

South Australia

# Corporations (Ancillary Provisions) Act 2001

An Act to enact ancillary provisions, including transitional provisions, relating to the enactment by the Parliament of the Commonwealth of new corporations legislation and new ASIC legislation under its legislative powers, including powers with respect to matters referred to that Parliament for the purposes of section 51(xxxvii) of the Constitution of the Commonwealth.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Definitions
- 4 Corresponding provision
- 5 Operation of Act

### Part 2—Transitional provisions

- 6 National scheme laws
- 7 Effect of section 6
- 8 Certain provisions of State law taken to operate despite national scheme law
- 9 Court proceedings and orders
- 10 Existing rules of court continue to have effect
- 11 References to old/new corporations legislation or old/new ASIC legislation
- 12 References to companies incorporated in a State or Territory

### Part 3—Application of Commonwealth Corporations legislation to State matters

- 13 Definitions
- 14 State provisions to which this Part applies
- 15 Effect of declaratory provisions
- 16 Modifications to applied law
- 17 Conferral of functions on ASIC
- 18 Conferral of functions or duties on State Courts
- 19 Implied application of regulations and other provisions of Corporations legislation
- 20 Proceedings for offences
- 21 Application of Corporations legislation by other means

### Part 4—General

- 22 Power to amend certain statutory instruments
- 22A Power to make interim regulations construing certain references in Acts
- 23 Rules of the Supreme Court
- 24 ASIC has certain functions and powers

- 25 Outstanding property held by CAC
- 25A Validation—FSR Amendments
- 26 Regulations

Schedule—Table

Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Corporations (Ancillary Provisions) Act 2001*.

### **3—Definitions**

(1) In this Act—

*ASIC* means the Australian Securities and Investments Commission;

*carried over provision*—

- (a) of the old corporations legislation means a provision of that legislation that—
  - (i) was in force immediately before the relevant time; and
  - (ii) corresponds to a provision of the new corporations legislation; and
- (b) of the old ASIC legislation means a provision of that legislation that—
  - (i) was in force immediately before the relevant time; and
  - (ii) corresponds to a provision of the new ASIC legislation;

*co-operative scheme laws* has the meaning given by section 84 of the *Corporations (South Australia) Act 1990*;

*corresponds* has a meaning affected by section 4;

*law of the State* includes an instrument of a legislative character made under an Act;

*liability* includes a duty or obligation;

*made* includes issued, given or published;

*national scheme law of this jurisdiction* has the same meaning as in the *Corporations (South Australia) Act 1990*;

*new ASIC Act* means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth;

*new ASIC legislation* means—

- (a) the new ASIC Act; and
- (b) the new ASIC Regulations (as amended and in force from time to time) and any other regulations made under the new ASIC Act; and

- (c) the laws of the Commonwealth referred to in paragraph (a)(ii) and (in relation to the State) paragraph (b)(iii) of the definition of *old ASIC legislation* in section 254(1) of the new ASIC Act, being those laws as they apply after the relevant time; and
- (d) the preserved instruments;

*new ASIC Regulations* means the old ASIC Regulations that, because of section 264 of the new ASIC Act, have effect as if they were made under section 251 of that Act;

*new Corporations Act* means the *Corporations Act 2001* of the Commonwealth;

*new corporations legislation* means—

- (a) the new Corporations Act; and
- (b) the new Corporations Regulations (as amended and in force from time to time) and any other regulations made under the new Corporations Act; and
- (c) the laws of the Commonwealth referred to (in relation to the State) in paragraph (c) of the definition of *old corporations legislation* in section 1371(1) of the new Corporations Act, being those laws as they apply after the relevant time; and
- (d) the preserved instruments;

*new Corporations Regulations* means the old Corporations Regulations that, because of section 1380 of the new Corporations Act, have effect as if they were made under section 1364 of that Act;

*old application Act* means the *Corporations (South Australia) Act 1990* as in force from time to time before the relevant time;

*old ASIC Act* means the *Australian Securities and Investments Commission Act 1989* of the Commonwealth as in force from time to time before the relevant time;

*old ASIC law* means the ASIC Law of South Australia (within the meaning of the old application Act) as in force from time to time before the relevant time;

*old ASIC legislation* means—

- (a) the old ASIC Law and the old ASIC Regulations, and any instruments made under that Law or those Regulations; and
- (b) the old application Act, and any instruments made under that Act, as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time; and
- (c) the laws of the Commonwealth as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time as laws of, or for the government of, the State because of Part 8 of the old application Act, and any instruments made under those laws as so applying;

*old ASIC Regulations* means the ASIC Regulations of South Australia (within the meaning of the old application Act) as in force from time to time before the relevant time;

*old Corporations Law* means the Corporations Law of South Australia, within the meaning of the old application Act, as in force from time to time before the relevant time;

