

(Reprint No. 1)

SOUTH AUSTRALIA

CORPORATIONS (SOUTH AUSTRALIA) ACT, 1990

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 12 December 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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CORPORATIONS (SOUTH AUSTRALIA) ACT, 1990

being

Corporations (South Australia) Act, 1990, No. 66 of 1990 [Assented to 20 December 1990]¹

as amended by

Corporations (South Australia) (Miscellaneous) Amendment Act 1991 No. 79 of 1991 [Assented to 12 December 1991]²

An Act to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of South Australia; and for other purposes.

PART 1

PRELIMINARY

Short title and purposes

1. (1) This Act may be cited as the *Corporations (South Australia) Act, 1990*.
- (2) The purposes of this Act are—
 - (a) to apply certain provisions of the *Corporations Act 1989* of the Commonwealth and the *Australian Securities Commission Act 1989* of the Commonwealth and of regulations under those Acts as laws of South Australia;and
 - (b) to apply certain other laws of the Commonwealth as laws of South Australia for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Definitions

3. (1) In this Act—

“applicable provision”, in relation to a jurisdiction, means a provision of—

 - (a) the Corporations Law, or Corporations Regulations, of that jurisdiction;
 - (b) the ASC Law, or ASC Regulations, of that jurisdiction;

¹Came into operation 1 January 1991: *Gaz.* 20 December 1990, p. 1842.

²Ss. 4, 6, 16 - 18 came into operation 1 January 1991: s. 2(2); s. 20 came into operation on assent: s. 2(3); remainder of Act had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

(c) in the case of the Capital Territory—a Commonwealth law as applying, of its own force or because of another Commonwealth law, in relation to—

(i) an offence against;

(ii) an act, matter or thing arising under or in respect of,

a provision that, because of any other application or applications of this definition, is an applicable provision of the Capital Territory or any other jurisdiction;

or

(d) in the case of a jurisdiction other than the Capital Territory—a Commonwealth law as applying, because of a law of that jurisdiction, in relation to—

(i) an offence against;

or

(ii) an act, matter or thing arising under or in respect of,

a provision that, because of any other application or applications of this definition, is an applicable provision of that or any other jurisdiction:

“ASC Act” means the *Australian Securities Commission Act 1989* of the Commonwealth:

“ASC Law” has the meaning given by Part 11:

“ASC Law of South Australia” means the provisions applying by reason of section 58:

“ASC Regulations” has the meaning given by Part 11:

“ASC Regulations of South Australia” means the provisions applying by reason of section 59:

“authority”, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act:

“Capital Territory” means the Australian Capital Territory and the Jervis Bay Territory:

“Commission” means the Australian Securities Commission established by the ASC Act:

“Commonwealth administrative laws” means the following:

(a) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

(b) the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth;

(c) the *Freedom of Information Act 1982* of the Commonwealth;

(d) the *Ombudsman Act 1976* of the Commonwealth;

(e) the *Privacy Act 1988* of the Commonwealth,

and the provisions of the regulations in force for the time being under those Acts:

“Commonwealth law” means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASC Law of the Capital Territory or provisions prescribed, for the purposes of the definition of “Commonwealth law” in section 4 of the Corporations Act, by regulations under section 73 of the Corporations Act:

“Commonwealth Minister” has the meaning given to “the Minister” by section 80A(2) of the Corporations Law:

“co-operative scheme law” has the meaning given by section 84:

“Corporations Act” means the *Corporations Act 1989* of the Commonwealth:

“Corporations Law” has the meaning given by Part 3:

“Corporations Law of South Australia” means the provisions applying by reason of section 7:

“Corporations Regulations” has the meaning given by Part 3:

“Corporations Regulations of South Australia” means the provisions applying by reason of section 8:

“corresponding law” means—

(a) an Act of a jurisdiction (other than South Australia) that corresponds to this Act;

(b) regulations made under such an Act;

(c) the Corporations Law, Corporations Regulations, ASC Law, or ASC Regulations, or any other applicable provision, of such a jurisdiction;

or

(d) rules of court made because of such an Act:

“Full Court”, in relation to a Supreme Court of a State or Territory, includes any court of the State or Territory to which appeals lie from a single judge of that Supreme Court:

“jurisdiction” means a State or the Capital Territory:

“law”, in relation to the Capital Territory, means a law of or in force in the Capital Territory:

“Minister for this jurisdiction” means the Minister:

“modifications” includes additions, omissions and substitutions:

“national scheme law” has the meaning given by section 60:

“national scheme law of this jurisdiction” means—

(a) this Act;

(b) the Corporations Law of South Australia;

or

(c) the ASC Law of South Australia:

“NCSC” means the National Companies and Securities Commission:

“officer”, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act:

“State” includes the Northern Territory:

“Territory” does not include the Northern Territory:

“this jurisdiction” means South Australia.

(2) In this Act, a reference to a Commonwealth Act includes a reference to—

(a) that Commonwealth Act as amended and in force for the time being;

and

(b) an Act passed in substitution for that Act.

Australian Capital Territory

4. For the purposes of the national scheme laws of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

This Act and applicable provisions of South Australia not to be affected by later State laws

5. (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of South Australia.

(2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of this Act or the applicable provisions of South Australia.

Operation of other South Australian Laws

6. Except as otherwise provided in this Act, nothing in this Act or the applicable provisions of South Australia affects the operation after the commencement of this section of an Act enacted before that commencement or of an instrument made under such an Act.

PART 2

THE CORPORATIONS LAW, AND THE CORPORATIONS REGULATIONS,
OF SOUTH AUSTRALIA**Application in South Australia of the Corporations Law**

7. The Corporations Law set out in section 82 of the Corporations Act as in force for the time being—

(a) applies as a law of South Australia;

and

(b) as so applying, may be referred to as the Corporations Law of South Australia.

Application of regulations

8. (1) The regulations in force for the time being under section 22 of the Corporations Act—

(a) apply as regulations in force for the purposes of the Corporations Law of South Australia;

and

(b) as so applying, may be referred to as the Corporations Regulations of South Australia.

(2) Subject to subsection (3) of this section, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the Commonwealth of Australia Gazette under section 48(1) of the *Acts Interpretation Act 1901* of the Commonwealth, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Corporations Act from the specified day.

(3) To the extent that a provision of the Corporations Regulations of South Australia is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to—

(a) affect a private person's rights as at that day so as to disadvantage that person;

or

(b) impose a liability on a private person in respect of anything done or omitted to be done before that day.

(4) In subsection (3)—

“private person” means a person other than—

(a) the Commonwealth, a State or the Capital Territory;

or

(b) an authority of the Commonwealth, of a State or of the Capital Territory.

(5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of South Australia

9. In the Corporations Law, and the Corporations Regulations, of South Australia—

“the Minister for this jurisdiction” means the Minister:

“this jurisdiction” means South Australia.

