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**Companies (Miscellaneous Amendments) Act 1981**

**No. 92 of 1981**

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**Companies (Miscellaneous Amendments) Act 1981**

**No. 92 of 1981**

**An Act to make certain amendments consequent upon the enactment of the *Companies Act* 1981 and for other purposes**

[*Assented to 18 June 1981*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Companies* (*Miscellaneous Amendments*) *Act* 1981.

**Commencement**

**2.** **(1)** Part I of this Act shall come into operation on the day on which this Act receives the Royal Assent.

**(2)** Division 1 of Part XI of this Act shall come into operation on the day on which this Act receives the Royal Assent or, if on that day the *Companies* (*Acquisition of Shares*) *Act* 1980 has not come into operation, on the day on which the *Companies* (*Acquisition of Shares*) *Act* 1980 comes into operation.

**(3)** The provisions of this Act other than the provisions referred to in sub-sections (1) and (2) shall come into operation on the day on which the *Companies Act* 1981 comes into operation.

**PART II—AMENDMENTS OF ABORIGINAL COUNCILS AND ASSOCIATIONS ACT 1976**

**Principal Act**

**3.** The *Aboriginal Councils and Associations Act* 1976ˡ is in this Part referred to as the Principal Act.

**Interpretation**

**4.** Section 3 of the Principal Act is amended by omitting paragraph (b) of the definition of “unauthorized name” and substituting the following paragraph:

“(b) a name of a kind that the Ministerial Council for Companies and Securities has, for the purposes of the *Companies Act* 1981, directed the National Companies and Securities Commission not to accept for registration under that Act.”.

**5.** Section 62 of the Principal Act is repealed and the following section substituted:

**Application of provisions of Companies Act relating to compositions with creditors**

“62. Subject to this Act, the provisions of the *Companies Act* 1981 that relate to compromises or arrangements between companies and their creditors apply, so far as they are capable of application and subject to such modifications, adaptations and exceptions (if any) as are prescribed, to and in relation to Incorporated Aboriginal Associations and, in the application of those provisions—

(a) a reference to a company shall be read as a reference to an Incorporated Aboriginal Association;

(b) a reference to the directors of a company shall be read as a reference to the members of the Governing Committee of an Incorporated Aboriginal Association; and

(c) a reference to the Court shall be read as a reference to the Federal Court of Australia.”.

**6.** Section 67 of the Principal Act is repealed and the following section substituted:

**Application of provisions of Companies Act to winding up of Incorporated Aboriginal Associations**

“67. Subject to this Act, the provisions of the *Companies Act* 1981 that relate to the winding up of companies incorporated under that Act apply, so far as they are capable of application and subject to such modifications, adaptations and exceptions (if any) as are prescribed, to and in relation to the winding up of Incorporated Aboriginal Associations and, in the application of those provisions—

(a) a reference to a company shall be read as a reference to an Incorporated Aboriginal Association;

(b) a reference to the directors of a company shall be read as a reference to the members of the Governing Committee of an Incorporated Aboriginal Association;

(c) a reference to the secretary of a company shall be read as a reference to the public officer of an Incorporated Aboriginal Association;

(d) a reference to the principal place of business of a company shall be read as a reference to the official address of the public officer of an Incorporated Aboriginal Association;

(e) a reference to the Court shall be read as a reference to the Federal Court of Australia; and

(f) a reference to the Commission shall be read as a reference to the Registrar of Aboriginal Corporations.”.

**PART III—AMENDMENT OF ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) ACT 1976**

**Principal Act**

**7.** The *Aboriginal Land Rights* (*Northern Territory*) *Act* 1976² is in this Part referred to as the Principal Act.

**Offence in connection with mining interest**

**8.** Section 47 of the Principal Act is amended by omitting from sub-section (3) *“Companies Ordinance* 1962-74 of the Australian Capital Territory” and substituting *“Companies Act* 1981”.

**PART IV—AMENDMENTS OF AUSTRALIAN BICENTENNIAL AUTHORITY ACT 1980**

**Principal Act**

**9.** The *Australian Bicentennial Authority Act* 19803 is in this Part referred to as the Principal Act.

**Power of Prime Minister to terminate appointment of Chairman in certain circumstances**

**10.** Section 7 of the Principal Act is amended by omitting from sub-section (5) “sections 120 and 121 of the *Companies Ordinance* 1962” and substituting “sections 225 and 226 of the *Companies Act* 1981”.

