

South Australia

# Companies (Administration) Act 1982

An Act to continue the Corporate Affairs Commission; to establish the Companies Auditors and Liquidators Disciplinary Board; and for other purposes.

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### 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 *Companies (Administration) Act 1982*.

### **4—Interpretation**

In this Act, unless the contrary intention appears—

*the Board* means the Companies Auditors and Liquidators Disciplinary Board;

*the Commission* means the Corporate Affairs Commission continued under this Act;

*member* means a member of the Board and includes the deputy of a member.

## **Part 2—The Corporate Affairs Commission**

### **Division 1—The Corporate Affairs Commission**

#### **6—Corporate Affairs Commission**

- (1) The Commission, entitled the *Corporate Affairs Commission*, established by Part 13 of the *Companies Act 1962* shall continue in existence.
- (2) The Commission—
  - (a) shall be a body corporate with perpetual succession and a common seal; and
  - (b) shall be capable of suing and being sued; and
  - (c) shall be capable of acquiring, holding, dealing with, and disposing of any interest in real or personal property; and
  - (d) shall be capable of acquiring or incurring any other rights or liabilities; and
  - (e) shall hold its property for and on behalf of the Crown; and
  - (f) shall have the powers, authorities, functions and duties conferred, assigned or imposed upon it by or under this or any other Act, or any law of the Commonwealth, a Territory of the Commonwealth or another State.
- (3) The Commission shall be constituted of—
  - (a) the Commissioner for Corporate Affairs; or
  - (b) the Deputy Commissioner for Corporate Affairs; or
  - (c) the Assistant Commissioner for Corporate Affairs.
- (4) An apparently genuine document purporting to bear the common seal of the Commission shall be presumed in any legal proceedings, in the absence of proof to the contrary, to have been duly executed by the Commission.

## 7—Delegation

- (1) Subject to this Act or any other Act, the Commission may delegate any of the Commission's powers, authorities, functions or duties under this Act or any other Act—
  - (a) to a person employed in the Public Service; or
  - (b) to the person for the time being holding a specified position in the Public Service.
- (2) A delegation under this section—
  - (a) must be in writing; and
  - (b) may be conditional or unconditional; and
  - (c) is revocable at will; and
  - (d) does not prevent the delegator from acting in any matter.
- (3) A delegated function or power may, if the instrument of delegation so provides, be further delegated.

## 8—Accounts

- (1) The Commission shall keep proper accounts of all moneys received or disbursed by the Commission.
- (2) The Auditor-General may at any time, and shall at least once in each calendar year, audit the accounts of the Commission.
- (3) The Auditor-General shall have in relation to the accounts and officers of the Commission the powers that are vested in the Auditor-General by the *Audit Act 1921* in relation to public accounts and accounting officers.

## 8A—Report

- (1) The Commission shall, on or before the thirty-first day of December in each year, deliver to the Minister a report of its operations during the period of twelve months that ended on the preceding thirtieth day of June.
- (2) The Minister shall cause a copy of the report to be laid before each House of Parliament.

## Division 2—The Commissioner, Deputy Commissioner and Assistant Commissioner

### 9—Appointment of the Commissioner

- (1) There shall be a Commissioner for Corporate Affairs.
- (2) The Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the *Public Service Act 1967*.

### 10—Deputy Commissioner for Corporate Affairs

- (1) There shall be a Deputy Commissioner for Corporate Affairs.
- (2) The Deputy Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the *Public Service Act 1967*.

## **11—Assistant Commissioner for Corporate Affairs**

- (1) There shall be an Assistant Commissioner for Corporate Affairs.
- (2) The Assistant Commissioner shall be appointed, and shall hold office, subject to, and in accordance with, the *Public Service Act 1967*.

## **12—Officers of the Commission**

- (1) There shall be such officers of the Commission as are necessary to enable it to perform its functions and duties and to exercise its powers and authorities.
- (2) All such officers shall be appointed, and shall hold office, under the *Public Service Act 1967*.
- (3) For the purposes of the exercise or discharge by the Commission of its powers, authorities, duties and functions, the Commission may, with the approval of the Minister and of the body or person concerned and on such terms and conditions as may be approved by the Public Service Board, make use of the services of any of the officers, employees or servants of any body or person.
- (4) The Commission may, with the approval of the Public Service Board and on such terms and conditions as may be approved by the Board, appoint persons to be officers of the Commission for the purpose of conducting or assisting in the conduct of investigations or inspections under the *Companies (South Australia) Code* or under the *Securities Industry (South Australia) Code*.
- (5) A person may be appointed to be an officer of the Commission pursuant to subsection (4) for a term not exceeding three years, and upon the expiration of that term, shall be eligible for reappointment.
- (6) An officer referred to in subsection (3) is not (in his capacity as such) an officer within the meaning of the *Public Service Act 1967* but, if the terms and conditions on which he is appointed so provide, any specified provisions of that Act or the regulations under that Act, whether with or without specified modifications, apply to and in respect of him as if he were an employee within the meaning of that Act.