Interpretation law

10. (1) Subject to Part 1.2 of the Corporations Law of South Australia, the *Acts Interpretation Act 1901* of the Commonwealth as in force at the commencement of section 8 of the Corporations Act, applies as a law of South Australia in relation to the Corporations Law, and the Corporations Regulations, of South Australia and any instrument made, granted or issued under that Law or those Regulations (other than application orders under section 111A of that Law) and so applies as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The *Acts Interpretation Act, 1915*, does not apply in relation to the Corporations Law, or the Corporations Regulations, of South Australia or an application order or any other instrument made, granted or issued under that Law or those Regulations.

PART 3

CITING THE CORPORATIONS LAW AND THE CORPORATIONS REGULATIONS

Simpler citation of Corporations Law, and Corporations Regulations, of South Australia

11. (1) The Corporations Law of South Australia may be referred to simply as the Corporations Law.

(2) The Corporations Regulations of South Australia may be referred to simply as the Corporations Regulations.

(3) This section has effect subject to section 13.

References to Corporations Law, and Corporations Regulations, of other jurisdictions

12. (1) This section has effect for the purposes of an Act, a law of South Australia or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than South Australia that corresponds to section 7 of this Act provides that the Corporations Law set out in section 82 of the Corporations Act as in force for the time being applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.

(3) Where a law of a jurisdiction other than South Australia that corresponds to section 8 of this Act provides that the regulations in force for the time being under section 22 of the Corporations Act apply for the purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

References to Corporations Law and Corporations Regulations

13. (1) The object of this section is to help ensure that the Corporations Law of South Australia operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than South Australia, constituted a single national Corporations Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of South Australia—

(a) to be a reference to the Corporations Law, or to the Corporations Regulations, of South Australia;

and

(b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than South Australia.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.

(5) In this section—

“instrument” means—

(a) an Act or an instrument made under an Act;

(b) a law of South Australia or an instrument made under such a law;

- (c) an award or other industrial determination or order, or an industrial agreement;
 - (d) any other order (whether executive, judicial or otherwise);
 - (e) a notice, certificate or licence;
 - (f) an agreement;
 - (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose;
 - (h) an indictment, presentment, summons or writ;
 - (i) any other pleading in, or process issued in connection with, a legal or other proceeding;
- or
- (j) any other document whatever.

PART 4

APPLICATION OF THE CORPORATIONS LAW TO THE CROWN

Interpretation

14. To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

Corporations Law of South Australia

15. (1) Chapter 5 (except Part 5.8) of the Corporations Law of South Australia binds the Crown not only in right of the State of South Australia but also, so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth, of each of the other States, of the Capital Territory, of the Northern Territory and of Norfolk Island.

(2) To avoid doubt, Chapter 7 of the Corporations Law of South Australia does not bind the Crown in right of the State of South Australia, of the Commonwealth, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

Corporations Law of other jurisdictions

16. Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than South Australia binds the Crown in right of the State of South Australia.

Crown not liable to prosecution

17. Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

This Part overrides the prerogative

18. Where, because of this Part, a provision of a law of another jurisdiction binds the Crown in right of the State of South Australia, the Crown in that right is subject to that provision despite any prerogative right or privilege.

PART 5

APPLICATION ORDERS

Commonwealth Minister to obtain consent of State Minister

19. Despite Part 1.3 of the Corporations Law of South Australia and section 20 of this Act, the Commonwealth Minister may only make an order under section 111A of that Law, or that section as applying because of section 20 of this Act, with the consent of the Minister for this jurisdiction.

Application orders for ASC Law

20. Part 1.3 of the Corporations Law of South Australia applies for the purposes of the ASC Law of South Australia as if the provisions of the ASC Law of South Australia were provisions of the Corporations Law of South Australia.

PART 6

ACCOUNTING STANDARDS

Accounting standards

21. Subject to the Corporations Law, and the Corporations Regulations, of South Australia, the instruments in force for the time being under section 32 of the Corporations Act also have effect for the purposes of Parts 3.6 and 3.7 of that Law.

PART 7

IMPOSITION OF FEES AND TAXES

Fees (including taxes) for chargeable matters

22. This section imposes the fees (including fees that are taxes) that the Corporations Regulations of South Australia prescribe.

Contributions and levies for fidelity funds of securities exchanges

23. (1) This section imposes—

(a) the contribution payable under section 902(1) of the Corporations Law of South Australia by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognised by a securities exchange;

(b) the annual contribution payable under section 902(2) of that Law by a member of a securities exchange;

and

(c) any levy payable under section 904 of that Law by a member of a securities exchange.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of South Australia.

Levies for National Guarantee Fund

24. This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of South Australia.

Contributions and levies for fidelity funds of futures organisations

25. (1) This section imposes—

(a) the contribution payable under section 1234(1) of the Corporations Law of South Australia by a person who wishes to be admitted to membership of a futures organisation;

(b) the annual contribution payable under section 1234(2) of that Law by a contributing member of a futures organisation;

and

(c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of South Australia.

PART 8

NATIONAL ADMINISTRATION AND ENFORCEMENT OF THE
CORPORATIONS LAW

DIVISION 1—PRELIMINARY

Object

26. The object of this Part is to help ensure that—

(a) the Corporations Law of South Australia, and the Corporations Law of each jurisdiction other than South Australia, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth;

and

(b) the ASC Law of South Australia, and the ASC Law of each jurisdiction other than South Australia, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

Effect of Part

27. (1) This Part has effect subject to this Act (in particular Part 9), the Corporations Law of South Australia and the ASC Law of South Australia.

(2) Nothing in this Part limits the generality of anything else in it.

DIVISION 2—OFFENCES AGAINST APPLICABLE PROVISIONS

Object

28. (1) The object of this Division is to further the object of this Part by providing—

(a) for an offence against an applicable provision of South Australia to be treated as if it were an offence against a law of the Commonwealth;

and

(b) for an offence against an applicable provision of another jurisdiction to be treated in South Australia as if it were an offence against a law of the Commonwealth.

(2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation)—

(a) the investigation and prosecution of offences;

(b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences;

(c) proceedings relating to a matter referred to in paragraph (a) or (b);

(d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);

(e) the sentencing, punishment and release of persons convicted of offences;

(f) fines, penalties and forfeitures;

(g) liability to make reparation in connection with offences;

(h) proceeds of crime;

and

(i) spent convictions.

Application of Commonwealth laws in relation to offences against applicable provisions

29. (1) The Commonwealth laws apply as laws of South Australia in relation to an offence against the applicable provisions of South Australia as if those provisions were laws of the Commonwealth and were not laws of South Australia.

(2) For the purposes of a law of South Australia, an offence against the applicable provisions of South Australia—

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth;

and

(b) is taken not to be an offence against the laws of South Australia.

(3) Subsection (2) has effect for the purposes of a law of South Australia except as prescribed by regulations under section 80.

Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions

30. (1) The Commonwealth laws apply as laws of South Australia in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that other jurisdiction.

(2) For the purposes of a law of South Australia, an offence against the applicable provisions of another jurisdiction—

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth;

and

(b) is taken not to be an offence against the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of South Australia except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorize or otherwise provide for, the doing of an act outside South Australia.

