if the co-operative is directed by an order of the Court under section 98 (j) to become registered as a company under the Corporations Act to the extent necessary for a co-operative to be registered as a company under Chapter 5B of that Act.

10 Applying the Corporations legislation to co-operatives (cf Vic Act s 10)

- (1) The regulations may declare any matter relating to co-operatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to any excluded Corporations legislation provision or provisions (with such modifications as may be specified in the declaration).

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) Without limiting subsection (1), any such regulations may:
- (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any excluded Corporations legislation provision that is the subject of the declaration, and
 - (b) provide for ASIC to exercise a function under any excluded Corporations legislation provision that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) specify that a reference to ASIC in any excluded Corporations legislation provision that is the subject of the declaration is to be read as a reference to another person, and

- (d) identify any excluded Corporations legislation provision to which the declaration relates by reference to that provision as in force at a particular time, and
 - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any excluded Corporations legislation provision to which the declaration relates.
- (3) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

11 Modifications to applied provisions (cf Vic Act s 11)

- (1) If a provision of this Act declares a matter to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* (the **declaratory provision**) in relation to any provisions of the Corporations legislation (the **applied provisions**), the declaratory provision is taken to specify the following modifications:
- (a) a reference in the applied provisions to the constitution of a company is to be read as a reference to rules,
 - (b) a cross-reference in the applied provisions to another provision of the Corporations Act is, if that cross-reference is not appropriate (because for example the provision cross-referred to is not among the applied provisions), to be read as a cross-reference to the equivalent provision of this Act,
 - (c) a reference in the applied provisions to the Commonwealth is to be read as a reference to New South Wales,
 - (d) any of the applied provisions that are not relevant to co-operatives or which are incapable of application to co-operatives are to be ignored,
 - (e) modifications directed by the Registrar under subsection (2).
- (2) The Registrar may, by order published in the Gazette, give directions as to the modifications that are necessary or desirable for the effectual operation of applied provisions.

[11] Section 22 Existing body corporate can be registered

Omit "*Corporations Law*" from section 22 (a).

Insert instead "Corporations Act".

[12] Section 68 Representatives of bodies corporate

Omit "*Corporations Law*" from section 68 (4).

Insert instead “Corporations Act”.

[13] Section 98 Orders that Court may make

Omit “*Corporations Law*” from section 98 (j).

Insert instead “Corporations Act”.

[14] Section 131 Cancellation of membership prohibited in certain circumstances

Omit “*Corporations Law*” from section 131 (a).

Insert instead “Corporations Act”.

[15] Section 131 (e)

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[16] Section 135 Interest on deposits, debentures and CCUs

Omit section 135 (4). Insert instead:

(4) The following provisions of the Corporations Act (as applied by section 266 of this Act) do not apply to an allotment or issue of debentures under this section:

- (a) Chapter 2L (Debentures),
- (b) Chapter 6D (Fundraising).

[17] Section 208 Disqualified persons

Omit section 208 (1) (b) (iii). Insert instead:

(iii) of any offence under section 184, 344, 590, 592, 670A or 728 of the Corporations Act, or

[18] Section 208 (2) (b)-(d)

Omit the paragraphs. Insert instead:

- (b) is prohibited from being a director of a company under Part 2D.6 (Disqualification from managing corporations) of the Corporations Act, or
- (c) is an insolvent under administration (as defined in the Corporations Act), or
- (d) has been convicted of a contravention of section 181, 182 or 183 of the Corporations Act (as applied under this Act).

[19] Section 208 (8)

Omit the subsection. Insert instead:

- (8) Subject to this section, a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 2D.6 of the Corporations Act, subject to the following modifications:
- (a) a reference in those provisions to corporations is to be read as a reference to co-operatives,
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

[20] Section 220 Meaning of “officer”

Omit “*Corporations Law*” from paragraph (f) of the definition of **officer**.

Insert instead “Corporations Act”.

[21] Section 229

Omit the section. Insert instead:

229 Application of Corporations Act provisions concerning officers of co-operatives (cf Vic Act s 228)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to sections 589–598 and 1307 of the Corporations Act, subject to the following modifications:

- (a) a reference in those sections to a company is to be read as a reference to a co-operative,
- (b) a reference in those sections to ASIC is to be read as a reference to the Registrar,
- (c) section 592 (1) (a) is to be read as if the reference to 23 June 1993 were omitted,
- (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

[22] Part 9, Division 5, heading

Omit the heading. Insert instead:

Division 5 **Financial statements, reports and audits**

[23] Section 243 Requirements for financial records, statements and reports

Omit section 243 (1). Insert instead:

(1) A co-operative must:

- (a) keep financial records and prepare financial statements and financial reports as required by the regulations, and
- (b) ensure that those financial statements and financial reports are audited in accordance with the regulations.

Maximum penalty: 20 penalty units.

[24] Section 243 (2) (a) and (b)

Omit the paragraphs. Insert instead:

- (a) any matter for which provision is made by or under Part 2F.3, sections 249K and 249V and Chapter 2M of the Corporations Act (including the conferring of jurisdiction on a court of this State),
- (b) requiring financial statements to be prepared in accordance with any accounting standards in force for the purposes of Chapter 2M of the Corporations Act (with or without modifications specified in the regulations),

[25] Section 243 (2) (c)

Omit “accounts or consolidated accounts”.

Insert instead “financial statements and financial reports”.

[26] Section 243 (2) (e)

Omit “accounts”. Insert instead “financial statements and financial reports”.

[27] Section 243 (2) (f)

Omit “accounts and consolidated accounts” wherever occurring.

Insert instead “financial statements and financial reports”.

[28] Section 243 (2) (g)

Omit “accounts and reports in relation to accounts”.

Insert instead “financial statements and financial reports”.

[29] Section 243 (3)

Omit the subsection.

[30] Section 245 Meaning of “entity” and “control”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[31] Section 247 Protection of auditors etc

Omit “accounts, consolidated accounts” from section 247 (1) (b).

Insert instead “financial statements, financial reports”.

[32] Section 252 Annual report

Omit “accounts” wherever occurring. Insert instead “financial statements”.

[33] Section 265 Subordinated debt

Omit “*Corporations Law*” from section 265 (3).

Insert instead “Corporations Act”.

[34] Section 266

Omit the section. Insert instead:

266 Application of Corporations Act to issues of debentures (cf Vic Act s 263)

(1) Subject to subsection (2), the debentures of a co-operative are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 1.2A (Disclosing entities), Chapter 2L (Debentures), Chapter 6D (Fundraising) and Part 7.11 (Conduct in relation to securities) of the Corporations Act, subject to the following modifications:

(a) the provisions apply as if a co-operative were a company,

(b) a reference in those provisions to a corporation includes a reference to a co-operative,

(c) a reference in those provisions to ASIC is a reference to the Registrar.

Note—

See the note to section 10 (1).

(2) The provisions of the Corporations Act made applicable to the debentures of a co-operative by this section do not apply to the following:

(a) a loan to which section 268 of this Act applies,

(b) an issue of debentures of a co-operative that is made:

(i) solely to members, or

(ii) solely to members and employees of the co-operative, or

(iii) to a person who on becoming an inactive member of the co-operative has had his or her share capital converted to debt.

(3) Expressions used in this section that are not defined in this Act have the same meaning as in the Corporations Act.

(4) The Registrar may exempt a co-operative from any of the requirements of the Corporations Act applied by this section.

[35] Section 267

Omit the section. Insert instead:

267 Application of Corporations Act—re-issue of redeemed debentures

Debentures issued by a co-operative to any of its members are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 563AAA of the Corporations Act as if a co-operative were a company.

[36] Section 285 Acquisition and disposal of assets

Omit “*Corporations Law*” from section 285 (1) (b).

Insert instead “Corporations Act”.

[37] Section 295 Unlisted companies to provide list of shareholders etc

Omit section 295 (1). Insert instead:

(1) This section applies to a company (within the meaning of the Corporations Act) that is not a listed corporation (within the meaning of that Act).

[38] Section 295 (2) (b) and (c)

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[39] Section 299 Share offers to which Division applies

Omit “*Corporations Law*” from section 299 (1) (b).

Insert instead “Corporations Act”.

[40] Section 305 Announcements of proposed takeovers concerning proposed company

Omit “*Corporations Law*” from section 305 (1).

Insert instead “Corporations Act”.

[41] Section 305 (2) (b)

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[42] Section 305 (8)

Insert “as in force on 12 March 2000” after “*Corporations Law*”.

[43] Section 306 Additional disclosure requirements for offers involving conversion to company

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[44] Section 316 Application for transfer

Omit “*Corporations Law*” from section 316 (1) (a).

Insert instead “Corporations Act”.

[45] Section 322 Stamp duty

Omit “*Corporations Law*” from section 322 (1).

Insert instead “Corporations Act”.

[46] Section 323 Methods of winding up

Omit “*Corporations Law*” from section 323 (2).

Insert instead “Corporations Act”.

[47] Section 324 Winding up on Registrar’s certificate

Omit “*Corporations Law*” from section 324 (3).

Insert instead “Corporations Act”.

[48] Section 325

Omit the section. Insert instead:

325 Application of Corporations Act to winding up (cf Vic Act s 316)

The winding up or dissolution of a co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Parts 5.4–5.7 and Part 5A.1 of the Corporations Act, subject to the following modifications:

- (a) a reference in those provisions to a special resolution or an extraordinary resolution is to be read as a reference to a special resolution within the meaning of this Act,
- (b) a reference in those provisions to ASIC is to be read as a reference to the Registrar,
- (c) section 461 (1) (h) is to be read as if “ASIC has stated in a report prepared under Division 1 of Part 3 of the ASIC Act that, in its opinion:” were omitted and “the Registrar has, as a result of an inquiry conducted under Division 2 or Division 4 of Part 14 of the *Co-operatives Act 1992*, stated that:” were inserted instead,
- (d) section 464 (1) is to be read as if “Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:” were omitted and “Where the Registrar is holding or has held an inquiry under Division 2 or Division 4 of Part 14 of the *Co-operatives Act 1992* in relation to:” were inserted instead,
- (e) section 513B (Voluntary winding up) is to be read as if it were amended by inserting after paragraph (d):
 - “(da) if the winding up is on the certificate of the Registrar—on the date that the certificate is given, or”,
- (f) section 516 is to be read as if “together with any charges payable by him or her to the co-operative in accordance with the rules” were inserted after “past member”,
- (g) section 542 (3) is to be read as if the following paragraph were inserted after paragraph (c):

“, and

- (d) in the case of a winding up on a certificate of the Registrar under section 323 of the *Co-operatives Act 1992*—with the consent of the Registrar.”
- (h) a reference in those provisions to a registered liquidator includes a reference to a person approved by the Registrar as a liquidator of a co-operative,
- (i) a reference in those provisions to section 233 (Orders the Court can make) of the Corporations Act is to be read as a reference to Division 5 (Oppressive conduct of affairs) of Part 4 of this Act,
- (j) for the purposes of the application of those provisions to a winding up on the certificate of the Registrar, the winding up is to be considered to be a voluntary winding up (but section 490 of the Corporations Act does not apply),
- (k) those provisions are to be read subject to sections 76 (Liability of members to co-operative) and 331 (Liability of member to contribute in a winding up where shares forfeited etc) of this Act for the purposes of determining the liability of members and past members to contribute on a winding up of a co-operative,
- (l) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

[49] Section 329 Liquidator—vacancy may be filled by Registrar

Omit “*Corporations Law*”.

Insert instead “Corporations Act (as applied by this Division)”.

[50] Part 12, Division 5

Omit the Division. Insert instead:

Division 5 Administration of co-operative—application of Corporations Act

332 Adoption of Part 5.3A of Corporations Act (cf Vic Act s 323)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.3A and Division 3 of Part 5.9 of the Corporations Act, subject to the following modifications:

- (a) those provisions are to be read as if a co-operative were a company,

- (b) those provisions are to be read as including the provisions of section 332A of this Act,
- (c) a reference in those provisions to sections 128 and 129 of the Corporations Act is to be read as a reference to sections 36–38 and 41 of this Act,
- (d) a reference in those provisions to an administrator appointed under a provision of Part 5.3A is to be read as including a reference to an administrator appointed by the Registrar under the provision included by paragraph (b),
- (e) a reference in those provisions to ASIC is to be read as a reference to the Registrar,
- (f) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

332A Appointment of administrator by Registrar

- (1) The Registrar may, after an inquiry into the affairs of a co-operative under Division 2 or 4 of Part 14, appoint a person as an administrator for the purposes of the provisions of Part 5.3A of the Corporations Act (as applying under section 332) if the Registrar is of the opinion that the co-operative is insolvent or likely to become insolvent at some future time.
- (2) The person appointed by the Registrar need not be a registered liquidator within the meaning of the *Corporations Act 2001* of the Commonwealth.

[51] Section 343A Adoption of Corporations Law concerning reciprocity with other jurisdictions

Omit the section.

[52] Section 343B

Omit the section. Insert instead:

343B Application of Corporations Act concerning insolvent co-operatives (cf Vic Act s 338)

A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 5.7B of the Corporations Act, subject to the following modifications:

- (a) those provisions are to be read as if a co-operative were a company,
- (b) a reference in those provisions to any provision of sections 286–290 of the Corporations Act is to be read as a reference to the equivalent provisions of the regulations under section 243 of this Act,
- (c) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

[53] Section 349 Application of provisions of Corporations Act to person appointed

Omit section 349 (2). Insert instead:

- (2) A person appointed to administer a compromise or arrangement is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 536 of the Corporations Act as if:
 - (a) the appointment were an appointment as a liquidator of the co-operative, and
 - (b) a reference in that section to a liquidator were a reference to that person, and
 - (c) a reference in that section to ASIC were a reference to the Registrar.

Note—

See the note to section 10 (1).

[54] Section 357 Provisions for facilitating reconstructions and mergers

Omit “*Corporations Law*” from section 357 (2) (b).

Insert instead “Corporations Act”.

[55] Section 364 Disposal of consideration for shares compulsorily acquired

Omit section 364 (3). Insert instead:

- (3) Anything sum paid or consideration transferred to the Minister under subsection (2) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Part 9.7 of the Corporations Act, subject to the following modifications:
 - (a) a reference in those provisions to unclaimed property includes any such sum or consideration,

- (b) a reference in those provisions to ASIC is to be read as a reference to the Minister,
- (c) a reference in those provisions to the Commonwealth is to be read as a reference to New South Wales,
- (d) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

See the note to section 10 (1).

[56] Section 368

Omit the section. Insert instead:

368 Jurisdiction to be exercised in harmony with Corporations Act jurisdiction

The jurisdiction of the Court under this Part is intended to complement the Court's jurisdiction under the Corporations Act (as applied under this Act) and should be exercised in harmony with that jurisdiction.

[57] Section 383 Privilege

Omit "*Corporations Law*" from section 383 (3).

Insert instead "Corporations Act".

[58] Section 389 Privilege

Omit "*Corporations Law*" from section 389 (2).

Insert instead "Corporations Act".

[59] Section 397 Falsification of records

Omit "accounts or accounting records" from section 397 (a).

Insert instead "financial records or financial statements".

[60] Schedule 1 Matters for which rules must make provision

Omit "accounts" from item 18 of clause 1.

Insert "financial statements".

[61] Schedule 2 Relevant interests, associates, related bodies

Omit "*Corporations Law*" from clause 16.

Insert instead “Corporations Act”.

[62] Schedule 3 Registration etc of charges

Omit “*Corporations Law*” from the definition of **marketable securities** in clause 1.

Insert instead “Corporations Act”.

[63] Schedule 3, clause 26

Omit “*Corporations Law* (as adopted and applying under this Act)” from paragraph (a) of the definition of **relevant day**.

Insert instead “Corporations Act (as applying under this Act)”.

[64] Schedule 3, clause 27 (1) (c)

Omit “*Corporations Law* as adopted and applying under this Act”.

Insert instead “Corporations Act (as applying under this Act)”.

[65] Schedule 3, clause 28 (1) (b)

Omit “*Corporations Law* (as adopted and applying under this Act)”.

Insert instead “Corporations Act (as applying under this Act)”.

[66] Schedule 3, clause 31 (1) (c)

Omit “*Corporations Law* (as adopted and applying under this Act)”.

Insert instead “Corporations Act (as applying under this Act)”.

[67] Schedule 4 Receivers, and other controllers, of property of co-operatives

Omit “*Corporations Law*” from the definition of **administrator** in clause 1.

Insert instead “Corporations Act”.

[68] Schedule 4, clause 3 (1) (d)

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[69] Schedule 4, clause 6 (1) (d)

Omit “accounting records”. Insert instead “financial records”.

[70] Schedule 4, clause 17 Lodging controller’s financial statements

Omit “An account”, “an account”, “the account”, “last account”, and “accounts” wherever occurring.

Insert instead “A financial statement”, “a financial statement”, “the financial statement”, “last financial statement” and “financial statements” respectively.

[71] Schedule 4, clause 18 (2) (a)

Omit “section 562 of the *Corporations Law*”.

Insert instead “section 556 of the Corporations Act”.

[72] Schedule 4, clause 18 (2) (c) and (3)

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[73] Schedule 4, clause 18 (7)

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[74] Schedule 4, clause 19

Omit “account” and “accounts”.

Insert instead “financial statement” and “financial statements” respectively.

Explanatory note

Item [1] of the proposed amendments omits the definitions of **accounting records** and **accounts** from section 5 of the *Co-operatives Act 1992*. It replaces those terms with definitions of **financial records** and **financial statements**, which is consistent with the terminology in the *Corporations Act 2001* of the Commonwealth. Items [6], [22], [23], [25]–[28], [31], [32], [59], [60], [69], [70] and [74] make consequential amendments.

Item [2] of the proposed amendments inserts a definition of **Corporations Act** in section 5 of the Act. It defines the term to mean the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends the definition of **deed of arrangement** in section 5 of the Act to replace a reference to a deed or arrangement under Part 5.3A of the *Corporations Law* with a reference to a deed of arrangement under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends the definition of **foreign co-operative** in section 5 of the Act to replace a reference to a body incorporated under the *Corporations Law* with a body incorporated under the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends the definition of **officer** in section 5 of the Act to replace a reference to an administrator appointed under Part 5.3A of the *Corporations Law* with a reference to an administrator appointed under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends the definition of **subsidiary** in section 5 of the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law* (as the definition currently provides).

Item [8] of the proposed amendments replaces section 5 (2) of the Act with a new subsection that provides that words and expressions that have a defined meaning in the *Corporations Act 2001* of the Commonwealth have, when used in the *Co-operatives Act 1992* in relation to a body corporate that is not a co-operative, the same meaning as in the Commonwealth Act.

Item [9] of the proposed amendments inserts a subsection in section 5 of the Act that provides that a reference in the Act to a provision of the Corporations Act applying under the Act (or a part of the Act) is a reference to that provision to the extent that it

is declared to apply to a matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* as a law of this State. Part 3 of that Act operates to apply provisions of the Corporations legislation that are the subject of a declaration as laws of the State in relation to the declared matter.

Item [10] of the proposed amendments re-enacts Division 4 of Part 1. That Division currently provides that the *Corporations Law* does not apply of its own force in relation to co-operatives except in relation to certain limited matters. It also provides for the application of provisions of the *Corporations Law* to co-operatives by the regulations. The re-enacted Division will ensure that the *Corporations Act 2001* of the Commonwealth will not apply to co-operatives as a law of the Commonwealth except to a limited extent. It does so by declaring a co-operative to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth except to a limited extent. It will also enable regulations to be made that declare a matter relating to co-operatives to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* so that certain provisions of the Corporations legislation can be applied to such matters as if they were laws of this State.

Item [11] of the proposed amendments amends section 22 of the Act to replace a reference to a body corporate incorporated or registered or deemed to be registered under the *Corporations Law* with a reference to a body corporate incorporated or registered or deemed to be registered under the *Corporations Act 2001* of the Commonwealth.

Item [12] of the proposed amendments amends section 68 of the Act to replace a reference to a listed corporation within the meaning of the *Corporations Law* with a reference to a listed corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [13] of the proposed amendments amends section 98 of the Act to enable the Supreme Court to make an order directing a co-operative to become registered as a company under the *Corporations Act 2001* of the Commonwealth. Currently, the Court may make an order directing a co-operative to become registered as a company under the *Corporations Law*.

Item [14] of the proposed amendments amends section 131 (a) of the Act to replace a reference to an administration under Part 5.3A of the *Corporations Law* with a reference to an administration under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [15] of the proposed amendments amends section 131 (e) of the Act to replace a reference to being registered as a company under the *Corporations Law* with a reference to being registered as a company under the *Corporations Act 2001* of the Commonwealth.

Item [16] of the proposed amendments amends section 135 of the Act to replace a reference to Part 7.12 of the *Corporations Law* (which has been repealed) with a reference to corresponding provisions in Chapters 2L and 6D of the *Corporations Act 2001* of the Commonwealth.

Item [17] of the proposed amendments amends section 208 of the Act to replace references to certain offences under the *Corporations Law* with references to offences under the corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

Item [18] of the proposed amendments amends section 208 of the Act to replace references to prohibition from being a director of a company and insolvent under administration under the *Corporations Law* with references to corresponding concepts in the *Corporations Act 2001* of the Commonwealth.

Item [19] of the proposed amendments amends section 208 to apply the provisions of Part 2D.6 of the *Corporations Act 2001* of the Commonwealth to co-operatives as a law of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [20] of the proposed amendments amends section 220 of the Act to replace a reference to an administrator appointed under Part 5.3A of the *Corporations Law* with a reference to an administrator appointed under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [21] of the proposed amendments re-enacts section 229 of the Act to apply the provisions of sections 589–598 and 1307 of the *Corporations Act 2001* of the Commonwealth to officers of co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to officers of co-operatives.

Item [24] of the proposed amendments amends section 243 of the Act to replace references to Parts 3.6 and 3.7 of the *Corporations Law* (which have been repealed and re-enacted) with references to corresponding provisions of the *Corporations Act 2001* of the Commonwealth. Item [29] of the proposed amendments omits a regulation-making power from section 243 as

that power exists in proposed section 10 (to be inserted by item [10]).

