

Western Australia

Corporations (Western Australia) Act 1990

As at 01 Feb 2005

Version 01-c0-05

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Corporations (Western Australia) Act 1990

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Western Australia

Corporations (Western Australia) Act 1990

An Act to apply certain provisions of laws of the Commonwealth relating to corporations, the securities industry and the futures industry as laws of Western Australia and for other purposes.

Part 1 — Preliminary

1. Short title and purposes

- (1) This Act may be cited as the *Corporations (Western Australia) Act 1990*¹.
- (2) The purposes of this Act are —
 - (a) to apply certain provisions of the *Corporations Act 1989* of the Commonwealth and the *Australian Securities and Investments Commission Act 1989* of the Commonwealth and of regulations under those Acts as laws of Western Australia; and
 - (b) to apply certain other laws of the Commonwealth as laws of Western Australia for the purpose of the administration and enforcement of the law relating to corporations, the securities industry, the futures industry and some other matters.

[Section 1 amended by No. 26 of 1999 s. 68(2).]

2. Commencement

This Act shall come into operation on 1 January 1991.

3. Definitions

- (1) In this Act, unless the contrary intention appears —

“applicable provision”, in relation to a jurisdiction, means a provision of —

 - (a) the Corporations Law, or Corporations Regulations, of that jurisdiction; or
 - (b) the ASIC Law, or ASIC Regulations, of that jurisdiction; or
 - (c) in the case of the Capital Territory — a Commonwealth law as applying, of its own force or because of another Commonwealth law, 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 Capital Territory or any other jurisdiction; or

- (d) in the case of a jurisdiction other than the Capital Territory — a Commonwealth law as applying, because of a law of that jurisdiction, 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 that or any other jurisdiction;

“ASIC Act” means the *Australian Securities and Investments Commission Act 1989* of the Commonwealth;

“ASIC Law” has the meaning given by Part 11;

“ASIC Law of Western Australia” means the provisions applying by reason of section 58;

“ASIC Regulations” has the meaning given by Part 11;

“ASIC Regulations of Western Australia” means the provisions applying by reason of section 59;

“authority”, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;

“Capital Territory” means the Australian Capital Territory and the Jervis Bay Territory;

“Commission” means the Australian Securities and Investments Commission established by the ASIC Act;

“Commonwealth administrative laws” means the following:

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(a) the *Administrative Appeals Tribunal Act 1975* of the Commonwealth;

[(b) deleted]

(c) the *Freedom of Information Act 1982* of the Commonwealth;

(d) the *Ombudsman Act 1976* of the Commonwealth;

(e) the *Privacy Act 1988* of the Commonwealth —
and the provisions of the regulations in force for the time being under those Acts;

“Commonwealth law” means any of the written or unwritten laws of the Commonwealth, including laws about the exercise of prerogative powers, rights and privileges, other than the Corporations Law of the Capital Territory, the ASIC Law of the Capital Territory or provisions prescribed, for the purposes of the definition of “Commonwealth law” in section 4 of the Corporations Act, by regulations under section 73 of the Corporations Act;

“Commonwealth Minister” has the meaning given to “the Minister” by section 80A(2) of the Corporations Law;

“co-operative scheme law” has the meaning given by section 84;

“Corporations Act” means the *Corporations Act 1989* of the Commonwealth;

“Corporations Law” has the meaning given by Part 3;

“Corporations Law of Western Australia” means the provisions applying by reason of section 7;

“Corporations Regulations” has the meaning given by Part 3;

“Corporations Regulations of Western Australia” means the provisions applying by reason of section 8;

“corresponding law” means —

(a) an Act of a jurisdiction (other than Western Australia) that corresponds to this Act; or

- (b) regulations made under such an Act; or
- (c) the Corporations Law, Corporations Regulations, ASIC Law, or ASIC Regulations, or any other applicable provision, of such a jurisdiction; or
- (d) rules of court made because of such an Act;

“Federal Court” means the Federal Court of Australia;

“jurisdiction” means a State or the Capital Territory;

“law” in relation to the Capital Territory, means a law of or in force in the Capital Territory;

“Minister for this jurisdiction” means the Minister;

“modifications” includes additions, omissions and substitutions;

“national scheme law” has the meaning given by section 60;

“national scheme law of this jurisdiction” means:

- (a) this Act; or
- (b) the Corporations Law of Western Australia; or
- (c) the ASIC Law of Western Australia;

“NCSC” means the National Companies and Securities Commission;

“officer”, in relation to the Commonwealth, has the same meaning as in Part 8 of the Corporations Act;

“State” includes the Northern Territory;

“State Family Court”, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* of the Commonwealth applies because of a proclamation made under section 41(2) of that Act;

“Territory” does not include the Northern Territory;

“this jurisdiction” means Western Australia.

- (2) In this Act, a reference to a Commonwealth Act includes a reference to —

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- (a) that Commonwealth Act as amended and in force for the time being; and
- (b) an Act passed in substitution for that Act.

[Section 3 amended by No. 51 of 1991 ss. 4 and 5; No. 26 of 1999 s. 68(2), (3) and (4); No. 32 of 2001 s. 7; No. 45 of 2004 s. 37.]

4. Australian Capital Territory

For the purposes of the national scheme laws of this jurisdiction, the Jervis Bay Territory is taken to be part of the Australian Capital Territory.

5. This Act and applicable provisions of Western Australia not to be affected by later State laws

- (1) An Act enacted, or an instrument made under an Act, after the commencement of this section is not to be interpreted as amending or repealing, or otherwise altering the effect or operation of, this Act or the applicable provisions of Western Australia.
- (2) Subsection (1) does not affect the interpretation of an Act, or of an instrument made under an Act, so far as that Act provides expressly for that Act or instrument, as the case may be, to have effect despite a specified provision, or despite any provision, of this Act or the applicable provisions of Western Australia.

6. Operation of other Western Australian laws

Except as otherwise provided in this Act, nothing in this Act or the applicable provisions of Western Australia affects the operation after the commencement of this section of an Act enacted before that commencement or of an instrument made under such an Act.

Part 2 — The Corporations Law, and the Corporations Regulations, of Western Australia

7. Application in Western Australia of the Corporations Law

The Corporations Law set out in section 82 of the Corporations Act as in force immediately before the repeal of that section —

- (a) applies as a law of Western Australia; and
- (b) as so applying, may be referred to as the Corporations Law of Western Australia.

[Section 7 amended by No. 8 of 2001 s. 30(2).]

