

Queensland



ANNO TRICESIMO

ELIZABETHAE SECUNDAE REGINAE

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No. 112 of 1981

**An Act to establish the Commissioner for Corporate Affairs as a body corporate, to establish the Companies Auditors and Liquidators Disciplinary Board, to amend the Companies Act 1961–1981 the Securities Industry Act 1975–1978 and certain other Acts and for other purposes**

[ASSENTED TO 16TH DECEMBER, 1981]

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PART I—PRELIMINARY

**1. Short title.** This Act may be cited as the *Companies (Administration) Act 1981*.

**2. Commencement.** (1) Section 1 and this section shall commence on the day on which this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided by subsection (1) the provisions of this Act shall commence on a day or days appointed by Proclamation or successive Proclamations.

**3. Interpretation.** In this Act, unless the contrary intention appears—  
“ Commissioner ” means the Commissioner for Corporate Affairs established under section 7;

“ Minister ” includes a Minister of the Crown who is temporarily performing the duties of the Minister.

**4. Division into Parts.** This Act is divided into Parts as follows:—  
PART I—PRELIMINARY (ss. 1–4);

PART II—COMMISSIONER FOR CORPORATE AFFAIRS (ss. 5–14);

PART III—COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD (ss. 15–21);

PART IV—AMENDMENT OF CERTAIN ACTS (ss. 22–27).

PART II—COMMISSIONER FOR CORPORATE AFFAIRS

**5. Appointment of Commissioner and other officers.** (1) The Governor in Council may, subject to this Act, appoint a Commissioner for Corporate Affairs.

(2) The Commissioner shall be appointed and hold office under and in accordance with the *Public Service Act 1922–1978*.

(3) The Governor in Council may, under and in accordance with the *Public Service Act 1922–1978*, appoint such Deputy or Assistant Commissioners for Corporate Affairs and other officers, and employ such employees, as are required to assist the Commissioner in the exercise of his powers, authorities, duties and functions under this or any other Act or any law.

(4) Officers and employees referred to in subsection (3) shall be under the direction of the Commissioner and shall perform such duties as may be assigned by the Commissioner.

(5) A person who is the Commissioner for Corporate Affairs, a Deputy or Assistant Commissioner for Corporate Affairs, an officer or employee referred to in subsection (3) or a person referred to in section 6 (1) is, for the purposes of the *National Companies and Securities Commission (State Provisions) Act 1981* a person appointed for the purposes of this Act.

**6. Saving of appointments.** (1) All persons appointed or employed under, pursuant to or for the purposes of Part XII of the *Securities Industry Act 1975-1978* and every person who pursuant to section 137 of that Act is to be taken to have been appointed or employed under that Act and holding office or employed at the commencement of this Part shall remain in office or employment, as the case may be, as if this Act had been in force at the time when they were appointed or employed or taken to have been appointed or employed and they shall for all purposes be deemed to have been appointed or employed pursuant to section 5 (3) of this Act.

(2) Without limiting the generality of subsection (1)—

- (a) the person who, at the commencement of this Part was the Commissioner for Corporate Affairs; and
- (b) every person who, at the commencement of this Part was a Deputy or Assistant Commissioner for Corporate Affairs.

for the purposes of the *Securities Industry Act 1975-1978* shall without any further or other appointment be the Commissioner for Corporate Affairs or, as the case may be, a Deputy or Assistant Commissioner for Corporate Affairs for the purposes of this Act.

**7. Commissioner to be body corporate.** (1) The Commissioner for Corporate Affairs referred to in section 5 (1) is hereby constituted a corporation sole under the name of the "Commissioner for Corporate Affairs" and shall by that name have perpetual succession and a common seal and be capable in law of suing and being sued and of acquiring, holding and disposing of real and personal property and of doing and suffering all such acts and things as bodies corporate may by law do or suffer.

(2) Every court shall take judicial notice of the common seal of the Commissioner affixed to an instrument or writing and, unless the contrary is established, shall presume that it was duly affixed.

(3) In the performance of a function or the exercise of a power under an Act or a law in force in the State the Commissioner represents the Crown in right of the State.

**8. Seal.** The common seal of the Commissioner may be affixed to an instrument or writing by the Commissioner for Corporate Affairs referred to in section 5 (1) or by—

- (a) a Deputy or Assistant Commissioner for Corporate Affairs;
- (b) an officer or employee referred to in section 5 (3); or
- (c) a person referred to in section 6 (1),

authorized in writing so to do either generally or in a particular case or class of cases and the Commissioner for Corporate Affairs or other person so authorized shall attest by his signature the fact and date of the seal being so affixed.

