NORTHERN TERRITORY OF AUSTRALIA

CORPORATIONS REFORM (NORTHERN TERRITORY) ACT 2001

As in force at 1 May 2016

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 May 2016.

CORPORATIONS REFORM (NORTHERN TERRITORY) ACT 2001

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

Part 1 Preliminary

1 Short title

This Act may be cited as the *Corporations Reform (Northern Territory) Act 2001*.

2 Commencement

This Act comes into operation on the day on which, but immediately before, the *Corporations Act 2001* of the Commonwealth commences.

3 Purpose

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

Note: The Corporations (Northern Territory Request) Act 2001 requests the Parliament of the Commonwealth to enact legislation in respect of certain matters relating to corporations and financial products and services.

4 Definitions

(1) In this Act:

applicable provision of the Northern Territory means a provision of:

(a) the old Corporations Law or the old Corporations Regulations;

(b) the old ASIC Law or the old ASIC Regulations; or

(c) a Commonwealth law as applying because an Act in relation to:

(i) an offence against; or

(ii) an act, matter or thing arising under or in respect of,

a provision that, because of any other application or applications of this definition, is an applicable provision of the Northern Territory, a State of the Commonwealth or the Australian Capital Territory and the Jervis Bay Territory.

ASIC means the Australian Securities and Investments Commission.

carried over provision:

(a) of the old corporations legislation means a provision of that legislation that:

(i) was in force immediately before the relevant time; and

(ii) corresponds to a provision of the new corporations legislation; and

(b) of the old ASIC legislation means a provision of that legislation that:

(i) was in force immediately before the relevant time; and

(ii) corresponds to a provision of the new ASIC legislation.

co-operative scheme law means any of the following laws:

(a) *Companies (Application of Laws) Act 1986*;

(b) *Companies (Northern Territory) Code*;

(c) *Companies (Acquisition of Shares)(Application of Laws) Act 1986*;

(d) *Companies (Acquisition of Shares) (Northern Territory) Code*;

(e) *Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1986*;

(f) *Companies and Securities (Interpretation and Miscellaneous Provisions) (Northern Territory) Code*;

(g) *Securities Industry (Application of Laws) Act 1986*;

(h) *Securities Industry (Northern Territory) Code*;

(i) *Futures Industry (Application of Laws) Act 1986;*

(j) *Futures Industry (Northern Territory) Code*.

Corporations Law of the Northern Territory means the Corporations Law set out in section 82 of the *Corporations Act 1989* of the Commonwealth applying as a law of the Northern Territory under section 7 of the old application Act.

corresponds derives its meaning from the meaning of a corresponding provision in section 5.

instrument includes an instrument of a legislative or administrative character.

liability includes a duty or obligation.

made includes issued, given or published.

national scheme law of this jurisdiction means:

(a) the *Corporations (Northern Territory) Act 1990*;

(b) the old Corporations Law; or

(c) the old ASIC Law.

new ASIC Act means the *Australian Securities and Investments Commission Act 2001* of the Commonwealth.

new ASIC legislation means:

(a) the new ASIC Act;

(b) the new ASIC Regulations (as amended and in force from time to time) and any other regulations made under the new ASIC Act;

(c) the laws of the Commonwealth referred to in paragraph (a)(ii) and (in relation to the Northern Territory) paragraph (b)(iii) of the definition of ***old ASIC legislation*** in section 254(1) of the new ASIC Act, being those laws as they apply after the relevant time; and

(d) the preserved instruments.

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

new Corporations Act means the *Corporations Act 2001* of the Commonwealth.

new corporations legislation means:

(a) the new Corporations Act;

(b) the new Corporations Regulations (as amended and in force from time to time) and any other regulations made under the new Corporations Act;

(c) the laws of the Commonwealth referred to (in relation to the Northern Territory) in paragraph (c) of the definition of ***old corporations legislation*** in section 1371(1) of the new Corporations Act, being those laws as they apply after the relevant time; and

(d) the preserved instruments.