8. Application of regulations

- (1) The regulations in force immediately before the repeal of the Corporations Act, under section 22 of that Act —
 - (a) apply as regulations in force for the purposes of the Corporations Law of Western Australia; and
 - (b) as so applying, may be referred to as the Corporations Regulations of Western Australia.
- (2) Subject to subsection (3) of this section, where regulations under section 22 of the Corporations Act take effect from a specified day that is earlier than the day when they are notified in the *Commonwealth of Australia Gazette* under section 48(1) of the *Acts Interpretation Act 1901* of the Commonwealth, subsection (1) of this section has effect, and is taken always to have had effect, as if those regulations had taken effect under the Corporations Act from the specified day.
- (3) To the extent that a provision of the Corporations Regulations of Western Australia is taken because of a particular application of subsection (2) to have effect, or to have had effect, before the day of notification of the regulations referred to in that subsection, the provision does not operate so as to —
 - (a) affect a private person's rights as at that day so as to disadvantage that person; or

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- (b) impose a liability on a private person in respect of anything done or omitted to be done before that day.
- (4) In subsection (3) —
 - “private person”** means a person other than —
 - (a) the Commonwealth, a State or the Capital Territory;
or
 - (b) an authority of the Commonwealth, of a State or of the Capital Territory.
- (5) Subsection (3) does not affect any other operation that the provision has because of subsection (2) or otherwise.

[Section 8 amended by No. 8 of 2001 s. 30(3).]

9. Interpretation of some expressions in the Corporations Law, and the Corporations Regulations, of Western Australia

In the Corporations Law, and the Corporations Regulations, of Western Australia —

“the Minister for this jurisdiction” means the Minister;

“this jurisdiction” means Western Australia.

10. Interpretation law

- (1) Subject to Part 1.2 of the Corporations Law of Western Australia, the *Acts Interpretation Act 1901* of the Commonwealth as in force at the commencement of section 8 of the Corporations Act ¹, applies as a law of Western Australia in relation to the Corporations Law, and the Corporations Regulations, of Western Australia and any instrument made, granted or issued under that Law or those Regulations (other than application orders under section 111A of that Law) and so applies as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.
- (2) The *Interpretation Act 1984* does not apply in relation to the Corporations Law, or the Corporations Regulations, of Western

Australia or an application order or any other instrument made,
granted or issued under that Law or those Regulations.

Part 3 — Citing the Corporations Law and the Corporations Regulations

11. Simpler citation of Corporations Law, and Corporations Regulations, of Western Australia

- (1) The Corporations Law of Western Australia may be referred to simply as the Corporations Law.
- (2) The Corporations Regulations of Western Australia may be referred to simply as the Corporations Regulations.
- (3) This section has effect subject to section 13.

12. References to Corporations Law, and Corporations Regulations, of other jurisdictions

- (1) This section has effect for the purposes of an Act, a law of Western Australia or an instrument made under an Act or under such a law.
- (2) Where a law of a jurisdiction other than Western Australia that corresponds to section 7 of this Act provides that the Corporations Law set out in section 82 of the Corporations Act applies as law of that jurisdiction, the Corporations Law of that jurisdiction is the Corporations Law so set out, applying as law of that jurisdiction.
- (3) Where a law of a jurisdiction other than Western Australia that corresponds to section 8 of this Act provides that the regulations under section 22 of the Corporations Act apply for the purposes of the Corporations Law of that jurisdiction, the Corporations Regulations of that jurisdiction are those regulations as so applying.

[Section 12 amended by No. 8 of 2001 s. 30(4) and (5).]

13. References to “Corporations Law” and “Corporations Regulations”

- (1) The object of this section is to help ensure that the Corporations Law of Western Australia operates, so far as possible, as if that Law, together with the Corporations Law of each jurisdiction other than Western Australia, constituted a single national Corporations Law applying of its own force throughout Australia.
- (2) Subject to this section, a reference in an instrument to the Corporations Law, or to the Corporations Regulations, is to be taken, for the purposes of the laws of Western Australia —
 - (a) to be a reference to the Corporations Law, or to the Corporations Regulations, of Western Australia; and
 - (b) to include a separate reference to the Corporations Law, or to the Corporations Regulations, of each jurisdiction other than Western Australia.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.
- (4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the Corporations Law, or to the Corporations Regulations, of a jurisdiction.
- (5) In this section —

“instrument” means —

 - (a) an Act or an instrument made under an Act; or
 - (b) a law of Western Australia or an instrument made under such a law; or
 - (c) an award or other industrial determination or order, or an industrial agreement; or
 - (d) any other order (whether executive, judicial or otherwise); or

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- (e) a notice, certificate or licence; or
- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.

Part 4 — Application of the Corporations Law to the Crown

14. Interpretation

To avoid doubt, a reference in this Part to the Crown in a particular right includes a reference to an instrumentality or agency (whether a body corporate or not) of the Crown in that right.

15. Corporations Law of Western Australia

- (1) Chapter 5 (except Part 5.8) of the Corporations Law of Western Australia binds the Crown not only in right of the State of Western Australia but also, so far as the legislative power of the Parliament permits, the Crown in right of the Commonwealth, of each of the other States, of the Capital Territory, of the Northern Territory and of Norfolk Island.
- (2) To avoid doubt, Chapter 7 of the Corporations Law of Western Australia does not bind the Crown in right of the State of Western Australia, of the Commonwealth, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

16. Corporations Law of other jurisdictions

Chapter 5 (except Part 5.8) of the Corporations Law of each jurisdiction other than Western Australia binds the Crown in right of the State of Western Australia.

17. Crown not liable to prosecution

Nothing in this Part, or in the Corporations Law, renders the Crown in any right liable to be prosecuted for an offence.

18. This Part overrides the prerogative

Where, because of this Part, a provision of a law of another jurisdiction binds the Crown in right of the State of Western

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Australia, the Crown in that right is subject to that provision despite any prerogative right or privilege.

Part 5 — Application orders

19. Commonwealth Minister to obtain consent of State Minister

Despite Part 1.3 of the Corporations Law of Western Australia and section 20 of this Act, the Commonwealth Minister may only make an order under section 111A of that Law, or that section as applying because of section 20 of this Act, with the consent of the Minister for this jurisdiction.

20. Application orders for ASIC Law

Part 1.3 of the Corporations Law of Western Australia applies for the purposes of the ASIC Law of Western Australia as if the provisions of the ASIC Law of Western Australia were provisions of the Corporations Law of Western Australia.

[Section 20 amended by No. 26 of 1999 s. 68(4).]

[Part 6 repealed by No. 26 of 1999 s. 68(5).]

Part 7 — Imposition of fees

22. Fees for chargeable matters

This section imposes the fees that the Corporations Regulations of Western Australia prescribe, except to the extent that they are taxes.

23. Contributions and levies for fidelity funds of securities exchanges

(1) This section imposes —

- (a) the contribution payable under section 902(1) of the Corporations Law of Western Australia by a person who wishes to be admitted to membership of a securities exchange, or to a partnership in a member firm recognized by a securities exchange; and
- (b) the annual contribution payable under section 902(2) of that Law by a member of a securities exchange; and
- (c) any levy payable under section 904 of that Law by a member of a securities exchange —

except to the extent that it is a tax.

(2) An expression has in subsection (1) the meaning it would have if this section were in Part 7.9 of the Corporations Law of Western Australia.