Functions and powers conferred on Commonwealth authorities

31. (1) A Commonwealth law applying because of section 29 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against the applicable provisions of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of South Australia.

(2) A Commonwealth law applying because of section 30 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in South Australia.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.

Reference in Commonwealth law to a provision of another law

32. A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of section 29 or 30, to be a reference to that provision as applying because of that section.

Restriction of functions and powers of State authorities and officers

33. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

DIVISION 3—ADMINISTRATIVE LAW

Object

34. The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws—

- (a) apply to the applicable provisions of South Australia;
- and
- (b) apply, in South Australia, to the applicable provisions of another jurisdiction, as if the applicable provisions were those of the Capital Territory.

Application of Commonwealth administrative laws in relation to applicable provisions

35. (1) The Commonwealth administrative laws apply as laws of South Australia in relation to any act, matter or thing arising under or in respect of the applicable provisions of South Australia as if those provisions were laws of the Commonwealth and were not laws of South Australia.

(2) For the purposes of a law of South Australia, an act, matter or thing arising under or in respect of the applicable provisions of South Australia—

- (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth;
- and
- (b) is taken not to be an act, matter or thing arising under or in respect of the laws of South Australia.

(3) Subsection (2) has effect for the purposes of a law of South Australia except as prescribed by regulations under section 80.

Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions

36. (1) The Commonwealth administrative laws apply as laws of South Australia in relation to any act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.

(2) For the purposes of a law of South Australia, an act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction—

(a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth;

and

(b) is taken not to be an act matter or thing arising under or in respect of the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of South Australia except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorize or otherwise provide for the doing of an act outside South Australia.

Functions and powers conferred on Commonwealth authorities

37. (1) A Commonwealth administrative law applying because of section 35 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of South Australia.

(2) A Commonwealth administrative law applying because of section 36 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of another jurisdiction.

(3) The function or power referred to in subsection (2) may only be performed or exercised in South Australia.

(4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.

Reference in Commonwealth administrative law to a provision of another law

38. A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken for the purposes of section 35 or 36, to be a reference to that provision as applying because of that section.

Restriction of functions and powers of State authorities and officers

39. Where, by reason of this Division, a function or power is conferred on an officer or authority of the Commonwealth, that function or power may not be performed or exercised by an officer or authority of the State.

PART 9

JURISDICTION AND PROCEDURE OF COURTS

DIVISION 1—VESTING AND CROSS-VESTING OF CIVIL JURISDICTION

Operation of Division

40. (1) This Division provides in relation to—

(a) the jurisdiction of courts in respect of matters other than criminal matters (in this Division called “civil” matters) arising under the Corporations Law of South Australia;

and

(b) the jurisdiction of the courts of South Australia in respect of civil matters arising under the Corporations Law of another State or the Capital Territory,

and so provides to the exclusion of the *Jurisdiction of Courts (Cross-vesting) Act, 1987*.

(2) Nothing in this Division affects any other jurisdiction of any court.

Interpretation

41. (1) In this Division—

“judgment” means a judgment, decree or order, whether final or interlocutory.

(2) In this Division—

(a) a reference to the Corporations Law of South Australia includes a reference to—

(i) the Corporations Regulations of South Australia;

(ii) the ASC Law of South Australia;

(iii) the ASC Regulations of South Australia;

(iv) any other applicable provisions (as defined in section 3) of South Australia;

(v) this Act;

(vi) regulations made under this Act;

and

(vii) rules of court made by the Supreme Court of South Australia, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph);

and

(b) a reference to the Corporations Law of another State or of the Capital Territory is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

Jurisdiction of Federal Court and State and Territory Supreme Courts

42. (1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, as it applies as a law of South Australia, jurisdiction is conferred on the Supreme Court of South Australia and of each other State and the Capital Territory with respect to civil matters arising under the Corporations Law of South Australia.

(2) The jurisdiction conferred on a Supreme Court by subsection (1) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

(3) Jurisdiction is conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of South Australia.

Appeals

43. (1) An appeal may not be instituted from a decision of a court of South Australia to a court of another State or Territory or to the Federal Court.

(2) An appeal may not be instituted from a decision of the Federal Court to a court of a State or Territory.

(3) An appeal may not be instituted from a decision of the Supreme Court of another State to the Federal Court or to a court of any State or Territory, except the Full Court of that Supreme Court.

(4) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State.

Transfer of proceedings

44. (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of South Australia in a court having jurisdiction under section 42.

(2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first mentioned court may transfer the proceeding or application to that other court.

(3) In deciding whether to transfer a proceeding or application under subsection (2), the court must have regard to—

(a) the principal place of business of any body corporate concerned in the proceeding or application;

and

(b) the place or places where the events the subject of the proceeding or application took place.

(4) The court may transfer the proceeding or application—

(a) on the application of a party made at any stage;

or

(b) of the court's own motion.

(5) Where, under subsection (2), a court transfers a proceeding, or an application in a proceeding, to another court—

(a) the Registrar or other proper officer of the first mentioned court must transmit to the Registrar or other proper officer of the other court all documents filed in the first mentioned court in respect of the proceeding or application, as the case may be;

and

(b) the other court must proceed as if—

(i) the proceeding had been originally instituted in the other court;

(ii) the same proceedings had been taken in the other court as were taken in the first mentioned court;

and

(iii) in a case where an application is transferred—the application had been made in the other court.

Conduct of proceedings

45. (1) Subject to sections 51 and 52, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with the matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) Where a proceeding is transferred or removed to a court (in this subsection called the “transferee court”) from another court (in this subsection called the “transferor court”), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

(3) In this section—

“relevant jurisdiction” means—

(a) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of South Australia;

(b) jurisdiction conferred on the Federal Court of Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction that is being exercised by the Federal Court sitting in South Australia;

(c) jurisdiction conferred on the Supreme Court of South Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory;

or

(d) jurisdiction conferred on the Supreme Court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of South Australia.

Courts to act in aid of each other

46. All courts having jurisdiction in civil matters arising under the Corporations Law of South Australia, the Judges of those courts and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

Exercise of jurisdiction pursuant to cross-vesting provisions

47. The Supreme Court of South Australia may—

(a) exercise jurisdiction (whether original or appellate) conferred on that Court by a law of another State or the Capital Territory corresponding to this Division with respect to matters arising under the Corporations Law of that State or Territory;

and

(b) hear and determine a proceeding transferred to that Court under such a provision.

Rights of appearance

48. A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the “transferred proceeding”) in that court is transferred to another court under this Division or a law of another State or the Capital Territory that corresponds to this Division, the same entitlements to practise in relation to—

(a) the transferred proceeding;

and

(b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding,

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

Limitation on appeals

49. An appeal does not lie from a decision of a court—

(a) in relation to the transfer of a proceeding under this Division;

or

(b) as to which rules of evidence and procedure are to be applied pursuant to section 45(1).

Enforcement of judgments, etc.

