

Queensland



ANNO TRICESIMO

ELIZABETHAE SECUNDAE REGINAE

No. 49 of 1981

**An Act relating to the Interpretation of certain Provisions
relating to corporations and the securities industry
and for certain other matters**

[ASSENTED TO 12TH JUNE, 1981]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

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

2. Commencement. This Act shall come into operation on the day on which the *National Companies and Securities Commission (State Provisions) Act 1981* comes into operation.

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

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

“Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of Queensland pursuant to the Agreement, as laws of Queensland;

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

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

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

(a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Queensland) Code*;

(b) the *Companies (Acquisition of Shares) (Queensland) Code*; and

(c) any Code to which this Act applies by reason of a relevant application provision in an Act.

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

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

6. Act to bind Crown. This Act binds the Crown.

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

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

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

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

9. Publication of Companies and Securities (Interpretation and Miscellaneous Provisions) (Queensland) Code. (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in Queensland.

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

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

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

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

- (a) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and

- (b) the operation of section 8 (including the operation, if applicable, of Schedule 1),

apply, or will apply, as laws of Queensland.

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

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

11. Interpretation of references to the applied provisions. (1)

Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under any other Act or in any other document made by or under the authority of, or for the purposes of, a law of Queensland—

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

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

12. Amendment of certain provisions in accordance with approval of Ministerial Council. Where, under the Agreement, the Ministerial Council—

- (a) approves a proposed amendment of the Commonwealth Act; and
 - (b) approves proposed regulations to be made under this Act in connexion with the operation of the proposed amendment,
- the Governor in Council may make regulations amending Schedule 1. in accordance with that approval, and that Schedule as so amended shall be Schedule 1 of this Act.

13. Relevant Codes deemed to be Acts for certain purposes. For the purposes of section 44 of *The Acts Interpretation Act of 1954* a relevant Code shall be deemed to be an Act.

14. Appropriation of penalties. Penalties under a relevant Code when recovered shall, notwithstanding anything in any other Act, be paid into the Consolidated Revenue Fund.

SCHEDULES

SCHEDULE 1

(s. 8)

The provisions of the Commonwealth Act apply as if—

1. Unless inconsistent with another provision of this Schedule—

(a) for the words “relevant Act” or “relevant Acts” in the Commonwealth Act (wherever occurring) there were substituted the words “relevant Code” or “relevant Codes” respectively;

(b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the word “Queensland”; and

(c) for the words “law of a State or of another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law of a State other than Queensland or of a Territory”.

2. In section 8 of the Commonwealth Act—

(a) for paragraph (c) there were substituted the following paragraph—

“(c) an Act—

(i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and

(ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,

together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;”;

(b) in paragraphs (d) and (f) for the words “an Ordinance” there were substituted the words “an Ordinance of a Territory”; and

(c) in paragraph (e) for the words “State Act” there were substituted the words “Act of another State or of a Territory”.

3. In section 9 of the Commonwealth Act—

(a) in the definition of “Agreement” for the expression “Act 1979” there were substituted the expression “(State Provisions) Act 1981”;

(b) the definition of “another Territory” were repealed;

(c) after the definition of “calendar year” there were inserted the following definition—

““Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of Queensland pursuant to the Agreement, as laws of Queensland;”;

(d) in the definition of “commencement” the words “or Ordinance” (where three times occurring) were repealed;

(e) for the definition of “committed for trial” there were substituted the following definition—

““committed for trial”, in relation to a person, means committed to prison to await his trial or granted bail to appear at his trial;”;

(f) in the definition of "Consolidated Revenue Fund" for the words "the Commonwealth" there were substituted the word "Queensland";

(g) in paragraph (b) of the definition of "constituent documents" for the expression "(other than the *Companies Ordinance* 1962 or the corresponding law of a State or another Territory or of another country)" there were substituted the expression "(other than *The Companies Act of* 1961 or the corresponding law of another State or of a Territory or of another country)";

(h) for the definitions of "Court" and "court of summary jurisdiction" there were substituted the following definitions—

"Court" means the Supreme Court of Queensland or a judge of that Court;

"court of summary jurisdiction" means a Magistrates Court of Queensland;;

(i) for the definition of "Crown" there were substituted the following definition—

"Crown" means the Crown in right of Queensland;;

(j) the definition of "Executive Council" were repealed;

(k) for the definition of "external Territory" there were substituted the following definition—

"external Territory" means a Territory, not being an internal Territory, for the government of which as such a Territory provision is made by an Act of the Commonwealth;;

(l) after the definition of "*Gazette*" there were inserted the following definition—

"*Government Gazette*" means the *Queensland Government Gazette*;;

(m) after the definition of "indictment" there were inserted the following definition—

"information" includes a complaint within the meaning of *The Justices Act of* 1886;;

(n) for the definition of "Jervis Bay Territory" there were substituted the following definition—

"Jervis Bay Territory" means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act* 1915 of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;;

(o) the definition of "Judge" were repealed;

(p) for the definition of "law of the Territory" or "law of the Australian Capital Territory" there were substituted the following definition—

"law of the Australian Capital Territory" includes a law of New South Wales as applying in that Territory;;

(q) for the definition of "magistrate" there were substituted the following definition—

