



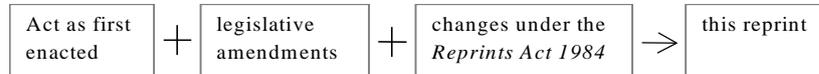
Western Australia

# **Companies (Administration) Act 1982**

**Reprint 1: The Act as at 12 October 2007**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

Notes of this kind may also be at the foot of Schedules or headings.

2. The other kind of editorial note shows something has been —
  - removed (because it was repealed or deleted from the law); or
  - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Western Australia

## Companies (Administration) Act 1982

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**Defined Terms**



Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 12 October 2007

## Companies (Administration) Act 1982

An Act to continue the office of Commissioner for Corporate Affairs, to establish the Companies Auditors and Liquidators Disciplinary Board<sup>2</sup>, to amend the *Companies Act 1961*<sup>3</sup>, and for related purposes.

### 1. Short title

This Act may be cited as the *Companies (Administration) Act 1982*<sup>1</sup>.

### 2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation<sup>1</sup>.

### 3. Terms used in this Act

In this Act, unless the contrary intention appears —

“**Commission**” means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979*<sup>5</sup> of the Commonwealth;

“**Commissioner**” means the Commissioner for Corporate Affairs appointed pursuant to section 4;

“**functions**” includes duties;

**“futures contract”** means a futures contract within the meaning of the *Futures Industry (Western Australia) Code*<sup>4</sup> or of the provisions of a law in force in a participating State or in a participating Territory that correspond with that Code;

**“power”** includes an authority;

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

*[Section 3 amended by No. 48 of 1988 s. 8.]*

**4. Commissioner for Corporate Affairs, and other officers**

- (1) There shall be a Commissioner for Corporate Affairs, who shall be appointed and hold office under and in accordance with Part 3 of the *Public Sector Management Act 1994* and shall, in the performance of a function or the exercise of a power under an Act or law in force in the State, represent the Crown in right of the State.
- (2) Subject to Part 3 of the *Public Sector Management Act 1994*, such Deputy or Assistant Commissioners for Corporate Affairs and other officers shall be appointed, and such employees shall be employed, as are required to assist the Commissioner in the exercise of the functions and powers of the Commissioner under or for the purposes of this or any other Act or law.
- (3) A person holding or acting in the office of the Commissioner for Corporate Affairs, or Deputy or Assistant Commissioner for Corporate Affairs, or of an officer or employee referred to in subsection (2) or (4) is, for the purposes of the *National Companies and Securities Commission (State Provisions) Act 1980*<sup>6</sup>, a person appointed for the purposes of this Act.

(4) All persons appointed or employed under, pursuant to or for the purposes of the *Companies Act 1961*<sup>3</sup> or the *Securities Industry Act 1975*<sup>7</sup> and so holding office or employed immediately prior to the coming into operation of this section shall be deemed to have been appointed or employed pursuant to this section, and, without limiting the generality of this subsection —

- (a) the person who was the Commissioner for Corporate Affairs; and
- (b) every person who was a Deputy or Assistant Commissioner for Corporate Affairs,

at that time shall without any further or other appointment be the Commissioner for Corporate Affairs or, as the case may be, a Deputy or Assistant Commissioner for Corporate Affairs for the purposes of this Act.

(5) Officers and employees referred to in this section shall be under the direction of the Commissioner and shall perform such duties as may be assigned by the Commissioner.

(6) For the purpose of the performance or exercise of the functions or powers of the Commissioner, the Commissioner 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<sup>8</sup> —

- (a) make use of the services of any of the officers, employees or servants of a body or person; or
- (b) appoint a body to act as, or a person to be, an officer assisting the Commissioner in relation to the conduct of investigations or inspections pursuant to any law relating to the regulation of companies or the securities industry,

and, if the terms and conditions on which he is appointed so provide, any specified provisions of the *Public Service Act 1978*<sup>9</sup> or the regulations thereunder, whether with or without specified modifications, may be applied to and in respect of an officer referred to in this subsection.

