

# AUSTRALIAN CAPITAL TERRITORY

No. 53 of 1980

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## An Ordinance to amend the *Companies Ordinance 1962*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Ordinance under the *Seat of Government (Administration) Act 1910*.

Dated this twenty-second day of December 1980.

ZELMAN COWEN  
Governor-General

By His Excellency's Command,

JOHN MOORE  
Minister of State for Business and  
Consumer Affairs

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## COMPANIES (AMENDMENT) ORDINANCE (No. 2) 1980

### Short title

1. This Ordinance may be cited as the *Companies (Amendment) Ordinance (No. 2) 1980*.<sup>1</sup>

### Principal Ordinance

2. In this Ordinance, "Principal Ordinance" means the *Companies Ordinance 1962*.<sup>2</sup>

### Commencement

3. (1) This section and sections 2, 16 and 17 shall come into operation on the date on which this Ordinance is notified in the *Gazette*.

(2) The provisions of this Ordinance, other than the provisions referred to in sub-section (1), shall come into operation on 1 February 1981.

### Interpretation

4. Section 5 of the Principal Ordinance is amended—

(a) by inserting in sub-section (1), after the definition of "banking corporation", the following definition:

“ ‘barrister and solicitor’ has the same meaning as in the *Legal Practitioners Ordinance 1970*;”;

- (b) by inserting in sub-section (1), after the definition of “document”, the following definition:

“ ‘duly qualified legal practitioner’ means a person who is for the time being entitled to practise as a barrister or solicitor, or as both, in any federal court or in the Supreme Court of a State or of a Territory;”.

**Registrar of Companies, &c.**

5. Section 7 of the Principal Ordinance is amended—

- (a) by omitting sub-section (7) and substituting the following sub-sections:

“(7) For the purpose of ascertaining whether the provisions of this Ordinance have been or are being complied with, the Registrar or a person authorized in writing by him may—

- (a) inspect any books required by or under this Ordinance to be kept by, or by a person in respect of, a corporation (whether or not the corporation has been dissolved); and
- (b) subject to sub-section (8A), inspect, where the Minister considers it necessary, books that relate to the corporation, being books kept by a banker who acts or has acted as banker to the corporation.

“(7A) A person entitled under sub-section (7) to inspect any books may require a person in whose custody or control those books are held or who has access to those books to produce those books for inspection.

“(7B) A person entitled under sub-section (7) to inspect any books may require any other person who has any information as to where the books, or any of them, are situated to give him that information and that other person shall comply with that requirement.

Penalty: \$200.”;

- (b) by omitting from sub-section (8) “the last preceding sub-section” and substituting “sub-section (7)”;
- (c) by inserting after sub-section (8) the following sub-section:

“(8A) A person shall not make an inspection in pursuance of sub-section (7) of books that relate to a corporation, being books kept by a banker who acts or has acted as banker to the corporation, unless he has given notice in writing to the banker stating—

- (a) that the Minister considers it necessary that those books be inspected;
  - (b) that the person giving the notice intends to inspect those books;  
and
  - (c) the time and place at which he intends to inspect those books.”;
- and

- (d) by omitting sub-section (10) and substituting the following sub-sections:

“(10) Where a person requires another person to produce books in pursuance of sub-section (7A) and furnishes to that other person reasonable evidence that he is the Registrar or a person authorized by the Registrar under sub-section (7), that other person shall comply with that requirement.

Penalty: \$200.

“(10A) For the purposes of sub-section (10), production by a person authorized by the Registrar under sub-section (7) of the instrument of his appointment shall be taken to be reasonable evidence that he is a person so authorized.”

#### **Power to restrain certain persons from managing companies**

**6.** Section 122 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (b) “or” (last occurring); and
- (b) by omitting paragraph (1) (c) and substituting the following paragraphs:

“(ca) of an offence under section 303 of this Ordinance as in force immediately before 1 February 1981; or

(c) of any offence under section 47, 124, 180J, 374B or 374C or of any of the corresponding provisions of a law of a State or of another Territory.”

**7.** Part VIA of the Principal Ordinance is repealed and the following Part substituted:

### **“PART VIA—SPECIAL INVESTIGATIONS**

#### **Interpretation and application**

“168. (1) In this Part, unless the contrary intention appears—

‘affairs’, in relation to a company or corporation referred to in sub-section 170 (3), includes—

- (a) the promotion, formation, membership, control, trading, dealing, business and property of the company or corporation;
- (b) the ownership of shares in, debentures of, and interests made available by, the company or corporation;
- (c) matters concerned with the ascertainment of the persons who are or have been financially interested in the success or failure, or apparent success or failure, of the company or corporation or are or have been able to control or materially influence the policy of the company or corporation; and
- (d) the circumstances under which a person acquired or disposed of, or became entitled to acquire or dispose of, shares in, debentures of, or interests made available by, the company or corporation;

'company' includes—

- (a) a foreign company registered under Division 3 of Part XI;
- (b) where the Minister has appointed an inspector under sub-section 170 (2) to investigate affairs of a corporation, that corporation; and
- (c) where the Minister has appointed an inspector under sub-section 172 (2) to investigate affairs of a corporation, that corporation;

'inspector' means an inspector appointed under this Part;

'interest' has the same meaning as in section 76;

'officer', in relation to a corporation referred to in sub-section 170 (3), includes—

- (a) a person who acts, or has at any time acted, as banker, solicitor, auditor or in any other capacity for the company or corporation;
- (b) a person who—
  - (i) has, or has at any time had, in his possession any property of the company or corporation;
  - (ii) is indebted to the company or corporation; or
  - (iii) is capable of giving information concerning affairs of the company or corporation; and
- (c) where an inspector appointed to investigate affairs of the company or a person investigating affairs in the Territory of the corporation has reasonable grounds for suspecting or believing that a person is a person referred to in paragraph (b)—that last-mentioned person.

“(2) This Part does not authorize an investigation into affairs of a corporation in relation to business of the corporation that is insurance business for the purposes of the *Insurance Act* 1973 or life insurance business for the purposes of the *Life Insurance Act* 1945.

“(3) Where 2 or more inspectors have been appointed, whether by the same instrument or by different instruments, to investigate affairs of a company, each of those inspectors may exercise his powers or perform his functions under this Part independently of the other inspector or inspectors.

#### **Appointment of inspector where application made**

“169. (1) Application for the appointment of an inspector to investigate—

- (a) affairs of a company; or
- (b) such affairs of a company as are specified in the application,

may be made to the Minister by instrument in writing.