**Appointment of senior officers of Authority**

**11.** Section 8 of the Principal Act is amended by omitting “sub-section 132 (2) of the *Companies Ordinance* 1962” and substituting “sub-section 236 (2) of the *Companies Act* 1981”.

**Authority may form, and invest in, companies for certain purposes**

**12.** Section 13 of the Principal Act is amended by omitting from sub-section (2) *“Companies Ordinance* 1962” and substituting *“Companies Act* 1981”.

**Exemption from taxation**

**13.** Section 19 of the Principal Act is amended by omitting from sub-section (4) *“Companies Ordinance* 1962” and substituting *“Companies Act* 1981”.

**Winding up of Authority**

**14.** Section 21 of the Principal Act is amended—

(a) by omitting from paragraph (a) of sub-section (3) *“Companies Ordinance* 1962” and substituting *“Companies Act* 1981”;

(b) by omitting from sub-paragraph (i) of paragraph (b) of sub-section (3) “Registrar of Companies holding office under the *Companies Ordinance* 1962” and substituting ‘‘office of the Corporate Affairs Commission for the Australian Capital Territory”; and

(c) by omitting from paragraph (c) of sub-section (3) “sub-sections 254 (2) and (3) of the *Companies Ordinance* 1962” and substituting “sub-sections 254 (2) and (3) of the *Companies Act* 1981”.

**PART V—AMENDMENT OF AUSTRALIAN CAPITAL TERRITORY SUPREME COURT ACT 1933**

**Principal Act**

**15.** The *Australian Capital Territory Supreme Court Act* 19334 is in this Part referred to as the Principal Act.

**Rules of court**

**16.** Section 28 of the Principal Act is amended—

(a) by inserting in paragraph (b) of sub-section (1) “of the Commonwealth or” after “any law”; and

(b) by omitting sub-section (5).

**PART VI—AMENDMENT OF AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) ACT 1969**

**Principal Act**

**17.** The *Australian Capital Territory Taxation* (*Administration*) *Act* 19695 is in this Part referred to as the Principal Act.

**18.** The Principal Act is amended by adding at the end of Part III the following Division:

***“Division* 10—*Registration of Transfers of Marketable Securities by Companies***

**Transfer of marketable securities not to be registered unless duly stamped**

“58a. A transfer of a share in the capital of, or a debenture of, a company shall not be registered, recorded or entered in the books of the company unless the instrument of transfer—

(a) bears a statement in respect of the sale or purchase to which the transaction relates, made in accordance with section 52 of this Act or in

accordance with a provision of a law of a State or another Territory relating to stamp duty, to the effect that stamp duty, if payable, has been or will be paid;

(b) has been duly stamped for the purposes of this Act or of a law of a State or another Territory relating to stamp duty; or

(c) bears a stamp affixed or impressed under section 17 of this Act or under a provision of a law of a State or another Territory relating to stamp duty to the effect that no tax or stamp duty is payable.”.

**PART VII—AMENDMENTS OF BANKS (SHAREHOLDINGS) ACT 1972**

**Principal Act**

**19.** The *Banks* (*Shareholdings*) *Act* 19726 is in this Part referred to as the Principal Act.

**Interests in shares**

**20.** Section 8 of the Principal Act is amended—

(a) by omitting paragraph (a) of sub-section (3) and substituting the following paragraph:

“(a) a right, being a right or an interest of a kind described in the definition of ‘prescribed interest’ in sub-section (1) of section 5 of the *Companies Act* 1981, was issued or offered to the public for subscription or purchase;”;

(b) by omitting from paragraph (c) of sub-section (3) “that section or corresponding provision” and substituting “section 164 of the *Companies Act* 1981”; and

(c) by omitting sub-paragraph (i) of paragraph (a) of sub-section (5) and substituting the following sub-paragraph:

“(i) a corporation that, by virtue of sub-section (5) of section 7 of the *Companies Act* 1981, is related to that other person;”.

**PART VIII—AMENDMENT OF FINANCIAL CORPORATIONS ACT 1974**

**Principal Act**

**21.** The *Financial Corporations Act* 19747 is in this Part referred to as the Principal Act.

**Related corporations**

**22.** Section 7 of the Principal Act is amended by omitting from sub-section (1) *“Companies Ordinance* 1962-1973 of the Australian Capital Territory or, if that Ordinance is amended, under that Ordinance as amended” and substituting *“Companies Act* 1981”.