(7) Subject to the *Companies (Application of Laws) Act 1981*<sup>4</sup> and the *Companies (Western Australia) Code*<sup>4</sup> the Commissioner under this Act is the successor in law of the Commissioner for Corporate Affairs under the *Companies Act 1961*<sup>3</sup> as in force immediately before the coming into operation of this section and where, whether before or after the coming into operation of this section —

(a) any duty or burden of proof is or was imposed on, or any obligation or liability is or was incurred by, or any right, privilege, property or power is or was acquired by or vested in, the Registrar of Companies<sup>10</sup> or the Commissioner for Corporate Affairs for the time being by the operation of the *Companies Act 1961*<sup>3</sup> or any other Act or otherwise according to law, it shall be deemed, in so far as the *Companies (Application of Laws) Act 1981*<sup>4</sup> does not apply thereto, to have been imposed on, incurred or acquired by, or vested in the person for the time being holding or acting in the office of Commissioner; and

(b) reference is or was made to the Registrar of Companies<sup>10</sup> or the Deputy or an Assistant Registrar, or to the Commissioner for Corporate Affairs or the Deputy or an Assistant Commissioner, expressly or impliedly, in —

(i) an Act, regulations, rules or by-laws or any instrument having effect thereunder;

(ii) in any document or instrument made, executed, entered into or done;

(iii) any contract or proceeding; or

(iv) any other manner,

that reference shall, unless the context is such that it would be incorrect or inappropriate to do so, be read and construed as a reference to the Commissioner.

*[Section 4 amended by No. 32 of 1994 s. 19.]*

**5. Instruments to be judicially noted**

All courts, judges and persons acting judicially shall take judicial notice of the signature of the Commissioner, and of any Deputy or Assistant Commissioner, to an instrument or writing, and of the seal of the Commissioner affixed to an instrument or writing in accordance with section 6, and, unless the contrary is established, shall presume that it was duly made or affixed, and all certificates, instruments and other documents purporting to be signed or sealed or signed and sealed by the Commissioner or any Deputy or Assistant Commissioner shall be admissible as evidence without further proof.

**6. Use of the seal of the Commissioner**

- (1) The seal of the Commissioner may be affixed to an instrument or writing by a person who is, or is acting in the office of —
- (a) Commissioner for Corporate Affairs; or
  - (b) a Deputy or Assistant Commissioner for Corporate Affairs,

or by a person who is an officer or employee within the meaning of section 4(2) and who is directed by the Governor or authorised by the Commissioner so to do either generally or in a particular case or class of cases.

- (2) The Commissioner or other person affixing the seal of the Commissioner shall, on the instrument or writing, attest by his signature the fact and date of the seal being so affixed.

**7. Execution of documents**

- (1) The Commissioner may authorise a person holding or acting in the office of Deputy or Assistant Commissioner generally, and any person specifically, to execute any document on behalf of the Commissioner, and a person so authorised may give effect to the authorisation.

- (2) Where a person holding or acting in the office of Deputy or Assistant Commissioner has been authorised generally, under subsection (1) to execute any document on behalf of the Commissioner, that document may be executed in the name and on behalf of that Deputy or Assistant Commissioner by any other person to whom section 4(3) refers who is authorised, generally or specifically, in writing by that Deputy or Assistant Commissioner to do so.
- (3) A document purporting to be executed as referred to in subsection (1) or (2) shall be deemed to have been duly executed by the Commissioner unless it is proved that the person who executed it was not duly authorised as referred to in subsection (1) or (2), as the case may be, and shall be admissible in evidence in any proceedings in the same way as it would be if it had been executed by the Commissioner.
- (4) The provisions of this section do not have effect or operation to the extent of any inconsistency with any delegation conferred upon the Commissioner by the Commission.