***old corporations legislation*** means—

- (a) the old Corporations Law and the old Corporations Regulations, and any instruments made under that Law or those Regulations; and
- (b) the old application Act, and any instruments made under that Act, as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time; and
- (c) the laws of the Commonwealth as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time as laws of, or for the government of, the State because of Part 8 of the old application Act, and any instruments made under those laws as so applying;

***old Corporations Regulations*** means the Corporations Regulations of South Australia, within the meaning of the old application Act, as in force from time to time before the relevant time;

***order***, in relation to a court, includes any judgment, conviction or sentence of the court;

***preserved instrument*** means—

- (a) in relation to the new corporations legislation, an instrument that, because of section 1399 of the new Corporations Act, has effect after the relevant time as if it were made under a provision of the new corporations legislation; and
- (b) in relation to the new ASIC legislation, an instrument that, because of section 275 of the new ASIC Act, has effect after the relevant time as if it were made under a provision of the new ASIC legislation;

***previous State corporations law*** means—

- (a) the *Companies Act 1962*; or
- (b) the *Marketable Securities Act 1971*; or
- (c) the *Securities Industry Act 1979*; or
- (d) a co-operative scheme law; or
- (e) any other Act, or provision of an Act, specified by the regulations under subsection (2);

***provision*** of a law includes any portion of the law;

***referring State*** has the meaning given by section 4 of the new Corporations Act;

***relevant time*** means the time when the new Corporations Act, as originally enacted, comes into operation;

***right*** includes an interest or status;

***State*** includes the Northern Territory;

***Territory*** means the Australian Capital Territory or the Jervis Bay Territory.

- (2) The regulations may provide that a specified Act, or a specified provision of an Act, is a previous State corporations law for the purposes of this Act.

#### 4—Corresponding provision

- (1) For the purposes of this Act, a provision (the *old provision*) of the old corporations legislation or the old ASIC legislation corresponds to a provision (the *new provision*) of the new corporations legislation or the new ASIC legislation (and *vice versa*) if—
  - (a) the old provision and the new provision are substantially the same, unless the regulations specify that the two provisions do not correspond; or
  - (b) the regulations specify that the two provisions correspond.
- (2) For the purposes of this Act, a provision (the *old provision*) of a previous State corporations law corresponds to a provision (the *new provision*) of a national scheme law of this jurisdiction (and *vice versa*) if—
  - (a) the old provision and the new provision are substantially the same, unless the regulations specify that the two provisions do not correspond; or
  - (b) the regulations specify that the two provisions correspond.
- (3) For the purposes of subsection (1)(a) or (2)(a), differences of all or any of the following kinds are not sufficient to mean that two provisions are not substantially the same:
  - (a) differences in the numbering of the provisions;
  - (b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);
  - (c) the fact that one of the provisions refers to a corresponding previous law and the other does not;
  - (d) for the purposes of subsection (1)(a), the fact that—
    - (i) the old provision allowed a court to exercise powers on its own motion but the new provision does not; or
    - (ii) the old provision required a court to apply a criterion of public interest but the new provision requires a court to apply a criterion of justice and equity; or
    - (iii) the new provision requires ASIC to take account of public interest but the old provision did not;
  - (e) for the purposes of subsection (1)(a), other differences that are attributable to the fact that the new corporations legislation and the new ASIC legislation apply as Commonwealth laws in this and other States and in the internal Territories;
  - (f) other differences of a kind prescribed by the regulations for the purposes of this paragraph.
- (4) Subsection (3) is not intended to otherwise limit the circumstances in which two provisions are, for the purposes of subsection (1)(a) or (2)(a), substantially the same.
- (5) The regulations may provide that—
  - (a) a specified provision of the old corporations legislation does, or does not, correspond to a specified provision of the new corporations legislation; or

- (b) a specified provision of the old ASIC legislation does, or does not, correspond to a specified provision of the new ASIC legislation;
- (c) a specified provision of a previous State corporations law does, or does not, correspond to a specified provision of a national scheme law of this jurisdiction.

## 5—Operation of Act

This Act has effect despite any provision of the old application Act or of the applicable provisions (as defined in that Act) of the State.

## Part 2—Transitional provisions

### 6—National scheme laws

- (1) The national scheme laws of this jurisdiction operate of their own force only in relation to—
  - (a) matters arising before the relevant time; and
  - (b) matters arising, directly or indirectly, out of such matters,insofar as those matters are not dealt with by the new corporations legislation, the new ASIC legislation or the co-operative scheme laws.
- (2) Except as provided by subsection (1) and section 9, the national scheme laws of this jurisdiction have no operation of their own force at and after the relevant time.

### 7—Effect of section 6

- (1) To the extent that a national scheme law of this jurisdiction ceases to operate of its own force because of section 6, the effect is that which would have resulted had this Act and that law been Commonwealth Acts in relation to which the *Acts Interpretation Act 1901* of the Commonwealth as in force on 1 November 2000 applied.