“(2) An application under this section in relation to a company may be made—

- (a) where the company, not being a banking corporation, has a share capital—
  - (i) by not less than 100 members of the company;
  - (ii) by members holding not less than one-tenth of the issued shares in the company; or
  - (iii) by members holding not less than one-tenth of the paid up capital of the company;
- (b) where the company is a banking corporation that has a share capital, by members holding not less than one-third of the issued shares in the company;
- (c) where the company does not have a share capital, by not less than one-tenth of the members of the company;
- (d) where the company, not being a banking corporation, has issued debentures, by the trustee for the holders of the debentures or by the holders of not less than one-tenth in nominal value of the debentures;
- (e) where the company has made available interests, by the trustee for, or representative of, the holders of interests or by not less than one-tenth of the holders of the interests; or
- (f) by the company in pursuance of a special resolution.

“(3) Where an application is made under this section, the applicants shall—

- (a) furnish such information in connection with the application as the Minister requires to enable him to determine whether there are reasonable grounds for appointing an inspector; and
- (b) where the Minister so requires, give security of such amount and in such manner as he determines for payment of the expenses of and incidental to the investigation.

“(4) Where an application is made under this section, the Minister shall, if he is satisfied that there are reasonable grounds for appointing an inspector and that the applicants have complied with the provisions of this section, appoint, by instrument in writing, an inspector to investigate affairs of the company to which the application relates or, if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he specifies in the instrument.

#### **Appointment of inspector by Minister**

“170. (1) Where it appears to the Minister that—

- (a) it is desirable for the protection of the public, of members or creditors of a company or of holders of debentures of a company or of interests made available by a company;

(b) it is in the public interest because fraud, misfeasance or other misconduct by a person who is or has been concerned with affairs of a company is alleged; or

(c) it is otherwise in the public interest,

to appoint an inspector to investigate affairs of a company, he may, by instrument in writing, appoint an inspector to investigate affairs of the company.

“(2) Where—

(a) under a law of a State or of another Territory corresponding to this Part, a person has been appointed to investigate affairs of a corporation; and

(b) the Minister is satisfied that, in connection with that investigation, it is expedient that an investigation be made into affairs of that corporation, or of a corporation that is, or at any time has been, a related corporation, in the Territory,

the Minister may, by instrument in writing, appoint that person an inspector to investigate affairs of the corporation in the Territory or, if he is of the opinion that an investigation ought not to be made into all those affairs, into such of those affairs as he specifies in the instrument.

“(3) The Minister may, by instrument in writing, declare that a person, being a person whom he could appoint under sub-section (2) to investigate affairs of a corporation in the Territory, may investigate affairs of the corporation in the Territory and shall, subject to any terms and conditions specified in the instrument, have, in relation to the investigation, such of the powers of an inspector as are specified in the instrument and the person may then investigate affairs of that corporation in the Territory and may, subject to those terms and conditions, exercise those powers as if he had been appointed under sub-section (2) as an inspector to investigate affairs of that corporation in the Territory.

“(4) Sections 175 and 179A and sub-sections 174 (1), 174 (2), 174 (3), 174 (4), 176 (1), 176 (3), 176 (4), 176 (5), 176 (6) and 176 (10) apply to an investigation of affairs of a corporation by a person under sub-section (3) as if he had been appointed under sub-section (2) as an inspector to investigate affairs of that corporation in the Territory and as if a requirement of that person in pursuance of his powers under sub-section (3) were a requirement of an inspector under section 173.

#### **Conditions, &c., of appointment of inspector**

“171. (1) The Minister shall, in the instrument appointing an inspector, specify full particulars of the appointment, including—

(a) the matters into which the investigation is to be made, being all affairs or particular affairs of a company; and

(b) the terms and conditions (if any) to which the appointment is subject.

“(2) The Minister may, in the instrument appointing an inspector, specify the period in respect of which the investigation is to be made.

“(3) The Minister may at any time by notice in writing given to an inspector terminate the appointment of the inspector.

“(4) The Minister shall cause notice of the appointment and notice of the termination of the appointment of an inspector to be published in the *Gazette*.

### **Investigation of affairs of related corporation**

“172. (1) Where an inspector thinks it necessary for the purposes of the investigation of affairs of a company to investigate affairs of a corporation that is, or has at any relevant time been, a related corporation, the inspector shall make a report in writing to the Minister.

“(2) On receipt of the report referred to in sub-section (1), the Minister may, by instrument in writing, appoint the inspector as an inspector to investigate affairs of the related corporation.

### **Powers of inspectors**

“173. (1) Subject to sub-section (3), an inspector may require an officer of a company affairs of which are being investigated under this Part, by notice in writing in accordance with the prescribed form given in the prescribed manner—

- (a) to produce to the inspector such books of the company and other books relating to affairs of the company as are in the custody or under the control of the officer;
- (b) to give to the inspector all reasonable assistance in connection with the investigation; and
- (c) to appear before the inspector for examination on oath or affirmation in relation to affairs of the company.

“(2) An inspector may administer the oath referred to in paragraph (1) (c).

“(3) An inspector shall not exercise his powers under sub-section (1) in respect of an officer of a company affairs of which he is investigating under section 172 unless he has furnished the officer with a certificate stating that he is an inspector appointed to investigate affairs of the company under that section and that he believes the person to be an officer of the company.

“(4) Where books are produced to an inspector under this Part, the inspector may take possession of the books for such period as he considers necessary for the purposes of the investigation and, during that period, he shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the inspector to inspect, at all reasonable times, such of the books as the person would be so entitled to inspect.

### **Examination by inspector**

“174. (1) Where affairs of a company are being investigated under this Part, an officer of the company shall not—

- (a) refuse or fail to comply with a requirement of an inspector under section 173 to the extent to which he is able to comply with it;
- (b) in purported compliance with such a requirement, knowingly furnish information that is false or misleading in a material particular; or
- (c) when appearing before an inspector for examination in pursuance of such a requirement—
  - (i) make a statement that is false or misleading in a material particular; or
  - (ii) refuse or fail to take an oath or make an affirmation.

Penalty: \$1,000.

“(2) A duly qualified legal practitioner acting for an officer of a company to be examined in pursuance of a requirement of an inspector—

- (a) may attend the examination; and
- (b) may—
  - (i) address the inspector; and
  - (ii) examine the officer,

in relation to matters in respect of which the inspector has questioned the officer.