50. (1) A judgment of the Federal Court or the Supreme Court of South Australia that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of another State or the Capital Territory that corresponds to this Division, is enforceable in South Australia as if the judgment had been given by that Court entirely in the exercise of the jurisdiction of that Court apart from this Division or any such law.

(2) Where—

(a) a provision of a law of South Australia (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court or the Supreme Court of South Australia or of another State or of the Capital Territory;

and

(b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of another State or the Capital Territory corresponding to this Division,

the reference in that provision to the Federal Court or the Supreme Court of South Australia or of the other State or Territory, as the case may be, is taken as a reference to that other court.

Rules of the Supreme Court

51. (1) The Judges of the Supreme Court of South Australia may make rules of court, not inconsistent with the Corporations Law of South Australia—

(a) with respect to proceedings, and the practice and procedure, of that Court under that Law;

(b) with respect to any matter or thing that is—

(i) required or permitted by that Law to be prescribed by rules within the meaning of that Law;

or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law;

and

(c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

(2) When the Supreme Court of South Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction conferred by a law of another State or the Capital Territory that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

(3) When the Supreme Court of another State or the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of South Australia, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law of the State or Territory corresponding to subsection (1), with such alterations as are necessary.

(4) In this section—

“Corporations Law of another State or the Capital Territory” does not include rules of court:

“Corporations Law of South Australia” does not include rules of court.

Rules of the Federal Court

52. (1) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of South Australia, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 60 of the Corporations Act, with such alterations as are necessary.

(2) In this section—

“Corporations Law of South Australia” does not include rules of court.

DIVISION 2—VESTING AND CROSS-VESTING OF CRIMINAL JURISDICTION**Operation of Division**

53. This Division provides in relation to—

(a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of South Australia;

and

(b) the jurisdiction of the courts of South Australia in respect of criminal matters arising under the Corporations Law of any jurisdiction.

Interpretation

54. (1) In this Division—

“magistrate” means a magistrate who is remunerated by salary or otherwise.

(2) In this Division—

(a) a reference to the Corporations Law of South Australia includes a reference to—

(i) the Corporations Regulations of South Australia;

(ii) the ASC Law of South Australia;

(iii) the ASC Regulations of South Australia;

(iv) any other applicable provisions (as defined in section 3) of South Australia;

(v) this Act;

(vi) regulations made under this Act;

and

(vii) rules of court made by the Supreme Court of South Australia, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph);

and

(b) a reference to the Corporations Law of another State or of the Capital Territory is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

Jurisdiction of courts

55. (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction—

(a) with respect to—

- (i) the summary conviction;
 - (ii) the examination and commitment for trial on indictment;
 - (iii) the trial and conviction on indictment,
of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to—
 - (iv) their sentencing, punishment and release;
 - (v) their liability to make reparation in connection with their offences;
 - (vi) the forfeiture of property in connection with their offences;
- or
- (vii) the proceeds of their crimes;

and

(b) with respect to the hearing and determination of—

- (i) proceedings connected with;
 - (ii) appeals arising out of;
- or
- (iii) appeals arising out of proceedings connected with,

any such trial or conviction or any matter of a kind referred to in paragraph (a)(iv), (v), (vi) or (vii),

have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of South Australia.

(2) Where a provision of a law of another State or the Capital Territory corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State or the Capital Territory upon a court of South Australia, the court may exercise that jurisdiction.

(3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.

(4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of another State or the Capital Territory, and—

- (a) the reference in subsection (1)(b) to “any such trial or conviction” includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law;

and

- (b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.

(5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned—

(a) would be required to be prosecuted on indictment;

or

(b) would be required to be prosecuted either summarily or on indictment.

(6) For the purposes of the application of a relevant law as provided by subsection (4)—

(a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment;

and

(b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.

(7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.

(8) Subject to subsection (9), the jurisdiction conferred on a court of South Australia by a law of another State or the Capital Territory corresponding to subsection (1) may be exercised despite any limits as to locality of the jurisdiction of that court under the law of South Australia.

(9) Where—

(a) jurisdiction is conferred on a court of South Australia in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of another State or of the Capital Territory;

and

(b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest,

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or the Capital Territory.

(10) The jurisdiction conferred on a court of another State or the Capital Territory by subsection (1) in relation to—

(a) the examination and commitment for trial on indictment;

and

(b) the trial and conviction on indictment,

of offenders or persons charged with offences against the Corporations Law of South Australia is conferred only in relation to—

(c) offences committed outside Australia;

and

(d) offences committed, begun or completed within the State or Territory concerned.

(11) In this section—

“Australia” does not include the coastal sea:

“relevant law” means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last mentioned court.

Laws to be applied

56. (1) Subject to this Division, the laws of South Australia respecting—

(a) the arrest and custody in South Australia of offenders or persons charged with offences;

and

(b) criminal procedure in South Australia in relation to such persons,

apply in South Australia, so far as they are applicable, to persons who are charged with offences against the Corporations Law of South Australia or of another State or the Capital Territory in respect of whom jurisdiction is conferred on a court of South Australia by this Division or a corresponding law of another State or the Capital Territory.

(2) Subject to this Division, the laws of each other State and the Capital Territory respecting—

(a) the arrest and custody in that State or Territory of offenders or persons charged with offences;

and

(b) criminal procedure in that State or Territory in relation to such persons,

apply in that State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of South Australia in respect of whom jurisdiction is conferred on a court of that State or Territory by this Division.

(3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of another State or the Capital Territory.

(4) In this section—

“criminal procedure” means the procedure for—

(a) the summary conviction;

(b) the examination and commitment for trial and indictment;

(c) the trial and conviction on indictment;

and

(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings,

of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail:

“laws of each other State and the Capital Territory” means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State or Territory concerned.

PART 10

COMPANIES LIQUIDATION ACCOUNT

Companies Liquidation Account

57. (1) In this section—

“relevant money” means—

(a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the *Companies (South Australia) Code*;

and

(b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the *Companies (South Australia) Code* that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement of that Chapter.

(2) Relevant money is to be dealt with in accordance with section 427 of the *Companies (South Australia) Code*.

PART 11

THE ASC LAW, AND THE ASC REGULATIONS, OF SOUTH AUSTRALIA

DIVISION 1—APPLICATION OF ASC ACT AND ASC REGULATIONS

Application in South Australia of the ASC Act

58. (1) The ASC Act, other than the excluded provisions—

(a) applies as a law of South Australia;

and

(b) as so applying, may be referred to as the ASC Law of South Australia.

(2) The excluded provisions of the ASC Act are—

Part 1, except section 6A

Part 2

Section 88

Divisions 1 and 4 of Part 4

Part 5

Part 6

Division 1 of Part 7

Part 8

Part 9

Division 1 of Part 10

Division 1 of Part 11

Part 12

Part 14

Sections 251 and 252.

Application of regulations

59. The regulations in force for the time being under section 251 of the ASC Act—

(a) apply as regulations in force for the purposes of the ASC Law of South Australia;

and

(b) as so applying, may be referred to as the ASC Regulations of South Australia.