## **Part 3—The Companies Auditors and Liquidators Disciplinary Board**

### **13—Companies Auditors and Liquidators Disciplinary Board**

For the purposes of the *Companies (South Australia) Code* there shall be a Companies Auditors and Liquidators Disciplinary Board, which shall perform the functions and may exercise the powers conferred on it under Division 2 of Part 2 of that Code.

### **14—Membership of the Board**

- (1) The Board shall consist of three persons appointed by the Governor of whom—
  - (a) one shall be a duly qualified legal practitioner of not less than five years' standing who shall be the chairman of the Board; and
  - (b) one shall be selected from a panel of three names nominated by the State Council of the Institute of Chartered Accountants in Australia; and

- (c) one shall be selected from a panel of three names nominated by the Council of the State Division of the Australian Society of Accountants.
- (2) If a Council fails to submit a panel of names in accordance with paragraphs (b) or (c) of subsection (1) within a reasonable time after being requested to do so by the Minister, the Governor may appoint a person of his choice.
- (3) The Governor may appoint a person to be the deputy of a member of the Board and that person may, in the absence of the member of whom he has been appointed a deputy, act as a member of the Board.
- (4) A person appointed to be the deputy of the Chairman of the Board shall be a duly qualified legal practitioner of not less than five years' standing and shall act as Chairman of the Board in the absence of the Chairman.
- (5) No act or proceeding of the Board shall be invalid by reason only of a vacancy in the office of a member, or a defect in the appointment of a member.
- (6) A person who immediately before the commencement of this Act, was a member of the Companies Auditors Board constituted under the *Companies Act 1962* shall, from the commencement of this Act, be a member of the Companies Auditors and Liquidators Disciplinary Board and shall be deemed to have been appointed to hold office for the period expiring on the date on which the period for which he was appointed under the *Companies Act 1962* would have expired.
- (7) A person who, immediately before the commencement of this Act, was the deputy of a member of the Companies Auditors Board constituted under the *Companies Act 1962* shall be deemed to be the deputy of that member of the Companies Auditors and Liquidators Disciplinary Board under this Act.

### **15—Exercise of powers of Board**

Any two members of the Board shall have and may exercise all or any of the powers or authorities of the Board.

### **16—Term of office**

A member shall hold office for such time not exceeding three years as is fixed by the terms of his appointment and shall be eligible for re-appointment but a member shall cease to hold office—

- (a) if, without leave of the Board, he is absent from three consecutive meetings of the Board; or
- (b) if he becomes an insolvent under administration within the meaning of the *Companies (South Australia) Code*; or
- (c) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three months or more; or
- (d) if he becomes incapable by reason of mental infirmity of managing his affairs; or
- (e) if he resigns or dies.

### **17—Remuneration**

Each member of the Board shall be entitled to such remuneration, allowances and expenses as are prescribed.

## **18—Companies Auditors Board to continue in existence**

- (1) Notwithstanding the repeal of sections 8 and 9 of the *Companies Act 1962* by this Act, the Companies Auditors Board established by the *Companies Act 1962* continues in existence for such period as is necessary for the Companies Auditors Board to complete any inquiry under section 9(9) of the *Companies Act 1962* that had been commenced by the Companies Auditors Board but had not been completed before the repeal of sections 8 and 9 of the *Companies Act 1962* and the Companies Auditors Board has, for the purposes of completing such an inquiry, all the powers that it would have had if those sections had not been repealed.
- (2) Where, pursuant to subsection (1), the Companies Auditors Board completes an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned section 9(12) of the *Companies Act 1962*, but shall furnish to the National Companies and Securities Commission a report on the inquiry.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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 *Companies (Administration) Act 1982* amended the following:

*Companies Act 1962*

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1982	27	<i>Companies (Administration) Act 1982</i>	25.3.1982	1.7.1982 being the day on which the <i>Companies (Application of Laws) Act 1982</i> came into operation ( <i>Gazette 1.7.1982 p2</i> ): s 2
1984	21	<i>Companies (Administration) Act Amendment Act 1984</i>	10.5.1984	10.5.1984
<b>2006</b>	<b>44</b>	<b><i>Statutes Amendment (Justice Portfolio) Act 2006</i></b>	<b>14.12.2006</b>	<b>Pt 7 (s 11)—18.1.2007 (<i>Gazette 18.1.2007 p234</i>)</b>

### 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		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
<i>s 5</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	
Pt 2		
s 6		
s 6(3)	substituted by 21/1984 s 2	10.5.1984
<b>s 7</b>	<b>substituted by 44/2006 s 11</b>	<b>18.1.2007</b>
s 8A	inserted by 21/1984 s 3	10.5.1984

## **Historical versions**

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