

Western Australia

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

As at 06 Jul 1998

Version 00-a0-09

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

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

AN ACT relating to the application of laws to regulate the acquisition of shares in companies incorporated in Western Australia and matters connected therewith, to amend the *Companies Act 1961*, and for other purposes.

1. Short title

This Act may be cited as the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

3. Interpretation

(1) In this Act, unless the contrary intention appears —

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;

Commission means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979* of the Commonwealth;

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

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the applied provisions means the provisions applying by reason of sections 4 and 6;

the Commonwealth Act means the *Companies (Acquisition of Shares) Act 1980* of the Commonwealth.

- (2) In this Act, a reference to a Commonwealth Act shall be construed as including a reference to that Act as amended and in force for the time being and to an Act passed in substitution for that Act.
- (3) The provisions of the Interstate Corporate Affairs Agreement do not apply to or with respect to the applied provisions or the administration of the applied provisions.

[Section 3 amended by No. 48 of 1989 s.17.]

4. Application of law relating to acquisition of shares

Subject to this Act, the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), apply —

- (a) as if amended as set out in Schedule 1; and
- (b) subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,

as laws of Western Australia.

5. Incorporation in *Companies Act 1961*

- (1) The provisions applying by reason of section 4, except as provided by section 17, operate to the exclusion of —
 - (a) Part VIB. of, and the Tenth Schedule to, the *Companies Act 1961*; and
 - (b) the *Company Take-overs Act 1979*.
- (2) The provisions of subsection (1) do not, unless the contrary intention appears —
 - (a) revive anything not in force or existing at the time at which the exclusion of the provisions of —

- (i) Part VIB. of, and the Tenth Schedule to, the *Companies Act 1961*; or
- (ii) the *Company Take-overs Act 1979*,
takes effect;
- (b) affect the previous operation of that Part or Schedule, or that Act, or anything duly done or suffered under that Part or Schedule or that Act;
- (c) affect any right, privilege, obligation or liability acquired or incurred under that Part or Schedule or that Act;
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against that Part or Schedule or that Act;
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if subsection (1) had not been enacted.

[Section 5 amended by No. 10 of 1982 s.11.]

6. Application of regulations relating to acquisition of shares

Subject to this Act, the provisions of regulations in force for the time being under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) apply —

- (a) as if amended as set out in Schedule 2; and
- (b) subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*,

as regulations made under the provisions applying by reason of section 4.

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7. Incorporation in *Companies (Western Australia) Code*

- (1) The provisions applying by reason of section 4 are incorporated with, and shall be read as one with, the *Companies (Western Australia) Code*.
- (2) The provisions applying by reason of section 6 are incorporated with, and shall be read as one with, regulations applying under the *Companies (Western Australia) Code*.

[Section 7 inserted by No. 10 of 1982 s.12.]

8. Operation of *Companies (Western Australia) Code*

For the purposes of the operation of the *Companies (Western Australia) Code* and regulations applying under that Code and the performance of functions and the exercise of powers under that Code or those regulations, with respect to the provisions of, or matters relating to or arising under, the applied provisions —

- (a) references in that Code or those regulations to documents submitted to, or lodged with, the Commissioner shall be construed as references to documents submitted to, or lodged with, the Commission under the applied provisions; and
- (b) references in those regulations to the *Companies (Western Australia) Code* shall, in accordance with subsection (1) of section 7, be construed as references to that Code with the incorporation of, and as read as one with, the provisions applying by reason of section 4.

[Section 8 inserted by No. 10 of 1982 s.12.]

9. Fees payable

- (1) There shall be paid to the Commissioner for Corporate Affairs for Western Australia, for and on behalf of the State, for or in respect of —
 - (a) the lodgment of documents with the Commission under the applied provisions;

- (b) the registration of documents under the applied provisions or the inspection or search of registers kept by, or documents in the custody of, the Commission under the applied provisions;
- (c) the production by the Commission, pursuant to a subpoena, of any register kept by, or documents in the custody of, the Commission under the applied provisions;
- (d) the issuing of documents or copies of documents, the granting of consents or approvals or the doing of other acts or things by the Commission under the applied provisions;
- (e) the making of inquiries of, or applications to, the Commission in relation to matters arising under the applied provisions; and
- (f) the submission to the Commission of documents for examination by the Commission,

such fees (if any) as are prescribed by regulations in force for the time being under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth and specified in the Schedule to those regulations as if amended as set out in Schedule 3 and as if, unless the contrary intention appears, expressions used had the same respective meanings as in the applied provisions.