Interpretation of some expressions in the ASC Law, and the ASC Regulations, of South Australia

60. (1) In this Part, and in the ASC Law, and the ASC Regulations, of South Australia—

“Advisory Committee” means the Companies and Securities Advisory Committee established by section 145 of the ASC Act:

“affairs”, in relation to a body corporate, has the same meaning as in section 260 of the Corporations Law:

“assist”, in relation to a Commission delegate, means—

(a) to perform functions—

(i) as a member, officer or employee of the Commission delegate;

and

(ii) in connection with the Commission delegate's performance or exercise of a function or power delegated under section 102 of the ASC Law;

or

(b) to perform services for the Commission delegate in connection with the Commission delegate's performance or exercise of a function or power delegated under section 102 of the ASC Law:

"Australia" includes any external Territory to which the ASC Act extends:

"books" includes—

(a) a register;

(b) accounts or accounting records, however compiled, recorded or stored;

(c) a document;

(d) banker's books;

and

(e) any other record of information:

"Chairperson" means—

(a) except in Part 11 of the ASC Law or in relation to the Disciplinary Board—the Chairperson of the Commission;

and

(b) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson of the Disciplinary Board:

"Commission" means the Australian Securities Commission established by section 7 of the ASC Act:

"Commission delegate" means a person to whom, or a body to which, a function or power is delegated under section 102 of the ASC Law:

"contravention", in relation to a law, includes an ancillary offence relating to an offence against that law:

"court", except in section 248 of the ASC Law, includes a tribunal having power to require the production of documents or the answering of questions:

"Deputy Chairperson" means the Deputy Chairperson of the Commission:

"Disciplinary Board" means the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the ASC Act:

"eligible person", in relation to a person, means a person who—

(a) if the first mentioned person is a body corporate—is or has been an officer of the body within the meaning of a national scheme law or a corresponding previous law;

or

(b) in any case—

(i) is or has been an employee, agent, banker, solicitor or auditor of;

or

(ii) is acting, or has acted, in any other capacity on behalf of, the first mentioned person:

“examination” means—

(a) in this section and Part 3 (other than section 27(2) and Division 9) of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of that Law;

or

(b) in section 27(2) and Division 9 of Part 3 of the ASC Law—an examination of a person pursuant to a requirement made under section 19 of the ASC law or a corresponding provision of the ASC law of another jurisdiction:

“expenses”, in relation to an investigation under Division 1 of Part 3 of the ASC Law, includes costs and expenses incurred in relation to a proceeding begun under section 50 of the ASC Law as a result of the investigation:

“fail” means refuse or fail:

“foreign country” means—

(a) an external Territory to which the ASC Act does not extend;

(b) a country outside Australia and the external Territories;

or

(c) a part of such a country:

“give” has—

(a) in relation to a document—a meaning affected by section 86 of the ASC Law;

and

(b) in relation to information—a meaning affected by section 61 of this Act:

“hearing”, in this section and Part 3 of the ASC law, means a hearing before the Commission and, in sections 52, 54, 55 and 56 of that Law, includes a part of such a hearing:

“information” has a meaning affected by section 61 of this Act:

“investigate”, in relation to the Commission, means investigate in the course of performing or exercising any of the Commission’s functions and powers:

“meeting” means—

(a) in Part 4 of the ASC Law, a meeting of the Commission;

and

(b) in Part 11 of that Law—a meeting of the Disciplinary Board:

“member” means—

(a) except in Division 2 of Part 4, or in Part 10, 11, or 14, of the ASC Law, or in relation to a Division of the Commission, or in relation to the Panel or the Disciplinary Board—a member of the Commission;

(b) in Part 10 of that Law or in relation to the Panel—a member of the Panel;

(c) in Part 11 of that Law or in relation to the Disciplinary Board—the Chairperson or any other member of the Disciplinary Board:

“national scheme law” means—

(a) the following:

- (i) the Corporations Law of this jurisdiction;
- (ii) the ASC Law of this jurisdiction;
- (iii) this Act;

(b) the following:

- (i) the Corporations Act;
- (ii) the Corporations Law of the Capital Territory;
- (iii) the ASC Act;

or

(c) a law of a jurisdiction (other than this jurisdiction or the Capital Territory) that corresponds to an Act or Law referred to in paragraph (a):

“national scheme law of this jurisdiction” means—

(a) this Act;

(b) the Corporations Law of South Australia;

or

(c) the ASC Law of South Australia:

“officer”, in relation to a body corporate, includes—

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (c) an official manager, or a deputy official manager, of the body;
- (d) a liquidator, or a provisional liquidator, of the body;

and

(e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons:

“Panel” means the Corporations and Securities Panel established by section 171 of the ASC Act:

“power” includes an authority:

“prescribed” means prescribed by the ASC Law or the regulations:

“President” means the President of the Panel:

“proceeding” means—

(a) a proceeding in a court;

or

(b) a proceeding or hearing before, or an examination by or before, a tribunal,

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature:

“produce”, except in Part 3 of the ASC Law, includes permit access to:

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and money:

“record”, in relation to an examination, means the whole or a part of a record made under section 24 of the ASC Law of statements made at the examination:

“regulations” means the ASC Regulations of this jurisdiction:

“report” includes an interim report:

“staff member” means—

(a) a member of the staff referred to in section 120(1) of the ASC Act or a person employed under section 120(3) of that Act;

(b) a person engaged under section 121(1) of that Act;

or

(c) any of the officers, employees and persons who under section 122 of that Act are to assist the Commission:

“statement”, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination:

“Territory” means—

(a) the Capital Territory;

or

(b) an external Territory to which the ASC Act extends:

“this Act”, except in this Part, means the ASC Law, and includes the regulations:

“this jurisdiction” means South Australia:

“this Law” includes the regulations:

“tribunal” means—

(a) a tribunal in Australia;

or

(b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence:

“witness”, in relation to a hearing before the Commission or the Panel, means a person appearing at the hearing to give evidence:

“written record”, in relation to an examination, means—

(a) a record of the examination—

(i) that is made in writing;

or

(ii) as reduced to writing;

or

(b) a part of such a record.

(2) Subject to the ASC Law of this jurisdiction, an expression has the same meaning in that Law and in the ASC Regulations of this jurisdiction as in the Corporations Law of this jurisdiction.

Giving information

61. A reference in the ASC Law, and the ASC Regulations, of South Australia to giving information includes a reference to—

- (a) explaining or stating a matter;
 - (b) identifying a person, matter or thing;
 - (c) disclosing information;
- or
- (d) answering a question.

Interpretation law

62. (1) Except so far as the contrary intention appears in the ASC Law of South Australia—

- (a) Part 1.2 (except section 8) of the Corporations Law of South Australia applies; and
- (b) subject to paragraph (a), the *Acts Interpretation Act 1901* of the Commonwealth as in force at the commencement of section 5(5) of the ASC Act applies as law of South Australia,

in relation to the ASC Law, and the ASC Regulations, of South Australia and any instrument made, granted or issued under that Law or those Regulations (other than application orders made for the purposes of that Law under section 111A of the Corporations Law of this jurisdiction) and so apply as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

(2) The *Acts Interpretation Act, 1915*, does not apply in relation to the ASC Law, or the ASC Regulations, of South Australia or an application order or any other instrument made, granted or issued under that Law or those Regulations.