" "magistrate" means—

(a) a magistrate in respect of whose office an annual salary is payable; and

(b) a stipendiary magistrate appointed by or under *The Justices Act of 1886*;;

(r) for the definition of "Minister" there were substituted the following definition—

" "Minister" means a Minister of State for Queensland;;

(s) after the definition of "Northern Territory" there were inserted the following definition—

" "Order in Council" means an Order in Council made by the Governor in Council, published in the *Government Gazette*;;

(t) in the definition of "Ordinance" before the word "Territory" there were inserted the words "Australian Capital";

(u) for the definition of "Parliament" there were substituted the following definition—

" "Parliament" means the Parliament of Queensland;;

(v) for the definitions of "participating State" and "participating Territory" there were substituted the following definitions—

" "participating State" means a State other than Queensland that is a party to the agreement;

" "participating Territory" means—

(a) the Australian Capital Territory;

(b) if the Northern Territory is a party to the Agreement—that Territory; and

(c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;;

(w) for the definition of "prescribed" there were substituted the following definition—

" "prescribed" means prescribed by the relevant Code or by regulations applying under the relevant Code;;

(x) for the definition of "Proclamation" there were substituted the following definition—

" "Proclamation" means a Proclamation made by the Governor published in the *Government Gazette*;;

(y) for the definition of "regulations" there were substituted the following definitions—

" "regulations" means regulations applying under the relevant Code;

" "relevant Code" means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*;;

(z) the definition of "State Act" were repealed;

(aa) for the definition of "the Minister" there were substituted the following definition—

"the Minister" means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of Queensland or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;

(ab) the definition of "the Territory" or "the Australian Capital Territory" were repealed; and

(ac) for the definition of "this Act" there were substituted the following definition—

"this Code" includes regulations applying under the relevant Code.

4. In section 11 of the Commonwealth Act—

(a) for the words "law of a State or of another Territory" (where twice occurring) there were substituted the words "law of a State other than Queensland or of a Territory";

(b) for the words "another Act" there were substituted the words "another law"; and

(c) for the words "other Act" there were substituted the words "other law".

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

"12. Where in any relevant Code—

(a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and

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

6. In section 14 of the Commonwealth Act—

(a) for the words "office of the Corporate Affairs Commission for the Territory" (where three times occurring) there were substituted the words "office of the Commissioner for Corporate Affairs for Queensland";

(b) after subsection (3) there were added the following subsections—

"(4) In this section—

"office of the Commissioner for Corporate Affairs for Queensland" means—

(a) in the case of a company or a foreign company registered under *The Companies Act of 1961*, a corresponding previous

enactment or a law operating to the exclusion of that Act at a place in the State other than Brisbane—the office of the Commissioner at that place; and

(b) in a case to which paragraph (a) does not apply—the office of the Commissioner at Brisbane.

(5) Where special circumstances exist the Commissioner for Corporate Affairs for Queensland may authorize the transfer of the documents relating to a company or foreign company registered in the State from his office at the place whereat the company or foreign company was registered to his office at another place in the State and upon such transfer the company or foreign company shall be deemed to have been registered at that other place and the provisions of subsection (4) shall apply accordingly.

(6) Where special circumstances exist and it appears to the Commissioner for Corporate Affairs for Queensland expedient to do so, the Commissioner may permit a document required by a relevant Code to be lodged with the Commission, to be lodged at an office of the Commissioner other than the office wherein it is required pursuant to the foregoing provisions of this section to be lodged and in any such case the document shall be deemed to have been lodged in accordance with this section.”.

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

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

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

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

(a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for Queensland; and

(b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Queensland.”.

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

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

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

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

(a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth;

(b) the *Companies (Acquisition of Shares) Act 1980* of the Commonwealth; or

(c) any other Act of the Commonwealth,
which, by reason of—

(d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*;

(e) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; or

(f) an Act containing a relevant application provision,
apply as, or applies as, a law of Queensland or, in the case of a repealed provision, has applied as a law of Queensland.

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

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

(a) revive anything not in force or existing at the time when the repeal takes effect;

(b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;

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

(d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

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

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

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

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

11. In section 33 of the Commonwealth Act—

(a) the expression “(1)” were repealed;

(b) for the words “another Act” (where twice occurring) there were substituted the words “an Act”;

(c) for the words “that other Act” (where twice occurring) there were substituted the words “that Act”; and

(d) subsection (2) were repealed.

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

“(b) under another law of Queensland or a law of another State or of a Territory;”.

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

“(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than section 7 and sections 536 to 539 inclusive) of *The Criminal Code*.”.

14. In the heading of PART IV of the Commonwealth Act for the word “ACT” there were substituted the words “(STATE PROVISIONS) ACT”.

15. In section 39 of the Commonwealth Act for the expression “Act 1979” (wherever occurring) there were substituted the expression “(State Provisions) Act 1981”.

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

SCHEDULE 2

(s. 9)

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

“COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (QUEENSLAND) CODE

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

PART I—PRELIMINARY

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

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

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

(a) this Code;

(b) the *Companies (Acquisition of Shares) (Queensland) Code*; and

(c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies by reason of a relevant application provision in an Act.

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

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