

**COMPANIES AND SECURITIES
(INTERPRETATION AND MISCELLANEOUS
PROVISIONS)
(WESTERN AUSTRALIA) CODE.**

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1. The provisions of this Code as originally published pursuant to section 9 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* came into operation in Western Australia on 1 July 1981, and the provisions of the amendments to that version as indicated by the sidenotes came into operation on the several days respectively specified in the notes at the end of this Code.

2. The sidenotes do not reflect the general changes effected by the operation of clause 1 of Schedule 1 of Act No. 32 of 1981.

3. The publication of this Code in this version was authorized by the Attorney General in accordance with section 9 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* on 30 June 1984.

**COMPANIES AND SECURITIES
(INTERPRETATION AND
MISCELLANEOUS
PROVISIONS)
(WESTERN AUSTRALIA) CODE**

**RELATING TO THE INTERPRETATION OF CERTAIN PROVISIONS
RELATING TO CORPORATIONS AND THE SECURITIES INDUSTRY,
AND FOR CERTAIN OTHER MATTERS.**

PART I—PRELIMINARY

1. This Code may be cited as the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*. Short title.

2. This Code comes into operation on the day on which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* comes into operation. Commence-
ment.

3. For the purposes of this Code, each of the following Codes is a relevant Code: Relevant
Codes.

- (a) this Code;
- (b) the *Companies (Acquisition of Shares) (Western Australia) Code*; and
- (c) any Code to which the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies by reason of a relevant application provision in an Act.

4. For the purposes of paragraph 3 (c), a provision in an Act is a relevant application provision in relation to a Code if the provision states that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies to the Code concerned. Relevant
application
provision.

Ss. 5, 5A, 6, 7, 8.

*National
 Companies and
 Securities
 Commission
 (State Pro-
 visions) Act
 1980.*

5. For the purposes of this Code, a reference to a relevant Code includes a reference to the provisions of the *National Companies and Securities Commission (State Provisions) Act 1980* other than sections 1, 2, 3, 4, 20, 21 and 22.

PART II—INTERPRETATION

Division 1—General

*Regard to be
 had to purpose
 or object of rel-
 evant Code.
 Cwth. 108 of
 1983, s.132.*

5A. (1) In the interpretation of a provision of a relevant Code, a construction that would promote the purpose or object underlying the relevant Code (whether that purpose or object is expressly stated in the relevant Code or not) shall be preferred to a construction that would not promote that purpose or object.

(2) Nothing in sub-section (1) shall be construed as authorizing, in the interpretation of a provision of a relevant Code, the consideration of any matter or document not forming part of the relevant Code for any purpose for which that matter or document could not be considered apart from that sub-section.

*Every section
 to be a sub-
 stantive enact-
 ment.*

6. Every section of a relevant Code has effect as a substantive enactment without introductory words.

*Headings,
 schedules, mar-
 ginal notes and
 footnotes.*

7. (1) The headings of the Parts, Divisions and Subdivisions into which a relevant Code is divided form part of the relevant Code.

(2) A schedule to a relevant Code forms part of the relevant Code.

(3) No marginal note or footnote to a relevant Code, and no heading to a section of a relevant Code, shall be taken to be part of the relevant Code.

Citation.

8. In any relevant Code—

- (a) an Act may be cited by its short title or by reference to the calendar year in which it was passed and its number;
- (b) an Imperial Act may be cited by its short title (if any) or in such other manner as is sufficient in an Imperial Act;
- (c) an Act—

*32 of 1981,
 Sch. 1.*

- (i) of the Parliament of the Commonwealth may be cited by a reference to the Commonwealth; and
- (ii) of another State or of a Territory may be cited by a reference to the State or Territory by the Parliament or legislature of which the Act was passed,

together with such mode of reference as is sufficient in Acts passed by that Parliament or legislature;

Ss. 8, 9.

- (d) an Ordinance of a Territory may be cited by its short title or by reference to the calendar year in which it was made and its number; 32 of 1981, Sch. 1.
- (e) an enactment may be cited by reference to the part, section, sub-section or other division of the Act, Imperial Act or Act of another State or of a Territory in which the enactment is contained; and 32 of 1981, Sch. 1.
- (f) a provision of an Ordinance of a Territory may be cited by reference to the part, section, sub-section or other division of the Ordinance in which the provision is contained. 32 of 1981, Sch. 1.

