

AUSTRALIAN CAPITAL TERRITORY

No. 43 of 1980

An Ordinance to establish a Corporate Affairs Commission for the Australian Capital Territory, and for related purposes

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 eleventh day of December 1980.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

JOHN MOORE
Minister of State for Business and Consumer Affairs

CORPORATE AFFAIRS COMMISSION ORDINANCE 1980

Short title

1. This Ordinance may be cited as the *Corporate Affairs Commission Ordinance 1980*.¹

Interpretation

2. (1) In this Ordinance, unless the contrary intention appears—

“Agreement” means the Agreement made on 22 December 1978 between the Commonwealth and the States a copy of which is set out in the Schedule to the *National Companies and Securities Commission Act 1979* or, if that Agreement is or has been amended or affected by another Agreement, that Agreement as so amended or affected;

“Commission” means the Corporate Affairs Commission established by this Ordinance;

“National Commission” means the National Companies and Securities Commission established by the *National Companies and Securities Commission Act 1979*;

“securities” has the same meaning as in the *National Companies and Securities Commission Act 1979*.

Establishment of Commission

3. There is established by this Ordinance a Commission by the name of the Corporate Affairs Commission.

Constitution of Commission

4. The Commission shall be constituted by the Commissioner.

Officers and staff

5. (1) For the purposes of this Ordinance, the Minister may appoint—

- (a) a Commissioner;
- (b) a Deputy Commissioner; and
- (c) Assistant Commissioners.

(2) The persons appointed to the offices referred to in sub-section (1) and the staff of the Commission shall be persons appointed or employed under the *Public Service Act 1922*.

Incorporation

6. (1) The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue or be sued in its corporate name.

(2) In addition to the common seal of the Commission there shall be such duplicates of that seal as the Commissioner directs, and every document to which a duplicate seal is affixed shall be deemed to have the common seal of the Commission affixed to it.

(3) Every court shall take judicial notice of the common seal of the Commission affixed to a document and, unless the contrary is established, shall presume that it was duly affixed.

(4) Every court shall take judicial notice of—

- (a) the official signature of any person who holds or has held, or is acting or has acted in, the office of Commissioner, Deputy Commissioner or Assistant Commissioner; and
- (b) the fact that the person holds or has held, or is acting or has acted in, that office,

if a signature purporting to be the signature of that person appears on any official document.

(5) In this section, a reference to a court shall be construed as including a reference to—

- (a) a judge of a court; and
- (b) any other person authorized by law or by consent of parties to receive evidence,

and, in relation to a person referred to in paragraph (b), the reference to taking judicial notice shall be construed as a reference to taking the like notice as would be taken by a court.

Functions and powers of Commission

7. (1) The Commission shall perform any functions and may exercise any powers that are conferred upon it by or under any Act or Ordinance.

(2) The Commission may perform any functions or exercise any powers that are conferred on the National Commission by or under any Ordinance, Act, State Act or law of another Territory, being functions or powers that are delegated to the Commission pursuant to any Ordinance, Act, State Act or law of another Territory to which the operation of the Agreement or the *National Companies and Securities Commission Act 1979* extends.

Acting appointments

8. (1) The Minister may appoint a person to act as Commissioner, Deputy Commissioner or Assistant Commissioner

- (a) during a vacancy in the office of Commissioner, Deputy Commissioner or Assistant Commissioner, as the case may be, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Commissioner, Deputy Commissioner or Assistant Commissioner is absent from duty or from the Territory or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) Where a person is acting as Commissioner, Deputy Commissioner or Assistant Commissioner in accordance with this section and the office of Commissioner, Deputy Commissioner or Assistant Commissioner becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The Minister may at any time terminate the appointment of a person appointed to act in accordance with this section.

(5) The appointment of a person under this section ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.

(6) While a person is acting as Commissioner, Deputy Commissioner or Assistant Commissioner in accordance with this section, he shall perform all

the functions, and may exercise all the powers, of the Commissioner, Deputy Commissioner or Assistant Commissioner, as the case requires.

(7) The validity of anything done by a person purporting to act in accordance with this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Powers and functions of Deputy or Assistant Commissioner

9. The Deputy Commissioner or an Assistant Commissioner may, subject to any directions given by the Commissioner, perform any functions and exercise any power of the Commissioner.

Notification of interests

10. (1) A person (other than the Commissioner) who is appointed under this Ordinance or is authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission and who, in the course of his official duties or the performance or exercise of the function or power, is required to consider any matter relating to—

- (a) a body corporate in securities of which he has a relevant interest;
- (b) securities in which he has a relevant interest;
- (c) securities of the same class as securities in which he has a relevant interest;
- (d) a person or body—
 - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or
 - (ii) with whom or with which he is associated; or
- (e) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith so inform the Commissioner in writing.

(2) A member of the staff of the Commission who, in the course of his official duties, is required to consider any matter relating to—

- (a) a person or body—
 - (i) by whom or by which he is employed or has been employed at any time during the immediately preceding 3 years; or
 - (ii) with whom or with which he is associated; or
- (b) a body corporate that is related to a body corporate by which he is employed or has been employed at any time during the immediately preceding 3 years,

shall forthwith so inform the Commissioner in writing.

(3) It is a defence to a prosecution for an offence against this section in respect of a failure by a person to inform the Commissioner that he is required

to consider a matter relating to a particular body corporate, a particular person or particular securities if the person establishes that, at the time when he was required to consider the matter, he was not aware of a fact or matter the existence of which obliged him to inform the Commissioner that he was required to consider the first-mentioned matter.

(4) The questions whether a person has a relevant interest in securities, whether a person is associated with a person or body and whether 2 bodies corporate are related to each other for the purposes of this section shall be determined as prescribed under the *National Companies and Securities Commission Act 1979* for the purposes of section 49 of that Act.

Penalty: \$5,000 or imprisonment for one year, or both.

Annual report

11. The Commissioner shall, as soon as practicable after 30 June and not later than 30 September in each year, prepare a report of the operations of the Commission during the year that ended on that 30 June, and shall forthwith furnish that report to the Minister.

Regulations

12. The Minister may make regulations, not inconsistent with this Ordinance, prescribing all matters that by this Ordinance are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Ordinance.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on 18 December 1980.