Item [30] of the proposed amendments amends section 245 of the Act to replace references to an entity and control within the meaning of the *Corporations Law* with a reference to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [33] of the proposed amendments amends section 265 of the Act to replace references to provisions of the *Corporations Law* relating to the proof and ranking of claims during a winding up with references to corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

Item [34] of the proposed amendments re-enacts section 266 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the issue of debentures to co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [35] of the proposed amendments re-enacts section 267 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the re-issue of redeemed debentures to co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [36] of the proposed amendments amends section 285 of the Act to replace references to a director or employee or a relative within the meaning of the *Corporations Law* with a reference to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Items [37] and [38] of the proposed amendments amend section 295 of the Act to replace references to a company, a listed corporation, a relevant interest and an associate within the meaning of the *Corporations Law* with references to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Items [39], [40] and [43] of the proposed amendments amend sections 299, 305 and 306 of the Act to replace references to a company registered under the *Corporations Law* with references to a company registered under the *Corporations Act 2001* of the Commonwealth.

Item [41] of the proposed amendments amends section 305 to replace references to performing obligations under the *Corporations Law* with references to performing obligations under the *Corporations Act 2001* of the Commonwealth.

Item [42] of the proposed amendments amends section 305 of the Act to ensure that expressions used in the section have the meanings they had under the *Corporations Law* on 12 March 2000.

Items [44] and [45] of the proposed amendments amend sections 316 and 322 of the Act to replace references to a company under the *Corporations Law* with references to a company under the *Corporations Act 2001* of the Commonwealth.

Item [46] of the proposed amendments amends section 323 of the Act to replace a reference to winding up under the *Corporations Law* with a reference to winding up under the *Corporations Act 2001* of the Commonwealth.

Item [47] of the proposed amendments amends section 324 of the Act to replace a reference to a registered liquidator under the *Corporations Law* with a reference to a registered liquidator under the *Corporations Act 2001* of the Commonwealth.

Item [48] of the proposed amendments re-enacts section 325 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to winding up to co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [49] of the proposed amendments amends section 329 of the Act to replace a reference to the filling of a vacancy in the office of liquidator in the manner provided by the *Corporations Law* with a reference to filling such a vacancy in the manner provided by the *Corporations Act 2001* of the Commonwealth.

Item [50] of the proposed amendments re-enacts Division 5 of Part 12 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the administration of bodies to co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [51] of the proposed amendments omits section 343A of the Act. That section currently provides that Part 5.7A of the *Corporations Law* applies to co-operatives. That Part will not be re-enacted in the *Corporations Act 2001* of the Commonwealth.

Item [52] of the proposed amendments re-enacts section 343B of the Act to apply certain provisions of the *Corporations Act*

2001 of the Commonwealth relating to the recovery of property or compensation for the benefit of creditors of an insolvent company to co-operatives as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [53] of the proposed amendments amends section 349 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to a compromise or arrangement to certain persons appointed under that section as laws of the State. At present, the corresponding provisions of the *Corporations Law* are applied to such persons.

Item [54] of the proposed amendments amends section 357 of the Act to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [55] of the proposed amendments amends section 364 of the Act to apply certain provisions of the *Corporations Act 2001* of the Commonwealth relating to unclaimed money to money received by the Minister under that section. At present, the corresponding provisions of the *Corporations Law* are applied to that money.

Item [56] of the proposed amendments re-enacts section 368 of the Act to ensure that jurisdiction exercised by the Supreme Court under the Act is exercised in harmony with any jurisdiction the Court has under the *Corporations Act 2001* of the Commonwealth.

Items [57], [58], [64], [65], [66] and [67] of the proposed amendments amend sections 383 and 389 of, and clauses 27, 28 and 31 of Schedule 3 and clause 1 of Schedule 4 to, the Act to replace references to administration under Part 5.3A of the *Corporations Law* with references to administration under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [61] of the proposed amendments amends clause 16 of Schedule 2 to the Act to replace a reference to a relevant interest in a share of a body corporate under the *Corporations Law* with a reference to the same concept under the *Corporations Act 2001* of the Commonwealth.

Item [62] of the proposed amendments amends the definition of **marketable securities** in clause 1 of Schedule 3 to the Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law* (as the definition currently provides).

Item [63] of the proposed amendments amends clause 26 of Schedule 3 to the Act to replace a reference to the day on which a winding up is taken to have begun under the *Corporations Law* with a reference to the day it is taken to have begun under the *Corporations Act 2001* of the Commonwealth.

Item [68] of the proposed amendments amends clause 3 of Schedule 4 to the Act to replace a reference to a registered liquidator under the *Corporations Law* with a reference to a registered liquidator under the *Corporations Act 2001* of the Commonwealth.

Items [71] and [72] of the proposed amendments amend clause 18 of Schedule 4 to the Act to replace certain references to provisions in the *Corporations Law* relating to priority of debts with references to corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

Item [73] of the proposed amendments amends clause 18 of Schedule 4 to the Act to replace a reference to Division 6 of Part 5.6 of the *Corporations Law* with a reference to the corresponding Division in the *Corporations Act 2001* of the Commonwealth.

4.13 Crimes (Administration of Sentences) Act 1999 No 93

Schedule 4 Official Visitors

Omit "*Corporations Law*" from clause 4 (2) (a).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to clause 4 of Schedule 4 to the *Crimes (Administration of Sentences) Act 1999* replaces a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.14 Duties Act 1997 No 123

[1] Section 8 Imposition of duty on certain transactions concerning dutiable property

Omit "*Corporations Law*" from the definition of **transfer** in section 8 (3).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 54 Change in trustees

Omit "*Corporations Law*" from the definition of **responsible entity** in section 54 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Section 54 (4)

Insert "(as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth)" after "*Corporations Law*" where secondly occurring.

[4] Section 54A Transfers in relation to managed investment schemes

Insert "(as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth)" after "*Corporations Law*" in section 54A (1) (b) where secondly occurring.

[5] Section 66 Exemptions—marketable securities

Omit "*Corporations Law*" from section 66 (5).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[6] Section 68 Exemptions—break-up of marriages and domestic relationships

Omit "*Corporations Law*" from section 68 (3) (a).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[7] Section 94 Definitions

Omit "*Corporations Law*" from the definition of **corporation**.

Insert instead "*Corporations Act 2001* of the Commonwealth".

[8] Section 109 Constructive ownership of land holdings and other property: subsidiaries

Omit "*Corporations Law*" from section 109 (3).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[9] Section 119 Exemptions

Omit "*Corporations Law*" from section 119 (1) (b1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[10] Section 119 (1) (g) (i)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[11] Section 125 Definitions

Omit “*Corporations Law*” from paragraph (a) of the definition **capital reduction** in section 125 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[12] Section 125 (1), definition of “company”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[13] Section 125 (1), definition of “voting shares”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[14] Section 212 Where is property located?

Omit section 212 (a). Insert instead:

(a) shares in or securities of a body corporate:

(i) in the case of a company within the meaning of the *Corporations Act 2001* of the Commonwealth—in the place where the company is taken to be registered for the purposes of that Act, or

(ii) in any other case—in the place of incorporation of the body corporate,

[15] Section 225 Certain debentures and related instruments

Omit “*Corporations Law*” from the definition of **related corporation** in section 225 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[16] Schedule 1 Savings, transitional and other provisions

Insert “(as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth)” after “*Corporations Law*” in clause 17 (2) (b).

[17] Schedule 1, clause 18 (2) (b)

Insert “(as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth)” after “*Corporations Law*”.

[18] Dictionary

Omit “*Corporations Law*” from paragraph (e) of the definition of **associated person**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[19] Dictionary, definition of “Australian register”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[20] Dictionary, definition of “managed investment scheme”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[21] Dictionary, definition of “NSW company”

Omit the definition. Insert instead:

NSW company means:

- (a) a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales for the purposes of that Act, or
- (b) any other body corporate that is incorporated under an Act of New South Wales.

[22] Dictionary, definition of “public unit trust scheme”

Omit the definition. Insert instead:

public unit trust scheme means a unit trust scheme:

- (a) any of the units of which are listed for quotation on the Australian Stock Exchange or on a recognised stock exchange, or
- (b) that is an undertaking to which Division 11 of Part 11.2 of the *Corporations Law* (as continued in effect by section 1408 of the *Corporations Act 2001* of the Commonwealth) applies and in respect of which:
 - (i) some or all of the units have been offered to the public, and

- (ii) no fewer than 50 persons hold units in it, or
- (c) that was (or would have been) exempted from the requirements of Part 7.12 of the *Corporations Law* (as in force immediately before its repeal) and in respect of which:
 - (i) some or all of the units have been offered to the public, and
 - (ii) no fewer than 50 persons hold units in it, or
- (d) that is a managed investment scheme within the meaning of Chapter 5C of the *Corporations Act 2001* of the Commonwealth and in respect of which:
 - (i) some or all of the units have been offered to the public, and
 - (ii) no fewer than 50 persons hold units in it, or
- (e) that, in the opinion of the Chief Commissioner, will satisfy paragraph (a), (b), (c) or (d) within 12 months after the Chief Commissioner gives written notice of that opinion to a person who has requested the Chief Commissioner to express that opinion in relation to the unit trust scheme.

[23] Dictionary, definition of “related person”

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[24] Dictionary, definition of “responsible entity”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Items [1], [5] and [11] of the proposed amendments amend sections 8, 66 and 125 of the *Duties Act 1997* to replace references to a share buy-back in accordance with Division 2 of Part 2].1 of the *Corporations Law* with references to the same concept under the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **responsible entity** in section 54 of the Act so that it has the same meaning as that term has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

Items [3], [4], [16] and [17] of the proposed amendments amend sections 54 and 54A of, and Schedule 1 to, the Act to include a reference to section 1408 of the *Corporations Act 2001* of the Commonwealth, which incorporates the transitional provisions of Division 11 of Part 11.2 of the *Corporations Law* into the provisions of Chapter 5C of the *Corporations Act 2001* of the Commonwealth.

Items [6] and [10] of the proposed amendments amend sections 68 and 119 (1) (g) (i) of the Act to replace references to compliance with a requirement of or prescribed under the *Corporations Law* with references to compliance with such a requirement under the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends the definition of **corporation** in section 94 of the Act so that it has the same meaning as corporation does in the *Corporations Act 2001* of the Commonwealth rather than in the *Corporations Law*.

Item [8] of the proposed amendments amends section 109 of the Act to replace a reference to a subsidiary of a company within

the meaning of the *Corporations Law* with a reference to a subsidiary of a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [9] of the proposed amendments amends section 119 (1) (b1) of the Act to replace a reference to a compromise or arrangement under Part 5.1 of the *Corporations Law* that has been approved by the court with a reference to the same approval under the *Corporations Act 2001* of the Commonwealth.

Item [12] of the proposed amendments amends the definition of **company** in section 125 of the Act to replace a reference to a public company within the meaning of the *Corporations Law* with a reference to a public company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [13] of the proposed amendments amends the definition of **voting shares** in section 125 of the Act so that it has the same meaning as the expression has in section 9 of the *Corporations Act 2001* of the Commonwealth rather than in section 9 of the *Corporations Law*.

Item [14] of the proposed amendments amends section 212 of the Act to ensure that, for the purposes of Chapter 7 of the Act, shares in and securities of a company within the meaning of the *Corporations Act 2001* of the Commonwealth are taken to be located in the place where the company is taken to be registered for the purposes of the *Corporations Act 2001* of the Commonwealth. This amendment is consequential on the amendment made by item [21].

Items [15], [18] and [23] of the proposed amendments amend the definition of **related corporation** in section 225 of the Act and certain definitions in the Dictionary to replace references to a related body corporate within the meaning of the *Corporations Law* with references to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [19] of the proposed amendments amends the definition of **Australian register** in the Dictionary to the Act so that it has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

Item [20] of the proposed amendments amends the definition of **managed investment scheme** in the Dictionary to the Act so that it has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

Item [21] of the proposed amendments replaces the definition of **NSW company**. Currently, the definition provides that the term means a company incorporated or taken to be incorporated under the *Corporations Law* of New South Wales, and includes a body corporate that is incorporated under any other New South Wales Act and that is not a company incorporated or taken to be incorporated under the Corporations Law of another State or a Territory of the Commonwealth. The new definition updates the reference to a company incorporated or taken to be incorporated under the *Corporations Law* so that it refers to a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth that is taken to be registered in New South Wales under that Act. Section 119A of the Commonwealth Act specifies how to determine the State or Territory in which a company is taken to be registered.

Item [22] of the proposed amendments replaces the definition of **public unit trust scheme**. The current definition contains references to a number of provisions of the *Corporations Law* that are no longer in force.

Item [24] of the proposed amendments amends the definition of **responsible entity** of a managed investment scheme in the Dictionary to the Act so that it has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the *Corporations Law*.

4.15 Election Funding Act 1981 No 78

[1] Section 85A Obligation of persons (other than parties etc) to make disclosure

Omit "*Corporations Law*" from section 85A (4).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 87A Prohibition on receiving gifts of unknown source

Omit "*Corporations Law*" from section 87A (5) (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 85A of the *Election Funding Act 1981* so that a reference to a related corporation under the *Corporations Law* is updated to a reference to a related corporation under the *Corporations Act 2001* of the Commonwealth. At present, section 85A provides that related corporations for the purposes of the *Corporations Law* are to be treated as a single corporation for the purposes of that section. Item [2] makes a similar amendment to section 87A.

4.16 Electricity (Pacific Power) Act 1950 No 22

Section 8A Definitions

Omit the definition of **company**. Insert instead:

company means a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

Explanatory note

Division 2A of Part 3 of the *Electricity (Pacific Power) Act 1950* currently provides for the formation of, and the delegation of functions of Pacific Power to, subsidiary companies. A subsidiary company is a company in which Pacific Power has a controlling interest. For the purposes of that Division, **company** is defined in section 8A to mean a company incorporated or taken to be incorporated under the *Corporations Law*. The proposed amendment to section 8A updates this reference to a company so that it refers to a company incorporated or taken to be incorporated under the *Corporations Act 2001* of the Commonwealth.

4.17 Evidence Act 1995 No 25

[1] Section 8 Operation of other Acts

Omit “the operation of the *Corporations law*, the *ASC law* and certain laws in force in the ACT” from the note to the section.

Insert instead “the operation of the *Corporations Act 2001* of the Commonwealth, the *Australian Securities and Investments Commission Act 2001* of the Commonwealth and certain laws in force in the ACT”.

[2] Dictionary

Omit “*Corporations Law*” from the definition of **Commonwealth owned body corporate** in Part 1.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the note to section 8 of the *Evidence Act 1995* to replace a reference to the *Corporations Law* and the *ASC Law* with a reference to the *Corporations Act 2001* of the Commonwealth and the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **Commonwealth owned body corporate** in Part 1 of the Dictionary to the Act to replace references to wholly-owned subsidiaries within the meaning of the *Corporations Law* with references to the same concept under the *Corporations Act 2001* of the Commonwealth.

4.18 Farm Debt Mediation Act 1994 No 91

[1] Section 5 Application of Act

Omit “*Corporations Law*” from section 5 (2) (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 17 Representation and assistance during mediation

Omit “*Corporations Law*” from section 17 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 5 of the *Farm Debt Mediation Act 1994* to provide that the Act does not apply in respect of a farmer, being a corporation, that is an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 17 of the Act to replace a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.19 Food Production (Safety) Act 1998 No 128

Section 3 Definitions

Omit “*Corporations Law*” from the definition of **private corporation** in section 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the definition of **private corporation** in section 3 of the *Food Production (Safety) Act 1998* replaces a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.20 Gas Supply Act 1996 No 38

[1] Section 33 Maintenance of records

Omit “*Corporations Law*” from section 33 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 78 Service of documents

Omit “*Corporations Law*” from section 78 (1) (b).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 33 of the *Gas Supply Act 1996* to replace a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to the same concept in the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 78 of the Act to replace a reference to the registered office of a corporation within the meaning of the *Corporations Law* with a reference to the registered office of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.21 Home Building Act 1989 No 147

[1] Section 22 Automatic cancellation of licences

Omit "*Corporations Law*" from section 22 (1) (c).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 90 Definitions

Omit "*Corporations Law*" from the definition of **insolvent** in section 90 wherever occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

Item [1] of the proposed amendments amends section 22 of the *Home Building Act 1989* to replace a reference to a corporation deregistered under Chapter 5A of the *Corporations Law* with a corporation deregistered under the same Chapter of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 90 to replace references to insolvent under administration and externally-administered body corporate within the meaning of the *Corporations Law* in the definition of **insolvent** with references to those concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.22 Home Building Legislation Amendment Act 2001

[1] Schedule 1 Amendments relating to regulation of residential building work, specialist work and the supply of kit homes

Omit "*Corporations Law*" wherever occurring from proposed section 22 in Schedule 1 [6].

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Schedule 1 [7], proposed section 22B (1)

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Schedule 3 Amendments relating to building consultancy work

Omit "*Corporations Law*" wherever occurring from proposed section 32D (1) (c) and (d) in Schedule 3 [7].

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendments to the *Home Building Legislation Amendment Act 2001* replace references to be inserted in the *Home Building Act 1989* to winding up and deregistration of companies under the *Corporations Law* with references to winding up and deregistration under the *Corporations Act 2001* of the Commonwealth.

4.23 Hunter Water Act 1991 No 53

[1] Section 3 Definitions

Omit “*Corporations Law*” from paragraph (a) of the definition of **statutory body** in section 3 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 18 Cancellation of operating licence

Omit “is insolvent within the meaning of section 460 of the *Corporations Law*” from section 18 (1) (c).

Insert instead “is insolvent within the meaning of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **statutory body** in section 3 of the *Hunter Water Act 1991* to replace a reference to a corporation that is not a company within the meaning of the *Corporations Law* with a reference to a corporation that is not a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 18 of the Act to enable the Governor to cancel the operating licence of the Hunter Water Corporation if it becomes insolvent within the meaning of the *Corporations Act 2001* of the Commonwealth. At present, the Governor has the same power if the Corporation becomes insolvent within the meaning of the *Corporations Law*.

4.24 Industrial Relations Act 1996 No 17

[1] Section 217 Organisations capable of applying for registration

Omit “*Corporations Law*” from section 217 (1) (a) and (c) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 379 Small claims procedure

Omit “*Corporations Law*” from section 379 (6) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 217 of the *Industrial Relations Act 1996* to replace references to organisations incorporated under the *Corporations Law* with references to organisations incorporated under the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 379 of the Act to replace a reference to a corporation and an officer of the corporation within the meaning of the *Corporations Law* with a reference to the same terms within the meaning of the

Corporations Act 2001 of the Commonwealth.

4.25 Intergovernmental Agreement Implementation (GST) Act 2000 No 44

Schedule 2 Amendment of *Duties Act 1997* No 123

Omit “*Corporations Law*” from the definition of **company** to be inserted in section 125 (1) of the *Duties Act 1997* by Schedule 2 [21].

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to Schedule 2 to the *Intergovernmental Agreement Implementation (GST) Act 2000* replaces a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.26 Interpretation Act 1987 No 15

[1] Section 21 Meaning of commonly used words and expressions

Omit the definitions of **ASIC Law** and **ASIC Regulations** and **Corporations Law** and **Corporations Regulations** from section 21 (1).

Insert in alphabetical order:

ASC Law has the same meaning as **ASIC Law**.

ASIC Law has the meaning provided for by Part 11 of the *Corporations (New South Wales) Act 1990*.

ASC Regulations has the same meaning as **ASIC Regulations** when used in relation to the *ASIC Law*.

ASIC Regulations:

- (a) when used in relation to the *ASIC Law*, has the meaning provided for by Part 11 of the *Corporations (New South Wales) Act 1990*, or
- (b) when used in relation to the *Australian Securities and Investments Commission Act 2001*, means regulations made under, or taken to be made under, that Act.

Corporations Law has the meaning provided for by Part 3 of the *Corporations (New South Wales) Act 1990*.

Corporations legislation means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

Corporations Regulations:

- (a) when used in relation to the *Corporations Law*, has the meaning provided for by Part 3 of the *Corporations (New South Wales) Act 1990*, or
- (b) when used in relation to the *Corporations Act 2001* of the Commonwealth, means regulations made under, or taken to be made under, that Act.

[2] Section 68 References to amended Acts and instruments

Insert after section 68 (3):

- (3A) Nothing in subsection (3) affects the operation of sections 11 and 12 of the *Corporations (Ancillary Provisions) Act 2001*.

Explanatory note

Item [1] of the proposed amendments amends section 21 of the *Interpretation Act 1987* to replace the definitions of **ASIC Law** and **ASIC Regulations** and **Corporations Law** and **Corporations Regulations** to reflect the fact that those Laws and Regulations will be superseded by the *Corporations Act 2001* and the *Australian Securities and Investments Commission Act 2001* of the Commonwealth. It also inserts a definition of **Corporations legislation**, which will be defined to mean the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies. Section 5D of the *Corporations Act 2001* of the Commonwealth provides that the Corporations legislation to which Part 1.1A applies is the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission 2001* of the Commonwealth (and any regulations made under that Act or Part).

Item [2] of the proposed amendments amends section 68 of the Act to make it clear that certain of its provisions do not affect the general referential provisions in sections 11 and 12 of the *Corporations (Ancillary Provisions) Act 2001*.

4.27 Land Acquisition (Just Terms Compensation) Act 1991 No 22

Section 22 Owners of land to whom Division applies

Omit “*Corporations Law*” from section 22 (2) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 22 of the *Land Acquisition (Just Terms Compensation) Act 1991* replaces references to **public company** and a **subsidiary** within the meaning of the *Corporations Law* with references to the same concepts in the *Corporations Act 2001* of the Commonwealth.

4.28 Law and Justice Foundation Act 2000 No 97

[1] Section 4 Constitution of Law and Justice Foundation of New South Wales

Omit section 4 (3).