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

old application Act means the *Corporations (Northern Territory) Act 1990* as in force from time to time before the relevant time.

old ASIC Act means the *Australian Securities and Investments Commission Act 1989* of the Commonwealth as in force from time to time before the relevant time.

old ASIC Law means the old ASIC Act, other than the excluded provisions specified in section 58(2) of the old application Act, from time to time applying before the relevant time as the ASIC Law of the Northern Territory within the meaning of section 58 of the old Application Act.

old ASIC legislation means:

(a) the old ASIC Law and the old ASIC Regulations, and any instruments made under that Law or those Regulations;

(b) the old application Act, and any instruments made under that Act, as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time; and

(c) the laws of the Commonwealth as applying in relation to the old ASIC Law and the old ASIC Regulations from time to time before the relevant time as laws of, or for the government of,

the Northern Territory because of Part 8 of the old application Act, and any instruments made under those laws as so applying.

old ASIC Regulations means the regulations in force under section 251 of the old ASIC Act applying from time to time before the relevant time as the ASIC Regulations of the Northern Territory within the meaning of section 59 of the old application Act.

old Corporations Law means the Corporations Law of the Northern Territory as in force from time to time, before the relevant time.

old corporations legislation means:

(a) the old Corporations Law and the old Corporations Regulations, and any instruments made under that Law or those Regulations;

(b) the old application Act, and any instruments made under that Act, as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time; and

(c) the laws of the Commonwealth as applying in relation to the old Corporations Law and the old Corporations Regulations from time to time before the relevant time as laws of, or for the government of, the Northern Territory because of Part 8 of the old application Act, and any instruments made under those laws as so applying.

old Corporations Regulations means the regulations in force under section 22 of the *Corporations Act 1989* of the Commonwealth applying from time to time before the relevant time as the Corporations Regulations of the Northern Territory within the meaning of section 8 of the old application Act.

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

preserved instrument means:

(a) in relation to the new corporations legislation – an instrument that, because of section 1399 of the new Corporations Act, has effect after the relevant time as if it were made under a provision of the new corporations legislation; and

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

previous Northern Territory corporations law means:

(a) the *Companies Act 1963*;

(b) the *Marketable Securities Act 1971*;

(c) a co-operative scheme law; or

(d) any other Act, or provision of an Act, specified by the regulations under subsection (2).

provision of a law includes any portion of the law.

referring State has the same meaning as in section 4 of the new Corporations Act.

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

right includes an interest or status.

(2) The Regulations may provide that a specified Act, or a specified provision of an Act, is a previous Northern Territory corporations law for the purposes of this Act.

5 Corresponding provision

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

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

(b) the Regulations specify that the 2 provisions correspond.

(2) For the purposes of this Act, a provision (***the old provision***) of a previous Northern Territory corporations law corresponds to a provision (***the new provision***) of a national scheme law of this jurisdiction (and vice versa) if:

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

(b) the regulations specify that the 2 provisions correspond.

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

(a) differences in the numbering of the provisions;

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

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

(d) for the purposes of subsection (1)(a), the fact that:

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

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

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

(e) for the purposes of subsection (1)(a), other differences that are attributable to the fact that the new corporations legislation and the new ASIC legislation apply as Commonwealth laws in the Northern Territory and the States and other Territories of the Commonwealth;

(f) other differences of a kind prescribed by the Regulations for the purposes of this paragraph.

(4) Subsection (3) is not intended to otherwise limit the circumstances in which 2 provisions are, for the purposes of subsection (1)(a) or (2)(a), substantially the same.

(5) The Regulations may provide that:

(a) a specified provision of the old corporations legislation does, or does not, correspond to a specified provision of the new corporations legislation;

(b) a specified provision of the old ASIC legislation does, or does not, correspond to a specified provision of the new ASIC legislation; or

(c) a specified provision of a previous Northern Territory corporations law does, or does not, correspond to a specified provision of a national scheme law of this jurisdiction.

6 Operation of Act

This Act has effect despite any provision of the old application Act or of an applicable provision of the Northern Territory.

Part 2 Repeal

7 Repeal of Acts

(1) The Acts specified in Schedule 1 are repealed.

(2) The effect of the repeal of a national scheme law of this jurisdiction under subsection (1) is that which would have resulted had this Act and that law been Commonwealth Acts in relation to which the *Acts Interpretation Act 1901* of the Commonwealth as in force on 1 November 2000 applied.

Note: Part III of the Acts Interpretation Act 1901 of the Commonwealth contains provisions dealing with the effect of the repeal of an Act. These provisions protect accrued rights and liabilities and allow legal proceedings in respect of them to be commenced or continued. However, this section and section 9 have the effect of cancelling certain rights and liabilities and terminating certain legal proceedings.