**8. Powers etc. of the Commissioner**

- (1) The Commissioner shall have and may perform and exercise such functions and powers as may be conferred or imposed on the Commissioner by or under this or any other Act or law or any law of the Commonwealth, a Territory of the Commonwealth or another State.
- (2) The Commissioner shall, as and when directed by the Minister so to do, report to the Minister with respect to the policy the Commissioner is pursuing or proposes to pursue in the performance or exercise of the functions and powers of the Commissioner or such of them as are specified by the Minister when giving the direction.
- (3) Except as to the contents of a report or recommendation by the Commissioner, the Commissioner is, in the performance or exercise of functions and powers under this Act or any other Act or law (other than those performed or exercised as an inspector

pursuant to any law relating to the regulation of companies or the securities industry) subject to the control and direction of the Minister.

- (4) Subject to any direction of the Minister or of the Commissioner, any function or power which may be performed or exercised by the Commissioner pursuant to this Act may be performed or exercised by a person holding or acting in the office of Deputy or Assistant Commissioner, and anything done or signed pursuant to this subsection shall be as valid and effectual as if done or signed by the Commissioner.
- (5) The provisions of this section do not have effect or operation to the extent of any inconsistency with —
  - (a) the Agreement; or
  - (b) any delegation conferred upon the Commissioner by the Commission.

#### **9. Proceedings for offences**

- (1) Except as otherwise expressly provided by any Act or law, proceedings for an offence in relation to any Act or law that confers functions or powers on the Commissioner may be taken by the Commissioner or, with the written consent of the Minister, by any person.
- (2) Nothing in subsection (1) applies to or affects the power of the Commissioner to take proceedings subject to and in accordance with the *Companies (Western Australia) Code*<sup>4</sup>, the *Securities Industry (Western Australia) Code*<sup>4</sup>, the *Companies (Acquisition of Shares) (Western Australia) Code*<sup>4</sup> or the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*<sup>4</sup>.

#### **10. Delegation by Commissioner**

- (1) Except as otherwise expressly provided by this or any other Act or law, the Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing under the

seal of the Commissioner, delegate to any person all or any functions or powers that are conferred or imposed on the Commissioner by or under any Act or law (other than functions or powers the delegation of which is prohibited by that Act or law) or otherwise conferred on the Commissioner.

- (2) The Commissioner may, by writing under the seal of the Commissioner, revoke, wholly or in part, any delegation under subsection (1).
- (3) A delegation under subsection (1) may be to —
  - (a) a specified person (whether a natural person or a body corporate); or
  - (b) the person for the time being holding a specified office under an Act or the person for the time being occupying a position in the Public Service being a position that is specified in the instrument of delegation.
- (4) Except in so far as the instrument of delegation otherwise provides, a person to whom a function or power has been delegated under subsection (1) may —
  - (a) in the case of a natural person — by writing under his hand; or
  - (b) in the case of a body corporate — by writing under its common or official seal,

authorise another person to perform the function or exercise the power so delegated and may, in like manner, revoke, wholly or in part, any such authority.

- (5) An authority under subsection (4) may be given to —
  - (a) a specified person; or
  - (b) the person for the time being occupying a position in the Public Service, being a position that is specified in the instrument by which the authority is given.

- (6) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commissioner under subsection (1) or by a person authorised by a delegate of the Commissioner under subsection (4) to perform that function or exercise that power has the same force and effect as if it had been done by the Commissioner.
- (7) Where, under any Act or law that confers functions or powers on the Commissioner, the performance of a function or the exercise of a power by the Commissioner is dependent upon the opinion, belief or state of mind of the Commissioner in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate or by a person authorised by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.
- (8) A delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Commissioner.
- (9) The giving of an authority under subsection (4) does not prevent the performance of a function or the exercise of a power by the person by whom the authority was given.
- (10) Where a person purports to perform a function or exercise a power conferred on the Commissioner by or under an Act or any law, it shall be presumed, unless the contrary is established, that the person is duly authorised as a delegate of the Commissioner or as a person duly authorised by such a delegate to perform the function or exercise the power.
- (11) A document purporting to be signed by a person as a delegate of the Commissioner shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the performance of a function or the

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exercise of a power duly delegated to the person by the Commissioner.