[2] Section 18 Audit

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 4 of the *Law and Justice Foundation Act 2000* to remove a provision that declares the Foundation to be an exempt public authority for the purposes of the *Corporations Law*. It is not possible for a State to declare the Foundation to be such an authority for the purposes of the *Corporations Act 2001* of the Commonwealth if it is not in fact such an authority.

Item [2] of the proposed amendments amends section 18 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.29 Legal Profession Act 1987 No 109

Section 48F Sharing receipts

Omit “*Corporations Law*” from section 48F (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 48F of the *Legal Profession Act 1987* replaces a reference to a related body within the meaning of section 50 of the *Corporations Law* with a reference to the corresponding provision of the *Corporations Act 2001* of the Commonwealth.

4.30 Legal Profession Amendment (Incorporated Legal Practices) Act 2000 No 73

[1] Schedule 1 Principal amendment

Omit “*Corporations Law*” from paragraph (a) of the definition of **corporation** in proposed section 47B.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Schedule 1, proposed section 47B, definition of “director”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Schedule 1, proposed section 47C

Omit “*Corporations Law*” from proposed section 47C (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Schedule 1, proposed section 47C (3) (b)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Schedule 1, proposed section 47E

Omit “*Corporations Law*” from proposed section 47E (5) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Schedule 1, proposed section 47F

Omit “*Corporations Law*” from proposed section 47F wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[7] Schedule 1, proposed section 47O

Omit “*Corporations Law*” from proposed section 47O (3) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Schedule 1, proposed section 47O (3) (b)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[9] Schedule 1, proposed section 47S

Insert after proposed section 47S (2):

(3) The regulations may declare any matter relating to an incorporated legal practice that is prohibited, required, authorised or permitted by or under this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

- (a) the whole of the Corporations legislation, or
- (b) a specified provision of the Corporations legislation, or
- (c) the Corporations legislation other than a specified provision, or
- (d) the Corporations legislation other than to a specified extent.

(4) In this section:

matter includes act, omission, body, person or thing.

[10] Schedule 2 Consequential and other amendments of *Legal Profession Act 1987*

Omit “*Corporations Law*” wherever occurring from the proposed Part to be inserted in Schedule 8 to the *Legal Profession Act 1987* by Schedule 2 [47].

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **corporation** in proposed section 47B of the *Legal Profession Act 1987* (the **Principal Act**), which is to be inserted by the *Legal Profession Amendment (Incorporated Legal Practices) Act 2000*, to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **director** in proposed section 47B of the Principal Act so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [3] of the proposed amendments amends proposed section 47C of the Principal Act to replace a reference to a managed Investments scheme within the meaning of the *Corporations Law* with a reference to a managed Investments scheme within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends proposed section 47C of the Principal Act to replace a reference to a related body corporate within the meaning of section 50 of the *Corporations Law* with a reference to a related body corporate within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends proposed section 47E of the Principal Act to make it clear that the provisions of that section dealing with solicitor directors of an incorporated legal practice that is an externally-administered body corporate under the *Corporations Act 2001* of the Commonwealth do not apply to the extent that they are inconsistent with the provisions of Chapter 5 of the Commonwealth Act.

Item [6] of the proposed amendments amends proposed section 47F of the Principal Act to replace references to a person who could be disqualified under section 206E of the *Corporations Law* from managing a corporation and to officers within the meaning of that Law with references to a person who could be disqualified under section 206E of the *Corporations Act 2001* of the Commonwealth and to officers within the meaning of that Act.

Item [7] of the proposed amendments amends proposed section 47O of the Principal Act to replace a reference to powers of investigation conferred on the Australian Securities and Investments Commission under the *Corporations Law* with a reference to powers of investigation conferred on the Australian Securities and Investments Commission under the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends proposed section 47O of the Principal Act to replace a reference to a document that is to be furnished to the Australian Securities and Investments Commission under the *Corporations Law* with a reference to a document that is to be furnished to the Australian Securities and Investments Commission under the *Corporations Act 2001* of the Commonwealth.

Item [9] of the proposed amendments amends proposed section 47S of the Principal Act to enable regulations to be made that declare certain matters relating to incorporated legal practices to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments replaces references to the *Corporations Law* in a proposed Part to be inserted in Schedule 8 to the Principal Act with references to the *Corporations Act 2001* of the Commonwealth.

4.31 Legal Profession Amendment (Mortgage Practices) Act 2000 No 23

[1] Schedule 1 Amendments

Omit “*Corporations Law*” wherever occurring from proposed section 54 (1AA) to be inserted by Schedule 1 [2].

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Schedule 1 [7]

Omit the definition of **ASIC exemption** from proposed section 115.

Insert instead:

ASIC exemption means an exemption from the *Corporations Act 2001* of the Commonwealth given by the Australian Securities and Investments Commission under that Act.

[3] Schedule 1 [7], proposed section 115, definition of “managed investment scheme”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Schedule 1 [7], proposed section 115, definition of “member”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Schedule 1 [7], proposed section 115, definition of “responsible entity”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Schedule 1 [7], proposed section 115, definition of “run-out mortgage”

Omit paragraph (b) of the definition. Insert instead:

(b) a mortgage that forms part of a managed investment scheme that is required to be operated by a responsible entity under the *Corporations Act 2001* of the Commonwealth (as modified by any ASIC exemption or the regulations under that Act).

[7] Schedule 1 [7], proposed section 116

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Schedule 1 [7], proposed section 117

Omit proposed section 117 (2) (a). Insert instead:

(a) the *Corporations Act 2001* of the Commonwealth, or that Act as modified by any

ASIC exemption or the regulations under that Act, and

[9] Schedule 1 [7], proposed section 122B

Omit “*Corporations Law*” from proposed section 122B (7) (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[10] Schedule 1 [7], proposed section 122D

Omit “*Corporations Law*” from proposed section 122D (3) (b).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends Schedule 1 [2] to the *Legal Profession Amendment (Mortgage Practices) Act 2000* (the **amending Act**), which amends section 54 of the *Legal Profession Act 1987* (the **principal Act**) to replace references to requirements under the *Corporations Law* and to managed investment schemes within the meaning of that Law with references to requirements under the *Corporations Act 2001* of the Commonwealth and managed investment schemes within the meaning of that Act.

Item [2] of the proposed amendments replaces the definition of **ASIC exemption** in proposed section 115 of the principal Act (to be inserted by the amending Act) to replace a reference to an exemption given by ASIC under the *Corporations Law* with a reference to an exemption given by ASIC under the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends the definition of **managed investment scheme** in proposed section 115 of the principal Act (to be inserted by the amending Act) so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [4] of the proposed amendments amends the definition of **member** of a managed investment scheme in proposed section 115 of the principal Act (to be inserted by the amending Act) so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [5] of the proposed amendments amends the definition of **responsible entity** in proposed section 115 of the principal Act (to be inserted by the amending Act) so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [6] of the proposed amendments amends the definition of **run-out mortgage** in proposed section 115 of the principal Act (to be inserted by the amending Act) to replace a reference to the operation of a managed investment scheme by a responsible entity within the meaning of the *Corporations Law* with a reference to the same concepts under the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends proposed section 116 of the principal Act (to be inserted by the amending Act) to replace a reference to a responsible entity and an ASIC exemption under the *Corporations Law* with a reference to the same concepts under the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends proposed section 117 of the principal Act (to be inserted by the amending Act) to replace a reference to the modification of the *Corporations Law* by ASIC or the regulations under that Law with a reference to the modification of the *Corporations Act 2001* of the Commonwealth by ASIC or the regulations under that Act.

Item [9] of the proposed amendments amends proposed section 122B of the principal Act (to be inserted by the amending Act) to replace a reference to an agent of the responsible entity under Chapter 5C of the *Corporations Law* with a reference to an agent of the responsible entity under Chapter 5C of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments amends proposed section 122D of the principal Act (to be inserted by the amending Act) to replace a reference to scheme property within the meaning of the *Corporations Law* with a reference to scheme property within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.32 Liquor Act 1982 No 147

[1] Section 4 Definitions

Omit “*Corporations Law*” from the definition of **TAB** in section 4 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 200J Disciplinary action against licensee

Omit “*Corporations Law*” from section 200J (1) (d) (ii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 200S Offences relating to authorised persons

Omit “*Corporations Law*” from section 200S (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 212 Disciplinary action against licensee

Omit “*Corporations Law*” from section 212 (2) (d) (ii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 216D Offences relating to authorised persons

Omit “*Corporations Law*” from section 216D (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 228 Disciplinary action against licensee

Omit “*Corporations Law*” from section 228 (1) (d) (ii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[7] Section 236 Offences relating to authorised persons

Omit “*Corporations Law*” from section 236 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments updates a reference in the definition of **TAB** in section 4 of the *Liquor Act 1982* to a subsidiary under Division 6 of Part 1.2 of the *Corporations Law* so that it is a reference to a subsidiary under the corresponding Division of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments updates a reference in section 200J of the Act to a externally administered corporation within the meaning of the *Corporations Law* so that it is a reference to an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth. Items [4] and [6] make similar amendments to sections 212 and 228 of the Act respectively.

Item [3] of the proposed amendments updates a reference in section 200S of the Act to an officer of a corporation within the meaning of the *Corporations Law* so that it is a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth. Items [5] and [7] make similar amendments to sections 216D and 236 of the Act respectively.

4.33 Local Government Act 1993 No 30

[1] Section 275 Who is disqualified from holding civic office?

Omit section 275 (1) (h). Insert instead:

(h) while disqualified from managing a corporation under Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

[2] Section 422 Appointment of auditors

Omit “*Corporations Law*” from section 422 (6)

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 275 of the *Local Government Act 1993* to ensure that persons who are disqualified from managing a corporation by Part 2D.6 of the *Corporations Act 2001* of the Commonwealth are also disqualified from holding civic office. At present, that section disqualifies a person from holding civic office while the person is prohibited by order under section 230 of the *Corporations Law* from managing a corporation. Section 230 has been repealed and re-enacted as Part 2D.6 of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 422 of the Act to replace a reference to a registered company auditor under the *Corporations Law* with a reference to a registered company auditor under the *Corporations Act 2001* of the Commonwealth.

4.34 Medical Practice Act 1992 No 94

[1] Section 116B Extended concept of employment

Omit “*Corporations Law*” from section 116B (2) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 116G Business interests—effect of prohibition

Omit “*Corporations Law*” from section 116G (2) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 116B of the *Medical Practice Act 1992* to replace references to a director, secretary or executive officer as defined in the *Corporations Law* with references to equivalent terms in the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 116G of the Act to replace references to a director, secretary, executive officer or relevant interest as defined in the *Corporations Law* with references to equivalent terms in the *Corporations Act 2001* of the Commonwealth.

4.35 Mines Rescue Act 1994 No 13

Section 31 Owners of coal mines to make contributions to the Fund for principal functions of Board

Omit "*Corporations Law*" from section 31 (5) (b).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to section 31 of the *Mines Rescue Act 1994* ensures that notices to be served under that section on the owner of a mine that is a body corporate are served in a manner authorised under the *Corporations Act 2001* of the Commonwealth for the service of documents on a body corporate. At present, the section provides that such notices must be served in a manner authorised under the *Corporations Law* for the service of documents on a body corporate.

4.36 Mining Act 1992 No 29

[1] Section 16

Omit the section. Insert instead:

16 Minister may require further information

The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

- (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
- (c) an individual who is a resident of a foreign country.

[2] Section 34

Omit the section. Insert instead:

34 Minister may require further information

The Minister may require the applicant to furnish further information in connection with the application, including (if the applicant is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

- (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or

- (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
- (c) an individual who is a resident of a foreign country.

[3] Section 54

Omit the section. Insert instead:

54 Minister may require further information

The Minister may require the applicant or tenderer to furnish further information in connection with the application or tender, including (if the applicant or tenderer is a corporation) information as to the extent to which the controlling power in the corporation's affairs is held by:

- (a) a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) a company registered under that Act that is taken for the purposes of that Act to be registered in a State or Territory other than New South Wales, or
- (c) an individual who is a resident of a foreign country.

Explanatory note

At present, sections 16, 34 and 54 of the *Mining Act 1992* enable the Minister to require certain corporate applicants and tenderers to provide information as to the extent to which the controlling power in the corporation's affairs is held by a foreign company or recognised company within the meaning of the *Corporations Law* or an individual who is a foreign resident. Foreign companies are bodies that are formed in places external to Australia while recognised companies are companies registered as companies under the *Corporations Law* of another State or Territory. The concept of recognised company does not exist in the *Corporations Act 2001* of the Commonwealth. However, section 119A of that Act provides for when companies registered under that Act will be taken to have been registered in a particular State or Territory. Items [1]-[3] of the proposed amendments re-enact sections 16, 34 and 54 so that the relevant controlling power will need to be held by a foreign company within the meaning of the *Corporations Act 2001* of the Commonwealth, a foreign resident or a company taken to be registered under that Act in another State or Territory.

4.37 Motor Accidents Compensation Act 1999 No 41

[1] Section 158 Applications for licences

Insert “, the *Corporations Act 2001* of the Commonwealth” after “*Corporations Law*” in section 158 (4) (b).

[2] Section 178 Information and documents as to business and finances to be supplied to Authority by insurers and former insurers

Insert “, the *Corporations Act 2001* of the Commonwealth” after “*Corporations Law*” in the definition of **documents** in section 178 (1).

[3] Section 178 (2) (a)

Omit “related corporation (within the meaning of the *Corporations Law*)”.

Insert instead “related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

[4] Section 178 (2) (b)

Omit “related corporation”. Insert instead “related body corporate”.

[5] Section 178 (5)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 180 Power of Supreme Court to deal with insurers unable to meet liabilities

Omit “related corporation (within the meaning of the *Corporations Law*)” from section 180 (3) (c).

Insert instead “related body corporate (within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

[7] Section 180 (3) (d)

Omit “related corporation”. Insert instead “related body corporate”.

[8] Section 181 Notification to Authority of certain defaults in relation to insurers

Omit section 181 (2) (b). Insert instead:

- (b) the receipt by the insurer of any bidder’s statement or target’s statement within the meaning of the *Corporations Act 2001* of the Commonwealth.

Explanatory note

Item [1] of the proposed amendments amends section 158 of the *Motor Accidents Compensation Act 1999* to provide that an applicant for a licence may be required to furnish previous returns and accounts under the *Corporations Act 2001* of the Commonwealth as well as under the *Corporations Law*.

Item [2] of the proposed amendments amends the definition of **documents** in section 178 of the Act so that it includes previous returns and accounts under the *Corporations Act 2001* of the Commonwealth as well as under the *Corporations Law*.

Items [3], [4], [6] and [7] of the proposed amendments amend sections 178 and 180 of the Act to replace references to a related corporation within the meaning of the *Corporations Law* with references to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 178 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 181 of the Act to replace an outdated reference to Part A, Part B, Part C and Part D takeover statements under the *Corporations Law* with a reference to bidder's statements and target's statements under the *Corporations Act 2001* of the Commonwealth, which correspond to the earlier statements.

4.38 National Parks and Wildlife Act 1974 No 80

Section 71AQ Board of management to keep accounts

Omit "*Corporations Law*" from section 71AQ (3).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

Section 71AQ (3) of the *National Parks and Wildlife Act 1974* currently requires the financial statements of a board of management to be submitted for verification and certification to an auditor who is a registered company auditor within the meaning of the *Corporations Law*. The proposed amendment updates this reference to a registered company auditor so that it is a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.39 Nature Conservation Trust Act 2001 No 10

[1] Section 44 Winding up

Omit section 44 (2) and (3). Insert instead:

- (2) Subject to subsection (1), the winding up or dissolution of the Trust is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the provisions apply to the Trust as if it were a company,
 - (b) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (2),

but only if:

(a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and

(b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

(3A) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (3) as if subsection (2) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

[2] Section 44 (4)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth (as applied under this section)”.

Explanatory note

Item [1] of the proposed amendments amends section 44 of the *Nature Conservation Trust Act 2001* to ensure that (subject to certain modifications) provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth relating to the winding up or dissolution of companies will apply to the winding up of the Trust as if the provisions were State laws. Currently, section 44 provides that the winding up and dissolution of the Trust is to be conducted in accordance with Chapter 5 of the *Corporations Law*, subject to such modifications as may be prescribed by the regulations under the Act. Item [2] makes a consequential amendment to section 44 of the Act.

4.40 New South Wales Cancer Council Act 1995 No 43

Section 11 Power to accept gifts

Omit “*Corporations Law*” from section 11 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 11 of the *New South Wales Cancer Council Act 1995* replaces a reference to certain securities of a company under the *Corporations Law* with a reference to the same securities of a company under the *Corporations Act 2001* of the Commonwealth. Section 11 currently empowers the NSW Cancer Council to receive and deal with such securities.

4.41 New South Wales Lotteries Corporatisation Act 1996 No 85

Section 5 Establishment of New South Wales Lotteries Corporation as statutory SOC

Omit “*Corporations Law*” from the note to the section.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 5 of the *New South Wales Lotteries Corporatisation Act 1996* replaces a general reference to the *Corporations Law* in a note to that section with a reference to the *Corporations Act 2001* of the Commonwealth.

4.42 Olympic Co-ordination Authority Act 1995 No 10

Section 20 Subsidiary corporations

Omit “*Corporations Law*” from the definition of **private corporation** in section 20 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 20 of the *Olympic Co-ordination Authority Act 1995* replaces a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.43 Partnership Act 1892 55 Vic No 12

[1] Section 1 Definition of partnership

Omit “*Corporations Law*” from section 1 (2) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 10 Liability of the firms for wrongs

Omit “*Corporations Law*” from section 10 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 52 Size of limited partnership

Omit section 52 (2). Insert instead:

- (2) The number of general partners must not (if the partnership consists only of those general partners) exceed:
 - (a) 20, or
 - (b) if the partnership is of a particular kind in respect of which a higher number applies in accordance with section 115 (2) of the *Corporations Act 2001* of the Commonwealth—that higher number.

Explanatory note

Item [1] of the proposed amendments amends section 1 of the *Partnership Act 1892* to ensure that the relationship between members of a company or association incorporated under the *Corporations Act 2001* of the Commonwealth is also not a partnership. Section 1 currently provides that the relationship between members of a company or an association that is

incorporated under the *Corporations Law* is not a partnership for the purposes of that Act.

Item [2] of the proposed amendments amends section 10 (2) to ensure that wrongs that are committed by a partner as a director of a body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth are generally not treated as wrongs for which the other partners are responsible. At present, section 10 (2) provides that wrongs committed by a partner as director of a body corporate within the meaning of the *Corporations Law* are generally not treated as wrongs for which other partners are responsible.

Item [3] of the proposed amendments amends section 52 to ensure that the number of general partners in a limited partnership does not exceed the highest number applicable for that kind of partnership under section 115 of the *Corporations Act 2001* of the Commonwealth.

4.44 Pay-roll Tax Act 1971 No 22

[1] Section 3 Definitions

Omit "*Corporations Law*" from the definition of **corporation** in section 3 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 3 (1), definition of "voting share"

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Section 10 Exemption from pay-roll tax

Omit section 10 (3). Insert instead:

(3) In this section, **statutory body** does not include a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

[4] Section 16B Grouping of corporations

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

[5] Section 16D Grouping of commonly controlled businesses

Omit "*Corporations Law* to be deemed, for the purposes of that Law," from section 16D (4).

Insert instead "*Corporations Act 2001* of the Commonwealth to be taken, for the purposes of that Act,".

[6] Section 25 Liquidator to give notice

Omit section 25 (7) (b). Insert instead:

(b) is intended to affect any of the provisions of the *Corporations Act 2001* of the Commonwealth.

[7] Section 31C Liability of directors and former directors of corporation for failure to pay tax

Omit “*Corporations Law*” from section 31C (3) (d) and (e) wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 3 of the *Pay-roll Tax Act 1971* to ensure that **corporation** has the same meaning in that Act as it has in the *Corporations Act 2001* of the Commonwealth. Currently, it has the same meaning as **corporation** has in the *Corporations Law*.

Item [2] of the proposed amendments amends section 3 of the Act to ensure that **voting share** has the same meaning in that Act as it has in the *Corporations Act 2001* of the Commonwealth. Currently, it has the same meaning as **voting share** has in the *Corporations Law*.

Item [3] of the proposed amendments amends section 10 of the Act to ensure that the term **statutory body** used in that section does not include companies incorporated under the *Corporations Act 2001* of the Commonwealth. At present, section 10 provides that the term **statutory body** does not include a company within the meaning of the *Corporations Law*.

Item [4] of the proposed amendments amends section 16B of the Act so that, for the purposes of the Act, two corporations constitute a group if they are, by reason of section 50 of the *Corporations Act 2001* of the Commonwealth, related to each other. Currently, corporations are treated as related if they are related under section 50 of the *Corporations Law*.

Item [5] of the proposed amendments amends section 16D of the Act to ensure that a corporation will be treated as having a controlling interest in a business if another corporation to which it is related within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth has a controlling interest in the business. At present, section 16D utilises the concept of **related** as set out in section 50 of the *Corporations Law*.

Item [6] of the proposed amendments amends section 25 of the Act to make it clear that the notice requirements imposed on liquidators by that section are not intended to affect any of the provisions of the *Corporations Act 2001* of the Commonwealth. At present, the section makes it clear that it does not affect the provisions of the *Corporations Law*.

Item [7] of the proposed amendments amends section 31C of the Act, which imposes a liability on a director of a corporation to pay the pay-roll tax for the corporation in certain cases where a notice to pay tax has not been rectified. The amendment makes it clear that a failure by a corporation to pay tax following a notice served on a director or former director of a corporation under that section is rectified if the corporation is being wound up under the *Corporations Act 2001* of the Commonwealth or an administrator of the corporation is appointed under Part 5.3A of that Act. At present, section 31C treats a failure to pay tax as having been rectified if the corporation is being wound up under the *Corporations Law* or an administrator has been appointed under Part 5.3A of that Law.