24. Levies for National Guarantee Fund

This section imposes any levy that is payable under section 938, 940 or 941 of the Corporations Law of Western Australia, except to the extent that it is a tax.

25. Contributions and levies for fidelity funds of futures organisations

- (1) This section imposes —
- (a) the contribution payable under section 1234(1) of the Corporations Law of Western Australia by a person who wishes to be admitted to membership of a futures organisation; and
 - (b) the annual contribution payable under section 1234(2) of that Law by a contributing member of a futures organisation; and
 - (c) any levy payable under section 1235 of that Law by a contributing member of a futures organisation —
- except to the extent that it is a tax.
- (2) An expression has in subsection (1) the meaning it would have if this section were in Part 8.6 of the Corporations Law of Western Australia.

Part 8 — National administration and enforcement of the Corporations Law

Division 1 — Preliminary

26. Object

The object of this Part is to help ensure that —

- (a) the Corporations Law of Western Australia, and the Corporations Law of each jurisdiction other than Western Australia, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth; and
- (b) the ASIC Law of Western Australia, and the ASIC Law of each jurisdiction other than Western Australia, are administered and enforced on a national basis, in the same way as if those Laws constituted a single law of the Commonwealth.

[Section 26 amended by No. 26 of 1999 s. 68(4).]

27. Effect of Part

- (1) This Part has effect subject to this Act (in particular Part 9), the Corporations Law of Western Australia and the ASIC Law of Western Australia.
- (2) Nothing in this Part limits the generality of anything else in it.

[Section 27 amended by No. 26 of 1999 s. 68(4).]

Division 2 — Offences against applicable provisions

28. Object

- (1) The object of this Division is to further the object of this Part by providing —
 - (a) for an offence against an applicable provision of Western Australia to be treated as if it were an offence against a law of the Commonwealth; and

- (b) for an offence against an applicable provision of another jurisdiction to be treated in Western Australia as if it were an offence against a law of the Commonwealth.
- (2) The purposes for which an offence is to be treated as mentioned in subsection (1) include, for example (but without limitation) —
- (a) the investigation and prosecution of offences; and
 - (b) the arrest, custody, bail, trial and conviction of offenders or persons charged with offences; and
 - (c) proceedings relating to a matter referred to in paragraph (a) or (b); and
 - (d) appeals and review relating to criminal proceedings and to proceedings of the kind referred to in paragraph (c); and
 - (e) the sentencing, punishment and release of persons convicted of offences; and
 - (f) fines, penalties and forfeitures; and
 - (g) liability to make reparation in connection with offences; and
 - (h) proceeds of crime; and
 - (i) spent convictions.

29. Application of Commonwealth laws in relation to offences against applicable provisions

- (1) The Commonwealth laws apply as laws of Western Australia in relation to an offence against the applicable provisions of Western Australia as if those provisions were laws of the Commonwealth and were not laws of Western Australia.
- (2) For the purposes of a law of Western Australia, an offence against the applicable provisions of Western Australia —
 - (a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of Western Australia.

(3) Subsection (2) has effect for the purposes of a law of Western Australia except as prescribed by regulations under section 80.

30. Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions

(1) The Commonwealth laws apply as laws of Western Australia in relation to an offence against the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that other jurisdiction.

(2) For the purposes of a law of Western Australia, an offence against the applicable provisions of another jurisdiction —

(a) is taken to be an offence against the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and

(b) is taken not to be an offence against the laws of that jurisdiction.

(3) Subsection (2) has effect for the purposes of a law of Western Australia except as prescribed by regulations under section 80.

(4) This section does not require, prohibit, empower, authorise or otherwise provide for, the doing of an act outside Western Australia.

[Section 30 amended by No. 51 of 1991 s. 6.]

31. Functions and powers conferred on Commonwealth authorities

(1) A Commonwealth law applying because of section 29 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against the applicable provisions of the Capital Territory also confers on the officer or authority the same function or power in relation to an

offence against the corresponding applicable provision of Western Australia.

- (2) A Commonwealth law applying because of section 30 that confers on an officer or authority of the Commonwealth a function or power in relation to an offence against an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an offence against the corresponding applicable provision of another jurisdiction.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in Western Australia.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an offence against the corresponding applicable provision of the Capital Territory.
- (5) A Commonwealth law applying because of section 29 or 30 applies as if it did not contain any provision empowering a Minister of State for the Commonwealth to give any directions in relation to the performance of a function or the exercise of a power conferred by subsection (1) or (2).

[Section 31 amended by No. 8 of 2001 s. 30(6).]

32. Reference in Commonwealth law to a provision of another law

A reference in a Commonwealth law to a provision of that or another Commonwealth law is taken, for the purposes of section 29 or 30, to be a reference to that provision as applying because of that section.

[33. Repealed by No. 8 of 2001 s. 30(7).]

Division 3 — Administrative law

34. Object

The object of this Division is to further the object of this Part by providing that the Commonwealth administrative laws —

- (a) apply to the applicable provisions of Western Australia; and
- (b) apply, in Western Australia, to the applicable provisions of another jurisdiction —

as if the applicable provisions were those of the Capital Territory.

35. Application of Commonwealth administrative laws in relation to applicable provisions

- (1) The Commonwealth administrative laws apply as laws of Western Australia in relation to any act, matter or thing arising under or in respect of the applicable provisions of Western Australia as if those provisions were laws of the Commonwealth and were not laws of Western Australia.
- (2) For the purposes of a law of Western Australia, an act, matter or thing arising under or in respect of the applicable provisions of Western Australia —
 - (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
 - (b) is taken not to be an act, matter or thing arising under or in respect of the laws of Western Australia.
- (3) Subsection (2) has effect for the purposes of a law of Western Australia except as prescribed by regulations under section 80.

36. Application of Commonwealth administrative laws in relation to applicable provisions of other jurisdictions

- (1) The Commonwealth administrative laws apply as laws of Western Australia in relation to any act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction as if those provisions were laws of the Commonwealth and were not laws of that jurisdiction.
- (2) For the purposes of a law of Western Australia, an act, matter or thing arising under or in respect of the applicable provisions of another jurisdiction —
 - (a) is taken to be an act, matter or thing arising under or in respect of the laws of the Commonwealth, in the same way as if those provisions were laws of the Commonwealth; and
 - (b) is taken not to be an act, matter or thing arising under or in respect of the laws of that jurisdiction.
- (3) Subsection (2) has effect for the purposes of a law of Western Australia except as prescribed by regulations under section 80.
- (4) This section does not require, prohibit, empower, authorise or otherwise provide for the doing of an act outside Western Australia.

37. Functions and powers conferred on Commonwealth authorities

- (1) A Commonwealth administrative law applying because of section 35 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of Western Australia.