- (2) Where a fee is payable to the Commissioner for Corporate Affairs for Western Australia for and on behalf of the State under subsection (1) for or in respect of the lodgment of a document with the Commission and the document is submitted for lodgment without payment of the fee, the document shall be deemed not to have been lodged until the fee has been paid.
- (3) Where a fee is payable to the Commissioner for Corporate Affairs for Western Australia for and on behalf of the State under subsection (1) for or in respect of any matter involving the doing of any act or thing by the Commission, the

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Commission shall not do that act or thing until the fee has been paid.

- (4) This section has effect notwithstanding anything contained in the applied provisions.
- (5) Nothing in this section prevents the Commissioner for Corporate Affairs for Western Australia for and on behalf of the State from —
 - (a) waiving or reducing, in a particular case or classes of cases, fees that would otherwise be payable pursuant to this section; or
 - (b) refunding in whole or in part, in a particular case or classes of cases, fees paid pursuant to this section.
- (6) In this section, unless the contrary intention appears, the expressions used have the same respective meanings as in the applied provisions.

[Section 9 amended in Gazette 25 Sep 1981 p.4080.]

10. Amendment of regulations pursuant to Agreement

- (1) Where, under the Agreement, the Ministerial Council approves a proposed amendment of regulations in force for the time being under the Agreement Commonwealth Act or the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth and, upon the expiration of six months after the date on which the Ministerial Council so approved, the amendment has not been made or has been made and is subject to disallowance or has ceased to be in force by disallowance or for any other reason, the Governor may make regulations in accordance with the proposed amendment approved by the Ministerial Council amending the provisions of regulations applying by reason of section 6 or the regulations referred to in section 9, as the case may be.
- (2) Regulations made by the Governor under subsection (1) may amend Schedule 2 or 3, as the case may be, and that Schedule as

so amended shall be Schedule 2 or 3, as the case may be, to this Act.

- (3) In this Act —
- (a) a reference to provisions of regulations applying by reason of section 6 includes a reference to provisions as so applying as amended in accordance with this section; and
 - (b) a reference to fees prescribed by regulations under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth includes a reference to those regulations as amended in accordance with this section.

11. Publication of *Companies (Acquisition of Shares) (Western Australia) Code*

- (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of the Commonwealth Act (other than sections 1, 2, 3, 4 and 5), amended as set out in Schedule 1 and in operation, or to come into operation, in Western Australia.
- (2) A document published under subsection (1) —
- (a) shall include the headings and sections set out in Schedule 4;
 - (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in Western Australia;
 - (c) shall include a statement of the date on which the Minister authorized the publication; and
 - (d) may be cited as the *Companies (Acquisition of Shares) (Western Australia) Code*.
- (3) A document that is or purports to be a copy of the *Companies (Acquisition of Shares) (Western Australia) Code* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the provisions of the

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Commonwealth Act applying by reason of section 4 as in operation, or to come into operation, in Western Australia as notified in the document in accordance with paragraph (b) of subsection (2).

12. Publication of Companies (Acquisition of Shares) (Western Australia) Regulations

- (1) The Minister may from time to time authorize the publication by the Government Printer of the provisions of regulations under the Commonwealth Act (other than provisions providing for the citation or commencement of the regulations) amended as set out in Schedule 2 and in operation, or to come into operation, in Western Australia.
- (2) A document published under subsection (1) —
 - (a) shall include the headings and provisions set out in Schedule 5;
 - (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in Western Australia;
 - (c) shall include a statement of the date on which the Minister authorized the publication; and
 - (d) may be cited as the *Companies (Acquisition of Shares) (Western Australia) Regulations*.
- (3) A document that is or purports to be a copy of the *Companies (Acquisition of Shares) (Western Australia) Regulations* that has been, or purports to have been, published in accordance with this section *is prima facie* evidence of the provisions applying by reason of section 6 as in operation, or to come into operation, in Western Australia as notified in the document in accordance with paragraph (b) of subsection (2).