Division 2—Words and References

9. In any relevant Code, unless the contrary intention appears— Definitions.

“Act” means an Act passed by the Parliament;

“Agreement” means the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission (State Provisions) Act 1980* or, if that Agreement is or has been amended or affected by another agreement, that Agreement as so amended or affected; 32 of 1981, Sch. 1.
Cwth. 4 of 1981, s.3.

..... 32 of 1981, Sch. 1.

“Australia” or “the Commonwealth” means the Commonwealth of Australia and, when used in a geographical sense, does not include an external Territory;

“calendar year” means a period of 12 months commencing on 1 January;

“Code” means the provisions of an Act passed by the Parliament of the Commonwealth pursuant to the Agreement as in force for the time being, being provisions applying, by reason of an Act passed by the Parliament of Western Australia pursuant to the Agreement, as laws of Western Australia; 32 of 1981, Sch. 1.

“commencement”, in relation to an Act or a provision of an Act, means the time when the Act, or the provision, as the case may be, comes into operation; 32 of 1981, Sch. 1.

“Commission” means the National Companies and Securities Commission;

“committed for trial”, in relation to a person, means committed to prison to await his trial or granted bail to appear at his trial; 32 of 1981, Sch. 1.

“Consolidated Revenue Fund” means the Consolidated Revenue Fund of Western Australia; 32 of 1981, Sch. 1.

S. 9.

“constituent documents”, in relation to a body, whether corporate or unincorporate, means—

- (a) the charter, memorandum or memorandum and articles of the body; and
- (b) any other instrument or law (other than the *Companies (Western Australia) Code* or the corresponding law in force in another State or in a Territory or in another country) constituting, or defining the constitution of, the body or governing activities or conduct of the body or of its members;

10 of 1982,
s. 6.

“Constitution” means the Constitution of the Commonwealth;

32 of 1981,
Sch. 1.

“Court” means the Supreme Court of Western Australia or a Judge of that Court;

32 of 1981,
Sch. 1.

“court of summary jurisdiction” has the meaning set out in section 4 of the *Interpretation Act 1918*;

32 of 1981,
Sch. 1.

“Crown” means the Crown in right of Western Australia;

32 of 1981,
Sch. 1.

.....

32 of 1981,
Sch. 1.

“external Territory” means a Territory, not being an internal Territory, for the government of which as such a Territory provision is made by an Act of the Commonwealth;

“financial year”, in relation to matters relating to the Consolidated Revenue Fund or moneys provided by the Parliament or to public taxes or finance, means the 12 months ending on 30 June;

“*Gazette*” means the *Commonwealth of Australia Gazette*;

32 of 1981,
Sch. 1.

“*Government Gazette*” means the *Government Gazette* of Western Australia;

“High Court” means the High Court of Australia;

“Imperial Act” means an Act passed by the Parliament of the United Kingdom;

“indictment” includes information;

“internal Territory” means the Australian Capital Territory, the Jervis Bay Territory or the Northern Territory;

32 of 1981,
Sch. 1.

“Jervis Bay Territory” means the Territory accepted by the Commonwealth pursuant to the *Jervis Bay Territory Acceptance Act 1915* of the Commonwealth as amended and in force for the time being and described in the Agreement set out in the Schedule to that Act;

32 of 1981,
Sch. 1.

.....

“land” includes messuages, tenements and hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein;

“law of the Australian Capital Territory” includes a law of New South Wales as applying in that Territory; 32 of 1981, Sch. 1.

“magistrate” means a magistrate within the meaning of section 4 of the *Justices Act* 1902; 32 of 1981, Sch. 1.

“Ministerial Council” means the Ministerial Council for Companies and Securities established by the Agreement;

“Minister” means a Minister of State for Western Australia; 32 of 1981, Sch. 1.

“month” means calendar month;

“Northern Territory” means the Northern Territory of Australia;

“Ordinance” means an Ordinance of the Australian Capital Territory; 32 of 1981, Sch. 1.

“Parliament” means the Parliament of Western Australia; 32 of 1981, Sch. 1.

“participating State” means a State other than Western Australia that is a party to the Agreement; 32 of 1981, Sch. 1.

“participating Territory” means— 32 of 1981, Sch. 1.

