

South Australia



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ELIZABETHAE II REGINAE  
A.D. 2001

**CORPORATIONS (COMMONWEALTH POWERS) ACT 2001**

No. 21 of 2001

[Assented to 14 June 2001]

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An Act to refer 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 of the Commonwealth.

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The Parliament of South Australia enacts as follows:

**Short title and purpose of Act**

1. (1) This Act may be cited as the *Corporations (Commonwealth Powers) Act 2001*.

(2) The purpose of this Act is to refer 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 of the Commonwealth, so as to enable that Parliament to make laws that apply of their own force in the State, instead of those matters being dealt with by the Corporations Law and other applied laws.

(3) Nothing in this Act is intended to enable the making of a law pursuant to the amendment reference with the sole or main underlying purpose or object of regulating industrial relations matters even if, but for this subsection, the law would be a law with respect to a matter referred to the Parliament of the Commonwealth by the amendment reference.

**Commencement**

2. This Act will come into operation on a day to be fixed by proclamation.

**Definitions**

3. (1) In this Act—

"**amendment reference**" means the reference under section 4(1)(b);

"**commencement day**" means the day on which section 4(1) commences;

"**Corporations instrument**" means any instrument made or issued under the Corporations legislation;

"**Corporations legislation**" means Commonwealth Acts enacted in the terms, or substantially in the terms, of the tabled text and as in force from time to time;

"**express amendment**" of the Corporations legislation means the direct amendment of the text of the Corporations legislation (whether by the insertion, omission, repeal, substitution or relocation of words or matter) by Commonwealth Acts, but does not include the enactment by a Commonwealth Act of a provision that has or will have substantive effect otherwise than as part of the text of the Corporations legislation;

"**initial reference**" means the reference under section 4(1)(a);

"**prescribed termination day**" means the day on which both the references are to terminate as set out in section 5(1);

"**reference**" means:

(a) the initial reference; or

(b) the amendment reference;

"**referred provisions**" means the tabled text to the extent to which that text deals with matters that are included in the legislative powers of the Parliament of the State;

"**tabled text**" means the text of the following proposed Bills for Commonwealth Acts, comprised in two or more documents (each bearing identification as "part of the tabled text") as tabled by or on behalf of the Attorney General of New South Wales in the Legislative Assembly of New South Wales at any time during the period between the giving of notice of motion for leave to introduce the Bill for the *Corporations (Commonwealth Powers) Act 2001* of that State in that Legislative Assembly and the second reading of that Bill in that Legislative Assembly:

- (a) *Corporations Bill 2001*;
- (b) *Australian Securities and Investments Commission Bill 2001*.

(2) If a proclamation terminating the amendment reference alone has been published under section 6 and has not been revoked, the expression "*the references*" refers to the initial reference only.

#### Reference of matters

4. (1) The following matters are referred to the Parliament of the Commonwealth:

- (a) the matters to which the referred provisions relate, but only to the extent of the making of laws with respect to those matters by including the referred provisions in Acts enacted in the terms, or substantially in the terms, of the tabled text (including laws containing provisions that authorise the making of Corporations instruments that affect the operation of the Corporations legislation, otherwise than by express amendment); and
- (b) the matters of the formation of corporations, corporate regulation and the regulation of financial products and services, but only to the extent of the making of laws with respect to those matters by making express amendments of the Corporations legislation (including laws inserting or amending provisions that authorise the making of Corporations instruments that affect the operation of the Corporations legislation, otherwise than by express amendment).

(2) The reference of a matter under subsection (1) has effect only—

- (a) if and to the extent that the matter is not included in the legislative powers of the Parliament of the Commonwealth (otherwise than by a reference under section 51 (xxxvii) of the Constitution of the Commonwealth); and
- (b) if and to the extent that the matter is included in the legislative powers of the Parliament of the State.

(3) The operation of each paragraph of subsection (1) is not affected by the other paragraph.

(4) For the avoidance of doubt, it is the intention of the Parliament of the State that—

- (a) the Corporations legislation may be expressly amended, or have its operation otherwise affected, at any time on or after the commencement day by provisions of Commonwealth Acts the operation of which is based on legislative powers that the Parliament of the Commonwealth has apart from the references; and

- (b) the Corporations legislation may have its operation affected, otherwise than by express amendment, at any time on or after the commencement day by provisions of Corporations instruments; and
  - (c) the references are not made subject to any condition relating to—
    - (i) the express amendment or affecting of the Corporations legislation by provisions referred to in paragraph (a); or
    - (ii) the affecting of the Corporations legislation by provisions referred to in paragraph (b).
- (5) Despite any other provision of this section, a reference has effect for a period—
- (a) beginning at the beginning of the commencement day; and
  - (b) ending at the beginning of the day on which it terminates as set out in section 5,

but not longer.

#### **Termination of references**

5. (1) Subject to earlier termination under this section, the references terminate on the day that is the fifth anniversary of the day of commencement of the Corporations legislation.

(2) Both the references terminate on a day that is earlier than the prescribed termination day if the Governor fixes that earlier day by proclamation under section 6 as the day on which the references terminate.

(3) The amendment reference alone terminates on a day that is earlier than the prescribed termination day if the Governor fixes that earlier day by proclamation under section 6 as the day on which the amendment reference terminates.

(4) If the amendment reference terminates before the initial reference, the termination of the amendment reference does not affect—

- (a) laws that were made under the amendment reference before that termination but have not come into operation before that termination; or
- (b) the continued operation in the State of the Corporations legislation as in operation immediately before that termination or as subsequently amended or affected by—
  - (i) laws referred to in paragraph (a); or
  - (ii) provisions referred to in section 4(4)(a) or (b).

(5) For the purposes of subsection (4)—

- (a) the laws referred to in subsection (4)(a) include Corporations instruments; and
- (b) the reference in subsection (4)(b) to the Corporations legislation as in operation immediately before the termination of the amending reference includes that legislation as affected by Corporations instruments that have come into operation before that time.

**Earlier termination of reference by proclamation**

6. (1) The Governor may, at any time, by proclamation published in the *Gazette*, fix a day that is earlier than the prescribed termination day as the day on which—

- (a) the references terminate; or
- (b) the amendment reference terminates.

(2) The day fixed under subsection (1) must be no earlier than the first day after the end of the period of 6 months beginning with the day on which the proclamation is published under that subsection.

(3) The Governor may, by proclamation published in the *Gazette*, revoke a proclamation published under subsection (1), in which case the revoked proclamation is taken (for the purposes of section 5) never to have been published.

(4) A revoking proclamation has effect only if published before the day fixed under subsection (1).

(5) The revocation of a proclamation published under subsection (1) does not prevent publication of a further proclamation under that subsection.

**Evidence**

7. (1) A certificate of the Clerk of the Legislative Assembly of New South Wales certifying that a document is an accurate copy of the tabled text, or is an accurate copy of a particular part or of particular provisions of the tabled text, is admissible in evidence in any proceedings and is evidence—

- (a) of the matter certified; and
- (b) that the text of proposed Commonwealth Bills was tabled in the Legislative Assembly of New South Wales as referred to in the definition of "*tabled text*" in section 3.

(2) Subsection (1) does not affect any other way in which the tabling or content of the tabled text, or the accuracy of a copy of the tabled text or of a part or provisions of the tabled text, may be established.

**Operation of Act**

8. This Act has effect despite any provision of the *Corporations (South Australia) Act 1990* or of the applicable provisions (as defined in that Act) of the State.