**Note—**

Part III of the *Acts Interpretation Act 1901* of the Commonwealth contains provisions dealing with the effect of repeal of an Act. These provisions protect accrued rights and liabilities and allow legal proceedings in respect of them to be commenced or continued. However, this section and section 9 have the effect of cancelling certain rights and liabilities and terminating certain legal proceedings.

- (2) Despite subsection (1), if by force of Chapter 10 of the new Corporations Act or Part 16 of the new ASIC Act a person acquires, accrues or incurs a right or liability in substitution for a pre-commencement right or liability, the pre-commencement right or liability is cancelled at the relevant time and ceases at that time to be a right or liability under a law of the State.
- (3) Despite subsection (1), a proceeding in a court that—
  - (a) was started before the relevant time; and
  - (b) was—
    - (i) under a provision of the old corporations legislation or the old ASIC legislation; or

- (ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation; and
  - (c) was a proceeding to which section 1383 of the new Corporations Act or section 267 of the new ASIC Act applies at the relevant time; and
  - (d) had not been concluded or terminated before the relevant time,is terminated at the relevant time by force of this subsection.
- (4) Despite subsection (1), if by force of a Commonwealth Act (other than the new Corporations Act) referred to in sections 1393 to 1396 of the new Corporations Act a person becomes liable to pay an amount that is the same, and is in respect of the same matter, as an amount (*the pre-commencement amount*) that was payable by the person before the relevant time under a provision of the old corporations legislation, the person's liability to pay the pre-commencement amount is cancelled at the relevant time and ceases at that time to be a liability under a law of the State.
- (5) In subsection (2)—

*pre-commencement right or liability* means a right or liability, whether civil or criminal, other than a right or liability under an order made by a court before the relevant time or a liability referred to in section 1397(4) of the new Corporations Act, that—

  - (a) was acquired, accrued or incurred under—
    - (i) a carried over provision of the old corporations legislation or the old ASIC legislation; or
    - (ii) a provision of the old corporations legislation or the old ASIC legislation that was no longer in force immediately before the relevant time; and
  - (b) was in existence immediately before the relevant time.
- (6) Nothing in this Act revives the co-operative scheme laws or otherwise affects the superseding of those laws by the national scheme laws of this jurisdiction as provided by Division 2 of Part 13 of the old application Act and any regulations made under section 80 of that Act for the purposes of that Division.

## **8—Certain provisions of State law taken to operate despite national scheme law**

- (1) Any provision of a relevant law of the State that—
  - (a) makes (or, if not in force, would make on coming into force) provision in relation to a matter in a manner that is inconsistent with a provision or provisions of a national scheme law of this jurisdiction; or
  - (b) but for the operation of section 5 of the old application Act, would have made (or, if not in force, would have made on coming into force) provision in relation to a matter in a manner that is inconsistent with a provision or provisions of the national scheme law of this jurisdiction,

is declared by this subsection to have effect despite the provision or provisions of the national scheme law of this jurisdiction with which it is inconsistent and as if the relevant law, or (in the case of a relevant law that is not an Act) the Act under which the relevant law was made, had itself provided expressly for this outcome.

**Note—**

Section 5G of the *Corporations Act 2001* of the Commonwealth applies to a provision of a State law that is inconsistent with a provision of the Corporations legislation to which Part 1.1A of that Act applies if that provision operated, immediately before the commencement of that Act, despite the provision of the old Corporations Law or the old ASIC Law that corresponds to the Commonwealth provision.

- (2) Any provision of a relevant law of the State that provides that the whole of a previous State corporations law or a specified provision of a State corporations law does not apply to a matter is declared by this subsection to also provide that the whole of the old Corporations Law and the old ASIC Law or the corresponding provision (if any) of the old Corporations Law or the old ASIC Law (as the case requires) does not apply to that matter.

**Note—**

Under section 5F(4) of the *Corporations Act 2001* of the Commonwealth if the old Corporations Law or the old ASIC law, or a provision of that Law, did not apply to a matter immediately before the commencement of that Act, then the Corporations legislation to which Part 1.1A of that Act applies, or the corresponding provision of that legislation, does not apply to the matter.

- (3) Subsection (1) or (2) does not apply to a provision of a relevant law of the State (or a class of provision of relevant laws of the State) specified by the regulations as a provision (or class of provision) to which the subsection does not apply.
- (4) For the purposes of subsection (1), a provision of a relevant law of the State is inconsistent with a provision of a national scheme law if it would be inconsistent within the meaning of section 109 of the Constitution of the Commonwealth of Australia if the national scheme law were an Act of the Commonwealth.
- (5) Nothing in this section affects the operation of section 6 of the old application Act in relation to an Act enacted before the commencement of that section or an instrument made under such an Act.
- (6) In this section—

*matter* includes act, omission, body, person or thing;

*relevant law of the State* means a law of the State that was enacted or made before the relevant time (whether or not it is in force before that time) other than a national scheme law of this jurisdiction or a previous State corporations law.