“(3) An officer of a company is not excused from answering a question put to him by an inspector on the ground that the answer might tend to incriminate him but, where the officer claims, before answering the question, that the answer might tend to incriminate him, neither the question nor the answer is admissible in evidence against him in criminal proceedings, other than proceedings under sub-section (1) or in relation to a charge of giving false testimony in respect of the answer.

“(4) An officer of a company who complies with the requirement of an inspector under section 173 shall not incur any liability to a person by reason only of that compliance and, for the purposes of this sub-section, a certificate furnished under sub-section 173 (3) is conclusive evidence of the facts required to be stated in that certificate.

“(5) An officer of a company required to attend for examination under this Part is entitled to be paid, in respect of his attendance, fees, and allowances for expenses, fixed by or in accordance with the regulations.

### **Person failing to comply with requirement of this Part**

“175. (1) Where an officer of a company fails to comply with a requirement of an inspector appointed to investigate affairs of a company, the inspector may, unless the person satisfies the inspector that he had a lawful excuse for the failure, apply to the Court for an order under sub-section (2).



“(2) Where an inspector applies to the Court under sub-section (1), the Court may inquire into the case and may—

- (a) order the officer to comply with the requirement of the inspector within such period as is fixed by the Court; and
- (b) if the Court is satisfied that the officer failed without lawful excuse to comply with the requirement of the inspector, punish him in like manner as if he had been guilty of a contempt of the Court.

### **Notes of examination**

“176. (1) An inspector may cause notes of an examination made by him under this Part to be recorded in writing.

“(2) Notes of an examination recorded in writing under sub-section (1)—

- (a) shall be read over to or by, and signed by, the person examined; and
- (b) may, subject to sub-section (5), be used in evidence in any legal proceedings against him.

“(3) Where a person examined under this Part refuses or fails to sign notes of the examination recorded in writing under sub-section (1), the inspector shall certify in writing that those notes accurately record all relevant matters raised during the examination and, subject to this section, those notes may be used in evidence in any legal proceedings against that person.

“(4) Where notes of an examination have been recorded in writing under sub-section (1), the person examined shall, upon request made by him in writing, be furnished without charge with a copy of those notes.

“(5) Notes recorded in writing under sub-section (1) that relate to a question the answer to which a person has claimed might tend to incriminate him shall not be used as evidence in criminal proceedings, other than proceedings under sub-section 174 (1) or proceedings relating to a charge of giving false testimony in respect of the answer.

“(6) Nothing in this section affects or limits the admissibility of written evidence other than notes recorded under this section or of oral evidence.

“(7) The Minister may furnish a duly qualified legal practitioner with a copy of notes recorded under this section, being notes of the examination of a person in relation to affairs of a company, where the Minister is satisfied that the practitioner is acting for a person who is conducting, or is, in good faith, contemplating, legal proceedings in respect of affairs of the company, being affairs investigated by an inspector under this Part.

“(8) A duly qualified legal practitioner furnished with a copy of notes under sub-section (7) shall use the notes only in connection with the preparation and institution of, and in the course of, legal proceedings referred to in that sub-section and shall not publish or communicate for any other purpose the notes or any part of the contents of the notes to any person.

**Penalty: \$200.**

“(9) Where a report is made under section 178, any notes recorded under this section relating to that report shall be furnished with the report.

“(10) Where a person examined under this Part alleges that notes recorded under this section in relation to the examination do not accurately record all relevant matters raised during the examination, the inspector who made the examination shall, by instrument in writing, record details of that person's allegations.

“(11) An instrument referred to in sub-section (10) shall be attached to the notes to which it relates and a copy of that instrument shall be attached to any copy of those notes furnished in accordance with this section or supplied under sub-section 178 (7).

### **Delegation of powers, &c., of inspector**

“177. (1) An inspector may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate to—

- (a) a person holding or performing the duties of an office included in the First, Second or Third Division of the Australian Public Service;
- (b) a duly qualified legal practitioner; or
- (c) a registered company auditor,

any of his powers or functions under this Part, other than—

- (d) this power of delegation;
- (e) a power to administer oaths and take affirmations; and
- (f) a power to examine on oath or affirmation.

“(2) A power or function delegated by an inspector under sub-section (1) may be exercised or performed by the delegate in accordance with the instrument of delegation.

“(3) A power or function delegated by an inspector under sub-section (1), when exercised or performed by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised or performed by the inspector.

“(4) An officer of a company affairs of which are being investigated under this Part may require a person to whom a power or function has been delegated by the inspector appointed in relation to that company under sub-section (1) to produce the instrument by which that power or function was delegated.

“(5) A delegation of a power or function by an inspector under sub-section (1) does not prevent the exercise of the power or the performance of the function by the inspector.

### **Report of inspector**

“178. (1) An inspector—

- (a) may make one or more interim reports in writing to the Minister during an investigation of affairs of a company and, if so directed in writing by the Minister, shall make such interim reports as are specified in the direction; and

- (b) shall, on the completion or termination of the investigation, make a final report in writing to the Minister on the result of the investigation.

“(2) An inspector may, when making a report under this section, give to the Minister any books of which he has taken possession under sub-section 173 (4) and the Minister—

- (a) may retain the books for such period as he considers necessary to enable a decision to be made as to whether any legal proceedings ought to be instituted as a result of the investigation;
- (b) may retain the books for such further period as he considers to be necessary to enable any such proceedings to be instituted and prosecuted;
- (c) may permit other persons to inspect the books while they are in his possession;
- (d) may permit the use of the books for the purposes of any legal proceedings instituted as a result of the investigation; and
- (e) shall permit a person who would be entitled to inspect any one or more of the books if they were not in the possession of the Minister to inspect at all reasonable times such of the books as that person would be so entitled to inspect.

“(3) Subject to sub-section (4), a copy of a final report shall, and a copy of the whole or any part of an interim report may, if the Minister thinks fit, be forwarded by the Minister to the company to which the report relates at its registered office in the place of its incorporation and a further copy of any report so forwarded shall, at the request of an applicant under section 169, be delivered to him.

“(4) The Minister shall not furnish a company or any other person with a copy of a report, or of any part of a report, by an inspector if he is satisfied that there is a prescribed reason for not divulging the contents of the report or of that part of the report.