**PART IX—AMENDMENTS OF INDUSTRIAL RESEARCH AND DEVELOPMENT GRANTS ACT 1967**

**Principal Act**

**23.** The *Industrial Research and Development Grants Act* 19678 is in this Part referred to as the Principal Act.

**Interpretation**

**24.** Section 5 of the Principal Act is amended—

(a) by inserting “of the Commonwealth,” after “law” in paragraph (a) of the definition of “eligible company” in sub-section (1); and

(b) by omitting from paragraph (b) of sub-section (9) *“Companies Ordinance* 1962-1971 of the Australian Capital Territory, but, in determining such a question, paragraph (b) of sub-section (1) of section 6 of that Ordinance shall be disregarded” and substituting *“Companies Act* 1981, but, in determining such a question, paragraph (b) of sub-section (1) of section 7 of that Act shall be disregarded”.

**PART X—AMENDMENTS OF INSURANCE ACT 1973**

**Principal Act**

**25.** The *Insurance Act* 19739 is in this Part referred to as the Principal Act.

**Interpretation**

**26.** Section 3 of the Principal Act is amended by omitting sub-section (2).

**References to related bodies corporate**

**27.** Section 4 of the Principal Act is amended by omitting *“Companies Ordinance* 1962-1973 of the Australian Capital Territory, are related to each other would be determined under that Ordinance if, in section 6 of that Ordinance” and substituting *“Companies Act* 1981, are related to each other would be determined under that Act if, in section 7 of that Act”.

**Application for authority**

**28.** Section 22 of the Principal Act is amended by omitting from paragraph (e) of sub-section (2) “under the law of a State or Territory” and substituting “under the law in force in a State or Territory”.

**Valuation of assets**

**29.** Section 33 of the Principal Act is amended by omitting “interests within the meaning of Division 5 of Part IV of the *Companies Ordinance* 1962-1973 of the Australian Capital Territory” from the definition of “securities” in sub-section (7) and substituting “prescribed interests as defined by sub-section 5 (1) of the *Companies Act* 1981”.

**Definitions**

**30.** Section 39 of the Principal Act is amended by omitting from sub-section (4) “the Ninth Schedule to the *Companies Ordinance* 1962-1973 of the Australian Capital Territory” and substituting “the regulations in force for the time being under sub-section 269 (8) of the *Companies Act* 1981”.

**Appointment of auditor**

**31.** Section 46 of the Principal Act is amended by inserting in paragraph (1) (b) “under a law in force” after “auditor”.

**Definitions**

**32.** Section 50 of the Principal Act is amended—

(a) by inserting “prescribed” before “interests” (twice occurring) in the definition of “affairs” in sub-section (1); and

(b) by omitting the definition of “interest” from sub-section (1) and substituting the following definition:

“ ‘prescribed interest’ means a prescribed interest as defined by sub-section 5 (1) of the *Companies Act* 1981;”.

**Part IV not to affect operation of certain laws**

**33.** Section 102 of the Principal Act is amended by inserting “of the Commonwealth or” after “law” (first occurring).

**Part V not to affect operation of certain laws**

**34.** Section 103 of the Principal Act is amended by inserting “of the Commonwealth or” after “law” (first occurring).

**Offences**

**35.** Section 128 of the Principal Act is amended by omitting sub-section (3) and substituting the following sub-section:

“(3) In this section, ‘officer’, in relation to a body corporate, has the same meaning as that expression has in relation to a corporation under the *Companies Act* 1981 by virtue of sub-section 5 (1) of that Act.”.

**PART XI—AMENDMENTS OF LIFE INSURANCE ACT 1945**

***Division 1***—***Amendment Relating to Acquisition of Shares in Companies***

**Documents lodged or furnished under laws relating to acquisition of shares**

**36.** Section 139aof the *Life Insurance Act* 194510 is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A company, being a company registered under this Act or the holding company of a company so registered, shall, within 7 days after—

(a) the company lodges a document, or a copy of a document, with a person holding an office established by or under a law of the Commonwealth, of a State or of a Territory or with a body so established; or

(b) a document, or a copy of a document, is furnished to the company, for the purposes of the *Companies* (*Acquisition of Shares*) *Act* 1980 or the corresponding law of a State or of a Territory other than the Australian Capital Territory, lodge a copy of that document with the Commissioner.”.