## 9—Court proceedings and orders

- (1) This section applies to a proceeding, whether criminal or civil, in relation to which the following paragraphs are satisfied:
- (a) the proceeding was started in a court before the relevant time; and
  - (b) the proceeding was—
    - (i) under a provision of the old corporations legislation or the old ASIC legislation; or

- (ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation; and
  - (c) the proceeding was not a proceeding to which section 1383 or 1384 of the new Corporations Act or section 267 or 268 of the new ASIC Act applies; and
  - (d) the proceeding had not been concluded or terminated before the relevant time.
- (2) Without limiting section 7(1) but subject to subsection (3), a proceeding to which this section applies may be continued, and any order made by a court in such a proceeding may be appealed against, reviewed or enforced as if section 6 had not been enacted.
- (3) Nothing in this Part, or in the *Acts Interpretation Act 1901* of the Commonwealth as applying by force of section 7, operates to preserve the effect of an order to which section 1383(5) of the new Corporations Act or section 267(5) of the new ASIC Act applies and, at the relevant time, that order ceases to have effect as an order of the court by which it was made and any proceeding in relation to such an order is terminated by force of this subsection.
- (4) For the avoidance of doubt, Part 9 of the old application Act continues to have the same application to a proceeding to which this section applies as it did before the relevant time.
- (5) In this section—  
*proceeding* includes—
  - (a) a proceeding by way of appeal against, or otherwise seeking review of, an order made by a court; and
  - (b) a proceeding to enforce an order made by a court; and
  - (c) any other proceeding in respect of a breach of an order made by a court.

## **10—Existing rules of court continue to have effect**

The rules of court made under section 51 of the old application Act and all other enabling powers, as in force immediately before the relevant time, continue to have effect (and may be dealt with) at and after the relevant time as if—

- (a) they were rules of court in force under section 23; and
- (b) they were made for the purposes of the provisions of the corporations legislation (within the meaning of section 23) that correspond to the provisions of the old Corporations Law for which they were made.

## **11—References to old/new corporations legislation or old/new ASIC legislation**

- (1) Subject to subsections (2) and (3), a reference in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—
  - (a) a Law, Regulations or instrument of a kind specified in column 1 of the Table in the Schedule is taken, at and after the relevant time, to include a reference to the Act, Regulations or instrument of the kind specified opposite it in column 2 of that Table; or

- (b) a provision or group of provisions of a Law, Regulations or instrument of a kind specified in column 1 of the Table in the Schedule is taken, at and after the relevant time, to include a reference to the corresponding provision or provisions (if any) of the Act, Regulations or instrument of the kind specified opposite it in column 2 of that Table.
- (2) The regulations may do either or both of the following:
- (a) provide that subsection (1) does not apply in relation to prescribed references, or references of a prescribed kind—
- (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
- (b) provide that subsection (1) applies in relation to prescribed references, or references of a prescribed kind—
- (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind,
- as if, in that subsection, the words "to be a reference" were substituted for the words "to include a reference".
- (3) Subsection (1) does not apply in relation to references in, or taken immediately before the relevant time to be in—
- (a) the old application Act or the applicable provisions (as defined in that Act) of the State; or
  - (b) a previous State corporations law or an instrument made under such a law; or
  - (c) this Act or any regulations made under this Act; or
  - (d) the *Statutes Amendment (Corporations) Act 2001*; or
  - (e) the *Acts Interpretation Act 1915*; or
  - (f) any other Act, or any provision of an Act, or any kind of Act or provision, specified by the regulations; or
  - (g) an instrument made under an Act, or any provision of an instrument made under an Act, or any kind of instrument made under an Act or provision of such an instrument, specified by the regulations; or
  - (h) a law applying as a law of the State by force of an Act, or any provision of a law applying as a law of the State by force of an Act, or any kind of law applying as a law of the State by force of an Act or provision of such a law, specified by the regulations.

- (4) For the purposes of this Act, the regulations may provide that a reference of a specified kind in, or taken immediately before the relevant time to be in, a specified Act or instrument made under an Act or a specified law applying as a law of the State by force of an Act is to be taken to be a reference of the kind specified in relation to the reference in the regulations.
- (5) An express reference in an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—
- (a) an Act, regulations or other instrument forming part of the new corporations legislation or the new ASIC legislation; or
  - (b) a provision or group of provisions of such an Act, regulations or other instrument,

is taken, in relation to events, circumstances or things that happened or arose at a time before the relevant time, to include (unless the contrary intention appears or the context of the reference otherwise requires) a reference to the corresponding provision or provisions of the old corporations legislation, or the old ASIC legislation, as the case requires, of this jurisdiction and of each other jurisdiction referred to in sections 12(2) and (3) and 64(2) and (3) of the old application Act.