8 Extinguishing rights and liabilities, and terminating proceedings, dealt with by new Corporations legislation

(1) If, by force of:

(a) Chapter 10 of the new Corporations Act; or

(b) Part 16 of the new ASIC Act,

a person acquires, accrues or incurs a right or liability in substitution for a pre-commencement right or liability, the pre-commencement right or liability is cancelled at the relevant time.

(2) A proceeding in a court that:

(a) was started before the relevant time;

(b) was:

(i) under a provision of the old corporations legislation or the old ASIC legislation; or

(ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation;

(c) was a proceeding to which section 1383 of the new Corporations Act or section 267 of the new ASIC Act applies; and

(d) had not been concluded or terminated before the relevant time,

is terminated at the relevant time.

(3) If, by force of a Commonwealth Act (other than the new Corporations Act) referred to in section 1393 to 1396 (inclusive) of the new Corporations Act, a person becomes liable to pay an amount that is the same as, and is in respect of the same matter as, an amount (***pre-commencement amount***) that was payable by the person before the relevant time under a provision of the old corporations legislation, the person's liability to pay the pre-commencement amount is cancelled at the relevant time.

(4) This section has effect despite Part III of the *Acts Interpretation Act 1901* of the Commonwealth as in force on 1 November 2000.

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

(a) was acquired, accrued or incurred under:

(i) a carried over provision of the old corporations legislation or the old ASIC legislation; or

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

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

Part 3 Transitional provisions

Division 1 Transitional arrangements for national scheme laws

9 Certain provisions of Northern Territory law taken to operate despite national scheme law

(1) Any provision of a relevant law of the Northern Territory that:

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

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

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

Note: Section 5G of the new Corporations Act only applies to a provision of a Northern Territory law that is inconsistent with a provision of the Corporations legislation to which Part 1.1A of that Act applies if that provision operated, immediately before the commencement of that Act, despite the provision of the old Corporations Law or the old ASIC Law that corresponds to the Commonwealth provision.

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

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

(3) Subsection (1) or (2) does not apply to a provision of a relevant law of the Northern Territory (or a class of provisions of relevant laws of the Northern Territory) specified by the Regulations as a provision (or class of provisions) to which the subsection does not apply.

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

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

(6) In this section:

matter includes act, omission, body, person or thing.

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

10 Court proceedings and orders

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

(a) the proceeding was started in a court before the relevant time;

(b) the proceeding was:

(i) under a provision of the old corporations legislation or the old ASIC legislation; or

(ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation or the old ASIC legislation;

(c) the proceeding was not a proceeding to which section 1383 or 1384 of the new Corporations Act or section 267 or 268 of the new ASIC Act applies;

(d) the proceeding had not been concluded or terminated before the relevant time.

(2) Without limiting section 7 but subject to subsection (3), a proceeding to which this section applies may be continued, and any order made by a court in such a proceeding may be appealed against, reviewed or enforced as if section 7 had not been enacted and the new corporations legislation and the new ASIC legislation had not commenced.

(3) Nothing in this Part, section 7, the Regulations or the *Acts Interpretation Act 1901* of the Commonwealth as in force on 1 November 2000 operates to preserve the effect of an order to which section 1383(5) of the new Corporations Act or section 267(5) of the new ASIC Act applies and, at the relevant time, that order ceases to have effect as an order of the court by which it was made and any proceeding in relation to such an order is terminated.

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

(5) In this section, ***proceeding*** includes:

(a) a proceeding by way of appeal against, or otherwise seeking review of, an order made by a court;

(b) a proceeding to enforce an order made by a court; and

(c) any other proceeding in respect of a breach of an order made by a court.

11 Existing rules of court continue to have effect

The rules of court made under section 51 of the old application Act and all other enabling powers, as in force immediately before the relevant time, continue to have effect (and may be dealt with) at and after the relevant time as if:

(a) they were rules of court in force under section 29; and

(b) they were made for the purposes of the provisions of the corporations legislation (within the meaning of section 29) that correspond to the provisions of the old Corporations Law for which they were made.

