

Queensland



# **CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001**

**Reprinted as in force on 4 March 2003  
(includes commenced amendments up to 2003 No. 4)**

**Reprint No. 1A**

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- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

This page is specific to this reprint. See previous reprint for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
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# **CORPORATIONS (ANCILLARY PROVISIONS) ACT 2001**

[as amended by all amendments that commenced on or before 4 March 2003]

**An Act to enact ancillary provisions relating to the enactment by the Parliament of the Commonwealth of new corporations legislation and new ASIC legislation and for other purposes**

## **PART 1—PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Corporations (Ancillary Provisions) Act 2001*.

### **2 Commencement**

(1) This Act, other than schedule 3, comes into operation immediately before the *Corporations Act 2001* (Cwlth), as originally enacted, comes into operation.

(2) Schedule 3 comes into operation when the *Corporations Act 2001* (Cwlth), as originally enacted, comes into operation.

### **3 Purpose**

The purpose of this Act is to enact ancillary provisions, including transitional provisions, relating to the enactment by the Parliament of the Commonwealth of new corporations legislation and new ASIC legislation under its legislative powers, including powers with respect to matters referred to that Parliament for the purposes of section 51(xxxvii) of the Commonwealth Constitution.

*Note—*

The *Corporations (Commonwealth Powers) Act 2001* refers certain matters relating to corporations and financial products and services to the Parliament of the Commonwealth for the purposes of section 51(xxxvii) of the Constitution.

## 4 Definitions

(1) In this Act—

“ASIC” means the Australian Securities and Investments Commission.

“carried over provision”—

- (a) of the old corporations legislation means a provision of that legislation that—
  - (i) was in force immediately before the relevant time; and
  - (ii) corresponds to a provision of the new corporations legislation; and
- (b) of the old ASIC legislation means a provision of that legislation that—
  - (i) was in force immediately before the relevant time; and
  - (ii) corresponds to a provision of the new ASIC legislation.

“cooperative scheme law” has the meaning given by the *Corporations (Queensland) Act 1990*, section 84.

“corresponds” has a meaning affected by section 5.<sup>1</sup>

“law of the State” includes a statutory instrument and any other instrument of a legislative character made under an Act.

“liability” includes duty and obligation.

“made” includes issued, given and published.

“national scheme law of this jurisdiction” has the same meaning as in the *Corporations (Queensland) Act 1990*, section 3(1).

“new ASIC Act” means the *Australian Securities and Investments Commission Act 2001* (Cwlth).

“new ASIC legislation” means—

- (a) the new ASIC Act; and

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<sup>1</sup> Section 5 (Corresponding provision)

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- (b) the new ASIC Regulations (as amended and in force from time to time) and any other regulations made under the new ASIC Act; and
- (c) the laws of the Commonwealth referred to in paragraph (a)(ii) and (in relation to the State) paragraph (b)(iii) of the definition “old ASIC legislation” in section 254(1) of the new ASIC Act, being those laws as they apply after the relevant time; and
- (d) the preserved instruments.

**“new ASIC Regulations”** means the old ASIC Regulations that, because of section 264 of the new ASIC Act, have effect as if they were made under section 251 of that Act.

**“new Corporations Act”** means the *Corporations Act 2001* (Cwlth).

**“new corporations legislation”** means—

- (a) the new Corporations Act; and
- (b) the new Corporations Regulations (as amended and in force from time to time) and any other regulations made under the new Corporations Act; and
- (c) the laws of the Commonwealth referred to (in relation to the State) in paragraph (c) of the definition “old corporations legislation” in section 1371(1) of the new Corporations Act, being those laws as they apply after the relevant time; and
- (d) the preserved instruments.

**“new Corporations Regulations”** means the old Corporations Regulations that, because of section 1380 of the new Corporations Act, have effect as if they were made under section 1364 of that Act.

**“old application Act”** means the *Corporations (Queensland) Act 1990* as in force from time to time before the relevant time.

**“old ASIC Act”** means the *Australian Securities and Investments Commission Act 1989* (Cwlth) as in force from time to time before the relevant time.

**“old ASIC Law”** means the ASIC Law of Queensland, within the meaning of the old application Act, as in force from time to time before the relevant time.

**“old ASIC legislation”** means—

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- (a) the old ASIC Law and the old ASIC Regulations, and any instruments made under that law or those regulations; and
- (b) the old application Act, and any instruments made under that Act, as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time; and
- (c) the laws of the Commonwealth as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time as laws of, or for the government of, the State because of part 8 of the old application Act, and any instruments made under those laws as so applying.

**“old ASIC Regulations”** means the ASIC Regulations of Queensland, within the meaning of the old application Act, as in force from time to time before the relevant time.

**“old Corporations Law”** means the Corporations Law of Queensland, within the meaning of the old application Act, as in force from time to time before the relevant time.

**“old corporations legislation”** means—

- (a) the old Corporations Law and the old Corporations Regulations, and any instruments made under that law or those regulations; and
- (b) the old application Act, and any instruments made under that Act, as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time; and
- (c) the laws of the Commonwealth as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time as laws of, or for the government of, the State because of part 8 of the old application Act, and any instruments made under those laws as so applying.

**“old Corporations Regulations”** means the Corporations Regulations of Queensland, within the meaning of the old application Act, as in force from time to time before the relevant time.