- (6) The regulations may do either or both of the following:
- (a) provide that subsection (5) does not apply in relation to prescribed references, or references of a prescribed kind—
    - (i) in prescribed Acts or instruments made under Acts; or
    - (ii) in prescribed laws applying as laws of the State by force of an Act; or
    - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
  - (b) provide that subsection (5) applies in relation to prescribed references, or references of a prescribed kind—
    - (i) in prescribed Acts or instruments made under Acts; or
    - (ii) in prescribed laws applying as laws of the State by force of an Act; or
    - (iii) in Acts, instruments made under Acts, or law applying as laws of the State by force of an Act, of a prescribed kind,

as if, in that subsection, the words "of a jurisdiction specified by the regulations" were substituted for the words "of this jurisdiction and of each other jurisdiction referred to in sections 12(2) and (3) and 64(2) and (3) of the old application Act".

## 12—References to companies incorporated in a State or Territory

- (1) Unless the contrary intention appears and subject to subsections (2) and (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—
- (a) a company (within the meaning of the Corporations Law of South Australia or of another State or a Territory) incorporated in South Australia or that other State or that Territory; or
  - (b) a company that is incorporated under the Corporations Law of South Australia or of another State or a Territory; or
  - (c) a company that is registered or taken to be registered under the Corporations Law of South Australia or of another State or a Territory; or
  - (d) a body that is taken to be registered as a company under the Corporations Law of South Australia or of another State or a Territory,

is taken, after the relevant time, to be a reference to a company that, under section 119A or 1378(4) of the new Corporations Act, is taken to be registered in South Australia or that other State or that Territory, as the case requires.

- (2) Unless the contrary intention appears and subject to subsection (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to a foreign company (within the meaning of the Corporations Law of South Australia or of another State or a Territory) is taken, after the relevant time, to be a reference to a foreign company within the meaning of the new Corporations Act.
- (3) Unless the contrary intention appears and subject to subsection (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act or an instrument made under an Act or a law applying as a law of the State by force of an Act to the jurisdiction of incorporation of a corporation, being a company registered or taken to be registered under the Corporations Law of South Australia or of another State or a Territory, is taken, after the relevant time, to be a reference to the State or Territory in which the corporation is taken to be registered under section 119A or 1378(4) of the new Corporations Act.
- (4) The regulations may do either or both of the following:
- (a) provide that subsection (1), (2) or (3) does not apply in relation to prescribed references, or references of a prescribed kind—
    - (i) in prescribed Acts or instruments made under Acts; or
    - (ii) in prescribed laws applying as laws of the State by force of an Act; or
    - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
  - (b) provide that subsection (1), (2) or (3) applies in relation to prescribed references, or references of a prescribed kind—
    - (i) in prescribed Acts or instruments made under Acts; or

- (ii) in prescribed laws applying as laws of the State by force of an Act;  
or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind,
- as if, in that subsection, the words "to include a reference" were substituted for the words "to be a reference".

## Part 3—Application of Commonwealth Corporations legislation to State matters

### 13—Definitions

In this Part—

*applied law* means a provision or provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that this Part applies to a matter as if the provision or provisions were a law or laws of the State;

*confer* includes impose;

*Corporations legislation* means the Corporations legislation to which Part 1.1A of the new Corporations Act applies;

*declaratory provision* means a provision of a law of the State to which this Part applies by operation of section 14;

*function* includes a power;

*matter* includes act, omission, body, person or thing;

*modification* includes addition, exception, omission or substitution;

*perform* includes exercise.

### 14—State provisions to which this Part applies

- (1) This Part applies to a provision of a law of the State if the provision declares a matter to be an applied Corporations legislation matter for the purposes of this Part in relation to any of the following (whether with or without modifications):
  - (a) the whole of the Corporations legislation;
  - (b) a specified Act, regulations or other instrument forming part of the Corporations legislation;
  - (c) a specified provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.
- (2) Subsection (1) does not apply to a provision of a law of the State to the extent that it declares a matter to be an applied Corporations legislation matter for the purposes of this Part in relation to a provision or provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that already applies to the matter as a law of the Commonwealth.

## **15—Effect of declaratory provisions**

- (1) Subject to this Part, a declaratory provision has effect in relation to a matter as follows:
  - (a) if the declaratory provision is one to which section 14(1)(a) applies, the whole of the Corporations legislation applies to the matter as if it were a law of the State; and
  - (b) if the declaratory provision is one to which section 14(1)(b) applies, the Act, regulations or other instrument specified by the declaratory provision applies or apply to the matter as if it or they were a law or laws of the State; and
  - (c) if the declaratory provision is one to which section 14(1)(c) applies, the provision or provisions specified by the declaratory provision applies or apply in relation to the matter as if it or they were a law or laws of the State.
- (2) A provision applied to a matter by a declaratory provision, or taken by force of section 19(1) to apply to the matter, is applied as in force for the time being unless the declaratory provision applies it as in force at a particular time specified by the declaratory provision.