(a) the Australian Capital Territory;

(b) if the Northern Territory is a party to the Agreement—that Territory; and

(c) any external Territory to which the Agreement applies pursuant to clause 50 of the Agreement;

“person” and “party” include a body politic or corporate as well as a natural person;

“prescribed” means prescribed by the relevant Code or by regulations applying under the relevant Code; 32 of 1981, Sch. 1.

“Proclamation” means Proclamation made by the Governor and published in the *Government Gazette*; 32 of 1981, Sch. 1.

“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 things in action;

“regulations” means regulations applying under the relevant Code; 32 of 1981, Sch. 1.

“relevant Code” means a Code that is a relevant Code within the meaning of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act* 1981; 32 of 1981, Sch. 1.

Ss. 9, 10, 11.

"State" means a State of the Commonwealth;Cwth. 4 of
1981, s.3.

.....

32 of 1981,
Sch. 1.

.....

"Territory" means a Territory referred to in section 122 of the Constitution;**"United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;**32 of 1981,
Sch. 1.**"the Minister" means the Minister for the time being administering the Act by reason of which the provisions of the relevant Code apply as laws of Western Australia or, if, for the time being, different Ministers are administering that Act in different respects, each of those Ministers to the extent that he is administering that Act in the relevant respect;**10 of 1982, s.9.
Cwth. 98 of
1981, s. 2.
Cwth. 108 of
1983, s. 133.**"the Territory" or "the Australian Capital Territory" means the Territory accepted by the Commonwealth pursuant to the *Seat of Government Acceptance Act* 1909 and described in the Second Schedule to that Act, and includes the Jervis Bay Territory.**32 of 1981,
Sch. 1.**"this Code" includes regulations applying under the relevant Code.**Parts of speech
and grammati-
cal forms.**10. In any relevant Code, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.**Reference to
corresponding
laws.
32 of 1981,
Sch. 1.**11. In any relevant Code, unless the contrary intention appears—****(a) a reference to the corresponding law of a State other than Western Australia or of a Territory shall, in the case of a participating State or participating Territory, be construed as a reference to the provisions of that relevant Code as they apply, with any additions, exceptions or modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement; and**32 of 1981,
Sch. 1.**(b) a reference to a provision of a law of a State other than Western Australia or of a Territory that corresponds with a particular provision of that relevant Code or of another law shall, in the case of a participating State or participating Territory, be construed as a reference to that provision of that relevant Code or of that other law, as the case may be, as it applies, with any additions, exceptions or**32 of 1981,
Sch. 1.

modifications, as part of the law of that State or Territory by virtue of a law of that State or Territory enacted or made in accordance with the Agreement.

12. Where in any relevant Code—

References to a Minister.
32 of 1981,
Sch. 1.

- (a) a Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Minister for the time being acting for or on behalf of the Minister so referred to; and
- (b) a Commonwealth Minister is referred to, the reference shall, unless the contrary intention appears, be deemed to include a reference to any Commonwealth Minister or member of the Federal Executive Council for the time being acting for or on behalf of the Commonwealth Minister so referred to.

13. In any relevant Code, unless the contrary intention appears—

References to writing, printing and documents.

- (a) a reference to writing shall be construed as including a reference to any mode of representing or reproducing words, figures or symbols in a visible form;
- (b) "printed" includes type-written, lithographed or reproduced by any mechanical means; and
- (c) "document" includes—
 - (i) any paper or other material on which there is writing or printing, or on which there are marks, symbols or perforations having a meaning for persons qualified to interpret them; and
 - (ii) a disc, tape or other article from which sounds, images or messages are capable of being reproduced,

and without limiting the generality of the foregoing, includes any summons, order and other legal process and any notice.

14. (1) A document that is required by a relevant Code to be lodged with the Commission shall be lodged at the office of the Commissioner for Corporate Affairs for Western Australia and any such document that is lodged, or submitted for lodgment, at that office shall be deemed to be lodged, or submitted for lodgment, as the case may be, with the Commission.

Lodging of documents and references to office of Commission.
32 of 1981,
Sch. 1.

(1A) A document that is required by a relevant Code to be given or sent to the Commission shall be delivered or sent to the office of the Commissioner for Corporate Affairs for Western Australia and any such document that is delivered or sent to that office shall be deemed to have been given or sent, as the case may be, to the Commission.

Cwth. 153 of 1981, s.19.

Ss. 14, 15, 16, 17, 18, 19.

32 of 1981,
Sch. 1.