4.45 Petroleum Products Subsidy Act 1997 No 112

Section 29 Information given by officers of bodies corporate

Omit “*Corporations Law*” from section 29 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 29 of the *Petroleum Products Subsidy Act 1997* replaces a reference to an officer of a body corporate within the meaning of the *Corporations Law* with a reference to an officer of a corporation within the meaning of the

Corporations Act 2001 of the Commonwealth.

4.46 Ports Corporatisation and Waterways Management Act 1995 No 13

Section 8 Establishment of Sydney Ports Corporation as statutory SOC

Omit “*Corporations Law*” from the note to the section.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 8 of the *Ports Corporatisation and Waterways Management Act 1995* replaces a general reference to the *Corporations Law* in a note to that section with a reference to the *Corporations Act 2001* of the Commonwealth.

4.47 Property, Stock and Business Agents Act 1941 No 28

[1] Section 4 Act not to apply to certain persons or bodies

Omit section 4 (5) (a) and (b). Insert instead:

- (a) the person holds a dealers licence under the *Corporations Act 2001* of the Commonwealth, or
- (b) the person holds a proper authority, within the meaning of the *Corporations Act 2001* of the Commonwealth, from the holder of such a dealers licence.

[2] Section 38E Qualifications and duties of auditors

Omit “*Corporations Law*” from section 38E (1) (a).

Insert “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 4 to ensure that the *Property, Stock and Business Agents Act 1941* does not require a person who has a dealers licence under the *Corporations Act 2001* of the Commonwealth (or who has a proper authority from such a licence holder under that Act) to be licensed or registered under the State Act. At present, a similar exemption exists for holders of dealers licences or proper authorities under the *Corporations Law*.

Item [2] of the proposed amendments amends section 38E of the Act to provide that a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth is qualified to audit the books of a licensee under the State Act. At present, a registered company auditor under the *Corporations Law* is similarly qualified.

4.48 Public Authorities (Financial Arrangements) Act 1987 No 33

Section 3 Definitions

Omit “as in the *Corporations Law*” from the definition of **entity** in section 3 (1).

Insert instead “as it has for the purposes of Chapter 2E of the *Corporations Act 2001* of

the Commonwealth”.

Explanatory note

The proposed amendment to section 3 of the *Public Authorities (Financial Arrangements) Act 1987* ensures that the current definition of **entity** is updated so that it refers to entity within the meaning of the *Corporations Act 2001* of the Commonwealth instead of the *Corporations Law*.

4.49 Public Lotteries Act 1996 No 86

[1] Section 17 Disciplinary action against licensee

Omit “*Corporations Law*” from section 17 (2) (f) (ii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 74 Offences relating to inspectors

Omit “*Corporations Law*” from section 74 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 17 of the *Public Lotteries Act 1996* to replace a reference to an externally administered corporation within the meaning of the *Corporations Law* with a reference to an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 74 of the Act to replace a reference to an officer of a corporation within the meaning of the *Corporations Law* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.50 Public Notaries Act 1997 No 98

Section 11 Employed public notaries not to carry out certain work

Omit section 11 (3). Insert instead:

- (3) For the purposes of this section, if a public notary is employed by a corporation, the corporation includes a related body corporate, and **corporation** and **related body corporate** have the same meanings as in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to section 11 of the *Public Notaries Act 1997* replaces a reference to a corporation and related corporation within the meaning of the *Corporations Law* with a reference to a corporation and related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.51 Registered Clubs Act 1976 No 31

[1] Section 10 Requirements to be met by clubs

Omit section 10 (1) (b) (i). Insert instead:

- (i) a company within the meaning of the *Corporations Act 2001* of the Commonwealth,
or

[2] Section 32 Registered club to have only one secretary

Omit section 32 (1) and (2). Insert instead:

- (1) A registered club must at any time have one, but not more than one, secretary who is to be the chief executive officer of the club.

Maximum penalty: 100 penalty units.

- (2) The maximum number of secretaries of a registered club is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to section 204A of that Act.

Note—

This subsection ensures that section 204A ((Minimum number of secretaries) of the *Corporations Act 2001* of the Commonwealth will not apply in relation to the matter referred to in the subsection. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to a specified provision of that Act, then that provision will not apply in relation to that matter in the State concerned.

[3] Section 34 Unapproved person not to act as secretary of registered club

Omit section 34 (4).

[4] Section 38 Form of balance sheet and profit and loss account or income and expenditure account of registered clubs

Omit “*Corporations Law*” from section 38 (1) (a).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 38 (2)

Omit the subsection. Insert instead:

- (2) Subject to subsections (3) and (4), the provisions of subsection (1) have effect in addition to:
 - (a) the provisions of the *Corporations Act 2001* of the Commonwealth relating to

balance sheets and profit and loss accounts of companies, and

- (b) the provisions of the *Co-operatives Act 1992* relating to balance sheets and income and expenditure accounts of societies.
- (3) The regulations may declare a matter that is dealt with by regulations made for the purposes of subsection (1) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (4) If any provision of any regulation made for the purposes of subsection (1) is inconsistent with any provision of the *Co-operatives Act 1992*:
 - (a) the provision of the regulation prevails to the extent of the inconsistency, and
 - (b) if the provision of the regulation is complied with by the registered club, the registered club is taken not to have failed to comply with the provision of the *Co-operatives Act 1992* with which the provision of the regulation is inconsistent.
- (5) In this section:

matter includes act, omission, body, person or thing.

[6] Section 39 Disclosure of interests of members of governing body of registered club

Omit “Section 231 (2), (3) and (5) of the *Corporations Law* apply to and in respect of this subsection in the same way as they apply to and in respect of section 231 (1) of that Law.” from section 39 (2).

Insert instead “Sections 191 (2) and 192 of the *Corporations Act 2001* of the Commonwealth apply to and in respect of this subsection in the same way as they apply to and in respect of section 191 (1) of that Act.”.

[7] Section 41 Registered clubs under official management or receivership or in

liquidation

Omit “*Corporations Law*” from section 41 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Section 71 Service of summonses, notices etc

Omit “(such as section 220 of the *Corporations Law* in respect of a registered club that is a company within the meaning of that Law)” from section 71 (5).

Insert instead “(such as section 109X of the *Corporations Act 2001* of the Commonwealth in respect of a registered club that is a company within the meaning of that Act)”.

[9] Section 73A

Omit the section. Insert instead:

73A Age of members of governing body of club

- (1) A person may become or be a member of the governing body of a registered club even if the person is of or above the age of 72 years.
- (2) Subsection (1) has effect despite any other Act or law.
- (3) The maximum age of a member of the governing body of a registered club is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to section 201C of that Act.

Note—

This subsection ensures that section 201C (Directors of public companies, or subsidiaries, over 72) of the *Corporations Act 2001* of the Commonwealth will not apply in relation to the matter referred to in the subsection. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to specified provision of that Act, then that provision will not apply in relation to that matter in the State concerned.

[10] Section 111 Keeping of records

Omit “section 217 or 359 of the *Corporations Law*” from section 111 (1).

Insert instead “section 142 or 601CT of the *Corporations Act 2001* of the Commonwealth”.

[11] Section 134 Definitions and operation of Part

Omit “*Corporations Law*” from the definition of **subsidiary** in section 134 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[12] Section 145 Disciplinary action against licensee

Omit “*Corporations Law*” from section 145 (2) (d) (ii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[13] Section 153 Offences relating to authorised persons

Omit “*Corporations Law*” from section 153 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 10 of the *Registered Clubs Act 1976* to ensure that a company under the *Corporations Act 2001* of the Commonwealth can be a registered club. At present, a company may be a registered club only if it is a company within the meaning of the *Corporations Law*.

Item [2] of the proposed amendments amends section 32 of the Act to ensure that a registered club that is a company under the *Corporations Act 2001* of the Commonwealth must have one secretary, who is to be the chief executive officer of the club. It also avoids an inconsistency with the *Corporations Act 2001* of the Commonwealth Act by declaring the maximum number of secretaries of a registered club to be an excluded matter for the purposes of section 5F of that Act in relation to section 204A (Minimum number of secretaries) of that Act. The effect of the declaration will be that section 5F of the Commonwealth Act will operate to provide that section 204A does not apply to the declared matter.

Item [3] of the proposed amendments amends section 34 of the Act to repeal a provision that refers to a repealed provision of the *Corporations Law*.

Item [4] of the proposed amendments amends section 38 of the Act so that a reference to a company within the meaning of the *Corporations Law* will be a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 38 of the Act to enable regulations made for the purposes of that section to declare a matter dealt with by the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. The effect of such a declaration will be that section 5F of the Commonwealth Act will operate to disapply the provisions of the Commonwealth legislation identified by the declaration. Section 38 of the Act currently provides that the provisions of any such regulation prevail over the *Corporations Law*.

Item [6] amends section 39 of the Act to replace references to directors disclosure of an interest under the *Corporations Law* with reference to disclosure under corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends section 41 of the Act so that a reference to a company within the meaning of the *Corporations Law* will be a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 71 of the Act to update a reference to section 220 of the *Corporations Law* so that it is a reference to section 109X of the *Corporations Act 2001* of the Commonwealth, which is the corresponding provision. At present, section 71 provides that the service provisions in that section are intended to operate in addition to, but not in derogation of, service provisions in other laws including the *Corporations Law*.

Item [9] of the proposed amendments re-enacts the provisions of section 73A of the Act to ensure that a person may be a member of the governing body of a registered club even if the person is of or above the age of 72 years. It also avoids an inconsistency with the *Corporations Act 2001* of the Commonwealth by declaring the maximum age of members of the governing body of a registered club to be an excluded matter for the purposes of section 5F of that Act in relation to section 201C (Directors of public companies, or subsidiaries, over 72) of that Act. The effect of the declaration will be that section 5F of the Commonwealth will operate to provide that section 201C does not apply to the declared matter. Section 73A currently provides that nothing in the *Corporations Law* or in any Act prevents a person from becoming or being a member of the governing body of a registered club only because the person is of or above the age of 72 years.

Item [10] of the proposed amendments amends section 111 of the Act to ensure that records of certain corporations are kept at the registered or principal office of the corporation under section 142 or 601CT of the *Corporations Act 2001* of the

Commonwealth. It replaces a similar requirement to keep records at the registered or principal office of the corporation under the *Corporations Law*.

Item [11] of the proposed amendments updates a reference in the definition of **subsidiary** in section 134 of the Act to a subsidiary under Division 6 of Part 1.2 of the *Corporations Law* so that it is a reference to a subsidiary under the corresponding Division of the *Corporations Act 2001* of the Commonwealth.

Item [12] of the proposed amendments updates a reference in section 145 of the Act to a externally administered corporation within the meaning of the *Corporations Law* so that it is a reference to an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [13] of the proposed amendments updates a reference in section 153 of the Act to an officer of a corporation within the meaning of the *Corporations Law* so that it is a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.52 Registration of Interests in Goods Act 1986 No 37

[1] Section 8 Search certificates and notice

Omit "*Corporations Law*" from section 8 (4) (b).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 9 Purchase of goods that are subject to registrable interest

Omit "*Corporations Law*" from section 9 (6) wherever occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Section 10B Effect on priorities of agreements and *Corporations Act 2001*

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

[4] Section 18 Offence by corporation

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

Item [1] of the proposed amendments amends section 8 of the *Registration of Interests in Goods Act 1986* to provide that a failure by a person to search instruments registered, deposited, filed or recorded under any Act or registered under the *Corporations Act 2001* of the Commonwealth does not of itself mean that the person is affected by certain notices of a registrable interest in goods. At present, similar provision is made in relation to searching instruments registered under the *Corporations Law*.

Item [2] of the proposed amendments amends section 9 of the Act to replace references to related bodies corporate and directors and officers of bodies corporate within the meaning of the *Corporations Law* with references to those concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 10B of the Act to ensure that an order of priority of registrable interests established by the Act is subject to any express contrary provision of the *Corporations Act 2001* of the Commonwealth. At present, the section refers to any express contrary provision of the *Corporations Law*.

Item [4] of the proposed amendments amends section 18 of the Act to replace a reference to a director, secretary, executive officer or employee within the meaning of the *Corporations Law* with a reference to a director, secretary, executive officer or employee within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.53 Retail Leases Act 1994 No 46

Sections 25 (h), 28 (e) and 55 (d)

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendments to sections 25, 28 and 55 of the *Retail Leases Act 1994* replace references to registered company auditors within the meaning of the *Corporations Law* with references to registered company auditors within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.54 Retirement Villages Act 1999 No 81

[1] Section 4 Definitions

Omit “*Corporations Law*” from paragraph (b) (i) of the definition of **close associate** in section 4 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 57 Certain persons not to be operators

Omit “*Corporations Law*” from section 57 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 89 Receivers and managers

Omit “*Corporations Law*” from section 89 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 118 Auditing of accounts

Omit “*Corporations Law*” from section 118 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **close associate** in section 4 of the *Retirement Villages Act 1999* to replace a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 57 of the Act to replace references to externally-administered body corporate and insolvent under administration within the meaning of the *Corporations Law* with references to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 89 of the Act to make it clear that the section has no application to the extent that it would be inconsistent with the *Corporations Act 2001* of the Commonwealth. The section currently makes similar provision in relation to inconsistencies with the *Corporations Law*.

Item [4] of the proposed amendments amends section 118 of the Act to replace a reference to a person qualified to audit accounts for the purposes of the *Corporations Law* with a reference to a person qualified to audit accounts for the purposes of the *Corporations Act 2001* of the Commonwealth.

4.55 Revenue Laws (Reciprocal Powers) Act 1987 No 86

[1] Section 3 Definitions

Omit “*Corporations Law*” from the definition of **officer** in section 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 12 Provision of information to certain Commonwealth and State officers

Omit section 12 (1) (b). Insert instead:

- (b) the Australian Securities and Investments Commission, or a person authorised by that Commission, for the purposes of the administration or execution of:
 - (i) any law that is a national scheme law within the meaning of the *Corporations (New South Wales) Act 1990* as in force immediately before the commencement of the *Corporations Act 2001* of the Commonwealth, or
 - (ii) any law that is a relevant Act for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth as in force immediately before the commencement of the *Corporations Act 2001* of the Commonwealth, or
 - (iii) any law that is a relevant Code for the purposes of a law of a State, corresponding to the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980*, as in force immediately before the commencement of the *Corporations Act 2001* of the Commonwealth, or
 - (iv) the *Corporations Act 2001* of the Commonwealth or Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth (or regulations in force under that Act or Part),

Explanatory note

Item [1] of the proposed amendments amends the definition of **officer** in section 3 (1) of the *Revenue Laws (Reciprocal Powers) Act 1987* to replace a reference to an officer within the meaning of section 82A of the *Corporations Law* with a reference to an officer within the meaning of section 82A of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 12 of the Act to ensure that certain NSW revenue officers may disclose to ASIC information obtained under the Act or a NSW revenue law for the purpose of the administration by ASIC of the *Corporations Act 2001* of the Commonwealth or Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth (or regulations in force under that Act or Part). The amendment also re-enacts references to ASIC’s administration of previous corporations legislation in force in the State.

4.56 Roman Catholic Church Communities' Lands Amendment Act 2001 No 11

[1] Schedule 1 Amendments

Omit "*Corporations Law*" from proposed section 20 (5) to be inserted by Schedule 1 [10].

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Schedule 1 [10]

Omit proposed section 22. Insert instead:

22 Procedure for winding up

- (1) The winding up of a body corporate in New South Wales is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Chapter 5 of the *Corporations Act 2001* of the Commonwealth (the **applied provisions**), subject to the following modifications:
 - (a) the applied provisions have effect subject to the provisions of sections 20 and 21 of this Act,
 - (b) a reference in the applied provisions to a company, Part 5.1 body or Part 5.7 body is taken to include a reference to a body corporate,
 - (c) a past or present member of a body corporate is not liable to pay the body corporate's liabilities on the winding up or the costs, charges or expenses of the winding up despite anything to the contrary in the applied provisions,
 - (d) the distribution of surplus property after a body corporate is wound up is to be dealt with in accordance with section 23 despite anything to the contrary in the applied provisions,
 - (e) such other modifications (within the meaning of Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) as may be prescribed by the regulations.
- (2) The regulations may provide for the Australian Securities and Investments Commission to exercise a function under any provision of the *Corporations Act 2001* of the Commonwealth that is the subject of the declaration under subsection (1), but only if:
 - (a) the Australian Securities and Investments Commission is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and

(b) the Australian Securities and Investments Commission is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

(3) Section 17 of the *Corporations (Ancillary Provisions) Act 2001* has effect in relation to a regulation under subsection (2) as if subsection (1) had expressly made provision for the Australian Securities and Investments Commission to exercise the functions concerned.

[3] Schedule 1 [10]

Omit “the *Corporations Law* and” from proposed section 23 (1).

[4] Schedule 1 [10]

Omit “the application of the *Corporations Law* to the winding up” from proposed section 25 (a).

Insert instead “the application by section 22 of provisions of the *Corporations Act 2001* of the Commonwealth to the winding up”.

Explanatory note

Item [1] of the proposed amendments amends proposed section 20 of the *Roman Catholic Church Communities’ Lands Act 1942* (the **Principal Act**), which is to be inserted by the *Roman Catholic Church Communities’ Lands Amendment Act 2001*, to replace a reference to a notice of a winding up published under the *Corporations Law* with a reference to a notice published under the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments replaces proposed section 22 of the Principal Act to ensure that (subject to certain modifications) certain provisions of the *Corporations Act 2001* of the Commonwealth relating to the winding up of companies and other bodies will apply to the conduct of a winding up of a body corporate under the Act as a State law. Currently, proposed section 22 provides that the winding up of a body’s affairs is to be conducted in accordance with certain modified corresponding provisions of the *Corporations Law*. Item [4] makes a consequential amendment to proposed section 25 of the Principal Act.

Item [3] of the proposed amendments amends proposed section 23 of the Principal Act to remove a reference to the provision applying despite the *Corporations Law*.

4.57 Snowy Hydro Corporatisation Act 1997 No 99

[1] Section 4 Definitions

Omit the definition of ***Snowy Hydro Company*** or ***Company*** from section 4 (1).

Insert instead:

Snowy Hydro Company or ***Company*** means Snowy Hydro Limited.

[2] Section 4 (2)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 4 (3)

Insert after section 4 (2):

(3) Notes included in this Act do not form part of this Act.

[4] Section 47

Omit the section. Insert instead:

47 Excluded matters for purposes of Corporations Act 2001 of the Commonwealth

The following matters are declared to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to Chapter 2E and Part 2J.3 of that Act:

- (a) any debt to the Commonwealth, or other liability, acquired by the Snowy Hydro Company (or the giving of any related security) in accordance with this Act or the Commonwealth Corporatisation Act or the Victorian Corporatisation Act or any agreement under any such Act,
- (b) the acquisition of initial shares in the Company by the Commonwealth or the State of New South Wales or Victoria.

Note—

This section ensures that the provisions of Chapter 2E (Related party transactions) and Part 2J.3 (Financial assistance) of the *Corporations Act 2001* of the Commonwealth will not apply in relation to the matters referred to in this section. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to specified provisions of that Act, then those provisions will not apply in relation to that matter in the State concerned.

[5] Section 48 Company's financial statements and reports to be laid before Parliament

Omit "*Corporations Law*" from section 48 (1) where firstly occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

[6] Section 48 (1)

Omit "the *Corporations Law*" where secondly occurring.

Insert instead "that Act".

Explanatory note

Item [1] of the proposed amendments amends the definition of **Snowy Hydro Company** or **Company** in section 4 of the *Snowy Hydro Corporatisation Act 1997* so that it refers to Snowy Hydro Limited.

Item [2] of the proposed amendments amends section 4 of the Act to replace a reference to a subsidiary of a body corporate under the *Corporations Law* with a reference to the same concept under the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments replaces section 47 of the Act. Currently, that section provides that certain provisions of the *Corporations Law* do not apply to specified matters. The new section will ensure that these same matters will be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the corresponding provisions of that Act. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to specified provisions of that Act, then the provisions will not apply in relation to that matter in the State concerned. Item [3] inserts a new subsection in section 4 of the Act that will provide that notes included in the Act by the proposed amendments do not form part of the Act.

Items [5] of the proposed amendments amends section 48 of the Act to replace a reference to documents required by the *Corporations Law* to be laid before a particular annual general meeting of the Company with a reference to the same requirement under the *Corporations Act 2001* of the Commonwealth. Item [6] makes a consequential amendment to that section.

4.58 State Owned Corporations Act 1989 No 134

[1] Section 3 Definitions

Omit the definition of **constitution** from section 3 (1). Insert instead:

constitution for a SOC or subsidiary means:

- (a) in relation to a company SOC—the constitution of that company within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (b) in relation to a statutory SOC—the constitution of the SOC referred to in section 20Q, or
- (c) in relation to a subsidiary that is a company within the meaning of the *Corporations Act 2001* of the Commonwealth—the constitution of the company within the meaning of that Act, or
- (d) in relation to a subsidiary that is not a company—the subsidiary’s charter or memorandum and articles of association.

[2] Section 3 (3)

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[3] Section 7B

Insert after section 7A:

7B Inter-relationship with Corporations legislation

- (1) The regulations may declare any matter relating to a company SOC that is dealt

with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

- (a) the whole of the Corporations legislation, or
- (b) a specified provision of the Corporations legislation, or
- (c) the Corporations legislation other than a specified provision, or
- (d) the Corporations legislation other than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) In this section:

matter includes act, omission, body, person or thing.

[4] Section 10 Directors

Omit “memorandum and articles of association” from section 10 (2).

Insert instead “constitution”.

[5] Section 10A Authority for Minister to act for and on behalf of a voting shareholder

Omit section 10A (14). Insert instead:

- (14) Any act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under this section is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to the matters specified. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to that Act or Part, then the provisions of that Act or Part will not apply in relation to that matter in the State concerned.