## **16—Modifications to applied law**

- (1) This Part operates to apply a provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, as a law of the State subject to the following modifications:
  - (a) such modifications as may be specified by or under the law containing the declaratory provision;
  - (b) a reference to ASIC is (unless a function under an applied law is conferred on ASIC as referred to in section 17) taken to be a reference to—
    - (i) the Minister administering the declaratory provision or such other person (or person belonging to a class of person) as may be specified by the regulations (whether generally or in relation to a particular applied law); or
    - (ii) such other person as may be specified by or under the declaratory provision;
  - (c) a reference to the Gazette is a reference to the South Australian Government Gazette;
  - (d) a reference to the Minister is a reference to the Minister administering the declaratory provision;
  - (e) a reference to this jurisdiction is a reference to South Australia;
  - (f) such other modifications as are necessary or that are prescribed by the regulations made under this Act, whether generally or in relation to a particular applied law.
- (2) Any power to make regulations under an Act containing a declaratory provision extends to the making of regulations specifying modifications for the purposes of this Part.

- (3) Except as provided by subsection (1), definitions and other interpretation provisions of the Corporations legislation, or of the Act, regulations or other instrument forming part of the Corporations legislation, relevant to the applied law are taken also to apply to the matter that is the subject of the declaratory provision.
- (4) This section has effect subject to sections 17 to 20.

### **17—Conferral of functions on ASIC**

- (1) Neither a declaratory provision nor an applied law operates to confer a function on ASIC in relation to the applied law unless—
  - (a) the declaratory provision provides for ASIC to perform that function pursuant to an agreement or arrangement of the kind referred to in section 11(8) or (9A)(b) of the new ASIC Act; and
  - (b) ASIC is authorised to perform that function under section 11 of the new ASIC Act.
- (2) If a declaratory provision operates to confer a function on ASIC in relation to an applied law, the conferral of that function is taken not to impose a duty to perform that function despite anything to the contrary in the applied law.

### **18—Conferral of functions or duties on State Courts**

An applied law that confers a function or duty on a court or on the Court is taken to confer that function or duty (along with the jurisdiction to perform that function or duty) on the Supreme Court or such other court of the State as may be specified by or under the declaratory provision.

### **19—Implied application of regulations and other provisions of Corporations legislation**

- (1) Unless a declaratory provision provides otherwise, the following provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, are also taken to apply to a matter that is the subject of a declaratory provision as if they were laws of the State:
  - (a) the provisions of any regulations made under the applied law;
  - (b) any provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that creates an offence in relation to a contravention of the applied law or specifies the penalty for an offence created by a provision of the applied law;
  - (c) the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the new Corporations Act for the purposes of any provision of the applied law that is a civil penalty provision within the meaning of that Part.
- (2) The regulations may prescribe modifications (whether generally or in relation to a particular applied law) of any of the provisions that are also taken to apply to a matter by force of subsection (1) for the purposes of that application.

### **20—Proceedings for offences**

- (1) Proceedings for an offence against an applied law may be dealt with as an offence against a law of the State.

- (2) For the purposes of an offence against an applied law—
- (a) the amount of a penalty unit specified in relation to that offence by the applied law, or a provision taken by force of section 19(1) to apply to the matter that is the subject of the declaratory provision, is \$100; and
  - (b) the laws of the State apply in relation to that offence as if the applied law, or a provision taken by force of section 19(1) to apply to the matter that is the subject of the declaratory provision, were a law or laws of the State.
- (3) Without limiting subsection (2)(b), the laws of the State referred to in that subsection as applying in relation to an offence include laws with respect to—
- (a) the investigation and prosecution of offences; and
  - (b) the arrest, custody, bail, trial, finding of guilt and conviction of persons charged with offences; and
  - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
  - (d) the classification of offences as indictable or summary or indictable triable summarily; and
  - (e) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
  - (f) the sentencing, punishment and release of persons found guilty or convicted of offences; and
  - (g) fines, penalties and forfeitures; and
  - (h) confiscation of the proceeds of crime.

## **21—Application of Corporations legislation by other means**

Nothing in this Part prevents a law of the State from applying any provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, as a law of the State otherwise than by means of a declaratory provision.

## **Part 4—General**

### **22—Power to amend certain statutory instruments**

- (1) The Governor, on the recommendation of the Minister, may make regulations amending a statutory instrument made by the Governor in the exercise of a power conferred by any Act.
- (2) The Minister may make a recommendation under subsection (1) only if he or she considers that each amendment proposed to be made by the regulations is consequential on the enactment, or the proposed enactment, by the Parliament of the Commonwealth of—
- (a) the new ASIC Act; or
  - (b) the new Corporations Act; or
  - (c) an Act amending an Act referred to in paragraph (a) or (b).

(3) Nothing in this section prevents a statutory instrument from being amended otherwise than by regulations made under this section, including an amendment of a kind referred to in subsection (2).