**“order”**, in relation to a court, includes any judgment, conviction or sentence of the court.

**“preserved instrument”** means—

- (a) in relation to the new corporations legislation, an instrument that, because of section 1399 of the new Corporations Act, has effect



after the relevant time as if it were made under a provision of the new corporations legislation; and

- (b) in relation to the new ASIC legislation, an instrument that, because of section 275 of the new ASIC Act, has effect after the relevant time as if it were made under a provision of the new ASIC legislation.

**“previous State corporations law”** means—

- (a) the repealed *Companies Act 1961*; or  
(b) the repealed *Marketable Securities Act 1970*; or  
(c) the repealed *Securities Industry Act 1975*; or  
(d) a cooperative scheme law; or  
(e) any other Act, or provision of an Act, specified under a regulation under subsection (2).

**“provision”** of a law includes any portion of the law.

**“referring State”** has the meaning given by section 4 of the new Corporations Act.

**“relevant time”** means the time when the new Corporations Act, as originally enacted, comes into operation.

**“right”** includes interest and status.

**“State”** includes the Northern Territory.

**“Territory”** means the Australian Capital Territory or the Jervis Bay Territory.

(2) A regulation may provide that a specified Act, or a specified provision of an Act, is a previous State corporations law for the purposes of this Act.

## 5 Corresponding provision

(1) For this Act, a provision (the **“old provision”**) of the old corporations legislation or the old ASIC legislation corresponds to a provision (the **“new provision”**) of the new corporations legislation or the new ASIC legislation (and vice versa) if—

- (a) the old provision and the new provision are substantially the same, unless a regulation specifies that the 2 provisions do not correspond; or

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(b) a regulation specifies that the 2 provisions correspond.

(2) For this Act, a provision (the “**old provision**”) of a previous State corporations law corresponds to a provision (the “**new provision**”) of a national scheme law of this jurisdiction (and vice versa) if—

(a) the old provision and the new provision are substantially the same, unless a regulation specifies that the 2 provisions do not correspond; or

(b) a regulation specifies that the 2 provisions correspond.

(3) For subsection (1)(a), differences of all or any of the following kinds are not enough to mean that 2 provisions are not substantially the same—

(a) the fact that—

(i) the old provision allowed a court to exercise powers on its own initiative or motion but the new provision does not; or

(ii) the old provision required a court to apply a criterion of public interest but the new provision requires a court to apply a criterion of justice and equity; or

(iii) the new provision requires ASIC to take account of public interest but the old provision did not;

(b) other differences that are attributable to the fact that the new corporations legislation and the new ASIC legislation apply as Commonwealth laws in this and other States and in the internal Territories.

(4) For subsection (1)(a) or (2)(a), differences of all or any of the following kinds are not enough to mean that 2 provisions are not substantially the same—

(a) differences in the numbering of the provisions;

(b) differences of a minor technical nature (for example, differences in punctuation, or differences that are attributable to the correction of incorrect cross references);

(c) the fact that one of the provisions refers to a corresponding previous law and the other does not;

(d) other differences of a kind prescribed under a regulation for this paragraph.

(5) Subsections (3) and (4) are not intended to otherwise limit the circumstances in which 2 provisions are, for subsection (1)(a) or (2)(a), substantially the same.

(6) A regulation may provide that—

- (a) a specified provision of the old corporations legislation does, or does not, correspond to a specified provision of the new corporations legislation; or
- (b) a specified provision of the old ASIC legislation does, or does not, correspond to a specified provision of the new ASIC legislation; or
- (c) a specified provision of a previous State corporations law does, or does not, correspond to a specified provision of a national scheme law of this jurisdiction.

## **6 Operation of Act**

This Act has effect despite any provision of the old application Act or of the applicable provisions (as defined in that Act) of the State.

## **PART 2—TRANSITIONAL PROVISIONS**

### **7 National scheme laws**

(1) The national scheme laws of this jurisdiction operate of their own force only in relation to—

- (a) matters arising before the relevant time; and
- (b) matters arising, directly or indirectly, out of matters mentioned in paragraph (a);

in so far as those matters are not dealt with by the new corporations legislation, the new ASIC legislation or the cooperative scheme law.

(2) Except as provided by subsection (1) and section 10,<sup>2</sup> the national scheme laws of this jurisdiction have no operation of their own force at and after the relevant time.

## **8 Effect of section 7**

(1) To the extent that a national scheme law of this jurisdiction ceases to operate of its own force because of section 7, the effect is that which would have resulted had this Act and that law been Commonwealth Acts in relation to which the *Acts Interpretation Act 1901* (Cwlth) as in force on 1 November 2000 applied.

*Note—*

Part III of the *Acts Interpretation Act 1901* (Cwlth) contains provisions dealing with the effect of repeal of an Act. These provisions protect accrued rights and liabilities and allow legal proceedings in respect of them to be commenced or continued. However, this section and section 10 have the effect of cancelling certain rights and liabilities and terminating certain legal proceedings.

(2) Despite subsection (1), if by force of chapter 10 of the new Corporations Act or part 16 of the new ASIC Act a person acquires, accrues or incurs a right or liability in substitution for a pre-commencement right or liability, the pre-commencement right or liability is cancelled at the relevant time and ceases at that time to be a right or liability under a law of the State.