[6] Section 12 Constitutions of company SOCs

Omit “memorandum and articles of association” from section 12 (1).

Insert instead “constitution”.

[7] Section 12 (2)

Omit “memorandum and articles”. Insert instead “constitution”.

[8] Section 13 Constitutions of subsidiaries

Omit “memorandum and articles of association” section 13 (1).

Insert instead “constitution”.

[9] Section 13 (2)

Omit “memorandum and articles”. Insert instead “constitution”.

[10] Section 20G

Omit the section. Insert instead:

20G Application of Commonwealth Corporations Act 2001

- (1) A statutory SOC is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation other than to the extent specified by the regulations for the purposes of this subsection.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a statutory SOC to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to:
 - (a) the whole of the Corporations legislation, or
 - (b) an Act, regulations or other instrument forming part of the Corporations legislation, or
 - (c) a provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part

3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (3) A provision of the Corporations legislation that is the subject of any such declaration in the regulations has effect subject to the following modifications:
 - (a) the provision applies as if a SOC were a public company and a company limited by shares,
 - (b) the provision applies as if shares in the SOC held by voting shareholders were shares held in the SOC as a public company and a company limited by shares,
 - (c) such other modifications as may be prescribed by the regulations.
- (4) Without limiting subsections (2) and (3) (c), any such regulations may:
 - (a) specify modifications to the definitions and other interpretative provisions of the Corporations legislation relevant to any provision of the Commonwealth legislation that is the subject of the declaration, and
 - (b) provide for ASIC to exercise a function under any provision of the Corporations legislation that is the subject of the declaration, but only if:
 - (i) ASIC is to exercise that function pursuant to an agreement of the kind referred to in section 11 (8) or (9A) (b) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (ii) ASIC is authorised to exercise that function under section 11 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, and
 - (c) specify that a reference to ASIC in any provision of the Corporations legislation that is the subject of the declaration is to be read as a reference to another person, and
 - (d) identify the provisions of the Corporations legislation to which the declaration relates by reference to that legislation as in force at a particular time, and
 - (e) specify a court of this State (other than the Supreme Court) to exercise any function conferred on a court or the Court by any provision of the Corporations legislation to which the declaration relates.
- (5) Subsection (2) does not apply to any provision of the Corporations legislation that applies to a statutory SOC as a law of the Commonwealth.

(6) Words and expressions used in this section and also in Part 3 of the *Corporations (Ancillary Provisions) Act 2001* have the same meanings as they have in that Part.

[11] Section 20HA Authority for Minister to act for and on behalf of a voting shareholder

Omit section 20HA (14). Insert instead:

(14) This section applies despite any provision of the Corporations legislation that is the subject of a declaration made for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* by regulations made under section 20G.

[12] Section 20Q Constitution of statutory SOCs

Omit “a memorandum and articles of association (its constitution)” from section 20Q (1).

Insert instead “a constitution”.

[13] Section 20Q (3)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[14] Section 20W Private corporations and subsidiaries

Omit “*Corporations Law*” from the definition of **private corporation** in section 20W (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[15] Section 26 Information to be laid before Parliament

Omit “memorandum and articles of association”, “memorandum or articles of association” and “memorandum and articles” wherever occurring.

Insert instead “constitution”.

[16] Section 26 (2)

Omit “contain”. Insert instead “contains”.

[17] Section 33 Operation of Act

Omit “memorandum or articles of association” wherever occurring.

Insert instead “constitution”.

[18] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Provisions to be included in constitution of company SOCs

(Section 12)

Provisions to the effect of the following provisions are to be included in the constitution of a company SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 2 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the corporation.
- (2) The corporation is expressly prohibited from exercising any power of the corporation in contravention of any requirement of or under section 19 or 20 of the *State Owned Corporations Act 1989*.

3 Shareholders

- (1) Only eligible Ministers may hold shares in the corporation's issued share capital.
- (2) The shareholders hold their shares in the corporation for and on behalf of the State.
- (3) A person ceases to be eligible to hold shares in the corporation on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (4) A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister.
- (5) The Premier is empowered to execute a transfer of any issued shares, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister, and the corporation is required to register the transfer.
- (6) The directors of the corporation are appointed by the voting shareholders.

- (7) All decisions relating to the operation of the corporation are to be made by or under the authority of the board of the corporation in accordance with its statement of corporate intent.
- (8) The board of the corporation is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the corporation.
- (9) The corporation may issue further shares to shareholders, but no shareholder is obliged to acquire any such further shares.
- (10) Only the voting shareholders may cast votes.
- (11) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes.

4 Staff director

- (1) One of the directors of the corporation is to be a staff director.
- (2) The staff director is to be selected by a selection committee from members of the staff of the corporation who are nominated for selection.
- (3) The selection committee is to consist of two persons nominated by the corporation's voting shareholders and two persons nominated by the Labor Council of New South Wales.
- (4) The procedures for constituting the selection committee, for nominating members of the staff and for determining other matters relating to the selection process are to be determined by the voting shareholders.

5 Dividends

- (1) Every dividend is to be of such amount, and paid at such times and in such instalments, as may be agreed between the voting shareholders and the board, or (failing agreement) as determined under subclause (2).
- (2) In the event of a failure to agree, the voting shareholders may, by written notice to the board, determine the matter, and the board must act in conformity with the determination.
- (3) Before giving such a notice, the voting shareholders are required to consult the board as to the matters to be referred to in the notice.

6 Subsidiaries

- (1) The corporation may not form, participate in the formation or acquire subsidiaries without the prior written approval of the voting shareholders.

- (2) The corporation must ensure that the constitutions of its subsidiaries at all times contain provisions to the effect of those required by Schedule 3 to the *State Owned Corporations Act 1989*.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its constitution and with the requirements of the *State Owned Corporations Act 1989*.

[19] Schedule 3

Omit the Schedule. Insert instead:

Schedule 3 Provisions to be included in constitutions of subsidiaries of company SOCs

(Section 13)

Provisions to the effect of the following provisions are to be included in the constitution of each subsidiary of a company SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 3 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of any requirement of or under section 19 or 20 of the *State Owned Corporations Act 1989*.

3 Shareholders

- (1) Those shareholders in the subsidiary consisting of eligible Ministers (if any) hold their shares in the subsidiary for and on behalf of the State.
- (2) Such a person ceases to be eligible to hold shares in the subsidiary on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (3) Such a shareholder may not sell or otherwise dispose of shares in the subsidiary

otherwise than to an eligible Minister or to the State owned corporation or a subsidiary of the State owned corporation.

- (4) The Premier is empowered to execute a transfer of any shares that were issued or transferred to an eligible Minister, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister, and the subsidiary is required to register the transfer.
- (5) The directors of the subsidiary are appointed by the shareholders of the subsidiary, but no such director may be appointed except with the prior approval of the voting shareholders of the State owned corporation.
- (6) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary in accordance with the statement of corporate intent of the State owned corporation.
- (7) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the subsidiary.
- (8) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (9) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the State owned corporation or by the Premier under subclause (4).

4 Subsidiaries

- (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the State owned corporation.
- (2) The subsidiary must ensure that the constitutions of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 3 to the *State Owned Corporations Act 1989*.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution and with the requirements of the *State Owned Corporations Act 1989*.

[20] Schedule 6

Omit the Schedule. Insert instead:

Schedule 6 Provisions to be included in constitution of statutory SOCs

(Section 20Q)

Provisions to the effect of the following provisions are to be included in the constitution of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 6 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the corporation.
- (2) The corporation is expressly prohibited from exercising any power of the corporation in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*.

3 Shareholders

- (1) Only eligible Ministers may hold shares in the corporation's issued share capital.
- (2) The shareholders hold their shares in the corporation for and on behalf of the State.
- (3) A person ceases to be eligible to hold shares in the corporation on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (4) A shareholder may not sell or otherwise dispose of shares in the corporation otherwise than to another eligible Minister.
- (5) The Premier is empowered to execute a transfer of any issued shares, whether or not the person still holds office as an eligible Minister, and the corporation is required to register the transfer.
- (6) The board of the corporation is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the corporation.
- (7) The corporation may issue further shares to shareholders, but no shareholder is

obliged to acquire any such further shares.

- (8) Only the voting shareholders may cast votes.
- (9) The voting shareholders must at all times have an equal number of shares and be in a position to cast an equal number of votes.

4 Subsidiaries

- (1) The corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders.
- (2) The corporation must ensure that the constitutions of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its constitution (if any) and with the requirements of the *State Owned Corporations Act 1989*.

[21] Schedule 7

Omit the Schedule. Insert instead:

Schedule 7 Provisions to be included in constitutions of subsidiaries of statutory SOCs

(Section 20R)

Provisions to the effect of the following provisions are to be included in the constitution of each subsidiary of a statutory SOC. Words and expressions used in these provisions have the same meanings as in the *State Owned Corporations Act 1989*.

1 Entrenchment

The constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedule 7 to the *State Owned Corporations Act 1989*, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

2 Act to prevail

- (1) The provisions of the *State Owned Corporations Act 1989* prevail over any inconsistent provisions of the constitution of the subsidiary.
- (2) The subsidiary is expressly prohibited from exercising any power of the subsidiary in contravention of or under section 20X or 20Y of the *State Owned Corporations Act 1989*.

3 Shareholders

- (1) Those shareholders in the subsidiary consisting of eligible Ministers (if any) hold their shares in the subsidiary for and on behalf of the State.
- (2) Such a person ceases to be eligible to hold shares in the subsidiary on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (3) Such a shareholder may not sell or otherwise dispose of shares in the subsidiary otherwise than to an eligible Minister or to the State owned corporation or a subsidiary of the State owned corporation.
- (4) The Premier is empowered to execute a transfer of any shares that were issued or transferred to an eligible Minister, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister, and the subsidiary is required to register the transfer.
- (5) All decisions relating to the operation of the subsidiary are to be made by or under the authority of the board of the subsidiary.
- (6) The board of the subsidiary is accountable to the voting shareholders in the manner set out in Part 4 of the *State Owned Corporations Act 1989* and in the constitution of the subsidiary.
- (7) The subsidiary may issue further shares to its shareholders, but no shareholder is obliged to acquire any such further shares.
- (8) Shares may not be issued or transferred except with the prior written approval of the voting shareholders of the State owned corporation or by the Premier under subclause (4).

4 Subsidiaries

- (1) The subsidiary may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the voting shareholders of the State owned corporation.
- (2) The subsidiary must ensure that the constitutions of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the *State Owned Corporations Act 1989*.
- (3) The subsidiary must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution (if any) and with the requirements of the *State Owned Corporations Act 1989*.

[22] Schedule 8 Constitution and procedure of boards of statutory SOCs

Omit “memorandum and articles of association”, “memorandum or articles of association” and “memorandum and articles” wherever occurring.

Insert instead “constitution”.

[23] Schedule 11 Savings and transitional provisions

Insert after Part 2:

Part 3 Provisions consequent on enactment of Corporations (Consequential Amendments) Act 2001

4 Memorandum and articles of association of SOC or its subsidiaries

- (1) Any memorandum and articles of association of a SOC or subsidiary of a SOC that were in force immediately before the commencement are taken together to make up its constitution for the purposes of this Act after that commencement.
- (2) The repeal and re-enactment of Schedules 2, 3, 6 and 7 to this Act by the *Corporations (Consequential Amendments) Act 2001* does not affect any obligation that a SOC or a subsidiary of a SOC may have had immediately before the commencement to include (or to ensure that another body include) certain provisions in a memorandum and articles of association.
- (3) In this clause, **commencement** means the commencement of the amendments made to this Act by the *Corporations (Consequential Amendments) Act 2001*.

Explanatory note

Item [1] of the proposed amendments amends section 3 of the *State Owned Corporations Act 1989* to replace the definition of **constitution** of a SOC or its subsidiaries with a definition that is consistent with the terminology used in the *Corporations Act 2001* of the Commonwealth. At the moment, the definition and other provisions of the Act refer to memoranda and articles of association. These concepts were replaced in the *Corporations Law* in 1998 with the concept of a constitution. Items [9], [12], [13], [15]–[22] make consequential amendments to sections 10, 12, 13, 20Q, 26 and 33 of the Act and to Schedules 2, 3, 6, 7 and 8 to the Act. Item [23] amends Schedule 11 to the Act to ensure that anything that, immediately before the commencement of these amendments, constituted the memoranda and articles of association of a SOC or its subsidiaries will be taken collectively after that commencement to form its constitution.

Item [2] of the proposed amendments amends section 3 of the Act to ensure that notes included in provisions to be inserted by the proposed amendments to the Act will not be treated as forming part of the Act.

Item [3] of the proposed amendments inserts section 7B in the Act to enable the regulations to declare a matter relating to a company SOC that is dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 10A of the Act to declare an act, matter or thing done or omitted to be done by a Minister while acting for or on behalf of a voting shareholder pursuant to an authority under that section to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments replaces section 20G. It ensures that the Corporations legislation enacted by the

Commonwealth will not apply of its own force to a statutory SOC. It also enables the regulations to apply provisions of the Corporations legislation as State law to matters concerning a statutory SOC.

Item [11] of the proposed amendments amends section 20HA to ensure that the provisions of that section prevail over any regulations made for the purposes of section 20G.

Item [14] of the proposed amendments amends section 20W to replace a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.59 Strata Schemes Management Act 1996 No 138

Section 11 Constitution of owners corporation

Omit section 11 (2). Insert instead:

- (2) An owners corporation is declared to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of the Corporations legislation.

Note—

This subsection ensures that neither the *Corporations Act 2001* nor Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth will apply in relation to an owners corporation. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

Explanatory note

At present, the *Strata Schemes Management Act 1996* provides that the *Corporations Law* does not apply to or in respect of an owners corporations. The proposed amendment to section 11 of the Act ensures that such corporations will be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the whole of that Act and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth. Section 5F of the *Corporations Act 2001* of the Commonwealth provides that if a State law declares a matter to be an excluded matter in relation to those Acts, then the provisions of those Acts will not apply in relation to that matter in the State concerned.

4.60 Superannuation Administration Authority Corporatisation Act 1999 No 5

Section 5 Establishment of statutory SOC

Omit “*Corporations Law*” from the note to the section.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 5 of the *Superannuation Administration Authority Corporatisation Act 1999* replaces a general reference to the *Corporations Law* in a note to that section with a reference to the *Corporations Act 2001* of the Commonwealth.

4.61 Supreme Court Act 1970 No 52

Section 101 Appeal in proceedings before the Court

Insert “or section 459G of the *Corporations Act 2001* of the Commonwealth” after “*Corporations Law*” in section 101 (2) (p).

Explanatory note

The proposed amendment to section 101 of the *Supreme Court Act 1970* ensures that a judgment or order of the Supreme Court under section 459G of the *Corporations Act 2001* of the Commonwealth cannot be appealed to the Court of Appeal without the leave of that Court. Currently, appeals from judgments and orders made under section 459G of the *Corporations Law* also require leave.

4.62 Sydney Olympic Park Authority Act 2001

Section 58 Subsidiary corporations

Omit “*Corporations Law*” from the definition of **private corporation** in section 58 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the definition of **private corporation** in section 58 of the *Sydney Olympic Park Authority Act 2001* replaces a reference to a corporation within the meaning of the *Corporations Law* with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.63 Sydney Organising Committee for the Olympic Games Act 1993 No 67

Section 6 Legal capacity

Omit “*Corporations Law*” from section 6 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 6 of the *Sydney Organising Committee for the Olympic Games Act 1993* provides that SOCOG has the same legal capacity and powers as a company under the *Corporations Act 2001* of the Commonwealth. At present, section 6 provides that SOCOG has the same legal capacity and powers as a company under the *Corporations Law*.

4.64 Sydney Water Act 1994 No 88

[1] Section 3 Definitions

Omit “*Corporations Law*” from paragraph (a) of the definition of **statutory body** in section 3 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 20 Cancellation of operating licences

Omit “*Corporations Law*” from section 20 (1) (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **statutory body** in section 3 of the *Sydney Water Act 1994* to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends section 20 of the Act to provide for the cancellation of an operating licence of Sydney Water Corporation if it is an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth. At present, section 20 provides for cancellation if the Corporation is an externally administered corporation within the meaning of the *Corporations Law*.

4.65 Sydney Water Catchment Management Act 1998 No 171

Section 3 Definitions

Omit “*Corporations Law*” from paragraph (a) of the definition of **public authority**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the definition of **public authority** in section 3 of the *Sydney Water Catchment Management Act 1998* replaces a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.66 Totalizator Act 1997 No 45

[1] Section 5 Definitions

Omit “*Corporations Law*” from the definition of **related body corporate** in section 5 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 5 (1), definition of “subsidiary”

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 12 Licences may be granted to conduct totalizators of various kinds

Omit “*Corporations Law*” from section 12 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 30 Division applies only to companies

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 30A

Insert after section 30:

30A References to *Corporations Law* in this Division

A reference in this Division (other than section 30) to the *Corporations Law* (or a provision of that Law) is a reference to that Law (or the provision of that Law) as in force on 6 March 1998.

[6] Section 35 Substantial shareholders to give notice to Minister

Omit “Part 6.7 (Substantial shareholdings) of the *Corporations Law*” and “that Law” from section 35 (1).

Insert instead “Part 6C.1 of the *Corporations Act 2001* of the Commonwealth” and “that Act” respectively.

[7] Section 35 (2)

Omit “Part 6.7 of the *Corporations Law*”.

Insert instead “Part 6C.1 of the *Corporations Act 2001* of the Commonwealth”.

[8] Section 42A

Insert after section 42:

42A Excluded matters for the purposes of the *Corporations Act 2001* of the Commonwealth

(1) The regulations may declare any matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

- (a) the whole of the Corporations legislation, or
- (b) a specified provision of the Corporations legislation, or
- (c) the Corporations legislation other than a specified provision, or
- (d) the Corporations legislation other than to a specified extent.

Note—

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

Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

(2) In this section:

matter includes act, omission, body, person or thing.

[9] Section 47 Disciplinary action against licensee

Omit “*Corporations Law*” from paragraph (e) of the definition of **grounds for disciplinary action** in section 47 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[10] Section 98 Offences relating to inspectors

Omit “*Corporations Law*” from section 98 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **related body corporate** in section 5 of the *Totalizator Act 1997* so that the term has the same meaning as it has in section 9 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in section 9 of the *Corporations Law* (as the definition currently provides).

Item [2] of the proposed amendments amends the definition of **subsidiary** in section 5 of the Act so that the term has the same meaning as it has in Division 6 of Part 1.2 of the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the same Division of Part 1.2 of the *Corporations Law*.

Items [3] and [4] of the proposed amendments amend sections 12 and 30 of the Act to replace references to a company incorporated under the *Corporations Law* with references to a company incorporated under the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments inserts section 30A in the Act to ensure that references to the *Corporations Law* in Division 3 of Part 3 have the meaning they had on 6 March 1998, being the date on which the Act commenced.

Items [6] and [7] of the proposed amendments amend section 35 to replace references to Part 6.7 of the *Corporations Law* with references to Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments inserts section 42A in the Act to enable the regulations to declare certain matters arising under the Act or the regulations to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

Item [9] of the proposed amendments amends section 47 of the Act to replace a reference to an externally administered corporation within the meaning of the *Corporations Law* with a reference to an externally administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments amends section 98 of the Act to replace a reference to an officer of a corporation within the meaning of the *Corporations Law* with a reference to an officer of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.67 Totalizator Agency Board Privatisation Act 1997 No 43

[1] Section 36A

Insert after section 36:

36A References to Corporations Law in this Division

A reference in this Division to the *Corporations Law* (or a provision of that Law) is a reference to that Law (or the provision of that Law) as in force on 6 March 1998.

[2] Section 40 Substantial shareholders to give notice to Minister

Omit “Part 6.7 (Substantial shareholdings) of the *Corporations Law*” and “that Law” from section 40 (1).

Insert instead “Part 6C.1 of the *Corporations Act 2001* of the Commonwealth” and “that Act” respectively.

[3] Section 40 (2)

Omit “Part 6.7 of the *Corporations Law*”.

Insert instead “Part 6C.1 of the *Corporations Act 2001* of the Commonwealth”.

[4] Section 45A

Insert after section 45:

45A Excluded matters for the purposes of the Corporations Act 2001 of the Commonwealth

- (1) The regulations may declare any matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
 - (a) the whole of the Corporations legislation, or
 - (b) a specified provision of the Corporations legislation, or
 - (c) the Corporations legislation other than a specified provision, or
 - (d) the Corporations legislation other than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) In this section:

matter includes act, omission, body, person or thing.

Explanatory note

Item [1] of the proposed amendments inserts section 36A in the *Totalizator Agency Board Privatisation Act 1997* to ensure that references to the *Corporations Law* in Division 2 of Part 8 have the meaning they had on 6 March 1998, being the date on which those provisions commenced.

Items [2] and [3] of the proposed amendments amend section 40 of the Act to replace references to Part 6.7 of the *Corporations Law* with references to Part 6C.1 of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments inserts section 45A in the Act to enable the regulations to declare certain matters arising under the Act or the regulations to be excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth.

4.68 Transport Administration Act 1988 No 109

Section 19C Establishment of RIC as statutory State owned corporation

Omit “*Corporations Law*” from the note to the section.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the note to section 19C of the *Transport Administration Act 1988* replaces a general reference to the *Corporations Law* in the note with a reference to the *Corporations Act 2001* of the Commonwealth.

4.69 Treasury Corporation Act 1983 No 75

Section 6 Powers etc of the Corporation

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 6 of the *Treasury Corporation Act 1983* ensures that the Treasury Corporation has the same legal capacity, powers and authorities as a company under the *Corporations Act 2001* of the Commonwealth. At present, its legal capacity, powers and authorities are identified by reference to those of a company under the *Corporations Law*.

4.70 Unclaimed Money Act 1995 No 75

Section 13K Application of Part

Omit “*Corporations Law*” and “that law” from section 13K (1) (b).