DIVISION 2—CITING THE ASC LAW AND THE ASC REGULATIONS

Alternative citations of the ASC Law, and the ASC Regulations, of South Australia

63. (1) The ASC Law of South Australia may be referred to simply as the ASC Law.

(2) The ASC Regulations of South Australia may be referred to simply as the ASC Regulations.

(3) This section has effect subject to section 65.

References to ASC Law, and ASC Regulations, of another jurisdiction

64. (1) This section has effect for the purposes of an Act, a law of South Australia or an instrument made under an Act or under such a law.

(2) Where a law of a jurisdiction other than South Australia contains provisions corresponding to sections 5 and 6 of the Corporations Act and also provides for provisions of the ASC Act to apply as law of that jurisdiction, those provisions of the ASC Act, as so applying, are the ASC Law of that jurisdiction.

(3) Where a law of a jurisdiction other than South Australia provides for the regulations in force for the time being under section 251 of the ASC Act to apply for the purposes of the ASC Law of that jurisdiction, those regulations as so applying are the ASC Regulations of that jurisdiction.

References to ASC Law and ASC Regulations

65. (1) The object of this section is to help ensure that, so far as possible—

(a) the bodies established by the ASC Act and the staff of those bodies, can perform functions and exercise powers;

and

(b) persons can have dealings with those bodies,

as if the ASC Act, the ASC Law of South Australia and the ASC Law of each other State, constituted a single national ASC Law applying of its own force throughout Australia.

(2) Subject to this section, a reference in an instrument to the ASC Law, or to the ASC Regulations, is to be taken, for the purposes of the laws of South Australia—

(a) to be a reference to the ASC Law, or to the ASC Regulations, of South Australia;

and

(b) to include a separate reference to the ASC Law, or to the ASC Regulations, of each jurisdiction other than South Australia.

(3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.

(4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASC Law, or to the ASC Regulations, of a jurisdiction.

(5) In this section—

“instrument” means—

(a) an Act or an instrument made under an Act;

(b) a law of South Australia or an instrument made under such a law;

(c) an award or other industrial determination or order, or an industrial agreement;

(d) any other order (whether executive, judicial or otherwise);

(e) a notice, certificate or licence;

(f) an agreement;

(g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose;

(h) an indictment, presentment, summons or writ;

(i) any other pleading in, or process issued in connection with, a legal or other proceeding;

or

(j) any other document whatever.

DIVISION 3—THE COMMISSION

Conferral of functions and powers on Commission

66. (1) The Commission has the functions and powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission also has the functions and powers conferred or expressed to be conferred upon the NCSC by or under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code*.

Agreements and arrangements

67. (1) The Minister, or a person authorized in writing by the Minister, may enter into an agreement or arrangement with the Commission for the performance of functions or the exercise of powers by the Commission as an agent of the State.

(2) The Commission has such functions and powers as are referred to in such an agreement or arrangement.

Conferral of other functions and powers for purposes of law in South Australia

68. The Commission has power to do acts in South Australia in the performance or exercise of any function or power—

(a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction;

or

(b) referred to in an agreement or arrangement made under a provision of an Act of another jurisdiction corresponding to section 67.

Directions by Commonwealth Minister

69. (1) If the Commonwealth Minister—

(a) has notified the Commission in writing that he or she is considering giving a direction under this section;

and

(b) has given the Chairperson of the Commission an adequate opportunity to discuss with the Commonwealth Minister the need for the proposed direction,

the Commonwealth Minister may give the Commission a written direction (not being a direction about a particular case) about policies it should pursue, or priorities it should follow in performing or exercising any of the functions or powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.

(2) The Commission must comply with a direction under subsection (1).

(3) A copy of an instrument under subsection (1) must be published in the Commonwealth of Australia Gazette within 21 days after the instrument is made but, if a copy is not so published, the instrument's validity is not affected.

DIVISION 4—THE PANEL

Conferral of functions and powers on the Panel

70. (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Panel has power to do acts in South Australia in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.

DIVISION 5—THE DISCIPLINARY BOARD

Conferral of functions and powers on the Disciplinary Board

71. (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.

(2) The Disciplinary Board has power to do acts in South Australia in the performance or exercise of any function or power expressed to be conferred on it by a national scheme law of another jurisdiction.

DIVISION 6—MISCELLANEOUS

Acting appointments

72. Where a person is appointed under the ASC Act to act in a particular office, the law of this jurisdiction applies in relation to that person while acting in that office as if the person were the holder of the office.

Alteration of names and constitutions

73. (1) Where—

(a) the name of a body established by the ASC Act is changed by law (whether or not the body is incorporated);

or

(b) the name of an office established by that Act is changed by law,

then, unless the contrary intention appears, a reference in—

(c) any Act of this jurisdiction;

(d) any instrument under such an Act;

(e) any award or other industrial determination or order or any industrial agreement;

(f) any other order (whether executive, judicial or otherwise);

(g) any contract;

(h) any pleading in, or process issued in connection with, any legal or other proceeding;

or

(i) any other instrument,

to the body or the office under the former name, except in relation to matters that occurred before that change took place, is taken as a reference to the body or the office under the new name.

(2) Where the constitution of a body established by the ASC Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears, the alteration does not affect any functions or powers conferred or expressed to be conferred on that body by a national scheme law of this jurisdiction.

Application of Commonwealth Crimes Act

74. (1) For the purposes of Part 3 of the ASC Law of South Australia, Part III of the *Crimes Act 1914* of the Commonwealth applies as a law of South Australia.

(2) For the purposes of Part III of the *Crimes Act 1914* of the Commonwealth as applying because of subsection (1), an examination or a hearing is a judicial proceeding.

(3) For the purposes of a national scheme law of South Australia—

(a) an offence under Part III of the *Crimes Act 1914* of the Commonwealth as applying because of subsection (1) in relation to an examination or hearing, is taken to be an offence against Part 3 of the ASC Law of South Australia;

and

(b) an offence under Part III of the *Crimes Act 1914* of the Commonwealth as applying, in relation to an examination or hearing held under the ASC Law of another jurisdiction, as a law of that jurisdiction is taken to be an offence against Part 3 of the ASC Law of that jurisdiction.

Application of Commonwealth Evidence Act

75. (1) For the purposes of Part 3 of the ASC Law of South Australia, Part IIIA of the *Evidence Act 1905* of the Commonwealth applies as a law of South Australia.

(2) For the purposes of Part IIIA of the *Evidence Act 1905* of the Commonwealth as applying because of subsection (1), an examination is a proceeding but is not a criminal proceeding.

