

COMPANIES (ADMINISTRATION).

No. 9 of 1982.

AN ACT to continue the office of Commissioner for Corporate Affairs, to establish the Companies Auditors and Liquidators Disciplinary Board, to amend the Companies Act 1961, and for related purposes.

[Assented to 14 May 1982.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Companies (Administration) Act 1982*. Short title.

2. The provisions of this Act shall come into operation on such day or days as is or are respectively fixed by proclamation. Commencement.

Interpre-
tation.

3. 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* of the Commonwealth;

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

“functions” includes duties;

“paragraph” means a paragraph of the section or subsection in which the term is used;

“power” includes an authority;

“section” means a section of this Act;

“subsection” means a subsection of the section in which the term is used;

“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.

Commis-
sioner for
Corporate
Affairs,
and other
officers.

4. (1) There shall be a Commissioner for Corporate Affairs, who shall be appointed and hold office under and in accordance with the *Public Service Act 1978* 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 the *Public Service Act 1978*, 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*, 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* or the *Securities Industry Act 1975* 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—

- (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* 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 as if he were a temporary officer within the meaning of that Act.

(7) Subject to the *Companies (Application of Laws) Act 1981* and the *Companies (Western Australia) Code* the Commissioner under this Act is the successor in law of the Commissioner for Corporate Affairs under the *Companies Act 1961* 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 or the Commissioner for Corporate Affairs for the time being by the operation of the *Companies Act 1961* or any other Act or otherwise according to law, it shall be deemed, in so far as the *Companies (Application of Laws) Act 1981* 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 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.

5. 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.

Instruments to be judicially noted.

6. (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—

Use of the seal of the Commissioner.

- (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 subsection (2) of section 4 and who is directed by the Governor or authorized 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.

Execution of documents.

7. (1) The Commissioner may authorize 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 authorized may give effect to the authorization

(2) Where a person holding or acting in the office of Deputy or Assistant Commissioner has been authorized 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 subsection (3) of section 4 refers who is authorized, 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 authorized 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.

Powers, etc. of the Commissioner.

8. (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. (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.

Proceed-
ings for
offences.

(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*, the *Securities Industry (Western Australia) Code*, the *Companies (Acquisition of Shares) (Western Australia) Code* or the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*.

Delegation
by Com-
missioner.

10. (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,

authorize 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 authorized 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 authorized by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorized 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 authorized as a delegate of the Commissioner or as a person duly authorized 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 exercise of a power duly delegated to the person by the Commissioner.

(12) A document purporting to be signed by a person authorized 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 authorized and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorized 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.

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

Directions
by Com-
missioner.

- (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 subsection (4) of section 10, authorized 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. (1) There may be paid out of the Consolidated Revenue Fund 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 Revenue Fund is hereby appropriated accordingly.

Financial
and audit
provisions.

(2) Except where otherwise expressly provided by or under the *Companies (Application of Laws) Act 1981* 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 Revenue Fund.

(3) The accounts of the Commissioner, including accounts maintained pursuant to section 464 or otherwise under the *Companies (Western Australia) Code*, 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 accounting officers for the purposes of the *Audit Act 1904*.

Companies
Auditor and
Liquidators
Disciplinary
Board.

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

(2) The Board shall consist of three 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 five years' standing, and shall be the chairman of the Board;
- (b) one shall be selected from a panel of three names nominated by the State Council of the Institute of Chartered Accountants in Australia; and
- (c) one shall be selected from a panel of three names nominated by the Council of the State Division of the Australian Society of Accountants.

(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 five 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 two 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 three years as is fixed by the terms of his appointment and shall be eligible for re-appointment but a member shall cease to hold office—

- (a) if, without leave of the Board, he is absent from three consecutive meetings of the Board;
- (b) if he becomes an insolvent under administration within the meaning of the *Companies (Western Australia) Code*;
- (c) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for three 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* 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* 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* shall be deemed to be the deputy of that member of the Companies Auditors and Liquidators Disciplinary Board under this Act.

Companies
Auditors
Board to
continue in
existence.

14. (1) Notwithstanding the repeal of sections 8 and 9 of the *Companies Act 1961* by this Act, the Companies Auditors Board established by the *Companies Act 1961* continues in existence for such period as is necessary for the Companies Auditors Board to complete any inquiry under subsection (9) of section 9 of the *Companies Act 1961* 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* and the Companies Auditors Board has, for the purposes of completing such an inquiry, all the powers that it would have had if those sections had not been repealed.

(2) Where, pursuant to subsection (1), the Companies Auditors Board completed an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned in subsection (11) of section 9 of the *Companies Act 1961* but shall furnish to the Commissioner a report on the inquiry.

Indemnity.

15. A person holding or acting in the office of Commissioner or Deputy or Assistant Commissioner, or of an officer or employee referred to in subsection (2) or (4) of section 4, or a person authorized 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. (1) The *Companies Act 1961* is amended—

Amendment
of the
*Companies
Act 1961.*

- (a) in subsection (1) of section 5 by deleting the interpretation of “Commissioner” and substituting the following interpretation—

‘ “Commissioner” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1982.* ’ ;

- (b) by repealing subsections (1), (1a), (2), (3), (4), (4a), (4b), and (4c) of section 7; and
(c) by repealing sections 8 and 9.

(2) The *Companies Act 1961* as amended by this section may be cited as the *Companies Act 1961-1982*.

(3) Any proceedings instituted by or against the Commissioner, or a Deputy or Assistant Commissioner, (whether referring to him personally or by reference to his office or both) before the commencement of this section may be continued and concluded after that commencement in all respects as if the proceedings were instituted by or against the Commissioner after that commencement.