(3) Despite subsection (1), a proceeding in a court that—

- (a) was started before the relevant time; and
- (b) was—
  - (i) under a provision of the old corporations legislation or the old ASIC legislation; or
  - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation; and
- (c) was a proceeding to which section 1383 of the new Corporations Act or section 267 of the new ASIC Act applies at the relevant time; and
- (d) had not been concluded or terminated before the relevant time;

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2 Section 10 (Court proceedings and orders)

is terminated at the relevant time by force of this subsection.

(4) Despite subsection (1), if by force of a Commonwealth Act (other than the new Corporations Act) referred to in sections 1393 to 1396 of the new Corporations Act a person becomes liable to pay an amount that is the same, and is in respect of the same matter, as an amount (the “**pre-commencement amount**”) that was payable by the person before the relevant time under a provision of the old corporations legislation, the person’s liability to pay the pre-commencement amount is cancelled at the relevant time and ceases at that time to be a liability under a law of the State.

(5) In subsection (2)—

“**pre-commencement right or liability**” means a right or liability, whether civil or criminal, other than a right or liability under an order made by a court before the relevant time or a liability referred to in section 1397(4) of the new Corporations Act, that—

(a) was acquired, accrued or incurred under—

- (i) a carried over provision of the old corporations legislation or the old ASIC legislation; or
- (ii) a provision of the old corporations legislation or the old ASIC legislation that was no longer in force immediately before the relevant time; and

(b) was in existence immediately before the relevant time.

(6) Nothing in this Act revives the cooperative scheme law or otherwise affects the superseding of those laws by the national scheme laws of this jurisdiction as provided by division 2 of part 13 of the old application Act and any regulations made under section 80 of that Act for the purposes of that division.

## **9 Certain provisions of State law taken to operate despite national scheme law**

(1) Any provision of a relevant law of the State that—

- (a) makes (or, if not in force, would make on coming into force) provision in relation to a matter in a way that is inconsistent with a provision or provisions of a national scheme law of this jurisdiction; or

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- (b) but for the operation of section 5 of the old application Act would have made (or, if not in force, would have made on coming into force) provision in relation to a matter in a way that is inconsistent with a provision or provisions of a national scheme law of this jurisdiction;

is declared by this subsection to have effect despite the provision or provisions of the national scheme law of this jurisdiction with which it is inconsistent and as if the relevant law, or (in the case of a relevant law that is not an Act) the Act under which the relevant law was made, had itself provided expressly for this outcome.

*Note—*

Section 5G of the Corporations Act applies to a provision of a State law that is inconsistent with a provision of the Corporations legislation to which part 1.1A of that Act applies if that provision operated, immediately before the commencement of that Act, despite the provision of the old Corporations Law or the old ASIC Law that corresponds to the Commonwealth provision.

(2) Any provision of a relevant law of the State that provides that the whole of a previous State corporations law or a specified provision of a previous State corporations law does not apply to a matter is declared by this subsection to also provide that the whole of the old Corporations Law and the old ASIC Law or the corresponding provision (if any) of the old Corporations Law or the old ASIC Law (as the case requires) does not apply to that matter.

*Note—*

Under section 5F(4) of the Corporations Act if the old Corporations Law or the old ASIC law, or a provision of that Law, did not apply to a matter immediately before the commencement of that Act, then the Corporations legislation to which part 1.1A of that Act applies, or the corresponding provision of that legislation, does not apply to the matter.

(3) Subsection (1) or (2) does not apply to a provision of a relevant law of the State (or a class of provision of relevant laws of the State) specified under a regulation as a provision (or class of provision) to which the subsection does not apply.

(4) For subsection (1), a provision of a relevant law of the State is inconsistent with a provision of a national scheme law of this jurisdiction if it would be inconsistent within the meaning of section 109 of the Commonwealth Constitution if the national scheme law were an Act of the Commonwealth.

(5) Nothing in this section affects the operation of section 6 of the old application Act in relation to an Act (a **“relevant Act”**) enacted before the commencement of that section or an instrument made under a relevant Act.

(6) In this section—

**“matter”** includes act, omission, body, person or thing.

**“relevant law of the State”** means a law of the State enacted or made before the relevant time (whether or not it is in force before that time) other than a national scheme law of this jurisdiction or a previous State corporations law.

## 10 Court proceedings and orders

(1) This section applies to a proceeding, whether criminal or civil, in relation to which the following paragraphs are satisfied—

- (a) the proceeding was started in a court before the relevant time;
- (b) the proceeding was—
  - (i) under a provision of the old corporations legislation or the old ASIC legislation; or
  - (ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation;
- (c) the proceeding was not a proceeding to which section 1383 or 1384 of the new Corporations Act or section 267 or 268 of the new ASIC Act applies;
- (d) the proceeding had not been concluded or terminated before the relevant time.

(2) Without limiting section 8(1)<sup>3</sup> but subject to subsection (3), a proceeding (a **“relevant proceeding”**) to which this section applies may be continued, and any order made by a court in a relevant proceeding may be appealed against, reviewed or enforced as if section 7<sup>4</sup> had not been enacted.