(2) Any application to the Commission for the issuing of a document or the doing of any other act or thing by the Commission under a relevant Code shall be in writing and shall be delivered to the office of the Commissioner for Corporate Affairs for Western Australia and any such application that is delivered to that office shall be deemed to have been made to the Commission.

32 of 1981,
Sch. 1.

(3) A reference in a relevant Code to the office of the Commission shall be construed as a reference to the office of the Commissioner for Corporate Affairs for Western Australia.

Service by
post.

15. Where a relevant Code authorizes or requires a document to be served by post, whether the expression "serve" or the expression "give" or "send" or any other expression is used, then, unless the contrary intention appears, the service shall be deemed to be effected by properly addressing and posting (under pre-paid post) the document as a letter to the last-known address of the person to be served, and unless the contrary is proved, to have been effected at the time when the letter would have been delivered in the ordinary course of post.

Rules as to
gender and
number.
Cwth. 13 of
1984, s. 8.

16. In any relevant Act, unless the contrary intention appears—

- (a) words importing a gender include every other gender; and
- (b) words in the singular number include the plural and words in the plural number include the singular.

References to
the Crown.
32 of 1981,
Sch. 1.

17. In any relevant Code, unless the contrary intention appears, a reference to the Crown shall be construed as a reference to the Sovereign for the time being.

Corporations
liable to and
may sue for
penalties.

18. (1) Every provision of a relevant Code relating to offences punishable on indictment or summary conviction shall, unless the contrary intention appears, be deemed to refer to bodies corporate as well as to natural persons.

(2) Where under a relevant Code a forfeiture or penalty is payable to a party aggrieved, it is payable to a body corporate where the body corporate is the party aggrieved.

References to
officers, lo-
calities, &c.
32 of 1981,
Sch. 1.

19. In any relevant Code, unless the contrary intention appears—

- (a) a reference to an officer or office shall be construed as a reference to such an officer or office in and for Western Australia; and
- (b) a reference to a locality, jurisdiction or other matter or thing shall be construed as a reference to such locality, jurisdiction or other matter or thing in and of Western Australia.

20. Where in a relevant Code a person holding or occupying a particular office or position is referred to in general terms, the reference shall, unless the contrary intention appears, be deemed to include a reference to all persons who at any time occupy that office or position for the time being.

Mention of
officer in gen-
eral terms.

Division 3—Powers and Duties

21. (1) Where a relevant Code confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed from time to time as occasion requires.

Exercise of
powers and
duties.

(2) Where a relevant Code confers a power or imposes a duty on the holder of an office as such, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed by the holder for the time being of the office.

22. Where a relevant Code confers on a person or authority the power to make, grant or issue any instrument (including rules, regulations or by-laws), the power shall, unless the contrary intention appears, be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to repeal, rescind, revoke, amend or vary such an instrument.

Power to make
grant or issue
an instrument
includes power
to repeal or
amend the
instrument.

23. (1) Subject to sub-section (2), where a relevant Code confers upon a person or authority a power to make appointments to an office or position, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend a person appointed, and to appoint another person temporarily in the place of a person so removed or suspended or in place of a sick or absent holder of the office or position.

Power to
appoint in-
cludes power to
remove or sus-
pend.

(2) Where the power of a person or authority to make appointments is exercisable only upon the recommendation, or subject to the approval or consent, of some other person or authority, the power of removal or suspension is, unless the contrary intention appears, exercisable only upon the recommendation, or subject to the approval or consent, of that other person or authority.

Ss. 24, 25, 26.

Exercise of
certain powers,
duties and
functions by a
delegate or
person
authorized by a
delegate.

32 of 1981,
Sch. 1.

32 of 1981,
Sch. 1.

24. (1) Where, under any relevant Code, the exercise of a power or duty or the performance of a function by a person is dependent upon the opinion, belief or state of mind of that person in relation to a matter—

- (a) if that power, duty or function has been delegated pursuant to any Act or Code—that power or duty may be exercised or that function may be performed by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (b) if a person to whom that power, duty or function has been so delegated has, pursuant to any Act or Code, authorized another person to exercise that power or duty or to perform that function—that power or duty may be exercised or that function may be performed by the authorized person upon the opinion, belief or state of mind of the authorized person in relation to that matter.