- (12) A document purporting to be signed by a person authorised by a delegate of the Commissioner to sign the document shall be deemed, unless the contrary is established, to have been signed by a person so authorised and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorised by such a delegate to perform or exercise.
- (13) A delegation or authority under this section may be made or given subject to such conditions or such limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authority.
- (14) Nothing in this section applies to a function or power that the Commissioner has by virtue of a delegation from the National Companies and Securities Commission<sup>5</sup>.

**11. Directions by Commissioner**

Where the Commissioner has delegated a function or power to a person under section 10 —

- (a) the Commissioner may give directions to the delegate with respect to the performance of that function or the exercise of that power; and
- (b) if the delegate has, under section 10(4), authorised another person to perform that function or exercise that power, the delegate —
  - (i) shall, if the Commissioner has given a direction to the delegate under paragraph (a) with respect to the performance of that function or the exercise of that power, give a corresponding direction to the other person; and
  - (ii) may, subject to any direction given to the delegate by the Commissioner under paragraph (a), give directions to the other person

with respect to the performance of that function  
or the exercise of that power.

**12. Financial and audit provisions**

- (1) There may be paid out of the Consolidated Account <sup>11</sup> such amounts as are necessary to give effect to any agreement between the Commonwealth and the States and any participating Territory pursuant to the Agreement relating to the apportionment of any fees or payments made with respect to refunds of fees specified therein, and the Consolidated Account <sup>11</sup> is hereby appropriated accordingly.
- (2) Except where otherwise expressly provided by or under the *Companies (Application of Laws) Act 1981* <sup>4</sup> or any other Act or law, all money payable to the Commissioner shall be collected and received by the Commissioner on account of, and shall be paid into, the Consolidated Account <sup>11</sup>.
- (3) The accounts of the Commissioner, including accounts maintained pursuant to section 464 or otherwise under the *Companies (Western Australia) Code* <sup>4</sup>, shall be audited by the Auditor General who shall have, in respect thereof, all the powers conferred on the Auditor General by any law for the time being in force applying to the audit of public accounts and the Commissioner and the officers and other persons or bodies referred to in section 4 shall be taken to be officers for the purposes of the *Auditor General Act 2006*.

*[Section 12 amended by No. 98 of 1985 s. 3; No. 77 of 2006 s. 17.]*

**13. Companies Auditor and Liquidators Disciplinary Board**

- (1) For the purposes of the *Companies (Western Australia) Code* <sup>4</sup> there shall be a Companies Auditors and Liquidators Disciplinary Board <sup>2</sup>, which shall perform the functions and may exercise the powers conferred on it under Division 2 of Part II of that Code.

- (2) The Board shall consist of 3 persons appointed by the Governor, of whom —
  - (a) one shall be selected from amongst persons who are duly qualified legal practitioners of not less than 5 years' standing, and shall be the chairman of the Board;
  - (b) one shall be selected from a panel of 3 names nominated by the State Council of the Institute of Chartered Accountants in Australia; and
  - (c) one shall be selected from a panel of 3 names nominated by the Council of the State Division of the Australian Society of Accountants.
- (3) A member of the Board may, with the approval of the Minister, appoint a person to be his deputy and the deputy shall hold office during the pleasure of the Minister.
- (4) A person appointed to be the deputy of the chairman of the Board shall be selected from amongst persons who are duly qualified legal practitioners of not less than 5 years' standing.
- (5) The deputy of a member of the Board shall be, in the event of the absence of the member of whom he is the deputy from a meeting of the Board, entitled to attend the meeting, and when so attending, shall be deemed to be a member of the Board and, in the case of the deputy of the chairman of the Board, shall be deemed to be the chairman of the Board.
- (6) Any appointment of a deputy and any act done by him as such shall not be questioned on the ground that the occasion for the exercise of his powers or functions had not arisen or had ceased.
- (7) Any 2 members of the Board shall have and may exercise all or any of the powers or authorities of the Board.
- (8) A member shall hold office for such time not exceeding 3 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 3 consecutive meetings of the Board;