(3) Nothing in this part, or in the *Acts Interpretation Act 1901* (Cwlth) as applying by force of section 8(1), operates to preserve the effect of an order

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3 Section 8 (Effect of section 7)

4 Section 7 (National scheme laws)

(a “**relevant order**”) to which section 1383(5) of the new Corporations Act or section 267(5) of the new ASIC Act applies and, at the relevant time, that order ceases to have effect as an order of the court by which it was made and any proceeding in relation to a relevant order is terminated by force of this subsection.

(4) For the avoidance of doubt, part 9 of the old application Act continues to have the same application to a proceeding to which this section applies as it did before the relevant time.

(5) In this section—

“**proceeding**” includes—

- (a) a proceeding by way of appeal against, or otherwise seeking review of, an order made by a court; and
- (b) a proceeding to enforce an order made by a court; and
- (c) any other proceeding in respect of a breach of an order made by a court.

## **11 Existing rules of court continue to have effect**

(1) The corporation rules of court, as in force immediately before the relevant time, continue to have effect (and may be dealt with) at and after the relevant time as if—

- (a) they were rules of court in force under section 24<sup>5</sup> and the *Supreme Court of Queensland Act 1991*; and
- (b) they were made for the purposes of the provisions of the corporations legislation (within the meaning of section 24) that correspond to the provisions of the old Corporations Law for which they were made.

(2) In this section—

“**corporation rules of court**” means rules of court made under the *Supreme Court of Queensland Act 1991*, section 118 in relation to a matter mentioned in schedule 1, section 22, and all other enabling powers.

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5 Section 24 (Rules of the Supreme Court)



## **12 References to old/new corporations legislation or old/new ASIC legislation**

(1) Subject to subsections (2) and (3), a reference in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—

- (a) a law, regulations or instrument of a kind specified in column 1 of the table in schedule 1 is taken, at and after the relevant time, to include a reference to the Act, regulations or instrument of the kind specified opposite it in column 2 of that table; or
- (b) a provision or group of provisions of a law, regulations or instrument of a kind specified in column 1 of the table in schedule 1 is taken, at and after the relevant time, to include a reference to the corresponding provision or provisions (if any) of the Act, regulations or instrument of the kind specified opposite it in column 2 of that table.

(2) A regulation may do either or both of the following—

- (a) provide that subsection (1) does not apply in relation to prescribed references, or references of a prescribed kind—
  - (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
- (b) provide that subsection (1) applies in relation to prescribed references, or references of a prescribed kind—
  - (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;as if, in that subsection, the words ‘to be a reference’ were substituted for the words ‘to include a reference’.

(3) Subsection (1) does not apply in relation to references in, or taken immediately before the relevant time to be in—

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- (a) the old application Act or the applicable provisions (as defined in that Act) of the State; or
- (b) a previous State corporations law or an instrument made under a previous State corporations law; or
- (c) this Act or any regulation made under this Act; or
- (d) the *Acts Interpretation Act 1954*; or
- (e) any other Act, or any provision of an Act, or any kind of Act or provision of an Act, specified under a regulation; or
- (f) an instrument made under an Act, or any provision of an instrument made under an Act, or any kind of instrument (an “**identified instrument**”) made under an Act or provision of an identified instrument, specified under a regulation; or
- (g) a law applying as a law of the State by force of an Act, or any provision of a law applying as a law of the State by force of an Act, or any kind of law (an “**identified law**”) applying as a law of the State by force of an Act or provision of an identified law, specified under a regulation.

(4) For this Act, a regulation may provide that a reference of a specified kind in, or taken immediately before the relevant time to be in, a specified Act or instrument made under an Act or a specified law applying as a law of the State by force of an Act is to be taken to be a reference of the kind specified in relation to the reference in the regulation.

(5) An express reference in an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—

- (a) an Act, regulations or other instrument forming part of the new corporations legislation or the new ASIC legislation; or
- (b) a provision or group of provisions of an Act, regulations or other instrument mentioned in paragraph (a);

is taken, in relation to events, circumstances or things that happened or arose at a time before the relevant time, to include (unless the contrary intention appears or the context of the reference otherwise requires) a reference to the corresponding provision or provisions of the old corporations legislation, or the old ASIC legislation, as the case requires, of this jurisdiction and of each other jurisdiction referred to in sections 12(2) and (3) and 64(2) and (3) of the old application Act.

(6) A regulation may do either or both of the following—

- (a) provide that subsection (5) does not apply in relation to prescribed references, or references of a prescribed kind—
  - (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
- (b) provide that subsection (5) applies in relation to prescribed references, or references of a prescribed kind—
  - (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;

as if, in that subsection, the words ‘of a jurisdiction specified under a regulation’ were substituted for the words ‘of this jurisdiction and of each other jurisdiction referred to in sections 12(2) and (3) and 64(2) and (3) of the old application Act’.

### **13 References to companies incorporated in a State or Territory**

(1) Unless the contrary intention appears and subject to subsections (2) and (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to—

- (a) a company (within the meaning of the Corporations Law of Queensland or of another State or a Territory) incorporated in Queensland or that other State or that Territory; or
- (b) a company that is incorporated under the Corporations Law of Queensland or of another State or a Territory; or
- (c) a company that is registered or taken to be registered under the Corporations Law of Queensland or of another State or a Territory; or

- (d) a body that is taken to be registered as a company under the Corporations Law of Queensland or of another State or a Territory;

is taken, after the relevant time, to be a reference to a company that, under section 119A or 1378(4) of the new Corporations Act, is taken to be registered in Queensland or that other State or that Territory, as the case requires.