(2) For the purpose of the exercise of a power or duty or the performance of a function under a relevant Code by—

- (a) a person to whom that power, duty or function has been delegated by the Commission; or
- (b) a person authorized by a delegate of the Commission to exercise that power or duty or to perform that function,

any reference to the Commission in a provision of that relevant Code relating to the exercise of that power or duty or the performance of that function shall be construed as including a reference to the delegate or the person authorized by the delegate, as the case may be.

Division 4—Distance and Time

Measurement
of distance.

25. In the measurement of any distance for the purposes of any relevant Code, that distance shall, unless the contrary intention appears, be measured in a straight line on a horizontal plane.

Reckoning of
time.

26. (1) Where, in a relevant Code, a period of time, dating from a given day, act or event, is prescribed or allowed for any purpose, the time shall, unless the contrary intention appears, be reckoned exclusive of that day or of the day of that act or event.

(2) Where the last day of a period prescribed or allowed by a relevant Code for the doing of anything falls on a Saturday, on a Sunday or on a day that is a public holiday or a bank holiday in the place in which the thing is to be or may be done, the thing may be done on the first day following that is not a Saturday, a Sunday or a public holiday or bank holiday in that place.

Ss. 27, 28, 29.

27. Where, in a relevant Code, a reference to time occurs, the reference shall, unless the contrary intention appears, be deemed in relation to the doing of an act or thing in a State or Territory to be a reference to the legal time in that State or Territory.

Expressions of
time.

Division 5—Effect of Repeal, Amendment or Expiration

28. (1) The repeal of the provisions of a relevant Commonwealth Act by which the provisions of a previous relevant Commonwealth Act were repealed does not have the effect of reviving the provisions of the previous relevant Commonwealth Act without express words.

Effect of re-
peal.
32 of 1981,
Sch. 1.

(2) In this section and in sections 29, 30, 31 and 32 a reference to provisions, or a provision, of a relevant Commonwealth Act is a reference to provisions, or a provision, of—

- (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980* of the Commonwealth;
- (b) the *Companies (Acquisition of Shares) Act 1980* of the Commonwealth; or
- (c) any other Act of the Commonwealth,

which, by reason of—

- (d) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*;
- (e) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; or
- (f) an Act containing a relevant application provision,

apply as, or applies as, a law of Western Australia or, in the case of a repealed provision, has applied as law of Western Australia.

(3) For the purposes of sub-section (2), a provision in an Act is a relevant application provision if the provision contains a statement to the effect that the provisions of an Act of the Commonwealth apply (whether with or without qualification) as laws of Western Australia.

29. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act, then, unless the contrary intention appears, the repeal does not—

Saving.
32 of 1981,
Sch. 1.

- (a) revive anything not in force or existing at the time when the repeal takes effect;
- (b) affect the previous operation of the provision of the relevant Commonwealth Act so repealed, or anything duly done or suffered under the provision of the relevant Commonwealth Act so repealed;

Ss. 29, 30, 31, 32, 33.

- (c) affect a right, privilege, obligation or liability acquired, accrued or incurred under the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that right, privilege, obligation or liability; or
- (d) affect a penalty, forfeiture or punishment incurred in respect of an offence committed against the provision of the relevant Commonwealth Act so repealed, or an investigation, legal proceeding or remedy in respect of that penalty, forfeiture or punishment,

and the investigation, legal proceeding or remedy may be instituted, continued or enforced, and a penalty, forfeiture or punishment may be imposed, as if the repealing provision of the relevant Commonwealth Act had not been enacted.

Repealed provisions continue in force until substituted provisions operate.
32 of 1981,
Sch. 1.

30. Where a provision of a relevant Commonwealth Act repeals a provision of a former relevant Commonwealth Act and substitutes a provision in lieu of the repealed provision, the repealed provision remains in force until the substituted provision comes into operation.

Amending Act to be construed with amended Act.
32 of 1981,
Sch. 1.

31. A provision of a relevant Commonwealth Act amending a provision of another relevant Commonwealth Act shall, unless the contrary intention appears, be construed with the provisions of the relevant Commonwealth Act being amended and as part of them.

Expiration of Acts.
32 of 1981,
Sch. 1.

32. The expiration of a provision of a relevant Commonwealth Act does not affect any civil proceedings previously commenced under the relevant Commonwealth Act and the civil proceedings may be continued, and everything in relation to the civil proceedings may be done, in all respects as if the provision of the relevant Commonwealth Act continued in force.

References to amended or re-enacted laws.
32 of 1981,
Sch. 1.