**9. Execution of documents.** (1) A Deputy or Assistant Commissioner authorized in writing to do so by the Commissioner may, in his own name, execute any document on behalf of the Commissioner.

(2) Where a Deputy or Assistant Commissioner has been authorized, as referred to in subsection (1), to execute any document on behalf of the Commissioner, that document may be executed in the name and on behalf of that Deputy or Assistant Commissioner by any person authorized in writing by that Deputy or Assistant Commissioner to do so.

(3) A document purporting to be executed as referred to in subsections (1) and (2) shall be deemed to have been duly executed by the Commissioner unless it is proved that the person who executed it was not duly authorized as referred to in subsection (1) or (2), as the case may be, and shall be admissible in evidence in any proceedings in the same way as it would be if it had been executed by the Commissioner.

**10. Powers.** The Commissioner shall have and may perform and exercise such functions and powers as may be conferred or imposed on the Commissioner by or under this or any other Act or any law in force in the State or any law of the Commonwealth or any law of or in force in a Territory of the Commonwealth or another State.

**11. Delegation by Commissioner.** (1) Except as otherwise expressly provided by this or any other Act, the Commissioner may, either generally or as otherwise provided by the instrument of delegation, by writing under the common seal of the Commissioner, delegate to any person all or any functions or powers that are imposed or conferred on the Commissioner by or under any Act (other than functions or powers the delegation of which is prohibited by the Act) or otherwise imposed or conferred on the Commissioner.

(2) The Commissioner may, by writing under the common seal of the Commissioner, revoke, wholly or in part, any delegation under subsection (1).

(3) A delegation under subsection (1) may be to—

- (a) a specified person (whether a natural person or a body corporate); or
- (b) the person for the time being holding a specified office under an Act or the person for the time being occupying a position in the Public Service of the State being a position that is specified in the instrument of delegation.

(4) Except in so far as the instrument of delegation otherwise provides, a person to whom a function or power has been delegated under subsection (1) may—

- (a) in the case of a natural person—by writing under his hand; or
- (b) in the case of a body corporate—by writing under its common or official seal,

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

(5) An authority under subsection (4) may be given to—

- (a) a specified person; or
- (b) the person for the time being occupying a position in the Public Service of the State, being a position that is specified in the instrument by which the authority is given.

(6) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or that power has been delegated by the Commissioner under subsection (1) or by a person authorized by a delegate of the Commissioner under subsection (4) to perform that function or exercise that power has the same force and effect as if it had been done by the Commissioner.

(7) Where, under any Act or law that imposes or confers functions or powers on the Commissioner, the performance of a function or the exercise of a power by the Commissioner is dependent upon the opinion, belief or state of mind of the Commissioner in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate or by a person authorized by the delegate under subsection (4) upon the opinion, belief or state of mind of the delegate or of the authorized person, as the case may be, in relation to that matter.

(8) A delegation under subsection (1) does not prevent the performance of a function or the exercise of a power by the Commissioner.

(9) The giving of an authority under subsection (4) does not prevent the performance of a function or the exercise of a power by the person by whom the authority was given.

(10) Where a person purports to perform a function or exercise a power conferred on the Commissioner by or under an Act or law, it shall be presumed, unless the contrary is established, that the person is duly authorized as a delegate of the Commissioner or as a person duly authorized by such a delegate to perform the function or exercise the power.

(11) A document purporting to be signed by a person as a delegate of the Commissioner shall be deemed, unless the contrary is established, to have been signed by such a delegate and to have been so signed pursuant to the performance of a function or the exercise of a power duly delegated to the person by the Commissioner.

(12) A document purporting to be signed by a person authorized by a delegate of the Commissioner to sign the document shall be deemed, unless the contrary is established to have been signed by a person so authorized and to have been so signed pursuant to the performance of a function or the exercise of a power that he is duly authorized by such a delegate to perform or exercise.

(13) A delegation or authority under this section may be made or given subject to such conditions or such limitations as to the performance or exercise of any of the functions or powers delegated, or as to time or circumstances, as may be specified in the instrument of delegation or authority.

(14) Nothing in this section applies to a function or power that the Commissioner has by virtue of a delegation from the National Companies and Securities Commission.