(2) Unless the contrary intention appears and subject to subsection (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to a foreign company (within the meaning of the Corporations Law of Queensland or of another State or a Territory) is taken, after the relevant time, to be a reference to a foreign company within the meaning of the new Corporations Act.

(3) Unless the contrary intention appears and subject to subsection (4), a reference (however expressed) in, or taken immediately before the relevant time to be in, an Act, an instrument made under an Act or a law applying as a law of the State by force of an Act to the jurisdiction of incorporation of a corporation, being a company registered or taken to be registered under the Corporations Law of Queensland or of another State or a Territory, is taken, after the relevant time, to be a reference to the State or Territory in which the corporation is taken to be registered under section 119A or 1378(4) of the new Corporations Act.

(4) A regulation may do either or both of the following—

- (a) provide that subsection (1), (2) or (3) does not apply in relation to prescribed references, or references of a prescribed kind—
- (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or
  - (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
- (b) provide that subsection (1), (2) or (3) applies in relation to prescribed references, or references of a prescribed kind—
- (i) in prescribed Acts or instruments made under Acts; or
  - (ii) in prescribed laws applying as laws of the State by force of an Act; or

- (iii) in Acts, instruments made under Acts, or laws applying as laws of the State by force of an Act, of a prescribed kind;
- as if, in that subsection, the words ‘to include a reference’ were substituted for the words ‘to be a reference’.

## **PART 3—APPLICATION OF COMMONWEALTH CORPORATIONS LEGISLATION TO STATE MATTERS**

### **14 Definitions for pt 3**

In this part—

**“applied law”** means a provision or provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that this part applies to a matter as if the provision or provisions were a law or laws of the State.

**“confer”** includes impose.

**“Corporations legislation”** means the Corporations legislation to which part 1.1A of the new Corporations Act applies.

**“declaratory provision”** means a provision of a law of the State to which this part applies by operation of section 15.

**“function”** includes power.

**“matter”** includes act, omission, body, person or thing.

**“change”** includes addition, exception, omission or substitution.

**“perform”** includes exercise.

### **15 State provisions to which this part applies**

(1) This part applies to a provision of a law of the State if the provision declares a matter to be an applied Corporations legislation matter for the purposes of this part in relation to any of the following (whether with or without changes)—

- (a) the whole of the Corporations legislation;

- (b) a specified Act, regulations or other instrument forming part of the Corporations legislation;
- (c) a specified provision or provisions of the Corporations legislation or of an Act, regulations or other instrument forming part of the Corporations legislation.

(2) Subsection (1) does not apply to a provision of a law of the State to the extent that it declares a matter to be an applied Corporations legislation matter for the purposes of this part in relation to a provision or provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that already applies to the matter as a law of the Commonwealth.

## **16 Effect of declaratory provisions**

(1) Subject to this part, a declaratory provision has effect in relation to a matter as follows—

- (a) if the declaratory provision is one to which section 15(1)(a) applies—the whole of the Corporations legislation applies to the matter as if it were a law of the State;
- (b) if the declaratory provision is one to which section 15(1)(b) applies—the Act, regulations or other instrument specified by the declaratory provision applies or apply to the matter as if it or they were a law or laws of the State;
- (c) if the declaratory provision is one to which section 15(1)(c) applies—the provision or provisions specified by the declaratory provision applies or apply in relation to the matter as if it or they were a law or laws of the State.

(2) A provision applied to a matter by a declaratory provision, or taken by force of section 20(1)<sup>6</sup> to apply to the matter, is applied as in force for the time being unless the declaratory provision applies it as in force at a particular time specified by the declaratory provision.

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6 Section 20 (Implied application of regulations and other provisions of Corporations legislation)

**17 Changes to applied law**

(1) This part operates to apply a provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, as a law of the State subject to the following changes—

- (a) the changes that may be specified by or under the law containing the declaratory provision;
- (b) a reference to ASIC is (unless a function under an applied law is conferred on ASIC as referred to in section 18) taken to be a reference to—
  - (i) the Minister administering the declaratory provision or the other person (or person belonging to a class of person) who may be specified under a regulation (whether generally or in relation to a particular applied law); or
  - (ii) another person who may be specified by or under the declaratory provision;
- (c) a reference to the gazette is a reference to the Queensland Government Gazette;
- (d) a reference to the Minister is a reference to the Minister administering the declaratory provision;
- (e) a reference to this jurisdiction is a reference to Queensland;
- (f) the other changes that are necessary or that are prescribed under a regulation made under this Act, whether generally or in relation to a particular applied law.

(2) Any power to make regulations under an Act containing a declaratory provision extends to the making of regulations specifying changes for the purposes of this part.

(3) Except as provided by subsection (1), definitions and other interpretation provisions of the Corporations legislation, or of the Act, regulations or other instrument forming part of the Corporations legislation, relevant to the applied law are taken also to apply to the matter that is the subject of the declaratory provision.

(4) This section has effect subject to sections 18 to 21.