13. Publication of *Companies (Acquisition of Shares-Fees) (Western Australia) Regulations*

- (1) The Minister may from time to time authorize the publication by the Government Printer of the Schedule to regulations prescribing fees under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth amended as set out in Schedule 3 and in operation, or to come into operation in Western Australia.
- (2) A document published under subsection (1) —
 - (a) shall include the headings and provisions set out in Schedule 6;
 - (b) shall include a notification of the date, or dates, on which the several provisions set out in the document came, or come, into operation in Western Australia;
 - (c) shall include a statement of the date on which the Minister authorized the publication; and
 - (d) may be cited as the *Companies (Acquisition of Shares-Fees) (Western Australia) Regulations*.
- (3) A document that is or purports to be a copy of the *Companies (Acquisition of Shares-Fees) (Western Australia) Regulations* that has been, or purports to have been, published in accordance with this section is *prima facie* evidence of the Schedule to regulations referred to in section 9 as in operation, or to come into operation, in Western Australia as notified in the document in accordance with paragraph (b) of subsection (2).

14. Publication of provisions amending Code or regulations

- (1) The Minister may from time to time authorize the publication by the Government Printer of a document setting out —
 - (a) provisions that by reason of —
 - (i) the enactment of an Act of the Commonwealth amending the Commonwealth Act; and

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- (ii) the operation of section 4 (including the operation, if applicable, of Schedule 1), apply, or will apply, as laws of Western Australia;
 - (b) provisions that by reason of —
 - (i) regulations under the Commonwealth Act; and
 - (ii) the operation of section 6 (including the operation, if applicable, of Schedule 2), apply, or will apply, as regulations made under the provisions applying by reason of section 4; or
 - (c) fees that by reason of —
 - (i) regulations under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth; and
 - (ii) the operation of section 9 (including the operation, if applicable, of Schedule 3), are, or will be, payable under that section.
- (2) A document published under subsection (1) shall include a notification of the date, or dates, on which the provisions or fees set out in the document came, or come, into operation in Western Australia.
- (3) A document that has been or purports to have been published in accordance with this section is *prima facie* evidence of provisions or fees referred to in subsection (1) set out in the document.

15. Interpretation of references to the applied provisions

- (1) Unless the contrary intention appears, in this or any other Act or in a regulation or other instrument made under this or any other Act or in any other document made by or under the authority of, or for the purposes of, a law of Western Australia —
- (a) a reference to the *Companies (Acquisition of Shares) (Western Australia) Code* is a reference to the provisions

- of the Commonwealth Act applying by reason of section 4;
- (b) a reference to a provision of that Code is a reference to the corresponding provision of the Commonwealth Act as so applying;
 - (c) a reference to the *Companies (Acquisition of Shares) (Western Australia) Regulations* is a reference to the provisions of regulations in force under the Commonwealth Act applying by reason of section 6;
 - (d) a reference to a provision of those regulations is a reference to the corresponding provision of the regulations in force under the Commonwealth Act as so applying;
 - (e) a reference to the *Companies (Acquisition of Shares-Fees) (Western Australia) Regulations* is a reference to the Schedule to regulations prescribing fees under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth as referred to in section 9; and
 - (f) a reference to a provision of that Schedule is a reference to the corresponding provision of the Schedule to regulations in force under that Act as referred to in section 9.
- (2) In subsection (1), “provision” includes Part, Division, section, subsection, paragraph, subparagraph, Schedule, form, regulation, clause, subclause or other division.

16. Amendment of certain provisions in accordance with approval of Ministerial Council

Where, under the Agreement, the Ministerial Council —

- (a) approves —
 - (i) a proposed amendment of the Commonwealth Act;

- (ii) regulations proposed to be made under the Commonwealth Act (whether or not amending other regulations);
 - (iii) a proposed amendment of the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth or
 - (iv) regulations proposed to be made under that Act (whether or not amending other regulations); and
- (b) approves proposed regulations to be made under this Act in connection with the operation of the proposed amendment or regulations referred to in paragraph (a),

the Governor may make regulations amending Schedule 1, 2 or 3 or section 9, as the case may be, in accordance with that approval, and that Schedule or section as so amended shall be Schedule 1, 2 or 3 or section 9, as the case may be, of this Act.