**12. Directions by Commissioner.** Where the Commissioner has delegated a function or power to a person under section 11—

- (a) the Commissioner may give directions to the delegate with respect to the performance of that function or the exercise of that power; and
- (b) if the delegate has, under section 11 (4), authorized another person to perform that function or exercise that power, the delegate—
  - (i) shall, if the Commissioner has given a direction to the delegate under paragraph (a) with respect to the performance of that function or the exercise of that power, give a corresponding direction to the other person; and
  - (ii) may, subject to any direction given to the delegate by the Commissioner under paragraph (a), give directions to the other person with respect to the performance of that function or the exercise of that power.

**13. Transitional.** (1) The Commissioner under this Act is the successor in law of the Commissioner for Corporate Affairs under the *Securities Industry Act 1975–1978* as in force immediately before the commencement of section 24.

(2) Any proceedings instituted by or against the Commissioner (whether referring to him personally or as Commissioner for Corporate Affairs or both) before the commencement of section 24 may be continued and concluded after the commencement of this Part in all respects as if the proceedings were instituted by or against the Commissioner after the commencement of this Part.

**14. Offices of Commissioner.** For the purpose of enabling the Commissioner to perform and exercise the functions and powers imposed and conferred upon him by this or any other Act or law there shall be offices of the Commissioner at Brisbane, Rockhampton and Townsville and at such other places as are appointed by Order in Council.

**PART III—COMPANIES AUDITORS AND LIQUIDATORS DISCIPLINARY BOARD**

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

(2) The Board shall consist of 3 persons of whom—

- (a) one shall be a duly qualified legal practitioner of not less than 5 years' standing who shall be the chairman of the Board;

- (b) one shall be selected from a panel of 3 names nominated by the Council of The Institute of Chartered Accountants in Australia (Queensland Branch); and
- (c) one shall be selected from a panel of 3 names nominated by the Queensland Divisional Council of the Australian Society of Accountants.

(3) The members of the Board shall be appointed by Order in Council on the recommendation of the Minister.

(4) A member of the Board may, with the approval of the Minister, appoint a person to be his deputy and the deputy shall hold office during the pleasure of the Minister.

(5) A person appointed to be the deputy of the chairman of the Board shall be a duly qualified legal practitioner of not less than 5 years' standing.

(6) The deputy of a member of the Board shall be, in the event of the absence of the member of whom he is the deputy from a meeting of the Board, entitled to attend that meeting, and when so attending, shall be deemed to be a member of the Board and, in the case of the deputy of the chairman of the Board, shall be deemed to be the chairman of the Board.

(7) Any appointment of a deputy and any act done by him as such shall not be questioned on the ground that the occasion for the exercise of his powers or functions had not arisen or had ceased.

(8) Each member and the deputy of each member of the Board shall be entitled to such remuneration as is prescribed by Order in Council.

**16. Term of office.** Each member of the Board shall hold office for such time not exceeding 3 years as is fixed by the terms of his appointment and shall be eligible for re-appointment.

**17. Vacation of office.** A member of the Board shall be deemed to have vacated his office—

- (a) if without leave of the Board, he is absent from 3 consecutive meetings of the Board;
- (b) if he becomes an insolvent under administration within the meaning of the *Companies (Queensland) Code*;
- (c) if he is convicted of an offence involving fraud or dishonesty punishable on conviction by imprisonment for 3 months or more;
- (d) if he becomes incapable by reason of mental infirmity of managing his affairs;
- (e) if his appointment is terminated by the Minister under section 20; or
- (f) if he resigns or dies.

**18. Proceedings of Board.** (1) All business of the Board shall be conducted by a quorum at the least, which shall consist of 2 members.

(2) The Board shall meet at such times and places and shall conduct its business in such manner as it determines from time to time.

(3) The chairman of the Board shall preside at all meetings of the Board at which he is present and in his absence from any meeting his deputy (if any) appointed pursuant to section 15 shall preside but in the absence of both the chairman and his deputy from any meeting the members present shall elect from their number a member who shall preside at the meeting.

(4) The person who presides at a meeting of the Board shall have a deliberative vote and, in the event of an equality of votes, a casting vote.

(5) A proceeding of the Board shall not be invalidated by reason of a defect in the appointment of a member or a deputy of a member or by reason of a vacancy in the membership of the Board.

**19. Disclosure of interest.** (1) A member of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not, unless the Minister or the Board otherwise determines—

(a) be present during any deliberation of the Board with respect to that matter; or

(b) take part in any decision of the Board with respect to that matter.