“(5) For the purposes of sub-section (4), each of the following reasons is a prescribed reason for not divulging the contents of a report, or a part of a report:

- (a) that divulging the report, or part of the report, would prejudice—
  - (i) a proposed prosecution;
  - (ii) a prosecution;
  - (iii) inquiries or investigations under an Act or this Ordinance; or
  - (iv) the ability of a liquidator to efficiently perform his functions;
- (b) that the report, or part of the report, contains defamatory matter or might otherwise be unfair to, or injurious to the reputation of, innocent persons.

“(6) The Minister may, if he is of the opinion that it is in the public interest so to do, cause the whole or any part of a report to be printed and published.

“(7) Where an inspector has caused notes of an examination under this Part to be forwarded to the Minister with the report to which they relate, a copy of the notes may, subject to section 176 and to sub-section (4), be supplied to such persons, upon such conditions, as the Minister thinks fit.

“(8) A person to whom a copy of notes of an examination under this Part has been supplied under sub-section (7) shall not use, publish or communicate to any person for any purpose the notes or any part of the contents of the notes in contravention of a condition imposed by the Minister under that sub-section.

Penalty: \$200.

“(9) Where it appears to the Minister, from an examination of a report made under this section or of notes of an examination made under this Part or of both, that a prosecution ought to be instituted, he may, by notice in writing given before or after the institution of that prosecution, require an officer of the company affairs of which were investigated (not being an officer who is, or, in the opinion of the Minister, is likely to be, a defendant in the proceedings) to give all assistance in connection with the prosecution or proposed prosecution that he is reasonably able to give.

“(10) Where a person to whom a notice has been given under sub-section (8) fails to comply with a requirement specified in the notice, the Court may, on the application of the Minister, direct that person to comply with the requirement.

“(11) Where it appears to the Minister, from an examination of a report made under this section or of notes of an examination made under this Part or of both, that proceedings ought, in the public interest, to be brought by a company affairs of which were investigated by the inspector for the recovery of damages in respect of fraud, misfeasance or other misconduct in connection with affairs of the company or for the recovery of property of the company, the Minister may cause proceedings to be instituted and prosecuted accordingly in the name of the company.

“(12) A copy of a report by an inspector purporting to be certified as such a report by the Minister is admissible in legal proceedings as evidence of the inspector's report of his opinion for the purposes of paragraph 222 (1) (g).

“(13) The Court before which legal proceedings are brought against a company or other person for or in respect of matters dealt with in a report under this Part may order that a copy of the report be given to that company or person.

### **Cost of investigation**

“179. (1) Subject to this section, the expenses of and incidental to an investigation under this Part, and the expenses of and incidental to proceedings instituted by the Minister in the name of a company under sub-section 178 (10), shall be paid by the Commonwealth.

“(2) Where the Court, on the application of the Minister, is of the opinion that the whole or any part of the expenses of and incidental to an investigation

into affairs of a company under this Part, or of and incidental to proceedings instituted by the Minister in the name of a company under sub-section 178 (10), should be paid by the company, the Court may order that the expenses or that part of the expenses be so paid or, if they have been paid under sub-section (1), order the company to reimburse the Commonwealth and may, in any case, order that the company pay to the Commonwealth an amount in respect of the remuneration of any officer or employee of the Australian Public Service or of an authority of the Commonwealth, being an officer or employee concerned with the investigation or proceedings.

“(3) An order under sub-section (2) shall specify the amount to be paid or reimbursed in accordance with that order and may specify the time at which, and the manner in which, the amount shall be paid or reimbursed or, where the Court orders that the amount be paid or reimbursed in instalments, the times at which, and the manner in which, those instalments shall be paid.

“(4) An inspector may include in a report made by him under section 178 a recommendation whether the Minister should apply for an order under sub-section (2).

“(5) Where—

- (a) an inspector was appointed in pursuance of an application under sub-section 169 (1);
- (b) the applicants have given security in accordance with sub-section 169 (3); and
- (c) the company fails to comply with an order under sub-section (2),

the Court may, on application by the Minister, order that the security be forfeited or, if the amount that the company has failed to pay or reimburse in pursuance of the order is less than the amount of the security, a part of the security equal to the amount ordered to be paid be forfeited.

“(6) Where the Court has ordered, under sub-section (5), that an amount be forfeited because of the failure of a company to comply with an order under sub-section (2), the liability of the company under that last-mentioned order shall be reduced by an amount equal to the amount so forfeited or, where the amount so forfeited is equal to the liability of the company under that order, shall be extinguished.

### **Concealing, &c., books of company**

“179A. (1) A person who—

- (a) conceals, destroys, mutilates or alters a book of or relating to a company affairs of which are being investigated under this Part; or
- (b) sends, causes to be sent, or conspires with another person to send, out of the Territory such a book or any property belonging to or under the control of the company,

is guilty of an offence against this Ordinance.

**Penalty: \$5,000 or imprisonment for 2 years.**

“(2) In a prosecution for an offence under sub-section (1), it is a defence that the defendant did not act with intent to defeat the operation of this Part or to delay or obstruct the carrying out of an investigation under this Part.

**Orders may be made by the Court**

“179B. (1) Where it appears to an inspector that, because of the failure or refusal of a person to comply with a requirement of the inspector under section 173, facts concerning shares in, debentures of, or interests made available by, a company or rights relating to the issue of shares by the company cannot be ascertained, the inspector may apply to the Court for one or more of the following orders:

- (a) an order restraining a person from disposing of an interest in shares in, debentures of, or interests made available by, the company or in rights relating to the issue of shares by the company;
- (b) an order restraining a person from acquiring shares in, debentures or, or interests made available by, the company, or rights relating to the issue of shares by the company;
- (c) an order restraining the exercise of voting or other rights attached to shares in the company;
- (d) an order directing a person who is registered as the holder of shares in respect of which an order under this section is in force to give notice in writing of that order to each person whom he knows to be entitled to exercise a right to vote attached to those shares;
- (e) an order directing the company not to make payment, except in the course of winding up, of any sum due from the company in respect of shares in, debentures of, or interests made available by, the company;
- (f) an order directing the company not to register the transfer or transmission of shares in, debentures of, or interests made available by, the company;
- (g) an order directing the company not to issue shares to a person who holds shares in the company by reason of his holding shares in the company or in pursuance of an offer made to such a person by reason of his holding shares in the company.

“(2) Where an inspector applies to the Court for an order under sub-section (1), the Court may make or refuse to make the order sought or make such other order under that sub-section as to it seems just.

“(3) The inspector or a person aggrieved by an order made under this section may apply to the Court for the variation or revocation of the order and the Court may, if it is satisfied that it is reasonable to do so, by order, vary or revoke the first-mentioned order.