- (b) if he becomes an insolvent under administration within the meaning of the *Companies (Western Australia) Code*<sup>4</sup>;
  - (c) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
  - (d) if he becomes incapable by reason of mental infirmity of managing his affairs; or
  - (e) if he resigns or dies.
- (9) Each member and the deputy of each member of the Board shall be entitled to such remuneration as is prescribed.
- (10) A person who, immediately before the coming into operation of this section, was a member of the Companies Auditors Board constituted under the *Companies Act 1961*<sup>3</sup> shall be deemed to be a member of the Companies Auditors and Liquidators Disciplinary Board under this section and to have been appointed to hold office for the period expiring on the date on which the time for which he was appointed under the *Companies Act 1961*<sup>3</sup> would have expired.
- (11) 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 1961*<sup>3</sup> shall be deemed to be the deputy of that member of the Companies Auditors and Liquidators Disciplinary Board under this Act.

**14. Companies Auditors Board to continue in existence**

- (1) Notwithstanding the repeal of sections 8 and 9 of the *Companies Act 1961*<sup>3</sup> by this Act, the Companies Auditors Board established by the *Companies Act 1961*<sup>3</sup> 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 1961*<sup>3</sup> 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 1961*<sup>3</sup> and

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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 completed an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned in section 9(11) of the *Companies Act 1961*<sup>3</sup> but shall furnish to the Commissioner a report on the inquiry.

**15. Indemnity**

A person holding or acting in the office of Commissioner or Deputy or Assistant Commissioner, or of an officer or employee referred to in section 4(2) or (4), or a person authorised to perform or exercise any function or power pursuant to this Act, is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done, in good faith, in performance or purported performance of any function or in exercise or purported exercise of any power to which this Act applies.

[16. *Omitted under the Reprints Act 1984 s. 7(4)(e).*]

**17. Secrecy**

- (1) Subject to this section, a person who is, or has at any time been —
- (a) the Commissioner;
  - (b) a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commissioner; or
  - (c) authorised to perform or exercise any function or power of the Commissioner under this or any other Act or any such function or power on behalf of the Commissioner,

shall not, except to the extent necessary to perform the official duties of that person, or to perform or exercise such a function or power, either directly or indirectly, make a record of, or

divulge or communicate to any person, any information that is or was acquired by that person by reason of that person being or having been so appointed or authorised, or make use of any such information, for any purpose other than the performance of those official duties or the performance or exercise of that function or power.

Penalty: \$5 000 or imprisonment for 1 year, or both.

- (2) Nothing in subsection (1) precludes a person from —
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under any prescribed Act or prescribed enactment of a Territory;
  - (b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of that person in the performance of the official duties of that person or in the performance of a function or the exercise of a power referred to in that subsection;
  - (c) producing a document or divulging or communicating information to a person to whom, in the opinion of the Commissioner, it is in the public interest that the document be produced or the information be divulged or communicated; or
  - (d) producing a document or divulging or communicating information that is required or permitted by any Act, or any Act of the Commonwealth or of another State or an enactment of a Territory, to be produced, divulged or communicated, as the case may be.
- (3) This section does not apply in circumstances where section 15 of the *National Companies and Securities Commission (State Provisions) Act 1980*<sup>6</sup> applies.

[Section 17 inserted by No. 48 of 1988 s. 9.]

**18. Restriction on dealings in securities**

- (1) A person who —
- (a) is, or has at any time been —
    - (i) the Commissioner;
    - (ii) a person appointed for the purposes of this Act or any other Act that confers functions or powers on the Commissioner; or
    - (iii) authorised to perform or exercise any function or power of the Commission or the Commissioner under this or any other Act or any such function or power on behalf of the Commission or the Commissioner;
- and
- (b) has, by reason that the person is, or has at any time been, the Commissioner or so appointed or authorised, information that is not generally available but, if it were, would be likely materially to affect —
    - (i) the price of securities; or
    - (ii) the price for dealing in a futures contract,
- shall not —
- (c) in a case where paragraph (b)(i) applies — deal in, or cause or procure any other person to deal in, those securities; or
  - (d) in a case where paragraph (b)(ii) applies — deal in, or cause or procure any other person to deal in, that futures contract or a futures contract of the same kind as that futures contract.

Penalty: \$20 000 or imprisonment for 5 years.