12 References in Acts or instruments to old corporations legislation or old ASIC legislation

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

(a) a law, regulations or instrument specified in column 1 of the table in Schedule 2 is taken, at and after the relevant time, to include a reference to the Act, regulations or instrument of the kind specified opposite it in column 2 of the table; or

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

(2) The Regulations may:

(a) provide that subsection (1) does not apply in relation to prescribed references or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts;

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under Acts, or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind; or

(b) provide that subsection (1) applies in relation to prescribed references or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts; or

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under an Act, or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind,

as if, in that subsection, the words ***to be a reference*** were substituted for the words ***to include a reference***.

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

(a) the old application Act or an applicable provision of the Northern Territory;

(b) a previous Northern Territory corporations law or an instrument made under a previous Northern Territory corporations law;

(c) this Act or the Regulations;

(d) the *Corporations Reform (Consequential Amendments NT) Act 2001*;

(e) the *Interpretation Act 1978*;

(f) any other Act, or any provision of an Act, or any kind of Act or provision of an Act, specified by the Regulations;

(g) an instrument made under an Act, or any provision of an instrument made under an Act, or any kind of instrument made under an Act or provision of an instrument made under an Act, specified by the Regulations; or

(h) a law applying as a law of the Northern Territory by force of an Act, or any provision of a law applying as a law of the Northern Territory by force of an Act, or any kind of a law applying as a law of the Northern Territory by force of an Act or provision of a law applying as a law of the Northern Territory, specified by the Regulations.

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

(5) An express reference in an Act, an instrument made under an Act or a law applying a law of the Northern Territory by force of an Act to:

(a) an Act, regulations or other instrument forming part of the new corporations legislation or the new ASIC legislation; or

(b) a provision or group of provisions of such an Act, regulations or other instrument,

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

(6) The Regulations may:

(a) provide that subsection (5) does not apply in relation to prescribed references or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts; or

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under Acts, or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind; or

(b) provide that subsection (5) applies in relation to prescribed references or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts;

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under Acts, or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind,

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

13 References to companies incorporated in a State or Territory

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

(a) a company (within the meaning of the Corporations Law of the Northern Territory or of a State or another Territory of the Commonwealth) incorporated in the Northern Territory or that State or other Territory;

(b) a company that is incorporated under the Corporations Law of the Northern Territory or of a State or another Territory of the Commonwealth;

(c) a company that is registered or taken to be registered under the Corporations Law of the Northern Territory or of a State or another Territory of the Commonwealth; or

(d) a body that is taken to be registered as a company under the Corporations Law of the Northern Territory or of a State or another Territory of the Commonwealth,

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

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

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

(4) The Regulations may:

(a) provide that subsection (1), (2) or (3) does not apply in relation to prescribed references, or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts;

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under Acts or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind; or

(b) provide that subsection (1), (2) or (3) applies in relation to prescribed references or references of a prescribed kind:

(i) in prescribed Acts or instruments made under Acts;

(ii) in prescribed laws applying as laws of the Northern Territory by force of an Act; or

(iii) in Acts, instruments made under Acts, or laws applying as laws of the Northern Territory by force of an Act, of a prescribed kind,

as if, in that subsection, the words "to include a reference" were substituted for the words "to be a reference".

Division 2 Transitional arrangements for co-operative scheme laws

14 Definition

In this Division, ***Corporations Law commencement*** means 1 January 1991 (which is the day the *Corporations (Northern Territory) Act 1990* commenced).

15 Winding up started before commencement

(1) The provisions of the new Corporations Act with respect to winding up do not apply to any body corporate whose winding up was started before the Corporations law commencement.

(2) If a body corporate's winding up started before the Corporations Law commencement under a law in force in the Northern Territory:

(a) the body corporate is to be wound up in the same manner, and with the same incidents, as if the *Companies Act 1981* of the Commonwealth had not been repealed and the *Corporations Act 1989* of the Commonwealth had not been enacted; and

(b) for the purposes of the winding up, the *Companies Act 1981* of the Commonwealth applies, with such modifications as the circumstances require, as if a reference in that Act to the NCSC were, except in relation to a time before that

commencement, a reference to the ASIC.

16 Companies Liquidation Account

(1) In this section, ***relevant money*** means:

(a) money that, immediately before the Corporations Law commencement, stood to the credit of the Companies Liquidation Account established by section 428 of the *Companies Act 1981* of the Commonwealth; and

(b) money that, after the Corporations Law commencement, was or is paid into the Companies Liquidation Account under the provisions of the *Companies Act 1981* of the Commonwealth that were taken to continue in force after the Corporations Law commencement for the purposes of windings up started before that commencement.