- (2) A Commonwealth administrative law applying because of section 36 that confers on an officer or authority of the Commonwealth a function or power in relation to an act, matter or thing arising under or in respect of an applicable provision of the Capital Territory also confers on the officer or authority the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of another jurisdiction.
- (3) The function or power referred to in subsection (2) may only be performed or exercised in Western Australia.
- (4) In performing a function or exercising a power conferred by subsection (1) or (2), an officer or authority of the Commonwealth must act as nearly as practicable as the officer or authority would act in performing or exercising the same function or power in relation to an act, matter or thing arising under or in respect of the corresponding applicable provision of the Capital Territory.
- (5) A Commonwealth law applying because of section 35 or 36 applies as if it did not contain any provision empowering a Minister of State for the Commonwealth to give any directions in relation to the performance of a function or the exercise of a power conferred by subsection (1) or (2).

[Section 37 amended by No. 8 of 2001 s. 30(8).]

38. Reference in Commonwealth administrative law to a provision of another law

A reference in a Commonwealth administrative law to a provision of that or another Commonwealth administrative law is taken for the purposes of section 35 or 36, to be a reference to that provision as applying because of that section.

[39. Repealed by No. 8 of 2001 s. 30(9).]

Part 9 — Jurisdiction and procedure of courts

Division 1 — Vesting and cross-vesting of civil jurisdiction

40. Operation of Division

- (1) This Division provides in relation to —
- (a) the jurisdiction of courts in respect of civil matters arising under the Corporations Law of Western Australia; and
 - (b) the jurisdiction of the courts of Western Australia in respect of civil matters arising under the Corporations Law of another State or the Capital Territory; and
 - (c) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth involving or related to decisions made under the Corporations Law of a State or the Capital Territory by Commonwealth authorities and officers of the Commonwealth; and
 - (d) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations Law of a State or the Capital Territory and related criminal justice process decisions,

and so provides to the exclusion of the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

- (2) Nothing in this Division affects any other jurisdiction of any court.

[Section 40 amended by No. 28 of 1995 s. 4; No. 32 of 2001 s. 8.]

41. Interpretation

- (1) In this Division —
- “civil matter”** means a matter other than a criminal matter;

“Commonwealth authority” means an authority or body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth;

“Corporations Law” has the extended meaning given by subsection (2);

“judgment” means a judgment, decree or order, whether final or interlocutory;

“lower court” means a court of a State or Territory that is not a superior court;

“officer of the Commonwealth” has the same meaning as in section 75(v) of the Constitution of the Commonwealth;

“superior court” means the Supreme Court of a State or Territory of a State Family Court;

“superior court matter” means a civil matter that the Corporations Law clearly intends (for example, by use of the expression “the Court”) to be dealt with only by a superior court.

(2) In this Division —

(a) a reference to the Corporations Law of Western Australia includes a reference to —

- (i) the Corporations Regulations of Western Australia; and
- (ii) the ASIC Law of Western Australia; and
- (iii) the ASIC Regulations of Western Australia; and
- (iv) any other applicable provisions (as defined in section 3) of Western Australia; and
- (v) this Act; and
- (vi) regulations made under this Act; and
- (vii) rules of court made by the Supreme Court of Western Australia or the Family Court of

Western Australia because of a provision of this Act; and

[(viii) deleted]

(ix) rules of court applied by the Supreme Court of another State, or of the Capital Territory, or a State Family Court of another State, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph);

and

(b) a reference to the Corporations Law of another State or of the Capital Territory is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

[Section 41 amended by No. 51 of 1991 s. 7; No. 28 of 1995 s. 5; No. 26 of 1999 s. 68(4); No. 32 of 2001 s. 9.]

42. Jurisdiction of State and Territory Supreme Courts

(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, jurisdiction is conferred on the Supreme Court of Western Australia and of each other State and the Capital Territory with respect to civil matters arising under the Corporations Law of Western Australia.

(1a) With respect to matters involving or related to decisions made, or proposed to be made, under the Corporations Law of a State or the Capital Territory by a Commonwealth authority or an officer of the Commonwealth, jurisdiction is conferred on the Supreme Court of Western Australia and of each other State and the Capital Territory in accordance with the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as

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if that Act conferred jurisdiction in matters arising under it on those Supreme Courts.

- (1b) Subsection (1a) applies to a decision made, or proposed or required to be made —
- (a) whether or not in the exercise of a discretion; and
 - (b) whether before or after the commencement of section 10(2) of the *Acts Amendment (Federal Courts and Tribunals) Act 2001*.
- (2) The jurisdiction conferred on a Supreme Court by subsection (1) or (1a) is not limited by any limits to which any other jurisdiction of that Supreme Court may be subject.

[(3) repealed]

[Section 42 amended by No. 51 of 1991 s. 7; No. 32 of 2001 s. 10.]

42A. Jurisdiction of State Family Courts

[(1) repealed]

- (2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations Law of Western Australia.
- (3) The jurisdiction conferred on a State Family Court by subsection (2) is not limited by any limits to which any other jurisdiction of the State Family Court may be subject.

[Section 42A inserted by No. 51 of 1991 s. 8; amended by No. 32 of 2001 s. 11.]

42B. Jurisdiction of lower courts

- (1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, jurisdiction is conferred on the lower courts of Western Australia and of each

other State and the Capital Territory with respect to civil matters, other than superior court matters, arising under the Corporations Law of Western Australia.

- (2) The jurisdiction conferred on a lower court by subsection (1) —
- (a) is subject to the court's general jurisdictional limits, so far as they relate to the amounts, or the value of property, with which the court may deal; but
 - (b) is not subject to the court's other jurisdictional limits.

[Section 42B inserted by No. 28 of 1995 s. 6; amended by No. 32 of 2001 s. 12.]

43. Appeals

- (1) An appeal may not be instituted from a decision of a court of Western Australia to a court of another State or of the Capital Territory or to the Federal Court or (except in the case of an appeal from the Family Court of Western Australia) to the Family Court.
- (2) An appeal may not be instituted from a decision of the Federal Court to a court of a State or of the Capital Territory or to the Family Court.
- (3) An appeal may not be instituted from a decision of the Family Court to a court of a State or of the Capital Territory or to the Federal Court.
- (4) An appeal may not be instituted from a decision of a court (not being a State Family Court) of another State to the Federal Court, to the Family Court, to a State Family Court of that State or to a court of a different State or of the Capital Territory.
- (5) An appeal may not be instituted from a decision of a court of the Capital Territory to a court of a State or to the Family Court.
- (6) An appeal may not be instituted from a decision of a State Family Court of a State to the Federal Court, to a court of the Capital Territory or of another State, or (except in accordance

with the law of the State under which the State Family Court is constituted) to the Supreme Court of that State.

[Section 43 inserted by No. 51 of 1991 s. 9; amended by No. 28 of 1995 s. 7.]

44. Transfer of proceedings

- (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of Western Australia in a court having jurisdiction under section 42.
- (2) Where it appears to the court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court having jurisdiction in the matters for determination in the proceeding or application, the first-mentioned court may transfer the proceeding or application to that other court.

[Section 44 amended by No. 51 of 1991 s. 10.]