(2) Where a person to whom subsection (1) applies has information as mentioned in that subsection and, in contravention of that subsection —

- (a) deals in, or causes or procures another person to deal in, securities; or
- (b) deals in, or causes or procures another person to deal in, a futures contract,

the first-mentioned person is liable to compensate any other party to the transaction for any loss sustained by that party by reason of —

- (c) any difference between the price at which the securities were dealt in in that transaction and the price at which they would be likely to have been dealt in in such a transaction at the time when the first-mentioned transaction took place if the information had been generally available; or
- (d) any difference between the price at which that dealing in that futures contract took place and the price at which it would be likely to have taken place if the information had been generally available,

as the case may be.

(3) The amount of compensation for which a person is liable under subsection (2) is —

- (a) in a case to which paragraph (b) does not apply — the amount of the loss sustained by the person claiming the compensation; or
- (b) if the first-mentioned person has been found by a court to be liable to pay an amount or amounts to any other person or persons under subsection (2) or under any other Act, or an Act of another State or a Commonwealth Act or enactment of a Territory, by reason of the same act or transaction — the amount of that loss less the amount or the sum of the amounts that

the first-mentioned person has been so found to be liable to pay.

- (4) For the purposes of subsection (3), the onus of proving that the liability of a person to pay an amount to another person arose from the same act or transaction from which another liability arose lies on the person liable to pay the amount.
- (5) An action under this section for recovery of compensation for a loss is not maintainable after the end of the period of 2 years commencing on the day of completion of —
- (a) the transaction in which securities were dealt in and in which the loss occurred; or
  - (b) the dealing in a futures contract, being the dealing in which the loss occurred,
- as the case requires.
- (6) The Commissioner may, if the Commissioner considers it to be in the public interest to do so, bring an action in the name of and for the benefit of a person for recovery of compensation for a loss referred to in subsection (2).
- (7) Nothing in subsection (2) affects any liability that a person may incur under any other law.
- (8) An expression (other than a reference to a futures contract) used —
- (a) in subsection (1)(b)(ii), (1)(d), (2)(b) or (d) or (5)(b); and
  - (b) in the *Futures Industry (Western Australia) Code*<sup>4</sup>,
- has the same meaning in that subsection as in that Code.
- (9) This section does not apply in circumstances where section 16 of the *National Companies and Securities Commission (State Provisions) Act 1980*<sup>6</sup> applies.

*[Section 18 inserted by No. 48 of 1988 s. 10.]*

**19. Notification of interests**

- (1) A person who is —
- (a) the Commissioner;
  - (b) a person appointed for the purposes of this Act or of any other Act that confers functions or powers on the Commissioner; or
  - (c) authorised to perform or exercise any function or power —
    - (i) of the Commissioner conferred on the Commissioner by an Act; or
    - (ii) on behalf of the Commission or the Commissioner,

and who, in the course of the official duties of that person or the performance or exercise of the function or power, is required to consider any matter relating to —

- (d) a body corporate in securities of which the person has a relevant interest;
- (e) securities in which the person has a relevant interest;
- (f) securities of the same class as securities in which the person has a relevant interest;
- (g) a futures contract in which the person has a relevant interest;
- (h) a futures contract that is of the same kind as a futures contract in which the person has a relevant interest;
- (j) a person or body —
  - (i) by whom or by which that person is employed or has been employed at any time during the immediately preceding 3 years; or
  - (ii) with whom or with which that person is associated;

or

- (k) a body corporate that is related to a body corporate by which that person is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith in writing so inform the Commissioner or, if that person is the Commissioner, the Minister.

Penalty: \$5 000 or imprisonment for 1 year, or both.

- (2) It is a defence to a prosecution for an offence against this section in respect of a failure by a person to inform the Commissioner or the Minister that the person is required to consider a matter relating to a particular body corporate, a particular person, particular securities or a particular futures contract, if the person establishes that, at the time when the person was required to consider the matter, the person was not aware of a fact or matter the existence of which obliged the person to inform the Commissioner or the Minister that the person was required to consider the first-mentioned matter.
- (3) The questions whether a person has a relevant interest in securities or in a futures contract, whether a futures contract is of the same kind as another futures contract, whether a person is associated with a person or body or whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under and for the purposes of section 49(4) of the *National Companies and Securities Commission Act 1979*<sup>5</sup> of the Commonwealth as amended and in force for the time being.