16A. Regulations for penalty notices

- (1) The Governor may make regulations that —
- (a) prescribe offences against the *Companies (Acquisition of Shares) (Western Australia) Code* (not being offences the penalties applicable to which include a term of imprisonment that exceeds 6 months or a pecuniary penalty that exceeds \$2 500) or offences against the *Companies (Acquisition of Shares) (Western Australia) Regulations*, for the purposes of section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code*; and
 - (b) in relation to each offence that is prescribed pursuant to this subsection —
 - (i) prescribe the particulars of that offence that are to be given in a notice served on a person under section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code* in relation to the offence; and

- (ii) prescribe the amount of the penalty (being an amount that does not exceed half the amount of the penalty applicable to the offence) that is payable in respect of the offence pursuant to a notice served on the person under section 53A of the *Companies (Acquisition of Shares) (Western Australia) Code* in relation to the offence.
 - (2) In subsection (1), a reference to a penalty applicable to an offences is a reference to the penalty that is applicable to that offence by virtue of any of the provisions of section 49 or 53 of the *Companies (Acquisition of Shares) (Western Australia) Code*.
 - (3) Unless the regulations otherwise prescribe, the particulars of an offence required to be prescribed by subsection (1)(b)(i), are to be set out in the form prescribed by the *Companies (Western Australia) Regulations* for the purposes of section 570A of the *Companies (Western Australia) Code*.
 - (4) A provision of the *Companies (Acquisition of Shares) (Western Australia) Regulations* that is inconsistent with a provision of regulations made under this section has no effect.
 - (5) Except as provided in subsection (4), regulations under this section shall be read and construed as one with the *Companies (Acquisition of Shares) (Western Australia) Regulations*.
- [Section 16A inserted by No. 48 of 1988 s.18.]*

17. Take-overs pending at commencement of Act

- (1) Subject to the interim take-over laws, where, pursuant to the superseded take-over laws, a take-over offer in relation to shares in a company was dispatched before the date of commencement of the *Company Take-overs Act 1979*, and the period during which the take-over offer was to remain open, or, in the case of a take-over offer constituted by an invitation the period for which the invitation was expressed to remain open, had not expired before the date of commencement of this Act —

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- (a) this Act, other than this section, does not apply to or in relation to —
 - (i) the acquisition of shares in the company pursuant to the take-over offer; or
 - (ii) any other acquisition of shares in the company during the period during which the take-over offer was to remain open, or, in the case of a take-over offer constituted by an invitation, the period for which the invitation was expressed to remain open, by the offeror or invitor who dispatched the take-over offer; and
 - (b) the superseded take-over laws continue to apply to and in relation to any offers or invitations to acquire shares in the company, being offers or invitations referred to in paragraph (a).
- (2) Where, pursuant to the interim take-over laws, an offer to acquire shares in a company was —
- (a) dispatched by or on behalf of an offeror under a take-over scheme in relation to that company; or
 - (b) made by causing a take-over announcement to be made on behalf of an on-market offeror in relation to that company,
- then —
- (c) this Act, other than this section, does not apply to or in relation to —
 - (i) the take-over scheme or the take-over announcement;
 - (ii) the acquisition of shares in the company pursuant to that offer; or
 - (iii) any other acquisition of shares in the company of the same class as the shares to which the take-over scheme or take-over announcement relates, during the period during which that offer

- was to remain open, by that offeror or on-market offeror; and
- (d) the interim take-over laws continue to apply to and in relation to —
 - (i) the take-over scheme or the take-over announcement; and
 - (ii) any acquisition referred to in paragraph (c).
- (3) For the purpose of this section —
- (a) “the superseded take-over laws” means the provisions of the law relating to take-overs in force immediately before the commencement of the *Company Take-overs Act 1979*, including the provisions of Part VIB. of, and the Tenth Schedule to, the *Companies Act 1961*, and a reference to the application of the superseded take-over laws to and in relation to offers or invitations to acquire shares in a company includes, without limiting the generality of those words, a reference to the application of sections 180X and 180Y of the *Companies Act 1961*, as amended, in force immediately before the date of commencement of the *Company Take-overs Act 1979*, in relation to shares in that company consequent upon the making of those offers or the issuing of those invitations;
 - (b) “the interim take-over laws” means the provisions of the law relating to take-overs in force in Western Australia immediately before the date of commencement of this Act, and a reference to the application of the interim take-over laws to and in relation to a take-over scheme or a take-over announcement in relation to, or an acquisition of shares in, a company includes, without limiting the generality of those words, a reference to the application of sections 42 and 43 of the *Company Take-overs Act 1979* in relation to shares in that company consequent upon that take-over scheme or

take-over announcement or that acquisition of shares;
and

- (c) except where the contrary intention appears, expressions used in this section have the same respective meanings as those expressions have in Part VIB. of the *Companies Act 1961*, or, as the case requires, as those expressions have in the *Company Take-overs Act 1979*.