Insert instead “*Corporations Act 2001* of the Commonwealth” and “that Act” respectively.

Explanatory note

The proposed amendment to section 13K of the *Unclaimed Money Act 1995* replaces a reference to a corporation and registered office within the meaning of the *Corporations Law* with a reference to the same terms within the meaning of the *Corporations Act 2001* of the Commonwealth. Currently, section 13K provides that Part 3A (which deals with unclaimed superannuation benefits) applies to a trustee that is a corporation within the meaning of the *Corporations Law* and that has its registered office within the meaning of that Law in New South Wales.

4.71 Water Management Act 2000 No 92

[1] Section 121 Ceasing to be an irrigation corporation

Omit “*Corporations Law*” from section 121 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 126 Cancellation of operating licence

Omit “*Corporations Law*” from section 126 (1) (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Section 127 Irrigation corporation may make arrangements with subsidiaries

Omit “*Corporations Law*” from section 127 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 187 Books of account

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 283 Definitions

Omit “*Corporations Law*” from paragraph (a) of the definition of **statutory body**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 121 of the *Water Management Act 2000* to ensure that regulations cannot be made under that section that are inconsistent with the *Corporations Act 2001* of the Commonwealth. Currently, the section provides that regulations made under the section cannot be inconsistent with the *Corporations Law*.

Item [2] of the proposed amendments amends section 126 of the Act to replace a reference to an externally-administered corporation within the meaning of the *Corporations Law* with a reference to an externally-administered corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 127 of the Act to replace a reference to a subsidiary of a corporation within the meaning of the *Corporations Law* with a reference to a subsidiary of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 187 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends the definition of **statutory body** in section 283 of the Act to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.72 Westpac Banking Corporation Act 1995 No 76

[1] Section 3 Definitions

Omit the definition of **Commission**. Insert instead:

Commission means the Australian Securities and Investments Commission.

[2] Section 3 (2)

Insert at the end of section 3:

(2) Notes included in this Act do not form part of this Act.

[3] Section 5A

Insert after section 5:

5A Relationship of this Act with Corporations legislation of the Commonwealth

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

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 Corporations 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.

(3) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

Explanatory note

Item [1] of the proposed amendments replaces the definition of **Commission** in section 3 of the Act so that it defines the Commission to be the Australian Securities and Investments Commission rather than the Australian Securities Commission.

Item [3] of the proposed amendments inserts a section 5A in the Act to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It also enables the regulations to declare a provision of the Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration. Item [2] of the proposed amendments amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [3] are not treated as forming part of the Act.

4.73 Westpac Banking Corporation (Transfer of Incorporation) Act 2000 No 71

[1] Long title

Omit “*Corporations Law of New South Wales*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Section 3 Definitions

Omit the definition of **registration date** from section 3 (1).

Insert instead:

registration date means the registration day specified by the Attorney General in an order made under section 5A.

[3] Section 3 (1), definition of “transfer application”

Omit the definition.

[4] Section 3 (1), definition of “Westpac company”

Omit the definition. Insert instead:

Westpac company means Westpac after it is taken to be registered as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth by operation of section 5H (4) of that Act.

[5] Section 3 (2)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 3 (3)

Omit the subsection.

[7] Part 2, Division 1

Omit the Division. Insert instead:

Division 1 Status and registration of Westpac

5 Westpac is deemed registration company

- (1) Westpac is a deemed registration company for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.
- (2) For the purposes of that section:
 - (a) the day on which Westpac is to be taken to be registered as a company is the registration date specified by the Attorney General in an order made under section 5A, and
 - (b) the type of company that Westpac is to be registered as is a public company limited by shares, and
 - (c) the company’s proposed name is “Westpac Banking Corporation”.

Note—

Section 5H of the *Corporations Act 2001* of the Commonwealth provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory to which the Act applies:

- (a) provides that the body is a deemed registration company for the purposes of the section, and
- (b) specifies:

- (i) the day on which the body is to be taken to be registered (the registration day) or the manner in which that day is to be fixed, and
- (ii) the type of company the body is to be registered as under the Act, and
- (iii) the company's proposed name (unless the ACN is to be used in its name),

and if section 5H (2) and (3) (relating to the lodgement of certain notices and documents with ASIC) are satisfied.

5A Order specifying registration date

- (1) The Attorney General may, by order published in the Gazette, specify a day on which Westpac is to be taken to be registered as a public company limited by shares for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth.
- (2) The Attorney General may make an order under subsection (1) only if the Attorney General is satisfied that:
 - (a) a transfer resolution has been passed by the shareholders of Westpac in accordance with the provisions of this Act, and
 - (b) the period of at least 1 month has elapsed since the date on which the resolution was passed, and
 - (c) an order declaring the resolution to be invalid has not been made by the Supreme Court under section 7 (1), and
 - (d) Westpac has complied with section 5H (2) and (3) of the *Corporations Act 2001* of the Commonwealth within the prescribed period after the transfer resolution was passed.
- (3) The Attorney General is to provide ASIC with a copy of an order made under this section as soon as practicable after it is issued to Westpac. However, a failure to provide such a copy does not affect the validity of the order.
- (4) An order under this section cannot be challenged, reviewed or called into question in proceedings before any court or tribunal.
- (5) An order under this section is conclusive evidence in any proceedings before a court or tribunal that all the requirements of this Act have been complied with concerning the registration of Westpac under the *Corporations Act 2001* of the Commonwealth as a public company limited by shares.
- (6) Nothing in subsection (4) or (5) affects the operation of section 7 in relation to an application made to the Supreme Court under that section for an order declaring a transfer resolution to be invalid.
- (7) Nothing in this section prevents a further proposal for a transfer resolution being

put to Westpac shareholders if:

- (a) a previously proposed transfer resolution was not passed or was declared to be invalid by order of the Supreme Court under section 7 (1), or
- (b) Westpac did not comply with section 5H (2) and (3) of the *Corporations Act 2001* of the Commonwealth within the prescribed period in relation to a previous transfer resolution.

(8) In this section:

prescribed period, in relation to a transfer resolution, means:

- (a) in relation to a resolution passed on or after the commencement of Schedule 4.73 to the *Corporations (Consequential Amendments) Act 2001*:
 - (i) except as provided by subparagraph (ii)—the period of 6 months (or such other period as may be prescribed by the regulations whether before or after the resolution is passed) after the date on which the resolution is passed, or
 - (ii) if an application for an order under section 7 (1) is duly made but is refused or withdrawn after the end of the period referred to in subparagraph (i)—the period of one month after the date on which the application is finally determined or withdrawn (as the case may be), or
- (b) in relation to a transfer resolution of the kind referred to in section 6 (2)—the period that was the prescribed period in relation to that resolution for the purposes of section 5 of this Act as in force immediately before its repeal by the *Corporations (Consequential Amendments) Act 2001* or such further period as may be prescribed by the regulations (whether before or after the expiry of the prescribed period).

[8] Section 6 What is a transfer resolution?

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

[9] Section 6 (2)

Insert at the end of section 6:

- (2) Any special resolution (within the meaning of the deed of settlement) passed by Westpac shareholders that was a transfer resolution within the meaning of this section as in force immediately before the commencement of this subsection is taken to be a transfer resolution for the purposes of subsection (1).

[10] Section 7 Irregularities concerning transfer resolutions

Omit section 7 (5). Insert instead:

- (5) If the Supreme Court makes an invalidity order in relation to a transfer resolution, any order made by the Attorney General under section 5A in relation to that resolution is taken to have no effect for the purposes of this Act.

[11] Part 2, Division 3, heading

Omit the heading. Insert instead:

Division 3 **General**

[12] Sections 8 and 9

Omit the sections.

[13] Section 10

Omit sections 10 and 11. Insert instead:

10 Relationship of this Act with Corporations legislation of the Commonwealth

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations (or that is of a savings or transitional nature consequent on Westpac's registration as a public company limited by shares under the *Corporations Act 2001* of the Commonwealth) to be an excluded matter for the purposes of section 5F of that Act in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) Without limiting subsection (1), that subsection extends to any of the following matters:

- (a) the use of the name Westpac Banking Corporation or the word “Limited” in Westpac company’s name after the registration date,
 - (b) the use of Westpac’s ARBN after the registration date,
 - (c) benefits given to a director of Westpac company in accordance with an agreement with the director on the terms referred to in Clause 56 (4B) of the deed of settlement,
 - (d) any buy-back of shares of Westpac that has not been completed by the registration date.
- (3) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

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 Corporations 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.

- (4) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

[14] Section 13 Regulations

Insert at the end of section 13:

- (2) The *Subordinate Legislation Act 1989* does not apply to the regulations.

[15] Schedule 1 Savings, transitional and other provisions

Omit clauses 2-9.

Explanatory note

Item [1] of the proposed amendments amends the long title of the *Westpac Banking Corporation (Transfer of Incorporation) Act*

2000 to replace a reference to the *Corporations Law* with a reference to the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 3 of the Act to replace a reference to definitions in section 9 of the *Corporations Law* with a reference to definitions in section 9 of the *Corporations Act 2001* of the Commonwealth.

Item [6] of the proposed amendments omits section 3 (3), which contains an outdated reference to the *Corporations Law of New South Wales*.

Item [7] of the proposed amendments replaces Division 1 of Part 2. It provides that Westpac is a deemed registration company for the purposes of section 5H of the *Corporations Act 2001* of the Commonwealth and specifies a mechanism for the determination of its registration date. Section 5H of the *Corporations Act 2001* of the Commonwealth provides that a body is taken to be registered under that Act as a company of a particular type under section 118 of that Act if a law of a State or Territory to which the Act applies provides that the body is a deemed registration company for the purposes of the section and specifies the registration day, the type of company the body is to be registered as under the Act and the company's proposed name. Items [2]–[4], [8]–[12] and [15] make consequential amendments.

Item [13] of the proposed amendments replaces section 10 in the Act to enable the regulations to declare a matter dealt with by the Act or the regulations (or savings and transitional matters) to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration. Item [14] amends section 13 to provide that the *Subordinate Legislation Act 1989* does not apply to the regulations.

4.74 Workers Compensation Act 1987 No 70

[1] Section 147 Miscellaneous provisions

Omit section 147 (5) and (6). Insert instead:

- (5) The following matters are excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 471B and 500 (2) of that Act:
- (a) an application by a person for an award of compensation,
 - (b) a person proceeding with such an application.

Note—

In the absence of this subsection, sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth would require the leave of a Court to make or proceed with an application for compensation against certain companies that are being externally administered. This section ensures that section 5F of that Act will operate to ensure that those sections will not require the leave of the Court directing the external administration before an application can be made or proceeded with.

- (6) Any award of compensation made pursuant to an application authorised by this section has effect only for the purposes of this Division and not otherwise.

[2] Section 173 Furnishing information for calculation of premiums

Omit "*Corporations Law*" from section 173 (1) (b).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[3] Section 178 Determination of application for licence

Omit “*Corporations Law*” from section 178 (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Section 189 Information and records as to business etc to be supplied to Authority by insurers

Omit “*Corporations Law*” from section 189 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[5] Section 190 Notification to Authority of certain defaults in relation to insurers

Omit section 190 (2) (f). Insert instead:

- (f) the receipt by the licensee or a related corporation or the giving, or causing to be given, by the licensee or corporation, of any bidder’s statement or target’s statement within the meaning of the *Corporations Act 2001* of the Commonwealth,

[6] Section 198 Investment of statutory funds

Omit “*Corporations Law*” from section 198 (3).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[7] Section 200 Directors of licensee companies under trustee duty

Omit “*Corporations Law*” from section 200 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Section 211A Endorsement of subsidiaries on self-insurer’s licence

Omit “*Corporations Law*” from section 211A (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends section 147 of the *Workers Compensation Act 1987* to declare an application for an award of compensation to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to sections 471B and 500 (2) of that Act. Sections 471B and 500 (2) require the leave of a Court before certain proceedings can be brought or maintained in relation to an externally administered company. The amendment will invoke section 5F so that section 5F will operate to wind back the operation of sections 471B and 500 (2) to the extent that those sections would otherwise operate to require the leave of a Court in respect of an application for an award of compensation. At present, section 147 of the *Workers Compensation Act 1987* provides that sections 471B and 500 (2) of the *Corporations Law* do not preclude a person from applying for such an award without the leave of the Supreme Court.

Item [2] of the proposed amendments amends section 173 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends section 178 of the Act to replace a reference to a related corporation within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 189 of the Act to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [5] of the proposed amendments amends section 190 of the Act to replace an outdated reference to Part A, Part B, Part C and Part D takeover statements under the *Corporations Law* with a reference to bidder's statements and target's statements under the *Corporations Act 2001* of the Commonwealth, which correspond to the earlier statements.

Item [6] of the proposed amendments amends section 198 of the Act to replace references to related corporations or associates within the meaning of the *Corporations Law* with references to those concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends section 200 of the Act to provide that a director of a company for the purposes of that section includes a deemed director of a company for the purposes of the *Corporations Act 2001* of the Commonwealth. Currently, the section includes deemed directors for the purposes of the *Corporations Law*.

Item [8] of the proposed amendments amends section 211A of the Act to replace a reference to a wholly owned subsidiary within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

4.75 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 4 Definitions

Omit "*Corporations Law*" from the definition of **related body corporate** in section 4 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Section 66 Manner of making claim for compensation

Omit "sections 220 and 363 of the *Corporations Law*" from section 66 (3) (c).

Insert instead "sections 109X and 601CX of the *Corporations Act 2001* of the Commonwealth".

[3] Section 169 Furnishing information for calculation of premiums

Omit "*Corporations Law*" from section 169 (1) (b).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[4] Section 175 Applications for licences

Insert ", the *Corporations Act 2001* of the Commonwealth" after "*Corporations Law*" in section 175 (3) (b).

[5] Section 186 Information and records as to business etc to be supplied to Authority by insurers

Omit "*Corporations Law*" from section 186 (4).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[6] Section 187 Notification to Authority of certain defaults in relation to insurers

Omit section 187 (3) (b). Insert instead:

- (b) the receipt by the insurer of any bidder’s statement or target’s statement within the meaning of the *Corporations Act 2001* of the Commonwealth.

[7] Section 192 Endorsement of subsidiaries on self-insurer’s licence

Omit “*Corporations Law*” from section 192 (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[8] Section 228 Miscellaneous provisions

Omit section 228 (5) and (6). Insert instead:

- (5) The following matters are excluded matters for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to the provisions of sections 471B and 500 (2) of that Act:
 - (a) an application by a person for an award of compensation,
 - (b) a person proceeding with such an application.

Note—

In the absence of this subsection, sections 471B and 500 (2) of the *Corporations Act 2001* of the Commonwealth would require the leave of a Court to make or proceed with an application for compensation against certain companies that are being externally administered. This section ensures that section 5F of that Act will operate to ensure that those sections will not require the leave of the Court directing the external administration before an application can be made or proceeded with.

- (6) Any award of compensation made pursuant to an application authorised by this section has effect only for the purposes of this Chapter and not otherwise.

Explanatory note

Item [1] of the proposed amendments amends the definition of **related body corporate** in section 4 of the *Workplace Injury Management and Workers Compensation Act 1998* so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [2] of the proposed amendments amends section 66 of the Act to replace a reference to service of documents under the *Corporations Law* with a reference to service of documents under the *Corporations Act 2001* of the Commonwealth.

Items [3] and [5] of the proposed amendments amend sections 169 and 186 of the Act to replace references to a registered company auditor within the meaning of the *Corporations Law* with references to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends section 175 of the Act to provide that an applicant for a licence may be required

to furnish previous returns and accounts under the *Corporations Act 2001* of the Commonwealth as well as under the *Corporations Law*.

Item [6] of the proposed amendments amends section 187 of the Act to replace an outdated reference to Part A, Part B, Part C and Part D takeover statements under the *Corporations Law* with a reference to bidder's statements and target's statements under the *Corporations Act 2001* of the Commonwealth, which correspond to the earlier statements.

Item [7] of the proposed amendments amends section 192 of the Act to replace a reference to a wholly-owned subsidiary within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [8] of the proposed amendments amends section 228 of the Act to declare an application for an award of compensation to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to sections 471B and 500 (2) of that Act. Sections 471B and 500 (2) require the leave of a Court before certain proceedings can be brought or maintained in relation to an externally administered company. The amendment will invoke section 5F so that section 5F will operate to wind back the operation of sections 471B and 500 (2) to the extent that those sections would otherwise operate to require the leave of a Court in respect of an application for an award of compensation. At present, section 228 of the *Workplace Injury Management and Workers Compensation Act 1998* provides that sections 471B and 500 (2) of the *Corporations Law* do not preclude a person from applying for such an award without the leave of the Supreme Court.

4.76 Workplace Video Surveillance Act 1998 No 52

Section 3 Definitions

Omit "*Corporations Law*" from the definition of **related corporation**.

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to the definition of **related corporation** in section 3 of the *Workplace Video Surveillance Act 1998* replaces a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to the same concept within the meaning of the *Corporations Act 2001* of the Commonwealth.

Schedule 5 Amendment of references in Regulations to national scheme laws

(Section 3)

5.1 Associations Incorporation Regulation 1999

[1] Clause 15

Omit the clause. Insert instead:

15 Modifications to applied text of *Corporations Act 2001* of the Commonwealth

The following modifications to the text of the *Corporations Act 2001* of the Commonwealth apply for the purposes of sections 50 (2) and 51 (3) of the Act:

- (a) the reference in section 495 (4) of the *Corporations Act 2001* of the Commonwealth to a contributory of a company is to be read and construed as a

reference to a member of the incorporated association,

- (b) a reference to a company carrying on business or having a place of business is to be read and construed as a reference to the incorporated association pursuing its objects,
- (c) a reference to registration of a company is to be read and construed as a reference to the incorporation of the incorporated association,
- (d) a reference to the constitution of a company is to be read and construed as a reference to the rules of the incorporated association,
- (e) a reference to ASIC is to be read and construed as a reference to the Director-General,
- (f) a reference to the registered office of a corporation is to be read and construed as a reference to the address of the public officer of the incorporated association last notified to the Director-General under the Act,
- (g) a reference to a special resolution is to be read and construed as a reference to a special resolution within the meaning of the Act,
- (h) the provisions of Parts 5.5 and 5.7 have effect as if sections 507, 582 (3), 583 (c) (iii) and 601AB (1) (c) of the *Corporations Act 2001* of the Commonwealth were omitted,
- (i) the provisions of section 501 of the *Corporations Act 2001* of the Commonwealth is not to be construed as authorising the distribution of surplus property of the incorporated association to its members,
- (j) a person in respect of whom an approval is in force under clause 16, in addition to any person qualified to act as a liquidator under the *Corporations Act 2001* of the Commonwealth may, despite any provision of that Act (except section 532 (2) (a), (2) (b), (7) and (9)), be appointed, and may act as, the liquidator of an incorporated association to which the approval relates.

[2] Clause 16 Additional persons qualified to be liquidators

Omit clause 16 (4).

[3] Clause 17 Incorporation of association as a company

Omit "*Corporations Law*" from clause 17 (1) wherever occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

[4] Schedule 1 Model rules

Omit "*Corporations Law*" from rule 18 (c).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments replaces clause 15 of the *Associations Incorporation Regulation 1999*. Currently, clause 15 prescribes modifications to the *Corporations Law* to the extent that it is applied by the Act to the winding up of incorporated associations. The new clause 15 prescribes the same modifications (being modifications that are not already specified in Part 3 of the *Corporations (Ancillary Provisions) Act 2001*) in relation to the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends clause 16 to omit a modification relating to liquidators that has now been incorporated in the new clause 15.

Item [3] of the proposed amendments amends clause 17 to replace references to registration and incorporation as a company under the *Corporations Law* with references to such registration and incorporation under the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends Schedule 1 to replace a reference to insolvent under administration within the meaning of the *Corporations Law* with a reference to insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.2 Casino Control Regulation 1995

[1] Schedule 1

Omit “*Corporations Law*” from item 12.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Schedule 1, item 13

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Schedule 1, items 14 and 15

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Schedule 4

Omit “*Corporations Law*” wherever occurring from section 69 (3) set out in Part C.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends item 12 of Schedule 1 to the *Casino Control Regulation 1995* to replace a reference to an arrangement under Part 5.1 of the *Corporations Law* with a reference to an arrangement under Part 5.1 of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends item 13 of Schedule 1 to the Regulation to replace a reference to a receiver or other controller within the meaning of the *Corporations Law* with a reference to a receiver or other controller within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends items 14 and 15 of Schedule 1 to the Regulation to replace references to an administration under Part 5.3A of the *Corporations Law* with references to an administration under Part 5.3A of the *Corporations Act 2001* of the Commonwealth.

Item [5] amends section 69 of the *Liquor Act 1982* set out in Part C of Schedule 4 to replace references to related bodies corporate within the meaning of the *Corporations Law* with references to related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.3 Charitable Fundraising Regulation 1998

Schedule 1 Conditions applying to certain authorities

Omit clause 7 (5):

- (5) If the organisation is a company incorporated under the *Corporations Act 2001* of the Commonwealth, the declaration above is required in addition to the directors' declaration provided under section 295 of that Act.

Explanatory note

The proposed amendment to clause 7 of Schedule 1 to the *Charitable Fundraising Regulation 1998* replaces a reference to a directors' statement about an annual financial report of a company under the *Corporations Law* with a reference to a directors' declaration under the *Corporations Act 2001* of the Commonwealth.

5.4 Commercial Agents and Private Inquiry Agents Regulation 2000

Clause 13 (1) and Form 6 of Schedule 1

Omit "*Corporations Law*" wherever occurring.

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendments to clause 13 of, and Schedule 1 to, the *Commercial Agents and Private Inquiry Agents Regulation 2000* replace references to a registered company auditor within the meaning of the *Corporations Law* with references to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.5 Commons Management Regulation 1996

Clause 32 Qualifications for auditors

Omit "*Corporations Law*".