(3) For the purpose of the making of a determination by the Board under subsection (2) in relation to a member who has made a disclosure under subsection (1), a member who has a direct or indirect pecuniary interest in the matter to which the disclosure relates shall not—

(a) be present during any deliberation of the Board for the purpose of making the determination; or

(b) take part in the making of the determination by the Board.

**20. Termination of appointment with respect to disclosure of interest.** The Minister shall terminate the appointment of a member where a member fails, without reasonable excuse, to comply with the requirements of section 19.

**21. Companies Auditors Board to continue in existence.** (1) Notwithstanding the repeal of sections 8 and 9 of the *Companies Act 1961–1981* by this Act, the Companies Auditors Board established by the *Companies Act 1961–1981* continues in existence for such period as is necessary for the Companies Auditors Board to complete any inquiry under section 9 (9) of the *Companies Act 1961–1981* that had been



commenced by the Companies Auditors Board but had not been completed before the repeal of sections 8 and 9 of the *Companies Act 1961-1981* and the Companies Auditors Board has, for the purposes of completing such an inquiry, all the powers that it would have had if those sections had not been repealed.

(2) Where, pursuant to subsection (1), the Companies Auditors Board completes an inquiry, the Companies Auditors Board shall not exercise any of the powers mentioned in section 9 (11) of the *Companies Act 1961-1981* but shall furnish to the Commissioner a report on the inquiry.

#### PART IV—AMENDMENT OF CERTAIN ACTS

**22. Amendment of Companies Act.** The *Companies Act 1961-1981* is amended as follows:—

(a) in section 5 (1) for the definition of “Commissioner” there shall be substituted the following definition:—

“ “Commissioner” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1981*; ”; and

(b) in section 381—

(i) in subsection (1) after the expression “*Securities Industry Act 1971*” there shall be inserted the expression “or the *Companies (Administration) Act 1981*”; and

(ii) after subsection (3) there shall be inserted the following subsections:—

“ (4) The Commissioner may, with the written consent of the Minister, take proceedings for an offence, other than an offence against this Act.

(5) Nothing in subsection (4) affects the power of the Commissioner to take proceedings under the *Securities Industry Act 1975-1978* or the *Business Names Act 1962-1979* or subject to and in accordance with the *Securities Industry (Queensland) Code*, the *Companies (Acquisition of Shares) (Queensland) Code*, the *Companies (Queensland) Code* or the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Queensland) Code*.”.

**23. Amendment of Companies Act.** The *Companies Act 1961-1981* is amended by repealing sections 8 and 9.

**24. Amendment of Securities Industry Act.** The *Securities Industry Act 1975-1978* is amended as follows:—

(a) in section 2 for the expression “PART XII—COMMISSIONER FOR CORPORATE AFFAIRS AND OTHER OFFICERS (s. 133);” there shall be substituted the expression “PART XII—GENERAL ADMINISTRATION s. 133);”;

(b) in section 4 (1) for the definition of “Commissioner” there shall be substituted the following definition:—

“ “Commissioner” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1981*; ”;

(c) for the heading immediately above section 133 there shall be substituted the following heading:—

“ PART XII—GENERAL ADMINISTRATION ”;

and

(d) for section 133 there shall be substituted the following section:—

“ **133. Administration.** The Commissioner is hereby charged with the administration of this Act and shall have and may exercise and perform such powers, authorities, duties and functions as are conferred or imposed upon the Commissioner by or under this Act.”.

**25. Amendment of Business Names Act.** In section 3 (1) of the *Business Names Act 1962–1979* for the definition of “ Commissioner ” there shall be substituted the following definition:—

“ “ Commissioner ” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1981*; ”.

**26. Amendment of Securities Industry (Application of Laws) Act 1981.** The *Securities Industry (Application of Laws) Act 1981* is amended as follows:—

(a) in section 4 (1) for the definition of “ Commissioner for Corporate Affairs ” there shall be substituted the following definition:—

“ “ Commissioner for Corporate Affairs ” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1981*; ”;

(b) in section 16 subsection (4) shall be omitted; and

(c) in section 24 after the word “ Commissioner ” (where four times occurring) there shall be inserted the words “ for Corporate Affairs ”.

**27. Amendment of Associations Incorporation Act.** In section 5 (1) of the *Associations Incorporation Act 1981* for the definition of “ Commissioner ” there shall be substituted the following definition:—

“ “ Commissioner ” means the Commissioner for Corporate Affairs under the *Companies (Administration) Act 1981*; ”.