44A. Transfer of proceedings by Family Court and State Family Courts

- (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of Western Australia in a court (in this section called the “**first court**”) having jurisdiction under section 42A.
- (2) If it appears to the first court that —
 - (a) the proceeding arises out of, or is related to, another proceeding pending in the Federal Court, or in another court of a State or of the Capital Territory, and that the court in which the other proceeding is pending is the most appropriate court to determine the first-mentioned proceeding; or
 - (b) having regard to —
 - (i) whether, in the first court’s opinion, apart from this Division or a law of another State or the

Capital Territory corresponding to this Division, the proceeding, or a substantial part of it, would have been incapable of being instituted in the first court; and

(ii) the extent to which, in the first court's opinion, the matters for determination in the proceeding are matters not within the first court's jurisdiction apart from this Division or such a law; and

(iii) the interests of justice —
the Federal Court, or another court of a State or of the Capital Territory, is the most appropriate court to determine the proceeding; or

(c) it is otherwise in the interests of justice that the Federal Court, or another court of a State or of the Capital Territory, determine the proceeding —

the first court must transfer the proceeding to the Federal Court, or to that other court, as the case may be.

- (3) Subject to subsection (2), if it appears to the first court that —
- (a) the proceeding arises out of, or is related to, another proceeding pending in another court having jurisdiction under section 42A in the matters for determination in the first-mentioned proceeding, and that the other court is the most appropriate court to determine the first-mentioned proceeding; or
 - (b) it is otherwise in the interests of justice that the proceeding be determined by another court having jurisdiction under section 42A in the matters for determination in the proceeding —

the court must transfer the proceeding to the other court.

- (4) If —
- (a) the first court transfers the proceeding to another court; and

- (b) it appears to the first court that —
 - (i) there is another proceeding pending in the first court that arises out of, or is related to, the first-mentioned proceeding; and
 - (ii) it is in the interests of justice that the other court also determine the other proceeding —

the first court must also transfer the other proceeding to the other court.

[Section 44A inserted by No. 51 of 1991 s. 11; amended by No. 28 of 1995 s. 8.]

44AA. Transfer of proceedings in lower courts

- (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of Western Australia in a lower court (the “**first court**”) having jurisdiction under section 42B.
- (2) If it appears to the first court that, having regard to the interests of justice, it is more appropriate for the proceeding, or an application in the proceeding, to be determined by another court (the “**second court**”) having jurisdiction in the matters for determination in the proceeding or application, the first court may take action under whichever of subsections (3) and (4) applies.
- (3) If the second court is also a lower court, the first court may transfer the proceeding or application to the second court.
- (4) If the second court is a superior court, the first court may transfer the proceeding or application to the relevant Supreme Court and recommend that the proceeding or application be transferred by the Supreme Court to the second court.
- (5) The relevant Supreme Court is not bound to comply with a recommendation under subsection (4) and it may instead decide —
 - (a) to deal with the proceeding or application itself; or

- (b) to transfer the proceeding or application to some other court (which could be the first court).
- (6) Nothing in this section allows the relevant Supreme Court to transfer the proceeding or application to another court otherwise than in accordance with section 44 and the other requirements of this Division.
- (7) In this section “**relevant Supreme Court**” means the Supreme Court of the State or Territory of which the first court is a court.
[Section 44AA inserted by No. 28 of 1995 s. 9.]

44B. Further matters for a court to consider when deciding whether to transfer a proceeding

In deciding whether to transfer under section 44, 44A or 44AA a proceeding or application, a court must have regard to —

- (a) the principal place of business of any body corporate concerned in the proceeding or application; and
- (b) the place or places where the events that are the subject of the proceeding or application took place; and
- (c) the other courts that have jurisdiction to deal with the proceeding or application.

[Section 44B inserted by No. 51 of 1991 s. 11; amended by No. 28 of 1995 s. 10.]

44C. Transfer may be made at any stage

A court may transfer under section 44, 44A or 44AA a proceeding or application —

- (a) on the application of a party made at any stage; or
- (b) of the court’s own motion.

[Section 44C inserted by No. 51 of 1991 s. 11; amended by No. 28 of 1995 s. 11.]

44D. Transfer of documents

Where, under section 44, 44A or 44AA, a court transfers a proceeding, or an application in a proceeding, to another court —

- (a) the Registrar or other proper officer of the first-mentioned court, must transmit to the Registrar or other proper officer of the other court all documents filed in the first-mentioned court in respect of the proceeding or application, as the case may be; and
- (b) the other court must proceed as if —
 - (i) the proceeding had been originally instituted in the other court; and
 - (ii) the same proceedings had been taken in the other court as were taken in the first-mentioned court; and
 - (iii) in a case where an application is transferred — the application had been made in the other court.

[Section 44D inserted by No. 51 of 1991 s. 11; amended by No. 28 of 1995 s. 12.]

45. Conduct of proceedings

- (1) Subject to sections 51, 52 and 52A, where it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction the rules of evidence and procedure to be applied in dealing with the matter are to be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.
- (2) Where a proceeding is transferred or removed to a court (in this subsection called the “**transferee court**”) from another court (in this subsection called the “**transferor court**”), the transferee court must deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the

making of an order), or similar steps, had been taken in the transferee court.

(3) In this section —

“relevant jurisdiction” means —

- (a) jurisdiction conferred on the Federal Court or the Family Court with respect to civil matters arising under the Corporations Law of Western Australia; or
- (b) jurisdiction conferred on the Federal Court or the Family Court with respect to civil matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction that is being exercised by the Federal Court or the Family Court, as the case may be, sitting in Western Australia; or
- (c) jurisdiction conferred on a court of Western Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory; or
- (d) jurisdiction conferred on a court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of Western Australia.

[Section 45 amended by No. 51 of 1991 s. 12; No. 28 of 1995 s. 13.]

46. Courts to act in aid of each other

All courts having jurisdiction in civil matters arising under the Corporations Law of Western Australia and the officers of, or under the control of, those courts must severally act in aid of, and be auxiliary to, each other in all such matters.

[Section 46 amended by No. 28 of 1995 s. 14.]

47. Exercise of jurisdiction pursuant to cross-vesting provisions

A court of Western Australia may —

- (a) exercise jurisdiction (whether original or appellate) conferred on it by a law of another State or the Capital Territory corresponding to this Division with respect to matters arising under the Corporations Law of that State or Territory; and
- (b) hear and determine a proceeding transferred to it under such a provision.

[Section 47 amended by No. 51 of 1991 s. 13; No. 28 of 1995 s. 15.]

48. Rights of appearance

A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the “**transferred proceeding**”) in that court is transferred to another court under this Division or a law of another State or the Capital Territory that corresponds to this Division, the same entitlements to practise in relation to —

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding —

in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

49. Limitation on appeals

An appeal does not lie from a decision of a court —

- (a) in relation to the transfer of a proceeding under this Division; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to section 45(1).