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

The proposed amendment to clause 32 of the *Commons Management Regulation 1996* replaces a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.6 Conveyancers Licensing Regulation 1993

[1] Clause 3 Definitions

Omit “*Corporations Law*” from the definition of **registered company auditor** in clause 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Clause 35 Delegation

Omit “within the meaning of the *Corporations Law*” from clause 35 (2) (b).

Explanatory note

Item [1] of the proposed amendments amends the definition of **registered company auditor** in clause 3 of the *Conveyancers Licensing Regulation 1993* to replace a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth. Item [2] makes a similar amendment to clause 35 (2) (b) of the Regulation.

5.7 Co-operative Housing and Starr-Bowkett Societies Regulation 2000

[1] Clause 8 Inspection of documents

Omit clause 8 (t)–(w). Insert instead:

- (t) documents lodged with the Registrar under section 263, 264, 268 or 269 of the Corporations Act (as applicable to a co-operative housing body by virtue of section 88 of the Act),
- (u) documents relating to a court approved scheme of arrangement or reconstruction lodged or filed with the Registrar under Part 5.1 of the Corporations Act (as applicable to a society by virtue of section 173 of the Act),
- (v) documents lodged or filed with the Registrar under Part 5.2 of the Corporations Act (as applicable to a society by virtue of section 174 of the Act) other than reports under section 422 of the Corporations Act,
- (w) documents lodged or filed with the Registrar under Part 5.4A, 5.4B, 5.5 or 5.6 of the Corporations Act (as applicable to a matter by virtue of section 177 of the Act) other than reports under section 533 of the Corporations Act.

[2] Clause 13 Preliminary

Omit the note to the clause.

[3] Clause 14 Modifications to application of Corporations Act

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[4] Clause 15 Forms

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[5] Clause 16 Schemes of arrangement and reconstruction—forms

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[6] Clause 17 Prescribed information as to compromise with creditors or members

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[7] Clause 18 Receivers and managers—forms

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[8] Clause 20 Modifications to applications of Corporations Act

Omit clause 20 (1).

[9] Clause 20 (2)

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[10] Clause 20 (3)

Omit the subclause. Insert instead:

(3) Section 464 of the Corporations Act is modified:

- (a) by omitting “Where ASIC is investigating, or has investigated, under Division 1 of Part 3 of the ASIC Act:”, and
- (b) by inserting instead “If the Registrar is conducting or has conducted an investigation under the *Co-operative Housing and Starr-Bowkett Societies Act 1998*:”.

[11] Clause 21 Forms

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[12] Clause 31 Powers of Court—prescribed persons: sec 209

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[13] Clause 37 Registration of charges

Omit “*Corporations Law*” from clause 37 (1) where lastly occurring.

Insert instead “Corporations Act”.

[14] Schedule 2 Fees

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

[15] Schedule 2

Insert in appropriate order:

177	Application to Registrar to exercise powers conferred by Part 5A.1 of the Corporations Act in accordance with section 177 of the 1998 Act	\$54
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[16] Schedule 3 Prescribed information relating to proposed compromise or arrangement

Omit “*Corporations Law*” from the definition of **marketable securities** in clause 1.

Insert instead “Corporations Act”.

[17] Schedule 3, clause 1, definition of “relative”

Omit “*Corporations Law*”. Insert instead “Corporations Act”.

[18] Schedule 3, clause 2

Omit “*Corporations Law*” wherever occurring.

Insert instead “Corporations Act”.

Explanatory note

Item [1] of the proposed amendments amends clause 8 of the *Co-operative Housing and Starr-Bowkett Societies Regulation 2000* to replace certain references to documents lodged or filed with the Registrar under provisions of the *Corporations Act 2001* of the Commonwealth that are applied to certain matters by the *Co-operative Housing and Starr-Bowkett Societies Act 1998* (the **principal Act**).

Item [2] of the proposed amendments omits the note to clause 13 of the Regulation. The note will become redundant on the commencement of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends clause 14 of the Regulation to modify certain provisions of the *Corporations Act 2001* of the Commonwealth that are applied by the principal Act. Currently, the same modifications are made to the *Corporations Law* as applied by that Act.

Item [4] of the proposed amendments amends clause 15 of the Regulation to ensure that certain forms prescribed by the *Corporations Regulations* for the purposes of a provision of the *Corporations Act 2001* of the Commonwealth that is applied to a

matter by section 88 of the principal Act are also prescribed for the purposes of that provision as applied by the principal Act.

Item [5] of the proposed amendments amends clause 16 of the Regulation to ensure that certain forms prescribed by the *Corporations Regulations* for the purposes of a provision of the *Corporations Act 2001* of the Commonwealth that is applied to a matter by section 173 of the principal Act are also prescribed for the purposes of that provision as applied by the principal Act.

Item [6] of the proposed amendments amends clause 17 of the Regulation to prescribe modifications to section 412 of the *Corporations Act 2001* of the Commonwealth as applied by the principal Act.

Item [7] of the proposed amendments amends clause 18 of the Regulation to ensure that certain forms prescribed by the *Corporations Regulations* for the purposes of a provision of the *Corporations Act 2001* of the Commonwealth that are applied to a matter by section 174 of the principal Act are also prescribed for the purposes of that provision as applied by the principal Act.

Item [8] of the proposed amendments amends clause 20 of the Regulation to remove an unnecessary modification to provisions of the *Corporations Act 2001* of the Commonwealth that are applied to a matter by the principal Act.

Items [9] and [10] of the proposed amendments amend clause 20 of the Regulation to prescribe modifications to certain provisions of the *Corporations Act 2001* of the Commonwealth that are applied to matters by section 177 of the principal Act.

Item [11] of the proposed amendments amends clause 21 of the Regulation to ensure that certain forms prescribed by the *Corporations Regulations* for the purposes of a provision of the *Corporations Act 2001* of the Commonwealth that are applied to a matter by section 177 of the principal Act is also prescribed for the purposes of that provision as applied by the principal Act.

Item [12] of the proposed amendments amends clause 31 of the Regulation to replace a reference to a liquidator or administrator appointed under the *Corporations Law* with a reference to such an appointment under the *Corporations Act 2001* of the Commonwealth.

Item [13] of the proposed amendments amends clause 37 of the Regulation to replace a reference to a charge registered under the *Corporations Law* with a reference to a charge registered under the *Corporations Act 2001* of the Commonwealth.

Item [14] of the proposed amendments amends Schedule 2 (Fees) to the Regulation to replace all references to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth.

Item [15] of the proposed amendments inserts a new fee in the Schedule in relation to a deregistration applications made in accordance with Part 5A.1 of the *Corporations Act 2001* of the Commonwealth as applied by the principal Act.

Item [16] of the proposed amendments amends clause 1 of Schedule 3 to the Regulation to amend the definition of **marketable securities** so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [17] of the proposed amendments amends clause 1 of Schedule 3 to the Regulation to amend the definition of **relative** so that the term has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning the term has in the *Corporations Law*.

Item [18] of the proposed amendments amends clause 2 of Schedule 3 to the Regulation to replace references to section 411 of the *Corporations Law* with references to section 411 of the *Corporations Act 2001* of the Commonwealth.

5.8 Co-operatives Regulation 1997

[1] Clause 6 Definition of “debenture”—exempt documents

Omit “*Corporations Law*” from clause 6 (c).

Insert instead “Corporations Act”.

[2] Clause 15

Omit the clause. Insert instead:

15 Requirements for financial records and financial statements

- (1) A co-operative is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provision) Act 2001* in relation to the provisions of section 198F, Part 2F.3, sections 249K, 249V and 250T and Parts 2M.2, 2M.3, 2M.4 and 2M.7 of the *Corporations Act 2001* of the Commonwealth, subject to the following modifications:
 - (a) the modifications specified in the *Co-operatives Act 1992* and Parts 1 and 2 of Schedule 3 to this Regulation,
 - (b) the provisions are to be read as if:
 - (i) any offence created in respect of those provisions were the offence set out in section 243 (1) of the *Co-operatives Act 1992*, and
 - (ii) any penalty for the offence were the penalty set out in section 243 (1) of the *Co-operatives Act 1992*,
 - (c) the provisions apply subject to subclause (2).

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

- (2) The directors of a co-operative, or the co-operative by a resolution passed at a general meeting, may authorise a member to inspect books of the co-operative.

[3] Part 6A, heading

Omit the heading. Insert instead:

Part 6A **Application of Corporations Act**

[4] Clause 23A

Omit the clause. Insert instead:

23A Securities listing provisions to apply to co-operatives

- (1) For the purposes of section 9 (2) (a) of the Act, the provisions of the Corporations Act that relate to the listing of securities of a co-operative for

quotation on a stock market of a securities exchange are not to be excluded from the operation of the Corporations Act in relation to a co-operative.

- (2) For the purposes of section 9 (2) (a) of the Act, the provisions of the Corporations Act that relate to the matters for which the following provisions of that Act make provision are not to be excluded from the operation of the Corporations Act in relation to a co-operative in respect of securities that are listed for quotation on a stock market of a securities exchange:
- (a) Part 1.2 (Interpretation), but only in relation to the interpretation of the other provisions of the Corporations Act applying under their own force to co-operatives,
 - (b) Part 1.2A (Disclosing entities),
 - (c) Section 775 (ASIC's power to prohibit trading in particular securities),
 - (d) Section 776 (Securities exchanges to provide assistance to ASIC),
 - (e) Section 777 (Power of Court to order compliance with or enforcement of business rules or listing rules of securities exchange),
 - (f) Section 779 (Qualified privilege),
 - (g) Part 7.2A (The Securities Clearing House),
 - (h) Part 7.10 (The National Guarantee Fund),
 - (i) Part 7.11 (Conduct in relation to securities),
 - (j) Chapters 2L and 6D, but only in relation to securities of the same class, and issued or offered on the same terms, as those already listed by the co-operative on the stock market of a securities exchange,
 - (k) Division 3 (Transfer of marketable securities and marketable rights) and 4 (Exemptions and modifications) of Part 7.13 (Title to, and transfer of, securities),
 - (l) Part 7.14 (Miscellaneous), but only to the extent to which that Part relates to the other provisions of the Corporations Act applying under their own force to co-operatives,
 - (m) Part 9.4 (Offences), but only to the extent to which that Part relates to the other provisions of the Corporations Act applying under their own force to co-operatives.
- (3) To remove doubt, this clause extends to all the securities of a co-operative, including CCUs.

- (4) In this clause, **securities exchange** and **stock market** have the same meanings as in the Corporations Act.

[5] Clause 23B

Omit the clause. Insert instead:

23B Provisions of Corporations Act regarding irregularities applied to co-operatives

Co-operatives are declared to be applied Corporations legislation matters for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to section 1322 (1)–(3A) and (4)–(6) of the Corporations Act, subject to the following modifications:

- (a) references to “this Act” are to be read as including references to the *Co-operatives Act 1992*,
- (b) a reference to a “corporation” is to be read as a reference to a co-operative,
- (c) a reference to a meeting in section 1322 (3) is to be read as including a reference to a vote conducted by a postal ballot (including a special postal ballot),
- (d) a reference in section 1322 (3) to the giving of notice of a meeting is to be read as including a reference to the giving of a disclosure statement or explanatory statement in relation to a matter the subject of a vote at a meeting or in relation to a matter the subject of a postal ballot (including a special postal ballot),
- (e) the reference in section 1322 (3) to “a person entitled to attend the meeting” is to be read as including a reference to a person entitled to vote in a postal ballot (including a special postal ballot),
- (f) the reference in section 1322 (4) (b) to a register kept by ASIC under the Corporations Act is to be read as a reference to a register kept by the Registrar under the *Co-operatives Act 1992*.

[6] Clause 30

Omit the clause. Insert instead:

30 Application of Corporations Act to winding up

For the purposes of section 325 (l) of the Act, the modifications set out in Parts 1 and 3 of Schedule 3 are prescribed.

[7] Clause 35 Application for registration of non-participating co-operative as foreign co-

operative

Omit “accounts” from clause 35 (3) (b).

Insert instead “financial statements”.

[8] Clause 37 Application of Act and regulations to foreign co-operatives

Omit clause 37 (1) (a) (iii). Insert instead:

(iii) section 325 (but only to the extent that it applies Parts 5.4, 5.4B and 5.6 of the Corporations Act in relation to the winding up of a participating co-operative in insolvency),

[9] Clause 43 Inspection of Register

Omit “*Corporations Law* (as adopted by sections 325 and 332 of the Act)” from clause 43 (e).

Insert instead “Corporations Act (as applied by sections 325 and 332 of the Act)”.

[10] Clause 43 (n)

Omit “under Part 7.12 of the *Corporations Law* (as adopted by section 266 of the Act)”.

Insert instead “under Chapters 2L and 6D of the Corporations Act (as applied by section 266 of the Act)”.

[11] Clause 43 (r)

Omit “*Corporations Law* (as adopted by sections 325 and 332 of the Act)”.

Insert instead “Corporations Act (as applied by sections 325 and 332 of the Act)”.

[12] Schedule 3, heading

Omit the heading. Insert instead:

Schedule 3 **Modifications of Corporations Act**

[13] Schedule 3, Part 1

Omit the Part. Insert instead:

Part 1 Interpretation of modified provisions

(1) The following definitions replace the corresponding definitions under the Corporations Act for the purpose of interpreting the applied provisions of the Corporations Act as modified by the Act and this Schedule:

Act means the *Co-operatives Act 1992*.

ASIC means the Registrar.

consolidated entity means a co-operative together with all the entities that the accounting standards require the co-operative to include in consolidated financial statements.

Court means the Supreme Court.

debenture, in relation to a co-operative, has the same meaning as in the Act.

director, in relation to a co-operative, has the same meaning as in the Act.

disclosing entity—see section 266 of the Act (which applies Part 1.2A of the Corporations Act).

financial year means a financial year of a co-operative as determined in accordance with section 248 of the Act.

member means member of a co-operative.

officer, in relation to a co-operative, has the same meaning as in the Act.

related body corporate has the meaning given by clause 22 of Schedule 2 to the Act.

- (2) Expressions used in the applied provisions as modified by the Act and this Schedule that are not defined in the Corporations Act have the same meaning as in the Act.
- (3) The applied provisions apply as if all notes were omitted.
- (4) In this Part:

applied provisions means the provisions of the Corporations Act referred to in clauses 15 and 30 of this Regulation.

[14] Schedule 3, Part 2, heading

Omit the heading. Insert instead:

Part 2 **Modification of requirements for financial records and financial statements**

[15] Schedule 3, Part 2, Division 1, heading

Omit the heading. Insert instead:

Division 1 **Corporations Act**

[16] Schedule 3, Part 2

Omit “company” and “the Act” from item [24].

Insert instead “co-operative” and “the *Co-operatives Act 1992*” respectively.

[17] Schedule 3, Part 2, item [33]

Omit the item. Insert instead:

[33] Section 307 (d)

Omit the paragraph. Insert instead:

(d) whether the co-operative has kept registers as required by section 249 of the *Co-operatives Act 1992* and other records as required by that Act (including provisions of this Act applied to a matter by or under that Act).

[18] Schedule 3, Part 2, item [34]

Omit the item. Insert instead:

[34] Section 311 (a)

Omit “this Act”.

Insert instead “the *Co-operatives Act 1992* (including provisions of this Act applied to a matter by or under that Act)”.

[19] Schedule 3, Part 2, items [48] and [59]

Omit “the Act”, “this Law adopted by or” and “this Law in relation to” wherever occurring.

Insert instead “the *Co-operatives Act 1992*”, “this Act applied” and “this Act in relation to” respectively.

[20] Schedule 3, Part 2, item [67]

Omit “the Act”. Insert instead “the *Co-operatives Act 1992*”.

[21] Schedule 3, Part 3

Omit “*Corporations Law*”, “the Commission” and “ASC Law” wherever occurring.

Insert instead “Corporations Act”, “ASIC” and “ASIC Act” respectively.

[22] Schedule 4 Prescribed information relating to proposed compromise or arrangement

Omit “accounts and group accounts” and “annexed to the accounts” from clause 2 (3) (b).

Insert instead “financial statements” and “annexed to the statements” respectively.

[23] Schedule 6 Fees

Omit “Lodgment of controller’s account” from the matter relating to clause 17 of Schedule 4 to the Act.

Insert instead “Lodgment of controller’s financial statement”.

[24] Schedule 6

Omit “*Corporations Law* (as adopted” wherever occurring.

Insert instead “Corporations Act (as applied”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **debenture** in clause 6 of the *Co-operatives Regulation 1997* to replace a reference to a holding company within the meaning of the *Corporations Law* with a reference to a holding company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments replaces clause 15 of the Regulation with a new clause to apply the provisions of the *Corporations Act 2001* of the Commonwealth relating to accounts and accounting records to co-operatives as a law of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [3] of the proposed amendments replaces a reference to the *Corporations Law* in the heading to Part 6A of the Regulation with a reference to the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments replaces clause 23A of the Regulation with a new clause to ensure that certain provisions of the *Corporations Act 2001* of the Commonwealth relating to securities are not excluded from applying as a law of the Commonwealth to co-operatives because of the operation of section 9 of the *Co-operatives Act 1992* (as amended by the proposed Act).

Item [5] of the proposed amendments replaces clause 23B of the Regulation with a new clause to apply the provisions of the *Corporations Act 2001* of the Commonwealth relating to irregularities to co-operatives as a law of the State. At present, the corresponding provisions of the *Corporations Law* are applied to co-operatives.

Item [6] of the proposed amendments replaces clause 30 of the Regulation with a new clause to prescribe certain modifications (as contained in Schedule 3) to the provisions of the *Corporations Act 2001* of the Commonwealth that are applied to co-operatives as laws of the State by section 325 of the *Co-operatives Act 1992* (as amended). Items [12]–[21] and [24] make consequential amendments to Schedule 3 by replacing references to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth.

Item [7] of the proposed amendments amends clause 35 of the Regulation to replace references to accounts with references to financial statements. This reflects amendments that will be made to the Act by the proposed Act. Items [22] and [23] make similar amendments to Schedules 4 and 6 to the Regulation.

Item [8] of the proposed amendments amends clause 37 of the Regulation to replace a reference to section 325 of the *Corporations Law* with a reference to the corresponding provision of the *Corporations Act 2001* of the Commonwealth.

Items [9] and [11] of the proposed amendments amend clause 43 of the Regulation to replace references to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth.

Item [10] of the proposed amendments amends clause 43 of the Regulation to replace a reference to Part 7.12 of the *Corporations Law* with a reference to the corresponding provisions of the *Corporations Act 2001* of the Commonwealth.

5.9 Environmental Planning and Assessment Regulation 2000

Clause 206 Definitions

Omit “*Corporations Law*” from the definition of **associate**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 206 of the *Environmental Planning and Assessment Regulation 2000* ensures that the term **associate** has the same meaning as it has in the *Corporations Act 2001* of the Commonwealth rather than the meaning it has in the *Corporations Law*.

5.10 Fair Trading Tribunal Regulation 1999

Clause 15 When parties may be represented

Omit “the *Corporations Law* of New South Wales or of another State or Territory” from clause 15 (2) (a).

Insert instead “the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 15 of the *Fair Trading Tribunal Regulation 1999* replaces a reference to a corporation within the meaning of the *Corporations Law* of New South Wales or of another State or Territory with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.11 Fisheries Management (General) Regulation 1995

[1] Clause 127 Persons prohibited from holding shares (section 49 (2) of the Act)

Omit “*Corporations Law*” from clause 127 (2).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Clause 127 (6)

Omit “of any jurisdiction (within the meaning of the *Corporations Law*)” from paragraph (b) of the definition of **foreign person**.

Insert instead “(within the meaning of the *Corporations Act 2001* of the Commonwealth)”.

[3] Clause 127 (8)

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[4] Clauses 128 (2) and 212F (4) (b)

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends clause 127 of the *Fisheries Management (General) Regulation 1995* to replace a reference to a subsidiary within the meaning of the *Corporations Law* with a reference to a subsidiary within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **foreign person** in clause 127 of the Regulation to replace a reference to a company or exempt body within the meaning of the *Corporations Law* with a reference to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends clause 127 of the Regulation to replace references to an interest in shares or voting power for the purposes of the *Corporations Law* with a reference to the same concepts under the *Corporations Act 2001* of the Commonwealth.

Item [4] of the proposed amendments amends clauses 128 and 212F of the Regulation to replace references to a registered company auditor within the meaning of the *Corporations Law* with references to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.12 Funeral Funds Regulation 1994

Clause 18 Qualifications as an independent auditor

Omit “*Corporations Law*” from clause 18 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 18 of the *Funeral Funds Regulation 1994* replaces a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.13 Home Building Regulation 1997

[1] Clause 3 Definitions

Omit “*Corporations Law*” wherever occurring from the definition of **insolvent** in clause 3 (1).

Insert “*Corporations Act 2001* of the Commonwealth”.

[2] Clause 12 Exemptions relating to contracting and advertising

Omit “*Corporations Law*” from paragraph (b) (i) of the definition of **exempt corporation** in clause 12 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[3] Clause 42 Beneficiaries

Omit “within the meaning of the *Corporations Law*” from clause 42 (2) (d).

Insert instead “within the meaning of section 50 of the *Corporations Act 2001* of the

Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **insolvent** in clause 3 of the *Home Building Regulation 1997* to replace references to insolvent under administration and externally-administered body corporate within the meaning of the *Corporations Law* with references to the same concepts within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends the definition of **exempt corporation** in clause 12 of the Regulation to replace a reference to a company within the meaning of the *Corporations Law* with a reference to a company within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [3] of the proposed amendments amends clause 42 of the Regulation to replace a reference to companies related to a corporate person with the meaning of the *Corporations Law* with a reference to companies related to such persons within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

5.14 Independent Commission Against Corruption Regulation 2000

Clause 4 Associated persons

Omit “*Corporations Law*” from clause 4 (1) (b) (iii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 4 of the *Independent Commission Against Corruption Regulation 2000* replaces a reference to a related body corporate within the meaning of the *Corporations Law* with a reference to a related body corporate within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.15 Legal Profession Regulation 1994

Clauses 40 (2) (b) and 48 (2)

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendments to clauses 40 and 48 of the *Legal Profession Regulation 1994* replace references to a registered company auditor within the meaning of the *Corporations Law* with references to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.16 Liquor Regulation 1996

Schedule 5 The applied provisions

Omit “section 217 or 359 of the *Corporations Law*” from section 111 (1).