(4) In this section—

*statutory instrument* has the same meaning as in the *Acts Interpretation Act 1915*.

## 22A—Power to make interim regulations construing certain references in Acts

(1) In this section—

*affected reference* means—

- (a) a reference in an Act to a provision of the new ASIC Act or the new Corporations Act; or
- (b) a reference in an Act to a term, expression or concept defined or used in the new ASIC Act or the new Corporations Act,

that is, or is to be, affected in any way by the enactment or proposed enactment by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act.

(2) The Governor, on the recommendation of the Minister, may make regulations providing that an affected reference in any Act is to be construed as set out in the regulations.

(3) The Minister may make a recommendation under subsection (2) only if he or she considers that—

- (a) each substantive provision of the proposed regulations is necessary as a consequence of the enactment, or the proposed enactment, by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act; and
- (b) subject to subsection (4), the proposed regulations do not deal with any other matter.

(4) Regulations made under this section may deal with matters of a transitional nature (including matters of an application or savings nature) consequent on the enactment of the amending Act referred to in subsection (3)(a).

**Note—**

Section 26(6) and (7) enable a provision of the regulations made under this section to have effect from a time that is earlier than the day on which they are made.

(5) Regulations made under this section have effect according to their terms.

(6) Regulations made under this section expire on the first anniversary of the day on which they are made unless they are revoked, or expressed to expire, on an earlier day.

## 23—Rules of the Supreme Court

(1) Three or more Judges of the Supreme Court may make rules of court—

- (a) with respect to proceedings, and the practice and procedure, of that Court under the Corporations legislation; and
- (b) with respect to any matter or thing that is—

- (i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or
  - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and
  - (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.
- (2) When a lower court of South Australia is exercising jurisdiction with respect to matters arising under the Corporations legislation, the court must apply the rules of court made under subsection (1), with such alterations that are necessary.
- (3) In this section—
- Corporations legislation** means—
- (a) the new Corporations Act; and
  - (b) the new ASIC Act; and
  - (c) the regulations made under the new Corporations Act and the new ASIC Act.

## 24—ASIC has certain functions and powers

- (1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the performance of functions or exercise of powers by ASIC as an agent of the State, even if those functions or powers are or may be conferred on another person or body by or under a law of the State.
- (2) An agreement or arrangement of a kind referred to in subsection (1) has effect by force of this section despite any provision of a law of the State with respect to any function or power that is the subject of the agreement or arrangement.

### Note—

Section 11(9) of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth provides that ASIC has, but is not under a duty to perform, the functions and powers that are the subject of the agreement or arrangement with the State.

## 25—Outstanding property held by CAC

Any estate or interest in property of a company that no longer exists vested in the Corporate Affairs Commission pursuant to section 399 of the *Companies Act 1962* and still held by the Corporate Affairs Commission immediately before the commencement of this section will, on that commencement, be taken to be property of a deregistered company under section 601AD of the *Corporations Law* (and will accordingly vest in ASIC under that section (on the basis that ASIC will take only the same property rights that the Corporate Affairs Commission held)).

## 25A—Validation—FSR Amendments

- (1) In this section—
- relevant period** means the period—
- (a) starting on the commencement of Part 1 of Schedule 1 to the *Financial Services Reform Act 2001* of the Commonwealth; and
  - (b) ending immediately before the commencement of Part 7 of the *Statutes Amendment (Corporations—Financial Services Reform) Act 2002*.

- (2) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had the *Statutes Amendment (Corporations—Financial Services Reform) Act 2002* been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.
- (3) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had none of the provisions of the *Financial Services Reform Act 2001* of the Commonwealth been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.

## 26—Regulations

- (1) The Governor may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide that certain provisions of Part 2 are taken to be modified as set out in the regulations. Those provisions then have effect as if they were so modified.
- (3) Without limiting subsection (1), the regulations may—
  - (a) declare a matter to be an excluded matter for the purposes of section 5F of the new Corporations Act in relation to—
    - (i) the whole of the Corporations legislation to which Part 1.1A of that Act applies; or
    - (ii) a specified provision of that legislation; or
    - (iii) that legislation other than a specified provision; or
    - (iv) that legislation otherwise than to a specified extent;
  - (b) declare a provision of a law of the State, or a provision of a law of the State as amended as specified in the regulations, to be a Corporations legislation displacement provision for the purposes of section 5G of the new Corporations Act (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of that Act applies).
- (4) Without limiting subsection (1), the regulations may make provision for or with respect to enabling jurisdiction conferred by or under the old corporations legislation or the old ASIC legislation or a previous State corporations law to be exercised by a court of the State, or confirming that such jurisdiction is exercisable by a court of the State, including (without limitation) provisions for or with respect to—
  - (a) conferring jurisdiction on courts of the State; and
  - (b) the construction of references in the old corporations legislation or the old ASIC legislation or a previous State corporations law to Commonwealth authorities and officers; and