“(4) The variation or revocation of an order made under this section does not affect the validity of any act or thing done, or refused to be done, pursuant to the order before it was varied or revoked.

“(5) A copy of an order made under this section shall be served on the company to which it relates.

“(6) A person who contravenes or fails to comply with an order made under this section is guilty of an offence against this Ordinance.

Penalty: \$1,000.

Default penalty: \$200.

“(7) Where an offence under sub-section (6) is committed by a company, every officer (as defined in sub-section 5 (1)) of the company who is in default is guilty of an offence against this Ordinance.

Penalty: \$1,000.

Default penalty: \$200.

“(8) A prosecution under this section shall not be instituted without the consent in writing of the Minister.

#### **Application for winding up**

“180. (1) Where a report of an investigation under this Part has been made by an inspector, the Minister may apply to the Court—

- (a) if the company the subject of the report is incorporated pursuant to this Ordinance or pursuant to any corresponding previous law of the Territory—for the winding up of the company; or
- (b) if the company the subject of the report is a foreign company—for the winding up of the company so far as its assets in the Territory are concerned.

“(2) Upon the making of an application under sub-section (1), the provisions of this Ordinance shall, with such adaptations as are necessary, apply as if—

- (a) in the case of a company incorporated pursuant to this Ordinance or pursuant to any corresponding previous law of the Territory—a winding up petition had been presented to the Court by the company; and
- (b) in the case of a foreign company—a petition for an order for the affairs of the company, so far as assets in the Territory are concerned, to be wound up in the Territory had been presented to the Court by a creditor or contributory of the company upon the liquidation of the company in the place in which it is incorporated.

“(3) Where, in the case of a foreign company, on an application under sub-section (1), an order is made for the company, so far as its assets in the Territory are concerned, to be wound up in the Territory, the company shall not carry on business or establish or keep a place of business in the Territory.

“(4) A copy of an application by the Minister under sub-section (1) shall be served on the company to which it refers.”.

**Application of certain provisions in winding up to official management**

**8.** Section 209 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (2) “two hundred and forty-eight, two hundred and forty-nine, three hundred and four, three hundred and five and three hundred and six of this Ordinance” and substituting “248, 249, 306, 374C and 374D”; and
- (b) by omitting from paragraph (2) (c) “(5) of section two hundred and eight of this Ordinance” and substituting “208 (5)”.

**Application for winding up**

**9.** Section 221 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (e) “one hundred and seventy-five of this Ordinance” and substituting “180”; and
- (b) by omitting from sub-section (2) “(a), (b), (c), (e) or (h) of sub-section (1) of the next succeeding section” and substituting “222 (1) (a), (b), (c), (e) or (h)”.

**Circumstances in which company may be wound up by Court**

**10.** Section 222 of the Principal Ordinance is amended by omitting from paragraph (1) (g) “section one hundred and sixty-nine or section one hundred and seventy of this Ordinance” and substituting “Part VIA”.

**Priorities**

**11.** Section 292 of the Principal Ordinance is amended—

- (a) by omitting from paragraph (1) (a) “two hundred and twenty-four of this Ordinance” and substituting “224”;
- (b) by omitting from paragraph (1) (a) “two hundred and eighty-one of this Ordinance” and substituting “281”;
- (c) by omitting from paragraph (1) (d) “and”;
- (d) by adding at the end of sub-section (1) the following word and paragraph:  
“and (f) eighthly, an amount that, pursuant to an order under section 179, the company was, at the relevant date, under an obligation to pay.”;
- (e) by omitting from sub-section (2) “(a) of sub-section (1) of this section” and substituting “(1) (a)”;
- (f) by omitting from sub-section (2) “that sub-section” and substituting “sub-section (1)”;
- (g) by omitting from sub-section (4) “(b) and (d) of sub-section (1) of this section” and substituting “(1) (b) and (d)”;
- (h) by omitting from sub-section (4) “the last preceding sub-section” and substituting “sub-section (3)”;
- (i) by omitting from sub-section (5) “of this section”;
- (j) by omitting from sub-section (7) “of this section”;
- (k) by omitting from sub-section (8) “of this section”;



- (l) by omitting from paragraph (8) (a) “(c) of that sub-section” and substituting “(1) (c)”; and
- (m) by omitting from paragraph (8) (b) “(e) of that sub-section” and substituting “(1) (e)”.

**Repeal**

12. Sections 300 to 305 (inclusive) of the Principal Ordinance are repealed.

13. Section 367 of the Principal Ordinance is repealed and the following sections are substituted:

**Privileged communications**

“367. Neither an inspector within the meaning of Part VIA nor a person authorized by him pursuant to section 177 shall require disclosure by a duly qualified legal practitioner of any privileged communication, whether oral or written, made to or by him in that capacity, except as respects the name and address of his client.

**Power to examine defaulting officers**

“367A. (1) Where it appears to the Court, on the application of the Minister or of a person authorized in that behalf by the Minister, that an officer or former officer of a company to which this section applies has conducted himself in such a way that the officer or former officer has rendered himself liable to action by the company in relation to the performance of his duties as an officer of the company, the Court may order that the officer or former officer shall attend before the Court on a day appointed by the Court to be examined as to his conduct and dealings as an officer of the company.

“(2) An examination under this section shall not be held in open court unless the Court otherwise orders.

“(3) The Court, when it makes an order under sub-section (1) or at any subsequent time on the application of any person concerned, may give such directions as to the matters to be inquired into, and the procedure to be followed, at the examination as it thinks fit.

“(4) The person who applies for an order under this section for the examination of an officer or former officer of a company and, with the leave of the Court, any creditor or member of the company may take part in the examination either personally or by a barrister and solicitor.

“(5) A person examined under this section shall be examined on oath, shall answer all questions that the Court puts or allows to be put to him and shall not be entitled to refuse to answer a question that is relevant or material to the examination on the ground that his answer might tend to incriminate him but, if he claims that the answer to any question might incriminate him and, but for this sub-section, he would have been entitled to refuse to answer the question, the answer shall not be used in any subsequent criminal proceedings against

him, other than proceedings in relation to a charge of giving false testimony in respect of the answer.

“(6) A person ordered to be examined under this section may be represented by a barrister and solicitor who may put to him questions for the purpose of enabling him to explain his conduct and dealings as an officer of the company or to explain or qualify any answer given by him.