Insert instead “section 142 or 601CT of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to section 111 set out in Schedule 5 to the *Liquor Regulation 1996* replaces a reference to a registered or principal office of a corporation under the *Corporations Law* with a reference to a registered or principal office of a

corporation under the *Corporations Act 2001* of the Commonwealth.

5.17 Local Government (General) Regulation 1999

[1] Clause 40A Definitions

Omit “*Corporations Law*” from paragraph (b) of the definition of **interest**.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

[2] Clause 40C Matters relating to the interests that must be included in returns

Omit “for the purposes of the *Corporations Law*” from clause 40C (3).

Insert instead “for the purposes of section 50 of the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **interest** in clause 40A of the *Local Government (General) Regulation 1999* to replace a reference to a relevant interest in securities within the meaning of the *Corporations Law* with a reference to a relevant interest in securities within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends clause 40C of the Regulation to replace a reference to corporations that are related within the meaning of the *Corporations Law* with a reference to corporations that are related within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

5.18 Motor Dealers Regulation 1999

Clause 3 Definitions

Omit “*Corporations Law*” from the definition of **registered company auditor** in clause 3 (1).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to the definition of **registered company auditor** in clause 3 of the *Motor Dealers Regulation 1999* replaces a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.19 Protection of the Environment Administration (Disclosure by Board Members) Regulation 1997

[1] Clause 3 Definitions

Omit “a relevant interest in the shares of the corporation within the meaning of Division 5 of Part 1.2 of the *Corporations Law*” from paragraph (b) of the definition of **interest** in clause 3 (1).

Insert instead “a relevant interest in securities that are shares of the corporation within the meaning of the *Corporations Act 2001*”.

[2] Clause 3 (3)

Omit “*Corporations Law*”.

Insert instead *Corporations Act 2001* of the Commonwealth”.

Explanatory note

Item [1] of the proposed amendments amends the definition of **interest** in clause 3 of the *Protection of the Environment Administration (Disclosure by Board Members) Regulation 1997* to replace a reference to a relevant interest in shares within the meaning of Division 5 of Part 1.2 of the *Corporations Law* with a reference to a relevant interest in securities that are shares within the meaning of the *Corporations Act 2001* of the Commonwealth.

Item [2] of the proposed amendments amends clause 3 of the Regulation to replace a reference to corporations that are related within the meaning of section 50 of the *Corporations Law* with a reference to corporations that are related within the meaning of section 50 of the *Corporations Act 2001* of the Commonwealth.

5.20 Residential Tribunal Regulation 1999

Clause 13 When parties may be represented

Omit “the *Corporations Law* of New South Wales or of another State or Territory” from clause 13 (1) (a).

Insert instead “the *Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 13 of the *Residential Tribunal Regulation 1999* replaces a reference to a corporation within the meaning of the *Corporations Law* of New South Wales or of another State or Territory with a reference to a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.21 Retirement Villages Regulation 2000

Clause 10 (c) (ii) and item 10 of Schedule 1

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendments to clause 10 of, and Schedule 1 to, the *Retirement Villages Regulation 2000* replace references to the constitution and replaceable rules of a company under the *Corporations Law* with references to the same concepts under the *Corporations Act 2001* of the Commonwealth.

5.22 State Owned Corporations (National Electricity Market) Regulation 1996

Clause 3

Omit the clause. Insert instead:

3 Application of Corporations legislation to statutory SOCs

- (1) A statutory SOC is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the following provisions of the *Corporations Act 2001* of the Commonwealth:
 - (a) Chapter 8,
 - (b) Part 9.1, in relation to the keeping of registers and the registration of documents in connection with matters arising under Chapter 8,
 - (c) Part 9.3, in relation to books kept in connection with matters arising under Chapter 8,
 - (d) Part 9.4, in relation to offences relating to matters arising under Chapter 8,
 - (e) Part 9.6, in relation to proceedings on matters arising under Chapter 8,
 - (f) section 1345A, in relation to matters arising under Chapter 8,
 - (g) Part 9.10, in relation to matters arising under Chapter 8, as if a reference in that Part to the Commonwealth were a reference to New South Wales.
- (2) This clause applies only to energy services corporations within the meaning of the *Energy Services Corporations Act 1995*.

Explanatory note

The proposed amendment replaces clause 3 of the *State Owned Corporations (National Electricity Market) Regulation 1996* so as to apply certain provisions of the Corporations legislation to certain statutory SOCs in exercise of the regulation-making power conferred by section 20G (2) of the *State Owned Corporations Act 1989* (as amended by the proposed Act). Currently, clause 3 applies corresponding provisions of the *Corporations Law* to these statutory SOCs.

5.23 Supreme Court Regulation 2000

[1] Clause 3 Definitions

Omit "*Corporations Law*" from the definition of **corporation** in clause 3 (1).

Insert instead "*Corporations Act 2001* of the Commonwealth".

[2] Schedule 1 Court fees

Omit "*Corporations Law*" wherever occurring (including in any notes).

Insert instead "*Corporations Act 2001* of the Commonwealth".

Explanatory note

Item [1] of the proposed amendments amends the definition of **corporation** in clause 3 of the *Supreme Court Regulation 2000* so that the term has the meaning it has in section 57A of the *Corporations Act 2001* of the Commonwealth rather the meaning it

has in section 57A of the *Corporations Law*.

Item [2] of the proposed amendments replaces various references in Schedule 1 to the Regulation to the *Corporations Law* with references to the *Corporations Act 2001* of the Commonwealth.

5.24 Totalizator Agency Board Privatisation Regulation 1998

Clause 4A

Omit the clause. Insert instead:

4A Exemption from prohibited shareholding interest provisions: section 36 (7)

- (1) The relevant interest that a relevant body has in shares of TAB Limited is to be disregarded for the purpose of determining whether the body has a prohibited shareholding interest (as referred to in section 38 of the Act) in TAB Limited if:
 - (a) in the case of an authorised trustee corporation:
 - (i) the shares are held by the authorised trustee corporation in its capacity as trustee of a trust, undertaking or scheme or by a custodian on behalf of the authorised trustee corporation in that capacity, and
 - (ii) the trust, undertaking or scheme is governed by an approved deed, and
 - (b) in the case of a registered scheme—the shares are held on trust by the responsible entity for the scheme, and
 - (c) neither the authorised trustee corporation, responsible entity or the custodian (if any), nor any related body corporate of the corporation, scheme or custodian determines the manner in which voting rights attached to the shares are exercised.
- (2) The Minister may, by notice in writing given to a relevant body, direct that this clause is not to apply to:
 - (a) a relevant body, or
 - (b) a specified shareholding of the relevant body.
- (3) This clause does not apply to a relevant body, or a specified shareholding of a relevant body, that is the subject of a direction given in accordance with subclause (2).
- (4) In this clause:

approved deed means a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the *Corporations Law* (as it continues to apply pursuant

to section 1454 of that Law and section 1408 of the *Corporations Act 2001* of the Commonwealth).

Note—

Division 5 of Part 7.12 of the *Corporations Law*, although repealed by the *Managed Investments Act 1998* of the Commonwealth, continues to apply to certain interests, undertakings and trustees pursuant to section 1454 of that Law (as continued in force by section 1408 of the *Corporations Act 2001* of the Commonwealth).

authorised trustee corporation has the meaning it had in the *Corporations Law* immediately before the commencement of the *Managed Investments Act 1998* of the Commonwealth.

registered scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant body means any of the following:

- (a) an authorised trustee company,
- (b) the responsible entity for a registered scheme,
- (c) a related body corporate of such a company or scheme.

responsible entity of a registered scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the *Totalizator Agency Board Privatisation Regulation 1998* replaces clause 4A to ensure that the clause extends to registered managed investment schemes under the *Corporations Act 2001* of the Commonwealth.

5.25 Totalizator Regulation 1998

Clause 4A

Omit the clause. Insert instead:

4A Exemption from prohibited shareholding interest provisions: section 31 (7)

- (1) The relevant interest that a relevant body has in shares of a licensee is to be disregarded for the purpose of determining whether the body has a prohibited shareholding interest (as referred to in section 33 of the Act) in the licensee if:
 - (a) in the case of an authorised trustee corporation:

- (i) the shares are held by the authorised trustee corporation in its capacity as trustee of a trust, undertaking or scheme or by a custodian on behalf of the authorised trustee corporation in that capacity, and
 - (ii) the trust, undertaking or scheme is governed by an approved deed, and
 - (b) in the case of a registered scheme—the shares are held on trust by the responsible entity for the scheme, and
 - (c) neither the authorised trustee corporation, responsible entity or the custodian (if any), nor any related body corporate of the corporation, scheme or custodian determines the manner in which voting rights attached to the shares are exercised.
- (2) The Minister may, by notice in writing given to a relevant body, direct that this clause is not to apply to:
- (a) a relevant body, or
 - (b) a specified shareholding of the relevant body.
- (3) This clause does not apply to a relevant body, or a specified shareholding of a relevant body, that is the subject of a direction given in accordance with subclause (2).
- (4) In this clause:

approved deed means a deed that is an approved deed for the purposes of Division 5 of Part 7.12 of the *Corporations Law* (as it continues to apply pursuant to section 1454 of that Law and section 1408 of the *Corporations Act 2001* of the Commonwealth).

Note—

Division 5 of Part 7.12 of the *Corporations Law*, although repealed by the *Managed Investments Act 1998* of the Commonwealth, continues to apply to certain interests, undertakings and trustees pursuant to section 1454 of that Law (as continued in force by section 1408 of the *Corporations Act 2001* of the Commonwealth).

authorised trustee corporation has the meaning it had in the *Corporations Law* immediately before the commencement of the *Managed Investments Act 1998* of the Commonwealth.

registered scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

relevant body means any of the following:

- (a) an authorised trustee company,
- (b) the responsible entity for a registered scheme,
- (c) a related body corporate of such a company or scheme.

responsible entity of a registered scheme has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

Explanatory note

The proposed amendment to the *Totalizator Regulation 1998* replaces clause 4A to ensure that the clause extends to registered managed investment schemes under the *Corporations Act 2001* of the Commonwealth.

5.26 Travel Agents Regulation 1995

Clauses 8 (h) and 12 (f)

Omit “*Corporations Law*” wherever occurring.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendments to clauses 8 and 12 of the *Travel Agents Regulation 1995* replace references to a director, secretary or executive officer of a corporation within the meaning of the *Corporations Law* with references to a director, secretary or executive officer within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.27 Warehousemen’s Liens Regulation 1997

Clause 6 Application for stay of proceedings

Omit “*Corporations Law*” from clause 6 (5).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 6 of the *Warehousemen’s Liens Regulation 1997* replaces a reference to service of a summons under the *Corporations Law* with a reference to service of a summons under the *Corporations Act 2001* of the Commonwealth.

5.28 Water Management (Private Drainage Boards—General) Regulation 1995

Clause 12 Qualifications of auditor

Omit “*Corporations Law*”.

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 12 of the *Water Management (Private Drainage Boards—General) Regulation 1995* replaces

a reference to a registered company auditor within the meaning of the *Corporations Law* with a reference to a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

5.29 Westpac Banking Corporation Regulation 1996

Clause 3 Application of certain provisions of *Corporations Law* relating to capital and shares

Omit “, 4A” from clause 3 (1).

Explanatory note

The proposed amendment to clause 3 of the *Westpac Banking Corporation Regulation 1996* ensures that provisions of Division 4A of Part 2.4 of the *Corporations Law*, as in force on 1 January 1996, will no longer be applied to Westpac Banking Corporation. Corresponding provisions will be contained in Subdivision B of Division 2 of Part 6.10 of the *Corporations Act 2001* of the Commonwealth, which will apply to the Corporation by virtue of section 603C of that Act.

5.30 Workers Compensation (Workplace Injury Management) Regulation 1995

Clause 24 Cancellation or suspension of certificate

Omit “*Corporations Law*” from clause 24 (1) (e) (iii).

Insert instead “*Corporations Act 2001* of the Commonwealth”.

Explanatory note

The proposed amendment to clause 24 of the *Workers Compensation (Workplace Injury Management) Regulation 1995* replaces a reference to a receiver, manager or other controller of property of a corporation within the meaning of the *Corporations Law* with a reference to a receiver, manager or controller within the meaning of the *Corporations Act 2001* of the Commonwealth.

Schedule 6 Amendment of Acts to avoid inconsistency with Corporations legislation

(Section 3)

6.1 Annual Reports (Departments) Act 1985 No 156

[1] Section 3A

Insert after section 3:

3A Notes

Notes included in this Act do not form part of this Act.

[2] Section 5 Relationship with other Acts etc

Insert at the end of section 5:

- (2) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (3) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

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 Corporations 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.

- (4) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

Explanatory note

Item [2] of the proposed amendments amends section 5 of the *Annual Reports (Departments) Act 1985* to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It also enables the regulations to declare a provision of the Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent

specified in the declaration. Item [1] inserts a section 3A in the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

6.2 Annual Reports (Statutory Bodies) Act 1984 No 87

[1] Section 3 Definitions

Insert after section 3 (2):

- (3) Notes included in this Act do not form part of this Act.

[2] Section 5 Relationship with other Acts etc

Insert at the end of section 5:

- (2) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (3) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

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 Corporations 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.

- (4) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

Explanatory note

Item [2] of the proposed amendments amends section 5 of the *Annual Reports (Statutory Bodies) Act 1984* to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It also enables the regulations to declare a provision of the Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration. Item [1] amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

6.3 Financial Sector Reform (New South Wales) Act 1999 No 1

[1] Section 6 Conferral of functions and powers on APRA

Insert after section 6 (2):

- (3) Without limiting the operation of section 31 of the *Interpretation Act 1987*, this section does not purport to impose a duty on APRA to perform any function or exercise any power conferred or expressed to be conferred on it by or under this Act if the imposition of the duty would be beyond the legislative power of the Parliament of the State.

[2] Section 7 Conferral of functions and powers on ASIC

Insert after section 7 (2):

- (3) Without limiting the operation of section 31 of the *Interpretation Act 1987*, this section does not purport to impose a duty on ASIC to perform any function or exercise any power conferred or expressed to be conferred on it by or under this Act if the imposition of the duty would be beyond the legislative power of the Parliament of the State.

[3] Section 47 Matters in relation to dissolved or deregistered societies

Omit “under Part 9.7 of the *Corporations Law*, which is deemed to apply as if the society had been a company” from section 47 (3).

Insert instead “under Part 9.7 of the *Corporations Act 2001* of the Commonwealth as applying under this section”.

[4] Section 47 (3A) and (3B)

Insert after section 47 (3):

(3A) Money received by ASIC on a disposal of, or dealing with property of a society under subsection (3) (a) that is not applied under subsection (3) (b) is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to the provisions of Part 9.7 of the *Corporations Act 2001* of the Commonwealth as if the society had been a company.

Note—

Part 3 of the *Corporations (Ancillary Provisions) Act 2001* provides for the application of provisions of the *Corporations Act 2001* and Part 3 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth as laws of the State in respect of any matter declared by a law of the State (whether with or without modification) to be an applied Corporations legislation matter for the purposes of that Part in relation to those Commonwealth provisions. Section 14 (2) of the *Corporations (Ancillary Provisions) Act 2001* ensures that a declaration made for the purposes of Part 3 of that Act only operates to apply a provision of the Corporations legislation to a matter as a law of the State if that provision does not already apply to the matter as a law of the Commonwealth. If a provision referred to in a declaration already applies as a law of the Commonwealth, nothing in the declaration will affect its continued operation as a law of the Commonwealth.

(3B) For the purposes of subsection (3A), Part 3 of the *Corporations (Ancillary Provisions) Act 2001* has effect as if that Part did not contain sections 16 (1) (b) and 17.

Explanatory note

Items [1] and [2] of the proposed amendments amend sections 6 and 7 of the *Financial Sector Reform (New South Wales) Act 1999* to ensure that the Act does not impose duties on the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission if to do so would be beyond the legislative power of the State.

Item [4] of the proposed amendments amends section 47 of the Act to apply Part 9.7 of the *Corporations Act 2001* of the Commonwealth to certain money received by the Australian Securities and Investments Commission as a law of the State. Item [3] makes a consequential amendment to section 47.

6.4 Public Authorities (Financial Arrangements) Act 1987 No 33

[1] Section 2C Relationship with other Acts

Insert after section 2C (2):

(3) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:

(a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or

- (b) a specified provision of that legislation, or
- (c) that legislation other than a specified provision, or
- (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (4) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the Commonwealth Act applies).

Note—

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 Corporations 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.

- (5) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

[2] Section 3 Definitions

Insert after section 3 (8):

- (9) Notes included in this Act do not form part of this Act.

Explanatory note

Item [1] of the proposed amendments amends section 2C of the *Public Authorities (Financial Arrangements) Act 1987* to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It also enables the regulations to declare a provision of the Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration.

Item [2] of the proposed amendments amends section 3 of the Act to ensure that notes included with the proposed amendment made by item [1] are not treated as forming part of the Act.

6.5 Public Finance and Audit Act 1983 No 152

[1] Section 4 Definitions

Insert after section 4 (3):

- (4) Notes included in this Act do not form part of this Act.

[2] Section 4A

Insert after section 4:

4A Relationship with Corporations legislation

- (1) The regulations may declare a matter that is dealt with by this Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth in relation to:
- (a) the whole of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies, or
 - (b) a specified provision of that legislation, or
 - (c) that legislation other than a specified provision, or
 - (d) that legislation otherwise than to a specified extent.

Note—

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 Corporations legislation of the Commonwealth, then the provisions that are the subject of the declaration will not apply in relation to that matter in the State concerned.

- (2) The regulations may declare a relevant provision of this Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies).

Note—

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 Corporations 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.

- (3) In this section:

matter includes act, omission, body, person or thing.

relevant provision of this Act means a provision that is:

- (a) a post-commencement provision within the meaning of section 5G of the *Corporations Act 2001* of the Commonwealth, or
- (b) materially amended within the meaning of that section on or after the commencement of the *Corporations Act 2001* of the Commonwealth if the amendment is enacted on or after that commencement.

Explanatory note

Item [2] of the proposed amendments inserts a section 4A in the *Public Finance and Audit Act 1983* to enable the regulations to declare a matter dealt with by the Act or the regulations to be an excluded matter for the purposes of section 5F of the *Corporations Act 2001* of the Commonwealth. It also enables the regulations to declare a provision of the Act to be a Corporations legislation displacement provision for the purposes of section 5G of the *Corporations Act 2001* of the Commonwealth. Such declarations will result in the *Corporations Act 2001* of the Commonwealth not applying to the extent specified in the declaration. Item [1] amends section 4 of the Act to ensure that notes included with the proposed amendment made by item [2] are not treated as forming part of the Act.

Schedule 7 Corporations (Ancillary Provisions) Regulation 2001

(Section 4)

1 Name of Regulation

This Regulation is the *Corporations (Ancillary Provisions) Regulation 2001*.

2 Commencement

This Regulation commences on the commencement of the *Corporations Act 2001* of the Commonwealth.

3 Definitions

(1) In this Regulation:

the Act means the *Corporations (Ancillary Provisions) Act 2001*.

(2) Notes included in this Regulation do not form part of this Regulation.

4 Provisions in State laws that are not to include reference to corresponding new corporations legislation

(1) In this clause:

new reference means a reference to:

- (a) the new corporations legislation, or
- (b) the new ASIC legislation, or

(c) a provision or group of provisions of that legislation.

old reference means a reference to a national scheme law of this jurisdiction.

(2) Section 11 (1) and (5) of the Act does not apply in relation to any old reference in, or taken immediately before the relevant time to be in, the following Acts and instruments (or provisions of Acts and instruments):

(a) the *Associations Incorporation Act 1984*,

(b) the *Business Names Act 1962*,

(c) the *Conveyancing Act 1919*,

(d) the *Co-operative Housing and Starr-Bowkett Societies Act 1998* and the regulations made under that Act,

(e) the *Co-operatives Act 1992* and the regulations made under that Act,

(f) the *Duties Act 1997*,

(g) the *Gas Industry Restructuring Act 1986*,

(h) the *Grain Marketing Act 1991*,

(i) the *Legal Profession Act 1987* and the regulations made under that Act,

(j) the *National Rail Corporation (Agreement) Act 1991*,

(k) the *National Trust of Australia (New South Wales) Act 1990*,

(l) the *Revenue Laws (Reciprocal Powers) Act 1987*,

(m) the *Stamp Duties Act 1920*,

(n) the *Supreme Court Act 1970*,

(o) the *Sydney Turf Club Act 1943*,

(p) the *Totalizator Act 1997*, the *Totalizator Agency Board Privatisation Act 1997*, and the regulations made under those Acts,

(q) the *Westpac Banking Corporation Act 1995* and the *Westpac Banking Corporation Regulation 1996*.

(3) Section 11 (5) of the Act does not apply to a new reference in a provision of an Act, instrument or law if, immediately before the relevant time, the provision did not expressly refer (or was not taken to be or include) a reference to a corresponding provision of the national scheme law of this jurisdiction.

Note—

Immediately before the relevant time, certain references to the *Companies Act 1961* and other corporation laws in force in the State before the co-operative scheme laws did not include references to the national scheme law. Some of these references were replaced in the *Corporations (Consequential Amendments) Act 2001* by references to the new corporations legislation and the new ASIC legislation.

- (4) Unless the contrary intention appears or the context of the reference requires otherwise, any new reference in a provision to which subclause (3) applies is taken to include a reference to a previous State corporations law (or provision of such a law) to which it referred immediately before the relevant time in relation to events, circumstances or things that happened or arose before the relevant time.