(2) Relevant money is to be dealt with in accordance with section 427 of the *Companies Act 1981* of the Commonwealth.

17 General

(1) If, immediately before the commencement of the new Corporations Act, an Act that is a co-operative scheme law repealed under section 7 and that applied to a matter in the Northern Territory, that Act:

(a) continues to apply to that matter after that commencement despite its repeal; and

(b) if that Act applied to that matter immediately before that commencement with particular modifications – continues to apply to the matter with the same modifications.

(2) For the purposes of subsection (1), if a company was dissolved before the Corporations Law commencement, the *Companies Act 1981* of the Commonwealth is taken to have applied to the dissolution immediately before the commencement of the new Corporations Act.

Division 3 Functions etc. of Commonwealth agencies in relation to transitional arrangements for national scheme laws

18 Definitions

In this Division:

authority, in relation to the Commonwealth, includes:

(a) a body corporate, or an unincorporated body, established for a public purpose by or in accordance with an Act of the Commonwealth;

(b) the Administrative Appeals Tribunal established by the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

(c) the Australian Federal Police; and

(d) any other court, tribunal or authority established by or in accordance with an Act of the Commonwealth.

non-federal proceeding means:

(a) a proceeding in relation to which:

(i) sections 1383(1)(a), (b) and (d) of the Corporations Act 2001 are satisfied but section 1383(1)(e) of that Act is not satisfied; or

(ii) sections 267(1)(a), (b) and (d) of the *Australian Securities and Investments Commission Act* are satisfied but section 267(1)(e) of that Act is not satisfied;

(b) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made before the commencement in relation to a proceeding that was:

(i) under a provision of the old corporations legislation;

(ii) brought as, or connected with, a prosecution for an offence against a provision of the old corporations legislation;

(iii) under a provision of the old ASIC legislation; or

(iv) brought as, or connected with, a prosecution for an offence against a provision of the old ASIC legislation; or

(c) an enforcement proceeding, or an appeal or review proceeding, in relation to an order of a court made after the commencement in relation to a proceeding referred to in paragraph (a).

officer, in relation to the Commonwealth, includes:

(a) a Minister of the Commonwealth;

(b) a person holding:

(i) an office established by or under an Act of the Commonwealth;

(ii) an appointment made under an Act of the Commonwealth; or

(iii) an appointment made by the Governor-General or a Minister of the Commonwealth but not under an Act;

(c) a member or special member of the Australian Federal Police;

(d) the Director of Public Prosecutions within the meaning of the *Director of Public Prosecutions Act 1983* of the Commonwealth;

(e) the Commonwealth Ombudsman within the meaning of the *Ombudsman Act 1976* of the Commonwealth;

(f) the Privacy Commissioner appointed under the *Privacy Act 1988* of the Commonwealth;

(g) a Special Prosecutor appointed under the *Special Prosecutors Act 1982* of the Commonwealth;

(h) any other person who is a member or officer of an authority of the Commonwealth; and

(i) any other person who is in the service or employment of the Commonwealth, or of an authority of the Commonwealth, or is employed or engaged under an Act of the Commonwealth.

transitional national scheme function or power means a function or power in relation to a non-federal proceeding that is expressed to be conferred by or under a law of the Northern Territory.

19 Continuing functions etc. of Commonwealth agencies under national scheme laws

(1) Commonwealth authorities and officers:

(a) have the transitional national scheme powers and functions; and

(b) may perform the functions and exercise the powers imposed and conferred on them by virtue of Division 1.

(2) A Commonwealth authority or officer:

(a) is not subject to any directions in relation to the performance or exercise of a transitional national scheme function or power; and

(b) is not under a duty to perform or exercise a transitional national scheme function or power.

(3) Subsection (2) does not apply to ASIC.

Part 4 Application of Commonwealth Corporations legislation to Territory matters

20 Definitions

In this Part:

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

confer includes impose.

Corporations legislation means the Corporations legislation to which Part 1.1A of the new Corporations Act applies.

declaratory provision means a provision of a law of the Northern Territory to which this Division applies by operation of section 21.

function includes a power.

matter includes act, omission, body, person or thing.

modification includes addition, exception, omission or substitution.

perform includes exercise.