“(7) Notes of an examination under this section—

- (a) shall be reduced to writing;
- (b) shall be read over to or by, and signed by, the person examined;
- (c) may, subject to sub-section (5), be used in evidence in any legal proceedings against him; and
- (d) may be inspected and copied by the person examined, the Minister, the Registrar or applicant or, with the consent of the Court, by any creditor or member of the company.

“(8) Where a person examined under this section refuses or fails to sign the notes of the examination in accordance with sub-section (7), the Court shall certify in writing that the notes accurately record all relevant matters raised during the examination and, subject to sub-section (5), the notes may be used in evidence in any legal proceedings against that person.

“(9) Nothing in sub-section (8) shall be read as relieving the person examined from the obligation to sign those notes.

“(10) Where the Court is satisfied that an order for an examination under this section was obtained without reasonable cause, it may order the whole or any part of the costs incurred by the person ordered to be examined to be paid by the applicant or by any other person who, with the consent of the Court, takes part in the examination.

“(11) Where a person examined under this section alleges that notes of the examination do not accurately record all relevant matters raised during the examination, the Court shall, by instrument in writing, record details of that person's allegations.

“(12) An instrument referred to in sub-section (11) shall be attached to the notes to which it relates.

#### **Power of Court to assess damages against delinquent officers**

“367B. (1) Where it appears to the Court, on the application of the Minister or of a prescribed person, that a person who has taken part in the formation, promotion, administration, management or winding up of a company to which this section applies—

- (a) has misapplied, retained or become liable or accountable for money or other property of the company; or
- (b) has been guilty of any negligence, default, breach of duty or breach of trust in relation to the company,

the Court may make one or more of the following orders:

- (c) an order that the last-mentioned person attend before the Court on a day appointed by the Court to be examined as to his conduct;
- (d) an order that the last-mentioned person repay or restore the money or other property or such part of the money or property as the Court thinks fit, together with interest at such rate as the Court thinks just;
- (e) an order that the last-mentioned person pay to the company such sum by way of damages in respect of the misapplication, retainer, negligence, default, breach of duty or breach of trust as the Court thinks just.

“(2) In relation to a company referred to in sub-section (1)—

- (a) a liquidator or provisional liquidator of the company;
- (b) a contributory of the company;
- (c) where the company is under official management—the official manager or a member of the company; and
- (d) a person authorized by the Minister to make an application under sub-section (1),

are prescribed persons for the purposes of that sub-section.

“(3) This section extends and applies to the receipt of any money or property by an officer or former officer of the company, whether by way of salary or otherwise, that appears to the Court to have been unfair or unjust to the company or its members.

“(4) The provisions of this section apply notwithstanding that the person concerned may be criminally liable in respect of the matters in respect of which the order is sought.

“(5) Sub-sections 367A (2) to (12) (inclusive) apply to an examination under this section as if that examination were an examination under section 367A.

### **Interpretation**

“367C. (1) In sections 367A and 367B, ‘company to which this section applies’ means a company, or an unregistered company within the meaning of Division 5 of Part X—

- (a) that is in course of being wound up;
- (b) that is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIA;
- (d) in respect of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in an instrument;
- (e) that has ceased to carry on business or is unable to pay its debts; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.

“(2) For the purposes of sub-section (1), a company shall be deemed—

- (a) to have ceased to carry on business if the Registrar has—
  - (i) sent to the company by post a letter pursuant to the provisions of sub-section 308 (1) and has not, within one month after the date of that notice, received an answer to the effect that the company is carrying on business; or
  - (ii) published in the *Gazette* a notice pursuant to the provisions of sub-section 308 (3); and
- (b) to be unable to pay its debts if execution or other process issued on a judgment, decree or order of a court against the company is returned unsatisfied in whole or in part.”.

14. After section 374 of the Principal Ordinance the following sections are inserted:

**Offences by officers of certain companies**

“374A. (1) A person who, being an officer or former officer of a company to which this section applies—

- (a) does not, to the best of his knowledge and belief, fully and truly disclose to the appropriate officer all the real and personal property of the company, and how and to whom and for what consideration and when the company disposed of any part of that property otherwise than in the ordinary course of the business of the company;
- (b) does not deliver up to the appropriate officer, or as he directs—
  - (i) all the real and personal property of the company in his custody or under his control that he is required by law to deliver up; or
  - (ii) all books and papers in his custody or under his control belonging to the company that he is required by law to deliver up;
- (c) within the period of 5 years immediately preceding the relevant day or at any time on or after that day—
  - (i) has concealed property of the company valued at not less than \$100 or has concealed a debt due to or from the company;
  - (ii) has fraudulently removed property of the company valued at not less than \$100;
  - (iii) has concealed, destroyed, mutilated or falsified, or has been a party to the concealment, destruction, mutilation or falsification of, a book or paper affecting or relating to the property or affairs of the company;
  - (iv) has made, or has been a party to the making of, a false entry in a book or paper affecting or relating to the property or affairs of the company;
  - (v) has fraudulently parted with, altered or made an omission in, or has been a party to the fraudulent parting with, altering or making of an omission in, a book or paper affecting or relating to the property or affairs of the company;

- (vi) by a false representation or other fraud, has obtained on credit for or on behalf of the company property that the company has not subsequently paid for;
  - (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, property that the company has not subsequently paid for; or
  - (viii) has pawned, pledged or disposed of property of the company that has been obtained on credit and has not been paid for, unless that pawning, pledging or disposing was in the ordinary course of the business of the company;
- (d) wilfully makes a material omission in a statement relating to affairs of the company;
  - (e) knowing or believing that a false debt has been proved by a person, fails for a period of one month to inform the appropriate officer of his knowledge or belief;
  - (f) prevents the production of a book or paper affecting or relating to the property or affairs of the company;
  - (g) within the period of 5 years immediately preceding the relevant day or at any time on or after that day, has attempted to account for part of the property of the company by making entries in the books of the company showing fictitious transactions, losses or expenses; or
  - (h) within the period of 5 years immediately preceding the relevant day or at any time on or after that day, has, by a false representation or other fraud, obtained or attempted to obtain the consent of the creditors of the company or any of them to an agreement with reference to affairs of the company or to its winding up,
- is guilty of an offence against this Ordinance.

Penalty: \$5,000 or imprisonment for 2 years.