18. Consequential amendment of the *Companies Act 1961*

- (1) In this section the *Companies Act 1961*, is referred to as “the principal Act”.
- (2) The principal Act as amended by this Act may be cited as the *Companies Act 1961-1981*.
- (3) The principal Act is hereby amended —
- (a) in paragraph (d) of subsection (6) of section 5, by inserting after the words “a company” the passage “or, within the meaning of section forty-two of the *Company Take-overs Act 1979* or of section forty-two of the *Companies (Acquisition of Shares) (Western Australia) Code*, to a dissenting offeree in relation to shares of a company”;
- (b) in subsection (2) of section 69D, by deleting the words “fourteen days” and substituting the words “two days”;
- (c) in subsection (2) of section 69E, by deleting the words “fourteen days” and substituting the words “two days”;
- (d) in subsection (2) of section 69F, by deleting the words “fourteen days” and substituting the words “two days”;
- (e) in paragraph (c) of subsection (1) of section 122, by inserting before the passage “or under section one hundred and thirteen” the passage “, or under section forty-four of the *Company Take-overs Act 1979* or of section forty-four of the *Companies (Acquisition of Shares) (Western Australia) Code* or the corresponding

provision of the law of another State or of a Territory of the Commonwealth,”;

- (f) in paragraph (c) of subsection (1) of section 127, by inserting after the word “Schedule” the passage “, the Company Take-overs Act 1979 or the Companies (Acquisition of Shares) (Western Australia) Code”;
- (g) in subsection (2) of section 129, by inserting after the passage “Part VIB” the passage “, the Company Take-overs Act 1979 or the Companies (Acquisition of Shares) (Western Australia) Code”;
- (h) in subsection (1) of section 185, by deleting the passage “(not being a take-over scheme as referred to in subsection (4) of section one hundred and eighty A)” and substituting a new passage as follows —
 - “ not being —
 - (a) a take-over scheme as referred to in subsection (4) of section one hundred and eighty A;
 - (b) a scheme involving the acquisition of shares in a company as a result of the acceptance of offers to acquire those shares made under a take-over scheme in relation to that company as referred to in section sixteen of the Company Take-overs Act 1979 or section sixteen of the Companies (Acquisition of Shares) (Western Australia) Code; or
 - (c) a scheme involving the acquisition of shares in a listed public company where the shares are acquired as a result of the acceptance of offers made in accordance with section seventeen of the Company Take-overs Act 1979 or section seventeen of the Companies

[Section 18 amended by No .10 of 1982 s.11(2).]

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and

- (i) in subsection (8) of section three hundred and fifty-four, by inserting after the words "one hundred and eighty-five" the expression "of this Act or section forty-two of the Company Take-overs Act 1979 or section forty-two of the Companies (Acquisition of Shares) (Western Australia) Code".

[Section 18 amended by No .10 of 1982 s.11(2).]

Schedules

Schedule 1

Section 4.

The provisions of the Commonwealth Act apply as if —

1. Unless inconsistent with another provision of this Schedule —
 - (a) for the passage “*Companies Act 1981*” in the Commonwealth Act (wherever occurring) there were substituted the passage “*Companies (Western Australia) Code*”;
 - (b) for the words “the Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “Western Australia”;
 - (c) for the words “this Act” in the Commonwealth Act (wherever occurring except where occurring in conjunction with the words “commencement of”) there were substituted the words “this Code”;
 - (d) for the words “commencement of this Act” in the Commonwealth Act (wherever occurring) there were substituted the passage “commencement of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*”; and
 - (e) for the words “law of a State or of another Territory” and “law of a State or another Territory” in the Commonwealth Act (wherever occurring) there were substituted the words “law in force in another State or in a Territory”.
2. In section 6 of the Commonwealth Act —
 - (a) before the definition of “company” there were inserted the following definition:
 - ‘ “*Companies (Acquisition of Shares) (Western Australia) Code*” or “Code” means the provisions applying by reason of section 4 of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; ’ ;