21 Northern Territory provisions to which this Part applies

(1) This Part applies to a provision of a law of the Northern Territory if the provision declares a matter to be an applied Corporations legislation matter for the purposes of this Part in relation to any of the following (whether with or without modifications):

(a) the whole of the Corporations legislation;

(b) a specified Act, regulations or other instrument forming part of the Corporations legislation;

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

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

22 Effect of declaratory provisions

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

(a) if the declaratory provision is one to which section 21(1)(a) applies – the whole of the Corporations legislation applies to the matter as if it were a law of the Northern Territory;

(b) if the declaratory provision is one to which section 21(1)(b) applies – the Act, regulations or other instrument specified by the declaratory provision applies or apply to the matter as if it or they were a law or laws of the Northern Territory;

(c) if the declaratory provision is one to which section 21(1)(c) applies – the provision or provisions specified by the declaratory provision applies or apply in relation to the matter as if it or they were a law or laws of the Northern Territory.

(2) A provision applied to a matter by a declaratory provision, or taken by force of section 26(1) to apply to the matter, is applied as in force for the time being unless the declaratory provision applies it as in force at a particular time specified by the declaratory provision.

23 Modifications to applied law

(1) This Part operates to apply a provision of the Corporations legislation, or of an Act, regulations or other instrument forming part of the Corporations legislation, as a law of the Northern Territory subject to the following modifications:

(a) any modifications specified by or under the law containing the declaratory provision;

(b) a reference to ASIC is (unless a function under an applied law is conferred on ASIC as referred to in section 24) taken to be a reference to:

(i) the Minister administering the declaratory provision or another person (or person belonging to a class of persons) specified by the Regulations (whether generally or in relation to a particular applied law); or

(ii) any other person specified by or under the declaratory provision;

(c) a reference to the *Gazette* is a reference to the *Gazette* as defined in section 18 of the *Interpretation Act 1978*;

(d) a reference to the Minister is a reference to the Minister administering the declaratory provision;

(e) a reference to this jurisdiction is a reference to the Northern Territory;

(f) any other modifications that are necessary or that are prescribed by Regulations made under this Act, whether generally or in relation to a particular applied law.

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

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

(4) This section has effect subject to sections 24 to 27 (inclusive).

24 Conferral of functions on ASIC

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

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

(b) ASIC is authorised to perform that function under section 11 of the new ASIC Act.

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

25 Conferral of functions on Northern Territory courts

An applied law that confers a function or duty on a court or on the Court is taken to confer that function or duty (along with the jurisdiction to exercise that function or duty) on the Supreme Court or such other court of the Northern Territory specified by or under the declaratory provision.

26 Implied application of regulations and other provisions of Corporations legislation

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

(a) the provisions of any regulations made under the applied law;

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

(c) the provisions of Part 9.4B (Civil consequences of contravening civil penalty provisions) of the new Corporations Act for the purposes of any provision of the applied law that is a civil penalty provision within the meaning of that Part.

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

27 Proceedings for offences

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

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

(a) the amount of a penalty unit specified in relation to that offence by the applied law, or a provision taken by force of section 26(1) to apply to the matter that is the subject of the declaratory provision, is $100; and

(b) the laws of the Northern Territory apply in relation to that offence as if the applied law, or a provision taken by force of section 26(1) to apply to the matter that is the subject of the declaratory provision, were a law or laws of the Northern Territory.

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

(a) the investigation and prosecution of offences;

(b) the arrest, custody, bail, trial, finding of guilt and conviction of persons charged with offences;

(c) proceedings relating to a matter referred to in paragraph (a) or (b);

(d) the classification of offences as indictable or summary;

(e) appeals and reviews relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c);

(f) the sentencing, punishment and release of persons found guilty or convicted of offences;

(g) fines, penalties and forfeitures; and

(h) confiscation of the proceeds of crime.

28 Application of Corporations legislation by other means

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

Part 5 General

29 Rules of the Supreme Court

(1) The Judges of the Supreme Court of the Northern Territory or a majority of them may make rules of court:

(a) with respect to proceedings, and the practice and procedure, of that Court under the Corporations legislation;

(b) with respect to any matter or thing that is:

(i) required or permitted by the Corporations legislation to be prescribed by rules within the meaning of the Corporations legislation; or

(ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to the Corporations legislation; and

(c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.