## **18 Conferral of functions on ASIC**

(1) Neither a declaratory provision nor an applied law operates to confer a function on ASIC in relation to the applied law unless—

- (a) the declaratory provision provides for ASIC to perform that function pursuant to an agreement or arrangement of the kind referred to in section 11(8) or (9A)(b) of the new ASIC Act; and
- (b) ASIC is authorised to perform that function under section 11 of the new ASIC Act.

(2) If a declaratory provision operates to confer a function on ASIC in relation to an applied law, the conferral of that function is taken not to impose a duty to perform that function despite anything to the contrary in the applied law.

## **19 Conferral of functions or duties on State courts**

An applied law that confers a function or duty on a court or on the Court is taken to confer that function or duty (along with the jurisdiction to perform that function or duty) on the Supreme Court or another court of the State that may be specified by or under the declaratory provision.

## **20 Implied application of regulations and other provisions of Corporations legislation**

(1) Unless a declaratory provision provides otherwise, the following provisions of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, are also taken to apply to a matter that is the subject of a declaratory provision as if they were laws of the State—

- (a) the provisions of any regulations made under the applied law;
- (b) any provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, that creates an offence in relation to a contravention of the applied law or specifies the penalty for an offence created by a provision of the applied law;



- (c) the provisions of part 9.4B<sup>7</sup> of the new Corporations Act for the purposes of any provision of the applied law that is a civil penalty provision within the meaning of that part.

(2) The regulations may prescribe changes (whether generally or in relation to a particular applied law) of any of the provisions that are also taken to apply to a matter by force of subsection (1) for the purposes of that application.

## 21 Proceedings for offences

(1) Proceedings for an offence against an applied law may be dealt with as an offence against a law of the State.

(2) For the purposes of an offence against an applied law—

- (a) the amount of a penalty unit specified in relation to that offence by the applied law, or a provision taken by force of section 20(1) to apply to the matter that is the subject of the declaratory provision, is the amount stated in the *Penalties and Sentences Act 1992*, section 5(1)(b);<sup>8</sup> and
- (b) the laws of the State apply in relation to that offence as if the applied law, or a provision taken by force of section 20(1) to apply to the matter that is the subject of the declaratory provision, were a law or laws of the State.

(3) Without limiting subsection (2)(b), the laws of the State referred to in that subsection as applying in relation to an offence include laws with respect to—

- (a) the investigation and prosecution of offences; and
- (b) the arrest, custody, bail, trial, finding of guilt and conviction of persons charged with offences; and
- (c) proceedings relating to a matter mentioned in paragraph (a) or (b); and
- (d) the classification of offences as indictable or summary or indictable offences that may be prosecuted summarily; and

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<sup>7</sup> *Corporations Act 2001*, part 9.4B (Civil consequences of contravening civil penalty provisions)

<sup>8</sup> *Penalties and Sentences Act 1992*, section 5 (Meaning of penalty unit)

- (e) appeals and reviews relating to criminal proceedings and to proceedings of the kind mentioned in paragraph (c); and
- (f) the sentencing, punishment and release of persons found guilty or convicted of offences; and
- (g) fines, penalties and forfeitures; and
- (h) confiscation of the proceeds of crime.

## **22 Application of Corporations legislation by other means**

Nothing in this part prevents a law of the State from applying any provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, as a law of the State otherwise than by means of a declaratory provision.

## **PART 4—GENERAL**

### **23 Power to amend certain statutory instruments**

(1) The Governor in Council may make a regulation amending a statutory instrument made or approved by the Governor in Council in the exercise of a power conferred by any Act.

(2) The Minister may recommend the making of a regulation under subsection (1) only if he or she considers that each amendment proposed to be made by a regulation is consequential on the enactment, or the proposed enactment, by the Parliament of the Commonwealth of—

- (a) the *Australian Securities and Investments Commission Act 1989*; or
- (b) the *Corporations Act 1989*; or
- (c) an Act amending an Act referred to in paragraph (a) or (b); or
- (d) the new ASIC Act; or
- (e) the new Corporations Act; or
- (f) an Act amending an Act referred to in paragraph (d) or (e).

(3) The *Statutory Instruments Act 1992*, part 5<sup>9</sup> does not apply to regulations made under this section.

(4) Nothing in this section prevents a statutory instrument from being amended otherwise than by a regulation made under this section, including an amendment of a kind mentioned in subsection (2).

### **23A Power to make interim regulations construing certain references in Acts**

(1) The Governor in Council may make a regulation providing that an affected reference in any Act is to be construed as set out in the regulation.

(2) The Minister may recommend the making of a regulation under subsection (1) only if he or she considers that—

- (a) each substantive provision of the proposed regulation is necessary as a consequence of the enactment, or proposed enactment, by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act; and
- (b) subject to subsection (3), the proposed regulation does not deal with any other matter.

(3) A regulation made under this section may deal with matters of a transitional nature (including matters of an application or savings nature) consequent on the enactment of the amending Act referred to in subsection (2)(a).

*Note—*

Section 27(7) and (8) enable a provision of the regulation made under this section to have effect from a time that is earlier than the day on which it is made.

(4) A regulation made under this section has effect according to its tenor.

(5) A regulation made under this section expires 1 year after it is made.

