

# Companies (Application of Laws) Bill

## EXPLANATORY NOTES

This Bill, together with the Companies (Consequential Amendments) Bill and the Companies (Administration) Bill, is introduced in accordance with the Agreement made on 22 December 1978 between the Commonwealth and the States for co-operative companies and securities regulation.

### PART I—PRELIMINARY

*Clause 1* contains the short title.

*Clause 2* contains provisions for the Act to commence on a proclaimed date.

*Clause 3* contains details of the division of the Act into Parts.

*Clause 4* contains interpretations including an interpretation of the Commonwealth/State Agreement.

*Clause 5* is an interpretation provision which provides that the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981* applies to the Companies (Victoria) Code.

### PART II—APPLICATION OF LAWS

*Clause 6* provides that the provisions of the *Commonwealth Companies Act 1981* as in force for the time being apply as laws of Victoria subject to the amendments set out in Schedule 1.

*Clause 7* provides that the Commonwealth Companies Regulations, as in force for the time being, apply as regulations made under provisions applied by clause 6, subject to the amendments set out in Schedule 2.

*Clause 8* provides for the payment of fees to the Commissioner for Corporate Affairs in accordance with the Schedule to regulations under the *Commonwealth Companies (Fees) Act 1981*, as in force for the time being, subject to the amendments set out in Schedule 3.

*Clause 9* makes provision, in accordance with the Agreement, for the case where amendment of regulations made under the *Commonwealth Companies Act 1981* or *Companies (Fees) Act 1981* has been approved by the Ministerial Council under the Agreement but has not been made by the Commonwealth within six months. In those circumstances, the Governor in Council may make regulations for Victoria.

*Clause 10* makes provision for the publication by the Government Printer in Victoria of the provisions of the laws applying by reason of clause 6 under the title Companies (Victoria) Code.

*Clause 11* makes provision for the publication by the Government Printer in Victoria of the provisions applying by reason of clause 7 under the title Companies (Victoria) Regulations.

*Clause 12* makes provision for the publication by the Government Printer in Victoria of the Schedule to the Companies (Fees) Regulations applying by reason of clause 8 under the title Companies (Fees) (Victoria) Regulations.

*Clause 13* makes provision for the publication by the Government Printer in Victoria of provisions of amended Companies (Victoria) Code, Companies (Victoria) Regulations and Companies (Fees) (Victoria) Regulations.

*Clause 14* makes provision for the use of the expressions Companies (Victoria) Code, Companies (Victoria) Regulations and Companies (Fees) (Victoria) Regulations in any Act regulation or instrument or any other document made by or under the authority of the law of Victoria. Those expressions describe the relevant applied provisions.

*Clause 15* makes provision, in accordance with the Agreement, for the Governor in Council to make by regulation any necessary adoptions for Victoria of future amendments to the Commonwealth *Companies Act* 1981, *Companies (Fees) Act* 1981 or regulations made under either of those Acts.

*Clause 16* makes provision for the Governor in Council to make regulations effecting approved exemptions from certain provisions of the Companies (Victoria) Code.

### PART III—TRANSITIONAL PROVISIONS

*Clause 17* is an interpretation provision.

*Clause 18* provides that the provisions applying by reason of clause 6 operate to the exclusion of the provisions of the *Companies Act* 1961, the *Marketable Securities Act* 1970 and the *Securities Industry Act* 1975 in relation to acts, matter and things in relation to which the first mentioned provisions apply.

*Clause 19* provides, in accordance with the Commonwealth/State Agreement, that Victoria withdraws from the Interstate Corporate Affairs Agreement.

*Clause 20* makes general saving provisions for the *Companies Act* 1961.

*Clause 21* makes particular saving provisions for the *Companies Act* 1961.

*Clause 22* provides that proceedings which have or could have been commenced by or against the Commissioner for Corporate Affairs under the *Companies Act* 1961 may be continued or commenced by or against the National Companies and Securities Commission.

*Clause 23* provides that property vested in the Commissioner for Corporate Affairs immediately before the commencement of this Act vests in the National Companies and Securities Commission.