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

(3) In this section:

Corporations legislation means:

(a) the new Corporations Act;

(b) the new ASIC Act; and

(c) the regulations made under the new Corporations Act and the new ASIC Act.

30 ASIC has certain functions and powers

(1) The Minister, or a person authorised in writing by the Minister, may enter into an agreement or arrangement with ASIC for the performance of functions or the exercise of powers by ASIC as an agent of the Northern Territory, even if those functions or powers are conferred on another person or body by or under a law of the Northern Territory.

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

Note: Section 11(9) of the new ASIC Act provides that ASIC has, but is not under a duty to perform, the functions and powers that are the subject of the agreement or arrangement with the Northern Territory.

31 Regulations

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may provide that certain provisions of Part 2 are taken to be modified as set out in the Regulations (and those provisions then have effect as if they were so modified).

(3) Without limiting subsection (1), the Regulations may amend regulations made under another Act, rules and by-laws, but only if the amendment is consequential on the enactment, or proposed enactment, by the Parliament of the Commonwealth of:

(a) the old ASIC Act;

(b) the *Corporations Act 1989* of the Commonwealth;

(c) an Act amending an Act specified to in paragraph (a) or (b);

(d) the new ASIC Act; or

(e) the new Corporations Act.

(4) Without limiting subsection (1), the Regulations may:

(a) declare a matter to be an excluded matter for the purposes of section 5F of the new Corporations Act in relation to:

(i) the whole of the Corporations legislation to which Part 1.1A of that Act applies;

(ii) a specified provision of that legislation;

(iii) that legislation other than a specified provision; or

(iv) that legislation otherwise than to a specified extent; and

(b) declare a provision of a law of the Northern Territory, or a provision of a law of the Northern Territory as amended as specified in the Regulations, to be a Corporations legislation displacement provision for the purposes of section 5G of the new Corporations Act (either generally or specifically in relation to a provision of the Corporations legislation to which Part 1.1A of that Act applies).

(5) Without limiting subsection (1), the Regulations may make provision for or with respect to enabling jurisdiction conferred by or under the old corporations legislation or the old ASIC legislation or a previous Northern Territory corporations law to be exercised by a court of the Northern Territory, or confirming that such jurisdiction is exercisable by a court of the Northern Territory, including (without limitation) provisions for or with respect to:

(a) conferring jurisdiction on courts of the Northern Territory;

(b) the construction of references in the old corporations legislation or the old ASIC legislation or a previous Northern Territory corporations law to Commonwealth authorities and officers;

(c) the disapplication of provisions of the old corporations legislation or the old ASIC legislation or a previous Northern Territory corporations law, including provisions that contemplate the administration or enforcement of laws as if they were Commonwealth laws or that contemplate offences and other matters as being offences against and matters under Commonwealth laws;

(d) the treatment of offences arising under the old corporations legislation or the old ASIC legislation or a previous Northern Territory corporations law (including the specification of penalties);

(e) prescribing modifications of the old corporations legislation or the old ASIC legislation or a previous Northern Territory corporations law; and

(f) associated procedural and consequential matters.

(6) Without limiting subsection (1), the Regulations may deal with matters of a transitional nature that relate to:

(a) the transition from the application of provisions of the old corporations legislation or a previous Northern Territory corporations law to the application of provisions of the new corporations legislation or the new ASIC legislation; and

(b) the repeal of an Act under section 7,

and, in so doing, the Regulations may:

(c) provide for the appointment by the Minister of a person (whether by name, by reference to an office, position or designation held by a person or by reference to a person holding, acting in or performing the duties of an office, position or designation) to be a person who may, in relation to an event, circumstance or thing that happened or arose before the commencement of section 7, exercise a power or perform a function conferred or imposed on the Commissioner for Corporate Affairs (within the meaning of the *Companies (Administration) Act 1986*) under an Act in force before that commencement as if that Act continued to be in force;

(d) provide that, if no person holds the appointment referred to in paragraph (c), the Chief Executive Officer of the Agency administering this Act may, in relation to an event, circumstance or thing that happened or arose before the commencement of section 7, exercise a power or perform a function conferred or imposed on the Commissioner for Corporate Affairs (within the meaning of the *Companies (Administration) Act 1986*) under an Act in force before that commencement as if that Act continued to be in force; and

(e) prohibit or regulate the exercise of a power or performance of a function of the Commissioner for Corporate Affairs by a person appointed in accordance with paragraph (c) or the Chief Executive Officer referred to in paragraph (d), including by imposing conditions, limitations or qualifications on the exercise of such a power or performance of such a function by that person.