(6) In this section—

**“affected reference”** means—

- (a) a reference in an Act to a provision of the new ASIC Act or the new Corporations Act; or
- (b) a reference in an Act to a term, expression or concept defined or used in the new ASIC Act or the new Corporations Act;

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9 *Statutory Instruments Act 1992*, part 5 (Guidelines for regulatory impact statements)

that is, or is to be, affected in any way by the enactment or proposed enactment by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act.

## **24 Rules of the Supreme Court**

(1) Rules of court may be made in accordance with the *Supreme Court of Queensland Act 1991*, part 9—

- (a) with respect to proceedings, and the practice and procedure, of the Supreme Court under the Corporations legislation; and
- (b) with respect to any matter or thing that is—
  - (i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or
  - (ii) necessary or convenient to be prescribed by those rules for carrying out or giving effect to the Corporations legislation; and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by the Supreme Court.

(2) When a lower court of Queensland is exercising jurisdiction with respect to matters arising under the Corporations legislation, the court must apply the rules of court made under subsection (1) with the alterations that are necessary.

(3) In this section—

“Corporations legislation” means—

- (a) the new Corporations Act; and
- (b) the new ASIC Act; and
- (c) the regulations made under the new Corporations Act and the new ASIC Act.

## **25 ASIC has certain functions and powers**

(1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the performance of functions or the exercise of powers by ASIC as an agent of the State, even

if those functions or powers are or may be conferred on another person or body by or under a law of the State.

(2) An agreement or arrangement of a kind mentioned in subsection (1) has effect by force of this section despite any provision of a law of the State with respect to any function or power that is the subject of the agreement or arrangement.

*Note—*

Section 11(9) of the *Australian Securities and Investments Commission Act 2001* (Cwlth) provides that ASIC has, but is not under a duty to perform, the functions and powers that are the subject of the agreement or arrangement with the State.

## 26 Notes in Act

A note in the text of this Act is part of the Act.

## 27 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may provide that certain provisions of part 2<sup>10</sup> are taken to be changed as set out in the regulation.

(3) Those provisions then have effect as if they were so changed.

(4) Without limiting subsection (1), a regulation may—

- (a) declare a matter to be an excluded matter for the purposes of section 5F of the new Corporations Act in relation to—
  - (i) the whole of the Corporations legislation to which part 1.1A of that Act applies; or
  - (ii) a specified provision of that legislation; or
  - (iii) that legislation other than a specified provision; or
  - (iv) that legislation otherwise than to a specified extent; or
- (b) declare a provision of a law of the State, or a provision of a law of the State as amended as specified in the regulation, to be a Corporations legislation displacement provision for the purposes of section 5G of the new Corporations Act (either generally or

*Corporations (Ancillary Provisions) Act 2001*

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specifically in relation to a provision of the Corporations legislation to which part 1.1A of that Act applies).

(5) Without limiting subsection (1), a regulation may make provision for or with respect to enabling jurisdiction (the “**declared jurisdiction**”) conferred by or under the old corporations legislation or the old ASIC legislation or a previous State corporations law to be exercised by a court of the State, or confirming that the declared jurisdiction is exercisable by a court of the State, including (without limitation) provisions for or with respect to—

- (a) conferring jurisdiction on courts of the State; and
- (b) the construction of references in the old corporations legislation or the old ASIC legislation or a previous State corporations law to Commonwealth authorities and officers; and
- (c) the disapplication of provisions of the old corporations legislation or the old ASIC legislation or a previous State corporations law, including provisions that contemplate the administration or enforcement of laws as if they were Commonwealth laws or that contemplate offences and other matters as being offences against and matters under Commonwealth laws; and
- (d) the treatment of offences arising under the old corporations legislation or the old ASIC legislation or a previous State corporations law (including the specification of penalties); and
- (e) prescribing changes of the old corporations legislation or the old ASIC legislation or a previous State corporations law; and
- (f) associated, procedural and consequential matters.

(6) Without limiting subsection (1), a regulation may deal with matters of a transitional nature relating to the transition from the application of provisions of the old corporations legislation or a previous State corporations law to the application of provisions of the new corporations legislation or the new ASIC legislation.

(7) Any provision of a regulation may be expressed to take effect from a time that is earlier than the beginning of the day on which the regulation containing the provision is made, not being a time earlier than immediately before the relevant time or, in the case of a regulation made under section 23(2)(f) or 23A,<sup>11</sup> the time when the amending Act (or the relevant provision of that Act) comes into operation or is taken to come into operation.

(8) To the extent to which a provision of a regulation takes effect from a time that is earlier than the beginning of the day on which the regulation containing the provision is made, the provision does not operate so as—

- (a) to affect in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of making of the regulation; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of making of the regulation.

(9) A regulation has effect despite anything to the contrary in part 2.<sup>12</sup>

(10) In this section—

**“matters of a transitional nature”** includes matters of an application or savings nature.

## **28 Transitional regulation-making powers**

(1) The following provisions, and any regulations made under the provisions, expire at the end of 30 June 2003—

- (a) section 5(6);
- (b) section 9(3);
- (c) section 12(2), (4) and (6);
- (d) section 13(4);
- (e) section 17(1)(f) and (2);
- (f) section 27(2) to (10).

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11 Section 23 (Power to amend certain statutory instruments) or 23A (Power to make interim regulations construing certain references in Acts)

12 Part 2 (Transitional provisions)

(2) Subsection (1) does not prevent the regulations expiring or being repealed before that time.