- (c) the disapplication of provisions of the old corporations legislation or the old ASIC legislation or a previous State corporations law, including provisions that contemplate the administration or enforcement of laws as if they were Commonwealth laws or that contemplate offences and other matters as being offences against and matters under Commonwealth laws; and
  - (d) the treatment of offences arising under the old corporations legislation or the old ASIC legislation or a previous State corporations law (including the specification of penalties); and
  - (e) prescribing modifications of the old corporations legislation or the old ASIC legislation or a previous State corporations law; and
  - (f) associated, procedural and consequential matters.
- (5) Without limiting subsection (1), the regulations may deal with matters of a transitional nature relating to the transition from the application of provisions of the old corporations legislation or a previous State corporations law to the application of provisions of the new corporations legislation or the new ASIC legislation.
- (6) Any provision of the regulations may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, not being a time earlier than immediately before the relevant time or, in the case of regulations made under section 22(2)(c) or 22A, the time when the amending Act (or the relevant provision of that Act) comes into operation or is taken to have come into operation.
- (7) To the extent to which a provision of a regulation takes effect from a time that is earlier than the beginning of the day on which the regulations containing the provision are made, the provision does not operate so as—
- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of making of those regulations; or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of making of those regulations.
- (8) The regulations have effect despite anything to the contrary in Part 2.
- (9) In this section—
- matters of a transitional nature* includes matters of an application or savings nature.

## Schedule—Table

Column 1	Column 2
the Corporations Law of South Australia	the new Corporations Act
the Corporations Regulations of South Australia	the new Corporations Regulations
an instrument made under the Corporations Law of South Australia or the Corporations Regulations of South Australia	a corresponding preserved instrument under the new corporations legislation
the Corporations Law	the new Corporations Act
the Corporations Regulations	the new Corporations Regulations

Column 1	Column 2
the Corporations Law of a jurisdiction other than South Australia that is a referring State	the new Corporations Regulations
the Corporations Regulations of a jurisdiction other than South Australia that is a referring State	the new Corporations Regulations
an instrument made under the Corporations Law, or the Corporations Regulations, of a jurisdiction other than South Australia that is a referring State	a corresponding preserved instrument under the new corporations legislation
the old ASIC Law	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the ASC Law of South Australia	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the old ASIC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
the ASC Regulations of South Australia	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
an instrument made under the old ASIC Law or the old ASIC Regulations	a corresponding preserved instrument under the new ASIC legislation
an instrument made under the ASC Law of South Australia or the ASC Regulations of South Australia	a corresponding preserved instrument under the ASIC legislation
the ASIC Law	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the ASC Law	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the ASIC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
the ASC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
the ASIC Law of a jurisdiction other than South Australia that is a referring State	Part 3 of the new ASIC Act except to the extent to which that Part operation in relation to a contravention of Part 2 of that Act
the ASC Law of a jurisdiction other than South Australia that is a referring State	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act

<b>Column 1</b>	<b>Column 2</b>
the ASIC Regulations of a jurisdiction other than South Australia that is a referring State	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
the ASC Regulations of a jurisdiction other than South Australia that is a referring State	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of Part 2 of that Act
an instrument made under the ASIC Law, or the ASIC Regulations, of a jurisdiction other than South Australia that is a referring State	a corresponding preserved instrument under the new ASIC legislation
an instrument made under the ASC Law, or the ASC Regulations, of a jurisdiction other than South Australia that is a referring State	a corresponding preserved instrument under the new ASIC legislation

## Legislative history

### Notes

- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Legislation amended by principal Act

The *Corporations (Ancillary Provisions) Act 2001* amended the following:

*Companies (Application of Laws) Act 1982*

*Corporations (South Australia) Act 1990*

*Futures Industry (Application of Laws) Act 1986*

*Jurisdiction of Courts (Cross-vesting) Act 1987*

*Securities Industry (Application of Laws) Act 1981*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
2001	20	<i>Corporations (Ancillary Provisions) Act 2001</i>	14.6.2001	15.7.2001 immediately before the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001: s 2
2002	34	<i>Statutes Amendment (Corporations—Financial Services Reform) Act 2002</i>	28.11.2002	Pt 7 (ss 17—20)—1.8.2003 ( <i>Gazette</i> 10.7.2003 p2913)

### Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	1.8.2003
Pt 4		
s 22		
s 22(2)	substituted by 34/2002 s 17	1.8.2003
s 22A	inserted by 34/2002 s 18	1.8.2003
s 25A	inserted by 34/2002 s 19	1.8.2003
s 26		
s 26(6)	amended by 34/2002 s 20	1.8.2003

**Corporations (Ancillary Provisions) Act 2001—1.8.2003**

Legislative history

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*Pt 5*

*omitted under Legislation Revision and  
Publication Act 2002*

*1.8.2003*