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- (b) in the definition of “convertible note” after the passage “1936” there were inserted the words “of the Commonwealth as amended and in force for the time being”;
 - (c) after the definition of “recorded” there were inserted the following definition:
 - ‘ “regulations” means the provisions applying as regulations made under this Code by reason of section 6 of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; ’ .
- 2A. After section 6 of the Commonwealth Act there were inserted the following section:
- “ 6A. In this Code —
- (a) a reference to a previous law, or provision of a previous law, or previous enactment, of Western Australia or of the State corresponding to, or to a provision of, this Code includes a reference to, or a provision of, the *Companies Act 1961*; and
 - (b) a reference to a previous law, or provisions of a previous law, or previous enactment, of a State other than Western Australia or of another State corresponding to, or to a provision of, this Code includes a reference to, or to a provision of, that law of that State corresponding to the *Companies Act 1961*. ” .
- 2B. In section 8A(4) of the Commonwealth Act, after the passage “*Act 1985*” there were inserted the words “of the Commonwealth”.
- 2BA. In section 16 of the Commonwealth Act —
- (a) in subsection (2AE) for the passage “*Act 1980*” there were substituted the passage “(*Western Australia Code*)”; and
 - (b) the subsection (2AG) after the passage “*Act 1986*” there were inserted the words “of the Commonwealth”.
- 2C. In section 18 (2C) of the Commonwealth Act, after the passage “*Act 1985*” there were inserted the words “of the Commonwealth”.

- 2D. In section 25B of the Commonwealth Act —
- (a) in subsection (3), after the passage “*Act 1986*” there were inserted the words “of the Commonwealth”; and
 - (b) in paragraph (a) of subsection (4), after the passage “*Act 1986*” there were inserted the words “of the Commonwealth”.
3. In subsection (7) of section 28 of the Commonwealth Act —
- (a) for the words “stock exchange in a State or in another Territory” there were substituted the words “stock exchange in a State other than Western Australia or in a Territory”; and
 - (b) for the words “other Territory” there were substituted the word “Territory”.
- 3AA. In section 31A of the Commonwealth Act —
- (a) for the words “stock exchange in a State or in another Territory” there were substituted the words “stock exchange in a State other than Western Australia or in a Territory”; and
 - (b) for the words “other Territory” there were substituted the word “Territory”.
- 3A. In subsection (4) of section 38 of the Commonwealth Act, for the words “law of the place” (where twice occurring) there were substituted the words “law in force in the place”.
4. In section 42 of the Commonwealth Act —
- (a) for the passage “*Unclaimed Moneys Ordinance 1950*” (wherever occurring) there were substituted the passage “*Unclaimed Moneys Act 1912*”; and
 - (b) in subsection (15) for the words “that Ordinance” there were substituted the words “that Act”; and
 - (c) in subsection (18) for the words “Commonwealth” there were substituted the word “State”.
- 4A. In section 49(6) of the *Commonwealth Act* for the words “of that *Act*” (wherever occurring) there were substituted the words “of that *Code*”.
5. In section 53 of the Commonwealth Act —

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- (a) in subsection (5)(b) for the words “that Act” there were substituted the words “that Code”; and
 - (b) in subsection (6) after the passage “*Act 1985*” there were inserted the words “of the Commonwealth”.
- 5A. After section 53 of the Commonwealth Act there were inserted the following section —
- “ 53A. Penalty notices
- (1) Where the Commission has reason to believe that a person has, whether before or after the commencement of section 18 of the *Companies and Securities Legislation (Miscellaneous Amendments Act) 1988*, committed a prescribed offence, the Commission may, subject to sub-section (2), serve on a person a notice in the prescribed form —
 - (a) alleging that the person has committed the prescribed offence and giving the prescribed particulars in relation to the prescribed offence;
 - (b) setting out the prescribed penalty in respect of the prescribed offence;and
 - (c) stating —
 - (i) in the case of a prescribed offence constituted by a failure to do a particular act or thing —
 - (A) that the obligation to do the act or thing continues notwithstanding the service of the notice or the payment of the prescribed penalty;
 - (B) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice

and does the act or thing, no further action will be taken against the person in relation to the prescribed offence; and

(C) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice or has not done the act or thing, proceedings may be instituted against the person; or

(ii) in the case of a prescribed offence, not being an offence constituted by a failure to do a particular act or thing —

(A) that if, within the period specified in the notice (being a period that is not less than 21 days), the person pays the prescribed penalty to the authority specified in the notice, no further action will be taken against the person in relation to the prescribed offence; and

(B) that if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice, proceedings may be instituted against the person.