50. Enforcement of judgments etc.

- (1) A judgment of the Federal Court, the Family Court or a court of Western Australia that is given, in whole or in part, in the exercise of jurisdiction conferred by this Division, or by a law of another State or the Capital Territory that corresponds to this Division, is enforceable in Western Australia as if the judgment had been given by that court entirely in the exercise of the jurisdiction of that court apart from this Division or any such law.
- (2) Where —
- (a) a provision of a law of Western Australia (not being a law in relation to the enforcement of judgments) refers to a thing done by the Federal Court, the Family Court, the Supreme Court of Western Australia or of another State or of the Capital Territory, the Family Court of Western Australia, a State Family Court of another State or a particular lower court of Western Australia or of another State or of the Capital Territory; and
 - (b) that thing is done by another court in the exercise of jurisdiction conferred by this Division or a law of another State or the Capital Territory corresponding to this Division —

the reference in that provision to the Federal Court, the Family Court, the Supreme Court of Western Australia or of the other State or Territory, the Family Court of Western Australia, that State Family Court or that lower court, as the case may be, is taken as a reference to that other court.

[Section 50 amended by No. 51 of 1991 s. 14; No. 28 of 1995 s. 16.]

51. Rules of the Supreme Court

- (1) The Judges of the Supreme Court of Western Australia or a majority of them may make rules of court, not inconsistent with the Corporations Law of Western Australia —

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- (a) with respect to proceedings, and the practice and procedure, of that Court under that Law; and
 - (b) with respect to any matter or thing that is —
 - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
 - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law;
- and
- (c) without limitation, with respect to costs, and with respect to rules as to meetings ordered by that Court.
- (1a) When a lower court of Western Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of Western Australia, the court must apply the rules of court made under subsection (1), with such alterations as are necessary.
- (2) When a court of Western Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of another State or the Capital Territory, being jurisdiction conferred by a law of another State or the Capital Territory that corresponds to this Division, that court must apply the rules of court made under subsection (1), with such alterations as are necessary.
- (3) When a court of another State or the Capital Territory is exercising jurisdiction with respect to matters arising under the Corporations Law of Western Australia, being jurisdiction conferred by this Division, that court must apply the rules of court made under the law of the State or Territory corresponding to subsection (1), with such alterations as are necessary.
- (4) In this section —

“Corporations Law of another State or the Capital Territory” does not include rules of court;

“Corporations Law of Western Australia” does not include rules of court.

[Section 51 amended by No. 28 of 1995 s. 17.]

52. Rules of the Federal Court

- (1) When the Federal Court is exercising jurisdiction with respect to matters arising under the Corporations Law of Western Australia, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 60 of the Corporations Act, with such alterations as are necessary.
- (2) In this section —
“Corporations Law of Western Australia” does not include rules of court.

52A. Rules of the Family Court or State Family Court

- (1) When the Family Court is exercising jurisdiction with respect to matters arising under the Corporations Law of Western Australia, being jurisdiction conferred by this Division, that Court must apply the rules of court made because of section 61A of the Corporations Act, with such alterations as are necessary.
- (2) When a State Family Court of another State is exercising jurisdiction with respect to matters arising under the Corporations Law of Western Australia, being jurisdiction conferred by this Division, that Court must apply the rules of court made under the law of the State corresponding to section 61A(1) of the Corporations Act, or section 244 of the *Family Court Act 1997*, with such alterations as are necessary.
- (3) In this section —
“Corporations Law of Western Australia” does not include rules of court.

[Section 52A inserted by No. 51 of 1991 s. 15; amended by No. 41 of 1997 s. 30.]

52B. Rules of the Family Court of Western Australia

- (1) The power to make rules conferred by section 244 of the *Family Court Act 1997* extends to making rules of court, not inconsistent with the Corporations Law of Western Australia —
 - (a) with respect to proceedings, and the practice and procedure, of the Family Court of Western Australia under that Law; and
 - (b) with respect to any matter or thing that is —
 - (i) required or permitted by that Law to be prescribed by rules within the meaning of that Law; or
 - (ii) necessary or convenient to be prescribed by such rules for carrying out or giving effect to that Law;and
 - (c) without limitation, with respect to costs, and with respect to rules about meetings ordered by the Family Court of Western Australia.
- (2) When the Family Court of Western Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of a State, being jurisdiction conferred by a law of a State that corresponds to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.
- (3) When the Family Court of Western Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of the Capital Territory, being jurisdiction conferred by a law of that Territory corresponding to this Division, that Court must apply the rules of court made under subsection (1), with such alterations as are necessary.

- (4) In this section —
“Corporations Law of a State” does not include rules of court;
“Corporations Law of the Capital Territory” does not include rules of court.

[Section 52B inserted by No. 51 of 1991 s. 15; amended by No. 41 of 1997 s. 30.]

Division 2 — Vesting and cross-vesting of criminal jurisdiction

53. Operation of Division

This Division provides in relation to —

- (a) the jurisdiction of courts in respect of criminal matters arising under the Corporations Law of Western Australia; and
- (b) the jurisdiction of the courts of Western Australia in respect of criminal matters arising under the Corporations Law of any jurisdiction.

54. Interpretation

- (1) In this Division —
“magistrate” means a magistrate who is remunerated by salary or otherwise.
- (2) In this Division —
 - (a) a reference to the Corporations Law of Western Australia includes a reference to —
 - (i) the Corporations Regulations of Western Australia; and
 - (ii) the ASIC Law of Western Australia; and
 - (iii) the ASIC Regulations of Western Australia; and
 - (iv) any other applicable provisions (as defined in section 3) of Western Australia; and
 - (v) this Act; and

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- (vi) regulations made under this Act; and
- (vii) rules of court made by the Supreme Court of Western Australia, and rules of court applied by the Federal Court because of a provision of this Act, and rules of court applied by the Supreme Court of another State, or of the Capital Territory, when exercising jurisdiction conferred by this Division (including jurisdiction conferred by virtue of any previous application or applications of this subparagraph);

and

- (b) a reference to the Corporations Law of another State or of the Capital Territory is a reference to the Corporations Law of that other State or of the Capital Territory within the meaning of the law of that other State or the Capital Territory corresponding to this Division.

[Section 54 amended by No. 26 of 1999 s. 68(4).]