33. Where a relevant Code contains a reference to a short title that is or was provided by law for the citation of an Act as originally enacted, or of an Act as amended, then, except so far as the contrary intention appears—

32 of 1981,
Sch. 1.

- (a) the reference shall be construed as a reference to that Act as originally enacted and as amended from time to time; and

32 of 1981,
Sch. 1.

- (b) where that Act has been repealed and re-enacted, with or without modifications, the reference shall be construed as including a reference to the re-enacted Act as originally enacted and as amended from time to time and, where, in

connection with that reference, particular provisions of the repealed Act are referred to, being provisions to which provisions of the re-enacted Act correspond, the reference to those particular provisions shall be construed as including a reference to those corresponding provisions.

.....

32 of 1981,
Sch. 1.

PART III—OFFENCES AND PENALTIES

34. Notwithstanding anything in any other law, proceedings for an offence against a relevant Code may be instituted within the period of 5 years after the act or omission alleged to constitute the offence or, with the consent of the Ministerial Council, at any later time.

Time for
instituting
criminal pro-
ceedings.

35. (1) An offence against a relevant Code that is not punishable by imprisonment or is punishable by imprisonment for a period not exceeding 6 months is, unless the contrary intention appears, punishable summarily.

Indictable
offences and
summary of-
fences.
Cwth. 4 of
1981, s. 4.

(2) An offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months is, subject to subsection (3), punishable on indictment.

(3) Where—

- (a) proceedings for an offence against a relevant Code that is punishable by imprisonment for a period exceeding 6 months are brought in a court of summary jurisdiction; and
- (b) the prosecutor requests the court to hear and determine the proceedings,

the offence is punishable summarily and the court shall hear and determine the proceedings.

(4) A court of summary jurisdiction may not—

- (a) impose, in respect of any one offence against a relevant Code, a period of imprisonment exceeding 2 years; or
- (b) impose, in respect of offences against a relevant Code or relevant Codes, cumulative periods of imprisonment that, in the aggregate, exceed 5 years.

(5) Nothing in this section renders a person liable to be punished more than once in respect of the same offence.

(6) In this section, “indictment” does not include information.

Cwth. 153 of
1981, s. 20.

Ss. 36, 37, 38.

Proceedings
how and when
taken.
Cwth. 4 of
1981, s. 5.

36. (1) Except where provision is otherwise made in the relevant Code concerned, in any proceedings for an offence against a provision of a relevant Code, any information, charge, complaint or application may be laid or made only—

- (a) by the Commission;
- (b) by a person to whom the Commission has delegated the power to institute the proceedings;
- (c) by a person authorized by a person referred to in paragraph (b) to institute the proceedings; or
- (d) by another person authorized in writing by the Ministerial Council to institute the proceedings.

(2) A delegation for the purposes of paragraph (1) (b) or an authorization for the purposes of paragraph (1) (c) or (d) may relate to all offences against relevant Codes, to all offences against a particular relevant Code or particular relevant Codes, to a particular offence or particular offences against a relevant Code, to any offences against, or constituted by any contravention of, or failure to comply with, a particular provision or particular provisions of a relevant Code or to a class of offences against a relevant Code.

Double
jeopardy.

37. Where an act or omission constitutes an offence—

- (a) under a relevant Code; and
- (b) under another law of Western Australia or a law of another State or of a Territory,

and the offender has been punished in respect of the offence under a law referred to in paragraph (b), he is not liable to be punished in respect of the offence under the relevant Code.

Aiding and
abetting, at-
tempts, &c.

38. (1) A person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in or party to, the commission of an offence against any relevant Code shall be deemed to have committed that offence and is punishable accordingly.

(2) A person who attempts to commit an offence against any relevant Code is guilty of an offence and is punishable as if the attempted offence had been committed.

32 of 1981,
Sch. 1.

(3) Nothing in this section shall be taken to affect the application in relation to any relevant Code of the provisions (other than section 7 and sections 553 to 556 inclusive) of *The Criminal Code*.

Ss. 38A, 39.