***Division 2*—*Amendments Consequential on Enactment of Companies Act 1981***

**Principal Act**

**37.** The *Life Insurance Act* 194510 is in this Division referred to as the Principal Act.

**Interpretation**

**38.** Section 4 of the Principal Act is amended by omitting sub-section (9).

**Terms and conditions of appointment**

**39.** Section 9a of the Principal Act is amended by omitting from sub-section (4) *“Companies Ordinance* 1962 of the Australian Capital Territory, are related to each other would be determined under that Ordinance if, in section 6 of that Ordinance” and substituting *“Companies Act* 1981, are related to each other would be determined under that Act if, in section 7 of that Act”.

**Documents lodged or furnished under laws relating to acquisition of shares**

**40.** Section 139a of the Principal Act is amended—

(a) by omitting from sub-section (2) *“Companies Ordinance* 1962 of the Australian Capital Territory” and substituting *“Companies Act* 1981”; and

(b) by omitting from sub-section (2) “that Ordinance” (twice occurring) and substituting “that Act”.

**PART XII—AMENDMENT OF PETROLEUM (SUBMERGED LANDS) (REGISTRATION FEES) ACT 1967**

**Principal Act**

**41.** The *Petroleum* (*Submerged Lands*)(*Registration Fees*) *Act* 196711 is in this Part referred to as the Principal Act.

**Imposition of registration fees**

**42.** Section 4 of the Principal Act is amended by omitting from paragraph (a) of sub-section (5) *“Companies Ordinance* 1962-66 of the Australian Capital Territory or, if that Ordinance is amended, of that Ordinance as so amended” and substituting *“Companies Act* 1981”.

**PART XIII—AMENDMENT OF STRUCTURAL ADJUSTMENT (LOAN GUARANTEES) ACT 1974**

**Principal Act**

**43.** The *Structural Adjustment* (*Loan Guarantees*) *Act* 197412 is in this Part referred to as the Principal Act.

**Further conditions relating to guarantees**

**44.** Section 8 of the Principal Act is amended by omitting paragraph (a) of sub-section (5) and substituting the following paragraph:

“(a) they are companies that would be deemed to be related to each other for the purposes of the *Companies Act* 1981 if that Act were applicable to them; or”.

**PART XIV—OTHER AMENDMENTS**

**Other amendments**

**45.** The Acts specified in the Schedule are amended as set out in that Schedule.

**SCHEDULE** Section 45

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| Acts | Provisions | Amendments |
| *Australian Industry Development Corporation Act* 1970 | Sub-section 4 (1) (paragraph (b) of definition of “approved auditor”) | Omit “a law of”, substitute “a law in force in” |
| *Commonwealth Employees* (*Employment Provisions*) *Act* 1977 | Sub-section 3 (1) (definition of “Commonwealth authority”) | Insert “of the Commonwealth or” after “law” (second occurring) |
| *Commonwealth Employees* (*Redeployment and Retirement*) *Act* 1979 | Sub-section 3 (1) (paragraph (c) of definition of “prescribed Commonwealth authority”) | Insert “of the Commonwealth or after “law” |
| *Defence Force Retirement and Death Benefits Act* 1973 | Sub-paragraph 71 (1) (b) (iii)  | Insert “of the Commonwealth or” after “law” |
| *Defence Forces Retirement Benefits Act* 1948 | Paragraph 82u (1) (b)  | Insert “of the Commonwealth or” after “law” (second occurring) |
| *Estate Duty Assessment Act* 1914 | Sub-section 9a (1) (paragraph (a) of definition of “family company”) | Insert “of the Commonwealth or after “law” |
| *Gift Duty Assessment Act* 1941 | Paragraph 13 (g)  | Insert “of the Commonwealth,” after “law” |
| *Homes Savings Grant Act* 1964  | Sub-section 4b (1) (definition of “registered company auditor”) | Omit “of a State or of a Territory”, substitute “in force in a State or Territory” |
| *Income Tax Assessment Act* 1936 | Sub-section 82l (1) (definition of “qualified person”) | Omit “the law of”, substitute “a law in force in” |
|  | Sub-paragraph 103a (2) (d) (iii)  | Omit “of a State or Territory relating to companies”, substitute “in force in a State or Territory relating to companies” |
| *Industrial Research and Development Incentives Act* 1976 | Sub-section 4 (1) (paragraph (a) of definition of “eligible company”) | Omit “the law of a State or of”, substitute “a law in force in a State or” |
| *National Health Act* 1953  | Section 74a  | Insert “of the Commonwealth or” after “law” |
| *Service and Execution of Process Act* 1901 | Sub-paragraph 4 (2) (b) (i)  | Omit “of that State or Territory”, substitute “in force in that State or Territory” |
|  | Sub-paragraph 11 (1) (i) (i)  | Omit “of a State or Territory” substitute “in force in a State or Territory” |
| *States Grants* (*Advanced Education*) *Act* 1972 | Sub-section 2 (1) (paragraph (a) of definition of “qualified accountant”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Advanced Education*) *Act* 1976 | Sub-section 3 (1) (paragraph (a) of definition of “qualified accountant”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Advanced Education Assistance*) *Act* 1976 | Sub-section 3 (1) (paragraph (a) of definition of “qualified accountant”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Independent Schools*) *Act* 1969 | Sub-section 2 (1) (paragraph (a) of definition of “qualified accountant”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Schools*) *Act* 1972 | Sub-section 4 (1) (paragraph (a) of definition of “qualified accountant”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Schools*) *Act* 1973 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |
| *States Grants (Schools) Act* 1976 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |
| *States Grants* (*Schools Assistance*) *Act* 1976 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |
| *States Grants* (*Schools Assistance*) *Act* 1977 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant)” | Omit “a law of”, substitute “a law in force in” |
| *States Grants* (*Schools Assistance*) *Act* 1978 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |

**SCHEDULE**—continued

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| --- | --- | --- |
| Acts | Provisions | Amendments |
| *States Grants* (*Schools Assistance*) *Act* 1979 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |
| *States Grants* (*Technical and Further Education Assistance*) *Act* 1976 | Sub-section 3 (1) (paragraph (a) of definition of “certificate by a qualified accountant”) | Omit “a law of”, substitute “a law in force in” |
| *States Grants* (*Tertiary Education Assistance*) *Act* 1977 | Sub-section 3 (1) (paragraph (b) of definition of “qualified auditor”) | Omit “the law of”, substitute “a law in force in” |
| *States Grants* (*Tertiary Education Assistance*) *Act* 1978 | Sub-section 3 (1) (sub-paragraph (a) (ii) of definition of “qualified auditor”) | Omit “the law of”, substitute “a law in force in” |
| *Superannuation Act* 1922  | Paragraph 119p (1) (b)  | Insert “of the Commonwealth or” after “law” (second occurring) |
| *Superannuation Act* 1976  | Sub-section 3 (1) (sub-paragraph (a) (iii) of definition of “approved authority”) | Insert “of the Commonwealth or” after “law” |
|  | Sub-paragraph 132 (1) (b) (iii)  | Insert “of the Commonwealth or” after “law” |
| *Tobacco Charge Act* (*No.* 2) 1955 | Section 3  | Insert “of the Commonwealth or” after “law” |

**NOTES**

1. No. 186, 1976, as amended. For previous amendments, see No. 56, 1978.

2. No. 191, 1976, as amended. For previous amendments, see Nos. 21, 70 and 83, 1978; No. 189, 1979; and No. 72, 1980.

3. No. 49, 1980.

4. No. 34, 1933, as amended. For previous amendments, see No. 27, 1935; No. 57, 1945; No. 52, 1947; No. 65, 1948; Nos. 51 and 80, 1950; Nos. 17 and 36, 1955; No. 47, 1956; No. 34, 1957; No. 43, 1958; No. 51, 1959; No. 110, 1960; No. 109, 1964; No. 92, 1965; Nos. 8 and 93, 1966; No. 156, 1968; No. 40, 1969; Nos. 13 and 98, 1971; No. 216, 1973 (as amended by No. 20, 1974); No. 158, 1976; and No. 3, 1978.

5. No. 42, 1969, as amended. For previous amendments, see No. 216, 1973 (as amended by No. 20, 1974).

6. No. 2, 1972, as amended. For previous amendments, see No. 216, 1973 (as amended by No. 20, 1974).

7. No. 36, 1974, as amended. For previous amendments, see No. 157, 1976.

8. No. 51, 1967, as amended. For previous amendments, see No. 59, 1972; No. 201, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 85, 1976; and No. 36, 1978.

9. No. 76, 1973, as amended. For previous amendments, see No. 216, 1973 (as amended by No. 20, 1974); No. 157, 1976; and No. 31, 1977.

10. No. 28, 1945, as amended. For previous amendments, see Nos. 65 and 80, 1950; No. 94, 1953; No. 3, 1958; No. 93, 1959; No. 29, 1961; No. 145, 1965; No. 78, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 32, 1977; and No. 177, 1978.

11. No. 123, 1967, as amended. For previous amendments, see No. 82, 1980.

12. No. 155, 1974.