55. Jurisdiction of courts

- (1) Subject to this section, the several courts of each State and the Capital Territory exercising jurisdiction —
 - (a) with respect to —
 - (i) the summary conviction; or
 - (ii) the examination and commitment for trial on indictment; or
 - (iii) the trial and conviction on indictment —
of offenders or persons charged with offences against the laws of the State or Capital Territory, and with respect to —
 - (iv) their sentencing, punishment and release; or
 - (v) their liability to make reparation in connection with their offences; or

- (vi) the forfeiture of property in connection with their offences; or
 - (vii) the proceeds of their crimes;
- and
- (b) with respect to the hearing and determination of —
 - (i) proceedings connected with; or
 - (ii) appeals arising out of; or
 - (iii) appeals arising out of proceedings connected with —any such trial or conviction or any matter of a kind referred to in paragraph (a)(iv), (v), (vi) or (vii) —
- have the equivalent jurisdiction with respect to offenders or persons charged with offences against the Corporations Law of Western Australia.
- (2) Where a provision of a law of another State or the Capital Territory corresponding to subsection (1) is expressed to confer jurisdiction with respect to offenders or persons who are charged with offences against the Corporations Law of that State or the Capital Territory upon a court of Western Australia, the court may exercise that jurisdiction.
 - (3) The jurisdiction conferred by subsection (1) is not to be exercised with respect to the summary conviction, or examination and commitment for trial, of any person except by a magistrate.
 - (4) The jurisdiction conferred by subsection (1) includes jurisdiction in accordance with provisions of a relevant law of another State or the Capital Territory, and —
 - (a) the reference in subsection (1)(b) to “**any such trial or conviction**” includes a reference to any conviction or sentencing in accordance with the provisions of a relevant law; and

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- (b) unless the contrary intention appears, a reference to jurisdiction conferred by subsection (1) includes a reference to such included jurisdiction.
- (5) A person may be dealt with in accordance with a relevant law even if, apart from this section, the offence concerned —
 - (a) would be required to be prosecuted on indictment; or
 - (b) would be required to be prosecuted either summarily or on indictment.
- (6) For the purposes of the application of a relevant law as provided by subsection (4) —
 - (a) a reference in that law to an indictable offence is taken to include a reference to an offence that may be prosecuted on indictment; and
 - (b) in order to determine the sentence that may be imposed on a person by a court pursuant to the relevant law, the person is taken to have been prosecuted and convicted on indictment in that court.
- (7) Subject to subsections (9) and (10), the jurisdiction conferred on a court of a State or the Capital Territory by subsection (1) is conferred despite any limits as to locality of the jurisdiction of that court under the law of that State or of the Capital Territory.
- (8) Subject to subsection (9), the jurisdiction conferred on a court of Western Australia by a law of another State or the Capital Territory corresponding to subsection (1) may be exercised despite any limits as to locality of the jurisdiction of that court under the law of Western Australia.
- (9) Where —
 - (a) jurisdiction is conferred on a court of Western Australia in relation to the summary conviction of persons charged with offences against the Corporations Law of this or another jurisdiction by subsection (1) or a corresponding provision of a law of another State or of the Capital Territory; and

- (b) the court is satisfied that it is appropriate to do so, having regard to all the circumstances including the public interest —

the court may decline to exercise that jurisdiction in relation to an offence committed in another State or the Capital Territory.

- (10) The jurisdiction conferred on a court of another State or the Capital Territory by subsection (1) in relation to —
 - (a) the examination and commitment for trial on indictment; and
 - (b) the trial and conviction on indictment —

of offenders or persons charged with offences against the Corporations Law of Western Australia is conferred only in relation to —

- (c) offences committed outside Australia; and
- (d) offences committed, begun or completed within the State or Territory concerned.

- (11) In this section —

“**Australia**” does not include the coastal sea;

“**relevant law**” means a law providing that where, in proceedings before a court, a person pleads guilty to a charge for which he or she could be prosecuted on indictment, the person may be committed, to a court having jurisdiction to try offences on indictment, to be sentenced or otherwise dealt with without being tried in that last-mentioned court.

56. Laws to be applied

- (1) Subject to this Division, the laws of Western Australia respecting —
 - (a) the arrest and custody in Western Australia of offenders or persons charged with offences; and

- (b) criminal procedure in Western Australia in relation to such persons —

apply in Western Australia, so far as they are applicable, to persons who are charged with offences against the Corporations Law of Western Australia or of another State or the Capital Territory in respect of whom jurisdiction is conferred on a court of Western Australia by this Division or a corresponding law of another State or the Capital Territory.

- (2) Subject to this Division, the laws of each other State and the Capital Territory respecting —

- (a) the arrest and custody in that State or Territory of offenders or persons charged with offences; and
(b) criminal procedure in that State or Territory in relation to such persons —

apply in that State or Territory, so far as they are applicable, to persons who are charged with offences against the Corporations Law of Western Australia in respect of whom jurisdiction is conferred on a court of that State or Territory by this Division.

- (3) The application of laws by subsections (1) and (2) is in addition to, and not in derogation from, the application of laws effected by Part 8 or the corresponding law of another State or the Capital Territory.

- (4) In this section —

“criminal procedure” means the procedure for —

- (a) the summary conviction; and
(b) the examination and commitment for trial and indictment; and
(c) the trial and conviction on indictment; and
(d) the hearing and determination of appeals arising out of any such trial or conviction or out of any related proceedings —

of offenders or persons charged with offences, and includes the procedure for holding accused persons to bail;

“laws of each other State and the Capital Territory” means the laws that apply in relation to offenders, or persons charged with offences, against the Corporations Law of the State or Territory concerned.

Part 10 — Companies Liquidation Account

57. Companies Liquidation Account

(1) In this section —

“**relevant money**” means —

- (a) money that, immediately before the commencement of this section, stood to the credit of the Companies Liquidation Account established by section 428 of the *Companies (Western Australia) Code*; and
 - (b) money that, after the commencement of this section, is paid into the Companies Liquidation Account under provisions of the *Companies (Western Australia) Code* that are taken to continue in force after the commencement of Chapter 5 of the Corporations Law for the purposes of windings up started before the commencement¹ of that Chapter.
- (2) Relevant money is to be dealt with in accordance with section 427 of the *Companies (Western Australia) Code*.

**Part 11 — The ASIC Law, and the ASIC Regulations,
of Western Australia**

[Heading amended by No. 26 of 1999 s. 68(4).]

Division 1 — Application of ASIC Act and ASIC Regulations

[Heading amended by No. 26 of 1999 s. 68(4).]

58. Application in Western Australia of the ASIC Act

- (1) The ASIC Act as in force immediately before its repeal, other than the excluded provisions —
 - (a) applies as a law of Western Australia; and
 - (b) as so applying, may be referred to as the ASIC Law of Western Australia.

- (2) The excluded provisions of the ASIC Act are —

Part 1, except section 6A

Part 2

Section 88

Divisions 1 and 4 of Part 4

Part 5

Part 6

Division 1 of Part 7

Part 8

Part 9

Division 1 of Part 10

Division 1 of Part 11

Part 12

Part 14

Sections 251 and 252.

[Section 58 amended by No. 26 of 1999 s. 68(4); No. 8 of 2001 s. 30(10).]

59. Application of regulations

The regulations in force immediately before the repeal of the ASIC Act, under section 251 of that Act —

- (a) apply as regulations in force for the purposes of the ASIC Law of Western Australia; and
- (b) as so applying, may be referred to as the ASIC Regulations of Western Australia.

[Section 59 amended by No. 26 of 1999 s. 68(4); No. 8 of 2001 s. 30(10).]