*Clause 24* provides for the continuance of any register, fund or account kept under the *Companies Act* 1961.

*Clause 25* provides that certain acts of the Minister or Commissioner for Corporate Affairs under the *Companies Act* 1961 are deemed to be acts of the Ministerial Council or National Companies and Securities Commission.

*Clause 26* preserves the registration and reservation of company names.

Clause 27 provides for the continued application of Table A and Table B of the Fourth Schedule to the *Companies Act* 1961 in certain circumstances.

Clause 28 provides that prospectus and statements under section 82 of the *Companies Act* 1961, registered under the *Companies Act* 1961 within six months before the commencement of this Act are deemed to be registered under the Companies (Victoria) Code until the expiration of six months from the date of registration.

Clause 29 provides that section 169 of the Companies (Victoria) Code does not apply to interests in partnership agreements subscribed for or purchased before 1 January 1972.

Clause 30 preserves the registration of charges registered under the *Companies Act* 1961 and makes provision for charges created but not registered prior to the commencement of this Act.

Clause 31 makes provision for the giving of a certificate that a person who was described as a manager in a return lodged under a previous law which corresponds to the Companies (Victoria) Code was a principal executive officer.

Clause 32 applies the accounts provisions of the Companies (Victoria) Code to companies with financial years ending before the commencement of this Act.

Clause 33 preserves the annual return provisions of the *Companies Act* 1961 in relation to companies which held an annual general meeting before the commencement of this Act but had not complied with those provisions in relation to that meeting.

Clause 34 provides that Part VII of the Companies (Victoria) Code applies to a special investigation being conducted under Part VIA of the *Companies Act* 1961 immediately before the commencement of this Act.

Clause 35 provides that where a person was appointed before the commencement of this Act to administer a compromise or arrangement, the date of his appointment is deemed, for the purposes of section 330 of the Companies (Victoria) Code, to be the date of commencement of this Act.

Clause 36 provides that where the winding up of a company is commenced before the commencement of this Act, the provisions of the *Companies Act* 1961 apply for the purposes of the winding up.

Clause 37 preserves the registration of auditors, liquidators and official liquidators.

Clause 38 preserves the power of the Minister to consent to certain proceedings under the *Companies Act* 1961 which require his consent before they can be taken.

Clause 39 contains deeming provisions in relation to corporations that are recognized companies for the purposes of the Companies (Victoria) Code and were registered as foreign companies under the *Companies Act* 1961.

Clause 40 contains deeming provisions in relation to the principal office and branch registers of companies that, immediately before the commencement of this Act, had a place of business in a participating State or Territory.

*Clause 41* provides for registration under the Companies (Victoria) Code of companies that were immediately before the commencement of this Act, registered as foreign companies under the *Companies Act 1961*.

*Clause 42* provides that the Commission may destroy or dispose of documents lodged under the *Companies Act 1961* relating to corporations that are recognized companies or recognized foreign companies for the purposes of the Companies (Victoria) Code.

*Clause 43* makes saving provisions for the *Marketable Securities Act 1970*.

*Clause 44* makes provision for the Supreme Court to resolve difficulties arising in the application to a particular matter of this Part or of any of the provisions of the Companies (Victoria) Code, the *Companies Act 1961* or the *Marketable Securities Act 1970*.

*Clause 45* contains a regulation making power.

### *Schedules*

*Schedule 1* sets out the various changes made to the provisions of the *Commonwealth Companies Act 1981* in their application as laws of Victoria.

*Schedule 2* sets out the various changes made to the provisions of the Commonwealth Companies Regulations in their application as regulations made under the law applied by clause 6.

*Schedule 3* sets out the various changes made to the provisions of the Schedule to Regulations made under the Commonwealth *Companies (Fees) Act 1981* in their application as laws of Victoria.

*Schedule 4* sets out the headings and sections to be included in the publication of the Companies (Victoria) Code.

*Schedule 5* sets out the headings and provisions to be included in the publication of the Companies (Victoria) Regulations.

*Schedule 6* sets out the headings and provisions to be included in the publication of the Companies (Fees) (Victoria) Regulations.