(7) Any provision of the Regulations may be expressed to take effect from a time that is before the day on which the Regulations containing the provision are made, not being a time earlier than immediately before the relevant time.

(8) To the extent to which a provision of a regulation takes effect from a time that is before the day on which the Regulations containing the provision are made, the provision does not operate so as:

(a) to affect in a manner prejudicial to any person (other than the Northern Territory or an authority of the Northern Territory), the rights of that person existing before the date of making of those Regulations; or

(b) to impose liabilities on any person (other than the Northern Territory or an authority of the Northern Territory) in respect of anything done or omitted to be done before the date of making of those Regulations.

(9) The Regulations have effect despite anything to the contrary in Part 2.

(10) In this section, ***matters of a transitional nature*** includes matters of an application or savings nature.

Schedule 1 Repealed Acts

section 7

Companies Ordinance 1963	No. 43, 1963
Companies Ordinance (No. 2) 1963	No. 62, 1963
Companies Ordinance (No. 3) 1963	No. 75, 1963
Companies Ordinance 1967	No. 25, 1967
Companies Ordinance 1968	No. 3, 1968
Companies Ordinance 1969	No. 44, 1969
Companies Ordinance 1972	No. 54, 1972
Companies Ordinance 1973	No. 38. 1973
Companies Ordinance 1974	No. 21, 1974
Companies Ordinance 1976	No. 22, 1976
Companies Act 1978	No. 80, 1978
Companies Amendment Act 1984	No. 40, 1984
Companies (Acquisition of Shares)(Application of Laws) Act 1986	No. 15, 1986
Companies (Administration) Act 1986	No. 17, 1986
Companies and Securities (Consequential Amendments) Act 1986	No. 18, 1986
Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1986	No. 16, 1986
Companies (Application of Laws) Act 1986	No. 13, 1986
Companies (Application of Laws) Amendment Act 1987	No. 25, 1987
Corporations (Consequential Amendments) Act 1990	No. 59, 1990
Corporations (Northern Territory) Act 1990	No. 56, 1990

Corporations (Northern Territory) Amendment Act 1991	No. 81, 1991
Corporations (Northern Territory) Amendment Act 1992	No. 69, 1992
Corporations (Northern Territory) Amendment Act 1995	No. 11, 1995
Futures Industry (Application of Laws) Act 1986	No. 60, 1986
Marketable Securities Ordinance 1971	No. 54, 1971
Securities Industry (Application of Laws) Act 1986	No. 14, 1986

Schedule 2 Table

section 12(1)

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

the old ASIC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of that Part
the ASC Regulations of the Northern Territory	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of that Part
an instrument made under the old ASIC Law or the old ASIC Regulations	a corresponding preserved instrument under the new ASIC legislation
an instrument made under the ASC Law of the Northern Territory or the ASC Regulations of the Northern Territory	a corresponding preserved instrument under the new ASIC legislation
the ASIC Law	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the ASC Law	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act
the ASIC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of that Part
the ASC Regulations	the new ASIC Regulations made for the purposes of Part 3 of the new ASIC Act except to the extent to which they operate in relation to a contravention of that Part
the ASIC Law of a jurisdiction other than the Northern Territory that is a referring State	Part 3 of the new ASIC Act except to the extent to which that Part operates in relation to a contravention of Part 2 of that Act

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

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Corporations Reform (Northern Territory) Act 2001* (Act No. 19, 2001)**

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 Corporations Act 2001 (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001)

***Corporations (Financial Services Reform Amendments) Act 2002* (Act No. 16, 2002)**

Assent date	7 June 2002
Commenced	11 March 2002 (s 2, s 2 *Financial Services Reform Act 2001* (Cth Act No. 122, 2001), s 2 Corporations Act 2001 (Cth Act No. 50, 2001) and Cth *Gaz* S285, 13 July 2001)

***Local Court (Related Amendments) Act 2016* (Act No. 8, 2016)**

Assent date	6 April 2016
Commenced	1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

3 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22 of 2018) to: ss 1, 3, 12, 14, 23 and 31.

4 LIST OF AMENDMENTS

s 23	amd No. 16, 2002, s 7
s 27	amd No. 8, 2016, s 45