*[Section 19 inserted by No. 48 of 1988 s. 11.]*

## **20. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

*[Section 20 inserted by No. 48 of 1988 s. 12.]*

## Notes

- <sup>1</sup> This reprint is a compilation as at 12 October 2007 of the *Companies (Administration) Act 1982* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Companies (Administration) Act 1982</i>	9 of 1982	14 May 1982	1 Jul 1982 (see s. 2 and <i>Gazette</i> 25 Jun 1982 p. 2079)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> s. 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1988</i> Pt. III	48 of 1988	1 Dec 1988	9 Dec 1988 (see s. 2 and <i>Gazette</i> 9 Dec 1988 p. 4817)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 1: The <i>Companies (Administration) Act 1982</i> as at 12 Oct 2007</b> (includes amendments listed above)			

- <sup>2</sup> This Board no longer functions.
- <sup>3</sup> The *Companies Act 1961* and related Acts about companies were superseded by the *Companies (Application of Laws) Act 1981* and the *Companies (Western Australia) Code*, see s. 18 of the Act.
- <sup>4</sup> The *Companies (Application of Laws) Act 1981* and the *Companies (Western Australia) Code* and related Acts and codes were superseded by the *Corporations (Western Australia) Act 1990* and the *Corporations Law* (see s. 85 of the Act) which, on 15 July 2001, were superseded by the *Corporations Act 2001* of the Commonwealth, see the *Corporations (Ancillary Provisions) Act 2001* s. 6.
- The *Corporations (Western Australia) Act 1990* Pt. 13 Div. 2 contains a number of transitional provisions that can affect how references to former laws and things under them may be read.

The former laws (listed in s. 84 of that Act) include:

the *Futures Industry (Western Australia) Code*

the *Companies (Western Australia) Code*

the *Securities Industry (Western Australia) Code*

the *Companies (Acquisition of Shares) (Western Australia) Code*

the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*.

- <sup>5</sup> The *National Companies and Securities Commission Act 1979* (Commonwealth) was repealed by Act No. 110 of 1991 (Commonwealth) s. 14. The National Companies and Securities Commission was replaced by the Australian Securities and Investments Commission.
- <sup>6</sup> The *National Companies and Securities Commission (State Provisions) Act 1980* was repealed by the *Corporations (Western Australia) Amendment Act 1991* s. 19.
- <sup>7</sup> The *Securities Industry Act 1975* was superseded by the *Securities Industry (Application of Laws) Act 1981* and the *Securities Industry (Western Australia) Code*. See also note 4.
- <sup>8</sup> Under the *Public Sector Management Act 1994* s. 112(2), a reference to the Public Service Board is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the Minister for Public Sector Management (as defined in the *Interpretation Act 1984*).
- <sup>9</sup> Under the *Public Sector Management Act 1994* s. 112(1), a reference to the *Public Service Act 1978* is, unless the contrary intention appears or it is otherwise provided under the *Acts Amendment (Public Sector Management) Act 1994*, to be construed as if it had been amended to be a reference to the *Public Sector Management Act 1994*.
- <sup>10</sup> The “Registrar of Companies” was an office created by the *Companies Act 1943*. That Act is now cited as the *Companies (Co-operative) Act 1943*.
- <sup>11</sup> Under the *Financial Legislation Amendment and Repeal Act 2006* Sch. 2 cl. 13 a reference in a written law to the Consolidated Fund may, where the context so requires, be read as if it had been amended to be a reference to the Consolidated Account. The reference was changed under the *Reprints Act 1984* s. 7(5)(a).

## Defined Terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined Term</b>	<b>Provision(s)</b>
Commission .....	3
Commissioner .....	3
functions .....	3
futures contract .....	3
power .....	3
the Agreement .....	3