(2) Sub-section (1) does not empower the Commission —

(a) to serve on a person more than one notice under that sub-section in relation to an alleged commission by that person of a particular prescribed offence; or

Schedule 1

- (b) to serve on a person a notice under that sub-section in relation to a prescribed offence unless proceedings could be instituted against that person for that offence in accordance with section 34 of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*.
- (3) A notice under sub-section (1) may be served on a natural person either personally or by post.
- (4) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence constituted by a failure to do a particular act or thing —
 - (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice, and does the act or thing — no proceedings may be instituted against the person in respect of the prescribed offence;
 - (b) if, at the expiration of the period specified in the notice, the person has paid the prescribed penalty to the authority specified in the notice but has not done the act or thing — no proceedings may be instituted against the person in respect of the prescribed offence, but the obligation to do that act or thing continues, and section 571 of the *Companies (Western Australia) Code* applies (subject to section 53(5) of the *Companies (Acquisition of Shares) (Western Australia) Code*) in relation to the continued failure to do that act or thing as if, on the day on which the person so paid the prescribed penalty, the person had been convicted of an offence constituted by a failure to do that act or thing;
 - (c) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice but has done the act or thing — proceedings may be

- instituted against the person in respect of the prescribed offence; or
- (d) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice and has not done the act or thing — the obligation to do that act or thing continues, and proceedings may be instituted against the person in respect of the prescribed offence.
- (5) Where a notice under sub-section (1) is served on a person in relation to a prescribed offence, not being an offence constituted by a failure to do a particular act or thing —
- (a) if, within the period specified in the notice, the person pays the prescribed penalty to the authority specified in the notice — no proceedings may be instituted against the person in respect of the prescribed offence; or
- (b) if, at the expiration of the period specified in the notice, the person has not paid the prescribed penalty to the authority specified in the notice — proceedings may be instituted against the person in respect of the prescribed offence.
- (6) The payment of an amount by a person pursuant to a notice served on the person under this section in relation to a prescribed offence shall not be taken for any purpose to be an admission by that person of any liability in connection with the alleged commission of the prescribed offence.
- (7) Except as provided by paragraphs (4)(a) and (b) and (5)(a), this section does not affect the operation of any provision of this Code, of the regulations, of the rules or of any other Code or any Act in relation to the institution of proceedings in respect of offences that are prescribed offences for the purposes of this section.
- (8) In this section —
- “authority” includes a person;

Schedule 1

“prescribed” means prescribed under the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* or by the *Companies (Acquisition of Shares) (Western Australia) Regulations*. ” .

6. In subsections (1) and (2) of section 56 of the Commonwealth Act, for the passage “, or of a regulation made for the purposes of sub-section 62(3) or (4),” there were substituted the words “or of the regulations”.
- (6) In subsection (1A) of section 56 of the Commonwealth Act after the passage “Act 1986” there were inserted the words “of the Commonwealth”.
7. Sections 62 and 64 of the Commonwealth Act were repealed.
8. In paragraph (e) of Clause 2 of Part B of the Schedule to the Commonwealth Act for the words “of that Act” there were substituted the words “of that Code”.
- 8A. In the Schedule to the Commonwealth Act, in clause 3 of Part B (wherever occurring), for the words “that Act” there were substituted the word “that Code”.
9. In paragraph (c) of Clause 2 of Part D of the Schedule to the Commonwealth Act for the words “of that Act” there were substituted the words “of that Code”.
10. In the Schedule to the Commonwealth Act, in clause 3 of Part D (wherever occurring), for the words “that Act” there were substituted the words “that Code”.

[Schedule 1 amended by No. 10 of 1982 s.13 and 14; No. 38 of 1988 s. 18; amended in Gazette 30 Dec 1983 p. 5026; (Corrigendum in Gazette 21 Jan 1984 p. 228); 27 Mar 1986 p. 1344; 27 Jun 1986 p. 2163; 5 Sep 1986 p. 3270.]

Schedule 2

Section 6.

The provisions of regulations in force for the time being under the Commonwealth Act apply as if in those regulations:

1. For the words “the Act” (wherever occurring) there were substituted the words “the Code”.
2. For the passage “*Companies (Acquisition of Shares) Act 1980*” (wherever occurring) there were substituted the passage “*Companies (Acquisition of Shares) (Western Australia) Code*”.
3. For the words “Supreme Court of the Australian Capital Territory” (wherever occurring) there were substituted the words “Supreme Court of Western Australia”.
4. For the expression “*Companies Act 1981*” (wherever occurring) there were substituted the words “*Companies (Western Australia) Code*”.
5. For the words “Companies Regulations” (wherever occurring) there were substituted the words “*Companies (Western Australia) Regulations*”.

[Schedule 2 amended in Gazette 25 Jun 1982 p. 2085.]