PART 12

GENERAL

DIVISION 1—ARRANGEMENTS

Definition

76. In this Division—

“relevant State law” means—

- (a) a law of the State concerning the management or affairs of a body corporate;
- (b) a law of the State concerning fraud or dishonesty;
- or
- (c) any other law of the State,

other than a co-operative scheme law.

Arrangements relating to applicable provisions

77. (1) Where an arrangement between the Minister and the Commonwealth Minister provides—

- (a) that an authority or officer of the Commonwealth has certain functions or powers under a relevant State law;
- or
- (b) that, despite section 33 or 39, an authority or officer of the State has certain functions or powers under an applicable provision of this jurisdiction,

those functions or powers are conferred on that authority or officer.

(2) Functions and powers conferred under an arrangement under subsection (1) are to be performed and exercised in accordance with the arrangement but are to be taken to have been validly performed or exercised despite any failure to comply with any condition or restriction under the arrangement.

Notice of arrangement

78. Notice of each arrangement under section 77 must be published in the *Gazette* and in the Commonwealth of Australia Gazette within 21 days after it is made.

DIVISION 2—PENALTIES AND FINES

Application of penalties and fines

79. All fines, penalties and other money (other than fees and taxes) which, under and by virtue of the applicable provisions of South Australia, are authorized or directed to be imposed on any person must be paid to the Commonwealth.

DIVISION 3—REGULATIONS

Regulations

80. (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) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, being provisions not inconsistent with the national scheme laws of this jurisdiction.

(3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.

(4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, 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 that publication;

or

(b) to impose a liability 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 that publication.

(5) Regulations containing provisions of a kind referred to in subsection (2) cease to have effect on the first anniversary of the day on which this section comes into operation.

(6) Where regulations cease to have effect because of subsection (5), section 12 of *Acts Interpretation Act, 1915*, applies as if the regulations had been disallowed by the Parliament.

PART 13

TRANSITIONAL

DIVISION 1—STAFF

Information previously acquired

81. A staff member who, before the commencement of this section, was an employee in the Public Service of South Australia engaged in the administration of a co-operative scheme law may disclose to the Commission information acquired while so engaged.

Staff

82. (1) A person who—

(a) is a member of the Commission's staff appointed under the *Public Service Act 1922* of the Commonwealth;

(b) was so appointed under section 81B of that Act;

and

(c) immediately before that appointment, was an employee in the Public Service of South Australia employed in the office of the Corporate Affairs Commission,

is to be taken to have been granted special leave without pay from the Public Service of South Australia for a period prescribed by regulation and on such conditions as may be determined by the Commissioner for Public Employment.

(2) A person who is on special leave without pay by virtue of subsection (1) may elect to resume duties in the Public Service of South Australia by notice in writing given to the Commissioner for Public Employment and, in that event, may, on the expiration of a period determined by the Commissioner, resume duties in the position in the Public Service to which the person is for the time being assigned.

(3) A person referred to in subsection (2) will, unless the person—

(a) makes an election under that subsection;

or

(b) resigns or otherwise ceases to be employed in the Public Service of South Australia,

before the expiration of the prescribed period, be taken to have resigned from the Public Service on the expiration of that period.

Superannuation arrangements with Commission

83. The Commission is prescribed for the purposes of section 5 of the *Superannuation Act, 1988*, as an authority with which the South Australian Superannuation Board may enter into superannuation arrangements.

DIVISION 2—CO-OPERATIVE SCHEME LAWS

Co-operative scheme laws

84. For the purposes of this Act, the following are the co-operative scheme laws:

Companies (Application of Laws) Act, 1982

Companies (South Australia) Code

Companies (Acquisition of Shares) (Application of Laws) Act, 1981

Companies (Acquisition of Shares) (South Australia) Code

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act, 1981
Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code
Securities Industry (Application of Laws) Act, 1981
Securities Industry (South Australia) Code
Futures Industry (Application of Laws) Act, 1986
Futures Industry (South Australia) Code.

National scheme laws prevail over co-operative scheme laws

85. (1) This section provides for the national scheme laws of this jurisdiction to supersede the co-operative scheme laws, which are to continue to operate of their own force only in relation to—

(a) matters arising before the commencement of this section;

and

(b) matters arising, directly or indirectly, out of such matters,

in so far as the national scheme laws do not deal with those matters.

(2) Where a co-operative scheme law is inconsistent with a national scheme law of this jurisdiction, the national scheme law prevails and, to the extent of the inconsistency, the co-operative scheme law does not operate.

(3) For the purposes of subsection (2), a co-operative scheme law is inconsistent with 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.

Regulations may exclude residual operation of co-operative scheme laws

86. (1) Regulations under section 80 may provide that prescribed provisions of co-operative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.

(2) Regulations in force because of subsection (1) have effect accordingly.

Effect of sections 85 and 86

87. (1) To the extent that a co-operative scheme law ceases to operate because of section 85 or 86, the law is taken for the purposes of the *Acts Interpretation Act, 1915*, to have been repealed by this Act.

(2) Nothing in this Act revives, or otherwise affects the exclusion of, the provisions referred to in section 18 of the *Companies (Application of Laws) Act, 1982*, or section 16(1) of the *Securities Industry (Application of Laws) Act, 1981*.

Regulations may modify co-operative scheme laws

88. (1) Regulations under section 80 may provide that a specified co-operative scheme law, or specified provisions of a co-operative scheme law, has or have effect with such modifications as the regulations prescribe.

(2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 85 or 86, the specified law does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.

(3) However, a reference in section 85(2) to a co-operative scheme law includes a reference to such a law as it has effect, or to provisions of such a law as they have effect, because of this section.

Co-operative scheme laws not affected by certain Commonwealth regulations

89. The operation or effect of a co-operative scheme law is not modified or otherwise affected because regulations of a kind referred to in section 77 or 79 of the Corporations Act modify or otherwise affect the operation of a Co-operative Scheme Act within the meaning of Part 12 of the Corporations Act.

References to co-operative scheme laws and regulations

90. (1) In this section—

“Code regulations” means provisions applying as regulations made under a Code by reason of a provision of an Act that is a co-operative scheme law:

“instrument” has the same meaning as in section 13, but does not include—

- (a) a co-operative scheme law;
 - (b) regulations under an Act that is such a law, or under this Act;
 - (c) Code regulations;
- or
- (d) a national scheme law of this jurisdiction, or the Corporations Regulations, or ASC Regulations, of South Australia.

(2) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to a co-operative scheme law is to be taken to include a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of the co-operative scheme law.

(3) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to Code regulations is to be taken to include a reference to such provisions of the Corporations Regulations, or ASC Regulations, of South Australia as correspond to provisions of the Code regulations.

(4) Subject to any regulations in force under subsection (7), a reference in an instrument to a provision of a co-operative scheme law or of Code regulations is to be taken to include a reference to the corresponding provision of a national scheme law of this jurisdiction or of the Corporations Regulations, or ASC Regulations, of South Australia, as the case may be.

(5) Subject to any regulations in force under subsection (7), a reference in an instrument to the NCSC is to be taken to include a reference to the Commission.