“(2) It is a defence to a charge under paragraph (1) (a), (b) or (d) or sub-paragraph (1) (c) (i), (vii) or (viii) if the accused proves that he had no intent to defraud, and to a charge under paragraph (1) (f) or sub-paragraph (1) (c) (iii) or (iv) if he proves that he had no intent to conceal the state of affairs of the company or to defeat the law.

“(3) A person who takes in pawn or pledge or otherwise receives property knowing it to be pawned, pledged or disposed of in circumstances that amount to an offence under sub-paragraph (1) (c) (viii) is guilty of an offence against this Ordinance.

Penalty: \$2,500 or imprisonment for 12 months.

#### **Liability where proper accounts not kept**

“374B. Where the provisions of section 161A have not been complied with in respect of a company to which this section applies throughout the period of 2 years immediately preceding the relevant day, or the period between the incorporation of the company and the relevant day, whichever is the shorter period, an officer who is in default is, unless he shows that he acted honestly and shows

that in the circumstances in which the business of the company was carried on the default was excusable, guilty of an offence against this Ordinance.

Penalty: \$2,500 or imprisonment for 12 months.

### **Offences**

"374C. (1) If an officer of a company to which this section applies was knowingly a party to the contracting of a debt by the company and had, at the time the debt was contracted, no reasonable or probable grounds of expectation, after taking into consideration the other liabilities (if any) of the company at the time, of the company being able to pay the debt, the officer is guilty of an offence against this Ordinance.

Penalty: \$500 or imprisonment for 3 months.

"(2) If any business of a company to which this section applies has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, a person who was knowingly a party to the carrying on of the business in that manner is guilty of an offence against this Ordinance.

Penalty: \$2,500 or imprisonment for 12 months.

"(3) Notwithstanding anything contained in section 381, a prosecution for an offence under sub-section (1), whenever committed, may be brought against an officer of a company within the period of 3 years immediately succeeding—

- (a) the date on which the company becomes a company to which this section applies; or
- (b) the date on which the debt to which the prosecution relates was contracted,

whichever is the later date, but nothing in this sub-section authorizes the institution of a prosecution under sub-section (1) in respect of a debt contracted more than 3 years before the company became a company to which this section applies.

### **Powers of Court**

"374D. (1) Where a person has been convicted of an offence under sub-section 374C (1) or (2), or has been convicted of an offence under sub-section 303 (3) or 304 (4) of this Ordinance as in force immediately before 1 February 1981, the Court, on the application of the Minister or a prescribed person, may, if it thinks proper to do so, declare that the person is personally responsible, without any limitation of liability—

- (a) in the case of a conviction under sub-section 374C (1) or under sub-section 303 (3) of this Ordinance as so in force—for the payment to the company of an amount equal to the whole of the debt in respect of which the conviction was made or of such part of the debt as the Court thinks fit; and
- (b) in the case of a conviction under sub-section 374C (2) or under sub-section 304 (4) of this Ordinance as so in force—for the payment to

the company of such amount as is required to satisfy all or any of the debts of the company as the Court directs.

“(2) In relation to a company to which a conviction referred to in sub-section (1) relates—

- (a) the appropriate officer; and
- (b) a creditor or contributory of the company authorized by the Minister to make an application under sub-section (1),

are prescribed persons for the purposes of that sub-section.

“(3) Where the Court makes a declaration under sub-section (1) in relation to a person, it may make such order as it thinks proper for the purpose of giving effect to that declaration and, in particular, may order that the liability of the person under the declaration is a charge on a debt or obligation due from the company to him, or on a charge or an interest in a charge on any assets of the company held by or vested in him or a corporation or person on his behalf, or a person claiming as assignee from or through the person liable or a corporation or person acting on his behalf, and may, from time to time, make such further order as is necessary for the purpose of enforcing a charge imposed under this sub-section.

“(4) For the purpose of sub-section (3), ‘assignee’ includes a person to whom or in whose favour, by the directions of the person liable, the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration, not including consideration by way of marriage, given in good faith and without notice of any of the matters upon which the conviction or declaration was made.

“(5) The provisions of this section have effect notwithstanding that the person concerned is criminally liable in respect of matters in respect of which the declaration under sub-section (1) is made.

“(6) On the hearing of an application under sub-section (1), the applicant may himself give evidence or call witnesses.

### **Interpretation**

“374E. (1) In sections 374A to 374D (inclusive)—

‘appropriate officer’ means—

- (a) in relation to a company, or an unregistered company within the meaning of Division 5 of Part X, that is being wound up—the liquidator;
- (b) in relation to a company that is under official management—the official manager;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA—the person nominated as the appropriate officer in the particular case by the Minister;
- (d) in relation to a company in respect of which a receiver or manager of all or any of the property of the company has been

appointed, whether by the Court or pursuant to the powers contained in any instrument—the receiver or manager; and

- (e) in relation to any company that has ceased to carry on business or is unable to pay its debts, other than a company referred to in paragraph (a)—the Registrar;

‘company to which this section applies’ means a company, or an unregistered company within the meaning of Division 5 of Part X—

- (a) that is in the course of being wound up;
- (b) that is under official management;
- (c) in respect of affairs of which there is an inspector within the meaning of Part VIA;
- (d) in respect of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in any instrument; or
- (e) that has ceased to carry on business or is unable to pay its debts;

‘the relevant day’ means—

- (a) in relation to a company, or an unregistered company within the meaning of Division 5 of Part X that is being wound up—the day upon which, under the provisions of this Ordinance, the winding up commences or is deemed to have commenced;
- (b) in relation to a company that is under official management—the day upon which it is determined that the company shall be placed under official management;
- (c) in relation to a company in respect of affairs of which there is an inspector within the meaning of Part VIA—the day upon which the inspector was appointed;
- (d) in relation to a company in respect of which a receiver or manager has been appointed—the day upon which the receiver or manager was appointed;
- (e) in relation to a company that is unable to pay its debts—the day upon which the execution or other process was returned unsatisfied in whole or in part; and
- (f) in relation to any company that has ceased to carry on business—the day upon which the last return was lodged by the company pursuant to the requirements of section 158 or 159, as the case requires.

“(2) For the purposes of sub-section (1), a company shall be deemed—

(a) to have ceased to carry on business if the Registrar has—

- (i) sent to the company by post a letter pursuant to the provisions of sub-section 308 (1) and has not, within one month after the date of that notice, received an answer to the effect that the company is carrying on business; or



- (ii) published in the *Gazette* a notice pursuant to the provisions of sub-section 308 (3); and
- (b) to be unable to pay its debts if execution or other process issued on a judgment, decree or order of a court against the company is returned unsatisfied in whole or in part.