38A. For the purposes of a relevant Code, a certificate that—

(a) purports to be signed by the registrar or other proper officer of a federal court or of a court of a State or Territory; and

(b) states—

(i) that a person was convicted by that court on a specified date of a specified offence; or

(ii) that a person charged before that court with a specified offence was, on a specified date, found in that court to have committed the offence but that the court did not proceed to convict the person of the offence,

is, unless it is proved that the conviction was quashed or set aside, or that the finding was set aside or reversed, as the case may be, conclusive evidence—

(c) in a case to which sub-paragraph (b) (i) applies—that the person was convicted of the offence on that date; and

(d) in any case, where the offence was constituted by a contravention of, or a failure to comply with, a provision of a law—that the person contravened, or failed to comply with, that provision.

Evidence.
Cwth. 108 of
1983, s. 134.

**PART IV—OFFENCES UNDER NATIONAL
COMPANIES AND SECURITIES COMMISSION
(STATE PROVISIONS) ACT**

32 of 1981,
Sch. 1.

39. (1) Subject to sub-section (2), the penalty, pecuniary or other, set out—

Penalties at
foot of sections
or sub-sections.

(a) at the foot of a section of the *National Companies and Securities Commission (State Provisions) Act 1980*; or

32 of 1981,
Sch. 1.

(b) at the foot of a sub-section of a section of the *National Companies and Securities Commission (State Provisions) Act 1980*, but not at the foot of the section,

32 of 1981,
Sch. 1.

indicates that a contravention of the section or the sub-section, respectively, whether by act or omission, is an offence against that Act, punishable upon conviction by a penalty not exceeding the penalty so set out.

(2) Where a penalty set out at the foot of a section, or sub-section of a section, of the *National Companies and Securities Commission (State Provisions) Act 1980* is expressed to apply to a part only of the section or sub-section, it applies to that part only.

32 of 1981,
Sch. 1.

PART V—INSTRUMENTS UNDER RELEVANT CODES

Application of
Code to
instruments
under relevant
Codes.
32 of 1981,
Sch. 1.
10 of 1982,
s.8.

40. (1) This Code applies to and in relation to an instrument (including regulations, rules and by-laws) applying, made, granted or issued under a relevant Code as if the instrument were a relevant Code and as if each regulation, rule or by-law were a section of a relevant Code.

10 of 1982,
s.8.

(2) Unless the contrary intention appears, expressions used in such an instrument have the same meanings as in the relevant Code under which the instrument applies or was made, granted or issued.

Cwth. 4 of
1981, s.6.

PART VI—EVIDENCE OF CORRESPONDING LAWS

Evidence of
laws of other
States and of
Territories.
Cwth. 4 of
1981, s.6.
10 of 1982,
s.8.

41. (1) Where a provision of a law of another State or of a Territory, being a law by reason of which provisions of a relevant Act of the Commonwealth or regulations in force for the time being under a relevant Act of the Commonwealth apply as laws of that State or Territory, provides that a document published in accordance with that provision is *prima facie* evidence of the provisions of that Act or those regulations as so applying on a particular date, a document that is, or purports to be, a copy of a document so published is *prima facie* evidence of the provisions of that Act or those regulations as so applying on that date.

(2) In subsection (1), "relevant Act of the Commonwealth" means—

- (a) the *Companies and Securities (Interpretation and Miscellaneous Provisions) Act* 1980 of the Commonwealth;
- (b) the *Companies (Acquisition of Shares) Act* 1980 of the Commonwealth;
- (c) the *Securities Industry Act* 1980 of the Commonwealth; or
- (d) the *Companies Act* 1981 of the Commonwealth,

as amended and in force for the time being.

NOTES

Sidenotes	Citation	Provisions	Commenced
Cwth. 4 of 1981	Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act 1981 of the Commonwealth.	The Act	1 July 1981
Cwth. 98 of 1981	Companies and Securities (Interpretation and Miscellaneous Provisions) Amendment Act (No. 2) 1981 of the Commonwealth.	The Act	1 July 1981
Cwth. 153 of 1981	Companies and Securities Legislation (Miscellaneous Amendments) Act 1981 of the Commonwealth.	Part VI ss.18-20	1 March 1982
Cwth. 108 of 1983	Companies and Securities Legislation (Miscellaneous Amendments) Act 1983 of the Commonwealth.	Part V ss.131-134	1 January 1984
Cwth. 13 of 1984.	Companies and Securities Legislation (Miscellaneous Amendments) Act (No. 1) 1984.	Part III	28 May 1984
32 of 1981	Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981.	Schedule 1	1 July 1981
10 of 1982	Companies (Consequential Amendments) Act 1982.	ss.7 and 8 s.9	1 July 1982 1 July 1981