(6) Regulations under section 80 may declare that, for the purposes of this section—

(a) prescribed provisions of national scheme laws of this jurisdiction correspond to prescribed provisions of co-operative scheme laws;

and

(b) prescribed provisions of the Corporations Regulations, or ASC Regulations, correspond to prescribed provisions of Code regulations.

(7) Regulations under section 80—

(a) may declare that subsection (2), (3), (4) or (5) of this section does not apply in relation to prescribed references in prescribed instruments;

or

(b) may declare that subsection (2), (3), (4) or (5) of this section has effect in relation to prescribed references in prescribed instruments as if, in the subsection, the words "be taken to be" were substituted for the words "be taken to include".

(8) Regulations in force because of subsection (6) or (7) have effect accordingly.

Conferral of functions and powers in relation to co-operative scheme laws

91. (1) The Commonwealth Director of Public Prosecutions—

(a) has the same enforcement powers in relation to the co-operative scheme laws as has the Crown in right of South Australia acting by the Attorney-General or the Director of Public Prosecutions of South Australia;

and

(b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the *Director of Public Prosecutions Act 1983* of the Commonwealth as if the offence were an offence against a national scheme law of this jurisdiction.

(2) The Australian Federal Police—

(a) have the same enforcement powers in relation to the co-operative scheme laws as has the police force of South Australia;

and

(b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Australian Federal Police in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law were an offence against a national scheme law of this jurisdiction.

(3) The Commonwealth Minister has, in respect of the prosecution of offences against the co-operative scheme laws, the same functions and powers as he or she has in respect of the prosecution of offences against a national scheme law of this jurisdiction.

(4) For the purposes of the exercise of enforcement powers, and other functions and powers conferred by this section, including the obtaining of warrants to arrest, an offence against a co-operative scheme law is taken to be an offence against a national scheme law of this jurisdiction.

(5) In this section, "enforcement power" means a function or power relating to—

(a) the investigation of an offence;

(b) the arrest and custody of persons charged with an offence;

(c) the institution and carrying on of a prosecution of an offence;

or

(d) matters relating to such an investigation, arrest, custody or prosecution.

Arrangements affecting exercise of investigation powers by State authorities and officers

92. (1) Where an arrangement between the Minister and the Commonwealth Minister makes provision in relation to the exercise by a State authority or officer of enforcement powers within the meaning of section 91 in relation to the co-operative scheme laws—

(a) the State authority or officer is authorized to act in accordance with that arrangement;

(b) the State authority or officer must not exercise an enforcement power except in accordance with that arrangement;

and

(c) the exercise of, or failure to exercise, an enforcement power by a State authority or officer is to be taken to have been validly performed or withheld, despite any failure to comply with any conditions in the arrangement.

(2) Notice of each arrangement under subsection (1) must be published in the *Gazette* and in the Commonwealth of Australia Gazette within 21 days after it is made.

DIVISION 3—EXEMPTIONS**Exempt bodies**

93. A body corporate is excluded from the definition of “corporation” in section 9 of the Corporations Law of South Australia if—

(a) the body is not a company for the purposes of section 9 of that Law;

and

(b) it is incorporated by or under a law of South Australia other than that Law or a corresponding previous law.

Exemptions from Part 7.12

94. (1) Where, immediately before the commencement of this section, a company was, because of section 16(1) of the *Companies (Application of Laws) Act, 1982*, exempt from complying with provisions of Division 6 of Part IV of the *Companies (South Australia) Code*, the company is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of South Australia.

(2) Where, immediately before the commencement of this section, a right or interest was, because of section 16(3) of the *Companies (Application of Laws) Act, 1982*, an exempt right or interest for the purposes of Division 6 of Part IV of the *Companies (South Australia) Code*, that right or interest is taken to be exempt from complying with the corresponding provisions of Divisions 2 and 5 of Part 7.12 of the Corporations Law of South Australia.

(3) A company, right or interest to which subsection (1) or (2) applies ceases to be an exempt company, right or interest if the Governor makes regulations under this Act declaring that it so ceases.

DIVISION 4—AUSTRALIAN STOCK EXCHANGE LIMITED**Saving of provisions about Australian Stock Exchange Limited**

95. (1) Section 85 does not apply in relation to Part IIA of the *Securities Industry (South Australia) Code*.

(2) Part IIA has effect, as provided in this section, despite the national scheme laws of this jurisdiction.

(3) A reference in Part IIA to a relevant Code, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of this jurisdiction.

(4) Subject to subsection (5), a reference in Part IIA to a particular co-operative scheme law, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of that law.

(5) A reference in Part IIA to a provision of a co-operative scheme law (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of this jurisdiction.

(6) Regulations in force because of section 90(6) also have effect for the purposes of this section.

DIVISION 5—COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD

Board to continue in existence for certain purposes

96. The Companies Auditors and Liquidators Disciplinary Board established under section 13 of the *Companies (Administration) Act, 1982*, may perform the functions and exercise the powers conferred on it under Division 2 of Part II of the *Companies (South Australia) Code* in respect of applications made to it under Subdivision B of that Division before the commencement of this section.

PART 14

PROVISIONS AFFECTING CORPORATIONS LAW

Certain land transfers by companies not to constitute reduction of share capital

97. Where land under the operation of the *Real Property Act, 1886*, is comprised in—

(a) a strata plan deposited under the *Strata Titles Act, 1988*;

or

(b) a plan of division under Part XIXAB of the *Real Property Act, 1886*,

and, at the time the plan was deposited, filed or enrolled, the proprietor of that land was a company, the transfer by the company of—

(c) a unit on the strata plan;

or

(d) an allotment on the plan of division,

in exchange for or in satisfaction of a right of the kind referred to in section 195(13) of the Corporations Law, does not of itself constitute, and is to be taken never to have constituted, a reduction of the share capital of the company.

APPENDIX

Legislative History

S. 20 of the *Corporations (South Australia) (Miscellaneous) Amendment Act 1991* provided as follows:

Reports and financial statements

20. The Minister must cause—

(a) a copy of each report of the operations of the National Companies and Securities Commission and the financial statements of the National Companies and Securities Commission prepared by the Australian Securities Commission in accordance with section 14(1), (7) or (8) of the *Corporations Legislation Amendment Act 1991* of the Commonwealth;

and

(b) a copy of the report of the Auditor-General for the Commonwealth on those financial statements,

being reports and financial statements copies of which have been submitted to the Minister by the Australian Securities Commission under section 15(3) of that Act, to be laid before each House of the Parliament within 12 sittings days of that House after its receipt by the Minister.

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|----------------|--|
| Section 3(1): | definition of "Commonwealth administrative laws" amended by 79, 1991, s. 4 |
| Section 30(1): | amended by 79, 1991, s. 6 |
| Section 74(3): | substituted by 79, 1991, s. 16 |
| Section 90(1): | definition of "instrument" substituted by 79, 1991, s. 17 |
| Section 91(1): | substituted by 79, 1991, s. 18 |