### **Offences**

“374F. (1) A person who gives, or agrees or offers to give, to a member or creditor of a company any valuable consideration with a view to securing his own appointment or nomination, or to securing or preventing the appointment or nomination of some person other than himself, as the company's liquidator or official manager is guilty of an offence against this Ordinance.

Penalty: \$500.

“(2) Every officer or contributory of a company who destroys, mutilates, alters or falsifies any books, papers or securities of, or relating to, the company, or makes or is a party to the making of a false or fraudulent entry in a register, book of account or document belonging to the company, with intent to defraud or deceive any person is guilty of an offence against this Ordinance.

Penalty: \$5,000 or imprisonment for 2 years.

### **Frauds by officers**

“374G. Every person who, while an officer of a company—

- (a) has, by false pretences or by means of any other fraud, induced a person to give credit to the company;
- (b) with intent to defraud creditors of the company, has made or caused to be made a gift, transfer of or charge on, or has caused or connived at the levying of any execution against, the property of the company; or
- (c) with intent to defraud creditors of the company, has concealed or removed any part of the property of the company within the period of 2 months immediately preceding the date of an unsatisfied judgment or order for payment of money obtained against the company or at any time after that period,

is guilty of an offence against this Ordinance.

Penalty: \$5,000 or imprisonment for 2 years.

### **Court may disqualify person from acting as director, &c., in certain circumstances**

“374H. (1) Unless cause to the contrary is shown, the Court may, on an application by the Minister and on being satisfied as to the matters referred to in sub-section (2), make an order prohibiting a person specified in the order from acting as a director of, or from being concerned in the management of, any company during such period, not exceeding 5 years after the date of the order, as is specified in the order.

“(2) The Court shall not make an order under sub-section (1) unless it is satisfied—

- (a) that the person to whom the application for an order relates was given adequate notice of the application;
- (b) that, within the period of 7 years before notice of the application was given to the person referred to in paragraph (a), whether that period commenced before or after 1 February 1981, that person was a director of, or was concerned in the management of, 2 or more companies to which this section applies; and
- (c) that, in the case of each company referred to in paragraph (b), the manner in which affairs of the company had been managed was wholly or partly responsible for the company being wound up, being under official management, ceasing to carry on business, being unable to satisfy a levy of execution, being subject to the appointment of a receiver or manager or entering into a compromise or scheme of arrangement with its creditors.

“(3) A person shall not contravene or fail to comply with an order under this section.

Penalty: \$1,000 or imprisonment for 6 months.

“(4) Sub-section (3) does not affect the powers of the Court in relation to the punishment of contempts of the Court.

“(5) In this section, ‘company to which this section applies’ means a corporation, or an unregistered company within the meaning of Division 5 of Part X—

- (a) that has been wound up, or is in the course of being wound up, because of inability to pay its debts as and when they became due;
- (b) that has been, or is, under official management;
- (c) that has ceased to carry on business because it was unable to pay its debts as and when they became due;
- (d) in respect of which a levy of execution was not satisfied;
- (e) in respect of the property of which a receiver or manager has been appointed, whether by the Court or pursuant to the powers contained in an instrument; or
- (f) that has entered into a compromise or scheme of arrangement with its creditors.”.

#### **Proceedings, how and when taken**

**15.** Section 381 of the Principal Ordinance is amended—

- (a) by omitting from sub-section (1) “six” and substituting “6”;
- (b) by omitting from sub-section (2) “the last preceding sub-section” and substituting “sub-section (1)”;

(c) by adding at the end thereof the following sub-sections:

“(5) A court of summary jurisdiction may not impose a longer period of imprisonment than 12 months in respect of one offence against this Ordinance.

“(6) A court of summary jurisdiction may not impose a fine exceeding \$1,000 in respect of one offence against this Ordinance.”.

16. After section 384 of the Principal Ordinance the following section is inserted:

#### **Delegations**

“385. (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to a person holding or performing the duties of an office included in the First or Second Division of the Australian Public Service any of his powers under this Ordinance, other than—

(a) this power of delegation; and

(b) the power to make regulations under this Ordinance.

“(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Ordinance, be deemed to have been exercised by the Minister.

“(3) A delegation under this section does not prevent the exercise of a power by the Minister.”.

#### **Regulations**

17. At any time after the date of commencement of this section and before 1 February 1981, regulations may be made under the Principal Ordinance as amended by this Ordinance as if the provisions of this Ordinance referred to in sub-section 3 (2) had come into operation on the date on which this Ordinance is notified in the *Gazette* but regulations so made shall not come into operation until 1 February 1981.

#### **Transitional provisions**

18. (1) Part VIA of the Principal Ordinance as amended by this Ordinance applies to and in relation to an investigation to which Division 3 or 4 of Part VI of the Principal Ordinance, as in force immediately before 1 February 1981, applied and which had not been completed before that date.

(2) An inspector to whom Division 3 or 4 of Part VI of the Principal Ordinance, as in force immediately before 1 February 1981, applied shall be deemed to have been appointed under Part VIA of the Principal Ordinance as amended by this Ordinance.

(3) Where, before 1 February 1981, an act, matter or thing had been done or had arisen in the course of an investigation to which Division 3 or 4 of Part VI of the Principal Ordinance, as in force immediately before that day, applied and which had not been completed, that act, matter or thing shall have the

same status, operation and effect in relation to the completion of the investigation on or after that day as if that act, matter or thing had been done or had arisen on or after that day.

(4) In particular and without effecting the generality of sub-section (3), an order, application, examination, deposition, writ, summons, proceeding, record, note or report made, effected, issued or given in relation to an investigation to which Division 3 or 4 of Part VI of the Principal Ordinance, as in force immediately before 1 February 1981, applied shall have the same status, operation and effect in relation to the completion of the investigation on or after that day as if the Principal Ordinance as amended by this Ordinance had been in force on the date on which the order, application, examination, deposition, writ, summons, proceeding, record, note or report was made, effected, issued or given.

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### NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 23 December 1980.
2. Ordinance No. 7, 1962 as amended by No. 11, 1962; No. 19, 1963; Nos. 11 and 13, 1966; No. 31, 1968; Nos. 4, 10 and 28, 1969; No. 5, 1971; Nos. 16 and 19, 1972; No. 9, 1973; No. 9, 1974; Nos. 32, 50 and 60, 1976; No. 38, 1977; No. 46, 1978; No. 6, 1980.