(3) A regulation made under a provision mentioned in subsection (1) must declare that it expires at the end of 30 June 2003.

## **PART 5—VALIDATION PROVISIONS CONSEQUENTIAL ON FINANCIAL SERVICES REFORM ACT 2001 (CWLTH)**

### **29 Validation**

(1) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had the amending Act been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.

(2) Anything done or omitted to be done by a person or body during the relevant period that would have been valid and lawful had none of the provisions of the *Financial Services Reform Act 2001* (Cwlth) been in operation at the time at which the thing was done or omitted, must be taken to be, and to have always been, valid and lawful.

(3) In this section—

**“amending Act”** means the *Financial Services Reform (Consequential Amendments) Act 2003*.

**“relevant period”** means the period—

- (a) starting on the commencement of the *Financial Services Reform Act 2001* (Cwlth), schedule 1, part 1; and
- (b) ending immediately before the date of assent of the amending Act.



**SCHEDULE 1**

section 12

<b>Column 1</b>	<b>Column 2</b>
the Corporations Law of Queensland	the new Corporations Act
the Corporations Regulations of Queensland	the new Corporations Regulations
an instrument made under the Corporations Law of Queensland or the Corporations Regulations of Queensland	a corresponding preserved instrument under the new corporations legislation
the Corporations Law	the new Corporations Act
the Corporations Regulations	the new Corporations Regulations
the Corporations Law of a jurisdiction other than Queensland that is a referring State	the new Corporations Act
the Corporations Regulations of a jurisdiction other than Queensland that is a referring State	the new Corporations Regulations
an instrument made under the Corporations Law, or the Corporations Regulations, of a jurisdiction other than Queensland that is a referring State	a corresponding preserved instrument under the new corporations legislation
the old ASIC Law	part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act
the ASC Law of Queensland	part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act

## SCHEDULE 1 (continued)

<b>Column 1</b>	<b>Column 2</b>
the old ASIC Regulations	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act
the ASIC Regulations of Queensland	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act
an instrument made under the old ASIC Law or the old ASIC Regulations	a corresponding preserved instrument under the new ASIC legislation
an instrument made under the ASIC Law of Queensland or the ASIC Regulations of Queensland	a corresponding preserved instrument under the new ASIC legislation
the ASIC Law	Part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act
the ASIC Law	Part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act
the ASIC Regulations	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act

## SCHEDULE 1 (continued)

<b>Column 1</b>	<b>Column 2</b>
the ASC Regulations	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act
the ASIC Law of a jurisdiction other than Queensland that is a referring State	Part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act
the ASC Law of a jurisdiction other than Queensland that is a referring State	Part 3 of the new ASIC Act except to the extent to which that part operates in relation to a contravention of part 2 of that Act
the ASIC Regulations of a jurisdiction other than Queensland that is a referring State	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act
the ASC Regulations of a jurisdiction other than Queensland that is a referring State	the new ASIC Regulations made for the purposes of part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of part 2 of that Act
an instrument made under the ASIC Law, or the ASIC Regulations, of a jurisdiction other than Queensland that is a referring State	a corresponding preserved instrument under the new ASIC legislation
an instrument made under the ASC Law, or the ASC Regulations, of a jurisdiction other than Queensland that is a referring State	a corresponding preserved instrument under the new ASIC legislation

## ENDNOTES

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 March 2003. Future amendments of the Corporations (Ancillary Provisions) Act 2001 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the latest reprint.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	15 July 2001	3 August 2001 (Column discontinued) Notes
1A	to Act No. 4 of 2003	4 March 2003	

## 5 List of legislation

### **Corporations (Ancillary Provisions) Act 2001 No. 45**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provisions commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

amending legislation—

### **Financial Services Reform (Consequential Amendments) Act 2003 No. 4 pts 1, 4**

date of assent 4 March 2003

commenced on date of assent

## 6 List of annotations

### **Corresponding provision**

s 5 (6) exp 30 June 2003 (see s 28(1))

### **Certain provisions of State law taken to operate despite national scheme law**

s 9 (3) exp 30 June 2003 (see s 28(1))

### **References to old/new corporations legislation or old/new ASIC legislation**

s 12 (2), (4) and (6) exp 30 June 2003 (see s 28(1))

### **References to companies incorporated in a State or Territory**

s 13 (4) exp 30 June 2003 (see s 28(1))

**Changes to applied law**

s 17 (1)(f) and (2) exp 30 June 2003 (see s 28(1))

**Power to amend certain statutory instruments**

s 23 amd 2003 No. 4 s 8

**Power to make interim regulations construing certain references in Acts**

s 23A ins 2003 No. 4 s 9

**Regulation-making power**

s 27 amd 2003 No. 4 s 10

(2)–(10) exp 30 June 2003 (see s 28(1))

**PART 5—VALIDATION PROVISIONS CONSEQUENTIAL ON FINANCIAL SERVICES REFORM ACT 2001 (CWLTH)**

pt hdg ins 2003 No. 4 s 11

**Validation**

s 29 prev s 29 om R1 (see RA s 40)

pres s 29 ins 2003 No. 4 s 11

**SCHEDULE 2—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 3—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)