Schedule 3

Schedule 3

Section 9.

The provisions of regulations in force for the time being under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth apply as if in those regulations:

1. For the words “the Act” (wherever occurring) there were substituted the words “the *Companies (Acquisition of Shares) (Western Australia) Code*”,

Schedule 4

Section 11.

The following headings and sections shall be included in the publication of the provisions of the Commonwealth Act under section 11:

“COMPANIES (ACQUISITION OF SHARES)
(WESTERN AUSTRALIA) CODE

RELATING TO THE ACQUISITION OF SHARES IN COMPANIES INCORPORATED
IN WESTERN AUSTRALIA AND MATTERS CONNECTED THEREWITH.

Part 1 — Preliminary

1. This Code may be cited as the *Companies (Acquisition of Shares) (Western Australia) Code*.
2. This Code comes into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*, comes into operation.
3. This Code shall be read and construed together with 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.
4. This Code has effect subject to and in accordance with the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*.
5. This Code has effect subject to and in accordance with the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.”

Schedule 5

Schedule 5

Section 12.

The following headings and provisions shall be included in the publication under section 12 of the provisions of regulations in force for the time being under the Commonwealth Act:

“COMPANIES (ACQUISITION OF SHARES)
(WESTERN AUSTRALIA) REGULATIONS

1. (1) These Regulations may be cited as the *Companies (Acquisition of Shares) (Western Australia) Regulations*.
- (2) These Regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* comes into operation.
- (3) These Regulations have effect subject to and in accordance with —
 - (a) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; and
 - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.” .

Schedule 6

Section 13.

The following headings and provisions shall be included in the publication under section 13 of the Schedule to regulations in force for the time being prescribing fees under the *Companies (Acquisition of Shares-Fees) Act 1980* of the Commonwealth:

“COMPANIES (ACQUISITION OF SHARES-FEES)
(WESTERN USTRALIA) REGULATIONS

1. These Regulations may be cited as the *Companies (Acquisition of Shares-Fees) (Western Australia) Regulations*.
2. These Regulations shall come into operation on the day on which the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* comes into operation.
3. These Regulations have effect subject to and in accordance with —
 - (a) the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*; and
 - (b) the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981*.
4. The fees payable for the purposes of section 9 of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981* are the fees specified in the Schedule in relation to the respective matters so specified.

SCHEDULE

FEES ”.

Notes

¹ This is a compilation of the *Companies (Acquisition of Shares) (Application of Laws) Act 1981*. The following table contains information about that Act.

Compilation table

Short title	Number and Year	Assent	Commencement
<i>Companies (Acquisition of Shares) (Application of Laws) Act 1981</i>	30 of 1981	26 May 1981	Proclaimed 1 Jul 1981; (see s. 2 and <i>Gazette</i> 29 Jun 1981 p. 2437)
<i>Companies (Acquisition of Shares) (Application of Laws) Regulations 1981</i> (see <i>Gazette</i> 25 Sep 1981 p. 4080)			1 Oct 1981
<i>Companies (Acquisition of Shares) (Application of Laws) Regulations 1982</i> (see <i>Gazette</i> 25 Jun 1982 p. 2085)			1 Jul 1982
<i>Companies (Consequential Amendments) Act 1982 Pt. IV</i>	10 of 1982	14 May 1982	Section 11-14 operative 1 Jul 1981; Balance operative 1 Jul 1982 (see s. 2(1))
<i>Companies (Acquisition of Shares) (Application of Laws) Regulations 1983</i> (see <i>Gazette</i> 30 Dec 1983 p. 5026)			1 Jan 1984
<i>Companies (Acquisition of Shares) (Application of Laws) Regulations 1986</i> (see <i>Gazette</i> 27 Mar 1986 p. 1344)			31 Mar 1986
<i>Companies (Acquisition of Shares) (Application of Laws) (No. 2) Regulations 1986</i> (see <i>Gazette</i> 27 Jun 1986 p. 2162-3)			24 Jun 1986
<i>Companies (Acquisition of Shares) (Application of Laws) (No. 3) Regulations 1986</i> (see <i>Gazette</i> 5 Sep 1987 p. 3269 70)			1 Sep 1986
<i>Companies and Securities Legislation (Miscellaneous Amendments) Act 1988 Pt. 5</i>	48 of 1988	1 Dec 1988	1 Feb 1989 (see s. 2 and <i>Gazette</i> 27 Jan 1989 p. 263)