60. Interpretation of some expressions in the ASIC Law, and the ASIC Regulations, of Western Australia

- (1) In this Part, and in the ASIC Law, and the ASIC Regulations, of Western Australia —

“Advisory Committee” means the Companies and Securities Advisory Committee established by section 145 of the ASIC Act;

“affairs”, in relation to a body corporate, has the same meaning as in section 246AA of the Corporations Law;

“assist”, in relation to a Commission delegate, means —

- (a) to perform functions —
 - (i) as a member, officer or employee of the Commission delegate; and
 - (ii) in connection with the Commission delegate’s performance or exercise of a function or power delegated under section 102 of the ASIC Law;

or

- (b) to perform services for the Commission delegate in connection with the Commission delegate's performance or exercise of a function or power delegated under section 102 of the ASIC Law;

"Australia" includes any external Territory to which the ASIC Act extends;

"books" includes —

- (a) a register; and
(b) financial reports or financial records, however compiled, recorded or stored; and
(c) a document; and
(d) banker's books; and
(e) any other record of information;

"Chairperson" means —

- (a) except in Part 11 of the ASIC Law or in relation to the Disciplinary Board — the Chairperson of the Commission; and
(b) in Part 11 of that Law or in relation to the Disciplinary Board — the Chairperson of the Disciplinary Board;

"Commission" means the Australian Securities and Investments Commission established by section 7 of the ASIC Act;

"Commission delegate" means a person to whom, or a body to which, a function or power is delegated under section 102 of the ASIC Law;

"contravention", in relation to a law, includes an ancillary offence relating to an offence against that law;

"court", except in section 248 of the ASIC Law, includes a tribunal having power to require the production of documents or the answering of questions;

"Deputy Chairperson" means the Deputy Chairperson of the Commission;

“Disciplinary Board” means the Companies Auditors and Liquidators Disciplinary Board established by section 202 of the ASIC Act;

“eligible person”, in relation to a person, means a person who —

- (a) if the first-mentioned person is a body corporate — is or has been an officer of the body within the meaning of a national scheme law or a corresponding previous law; or
- (b) in any case —
 - (i) is or has been an employee, agent, banker, solicitor or auditor of; or
 - (ii) is acting, or has acted, in any other capacity on behalf of —

the first-mentioned person;

“examination” means —

- (a) in this section and Part 3 (other than section 27(2) and Division 9) of the ASIC Law — an examination of a person pursuant to a requirement made under section 19 of that Law; or
- (b) in section 27(2) and Division 9 of Part 3 of the ASIC Law — an examination of a person pursuant to a requirement made under section 19 of the ASIC Law or a corresponding provision of the ASIC Law of another jurisdiction;

“expenses”, in relation to an investigation under Division 1 of Part 3 of the ASIC Law, includes costs and expenses incurred in relation to a proceeding begun under section 50 of the ASIC Law as a result of the investigation;

“fail” means refuse or fail;

“foreign country” means —

- (a) an external Territory to which the ASIC Act does not extend; or

(b) a country outside Australia and the external Territories; or

(c) a part of such a country;

“give” has —

(a) in relation to a document — a meaning affected by section 86 of the ASIC Law; and

(b) in relation to information — a meaning affected by section 61 of this Act;

“hearing”, in this section and Part 3 of the ASIC Law, means a hearing before the Commission and, in sections 52, 54, 55 and 56 of that Law, includes a part of such a hearing;

“information” has a meaning affected by section 61 of this Act;

“investigate”, in relation to the Commission, means investigate in the course of performing or exercising any of the Commission’s functions and powers;

“meeting” means —

(a) in Part 4 of the ASIC Law, a meeting of the Commission; and

(b) in Part 11 of that Law — a meeting of the Disciplinary Board;

“member” means —

(a) except in Division 2 of Part 4, or in Part 10, 11, or 14, of the ASIC Law, or in relation to a Division of the Commission, or in relation to the Panel or the Disciplinary Board — a member of the Commission;

(b) in Part 10 of that Law or in relation to the Panel — a member of the Panel;

(c) in Part 11 of that Law or in relation to the Disciplinary Board — the Chairperson or any other member of the Disciplinary Board;

“national scheme law” means —

- (a) the following —
 - (i) the Corporations Law of this jurisdiction;
 - (ii) the ASIC Law of this jurisdiction;
 - (iii) this Act; or
- (b) the following —
 - (i) the Corporations Act;
 - (ii) the Corporations Law of the Capital Territory;
 - (iii) the ASIC Act; or
- (c) a law of a jurisdiction (other than this jurisdiction or the Capital Territory) that corresponds to an Act or Law referred to in paragraph (a);

“national scheme law of this jurisdiction” means —

- (a) this Act;
- (b) the Corporations Law of Western Australia; or
- (c) the ASIC Law of Western Australia;

“officer”, in relation to a body corporate, includes —

- (a) a director, secretary, executive officer or employee of the body;
- (b) a receiver, or a receiver and manager, of property of the body;
- (c) an administrator of the body or an administrator of a deed of company arrangement executed by the body;
- (d) a liquidator, or a provisional liquidator, of the body; and
- (e) a trustee or other person administering a compromise or arrangement made between the body and any other person or persons;

“Panel” means the Corporations and Securities Panel established by section 171 of the ASIC Act;

“power” includes an authority;

“prescribed” means prescribed by the ASIC Law or the regulations;

“President” means the President of the Panel;

“proceeding” means —

- (a) a proceeding in a court; or
- (b) a proceeding or hearing before, or an examination by or before, a tribunal —

whether the proceeding, hearing or examination is of a civil, administrative, criminal, disciplinary or other nature;

“produce”, except in Part 3 of the ASIC Law, includes permit access to;

“property” means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description and includes a thing in action and money;

“record”, in relation to an examination, means the whole or a part of a record made under section 24 of the ASIC Law of statements made at the examination;

“regulations” means the ASIC Regulations of this jurisdiction;

“report” includes an interim report;

“staff member” means —

- (a) a member of the staff referred to in section 120(1) of the ASIC Act or a person employed under section 120(3) of that Act;
- (b) a person engaged under section 121(1) of that Act; or
- (c) any of the officers, employees and persons who under section 122 of that Act are to assist the Commission;

“statement”, in relation to an examination, includes a question asked, an answer given, and any other comment or remark made, at the examination;

“Territory” means —

- (a) the Capital Territory; or

(b) an external Territory to which the ASIC Act extends;

“this Act”, except in this Part, means the ASIC Law, and includes the regulations;

“this jurisdiction” means Western Australia;

“this Law” includes the regulations;

“tribunal” means —

- (a) a tribunal in Australia; or
- (b) any other body, authority or person in Australia having power, by law or by consent of parties, to hear, receive or examine evidence;

“witness”, in relation to a hearing before the Commission or the Panel, means a person appearing at the hearing to give evidence;

“written record”, in relation to an examination, means —

- (a) a record of the examination —
 - (i) that is made in writing; or
 - (ii) as reduced to writing;

or

- (b) a part of such a record.

- (2) Subject to the ASIC Law of this jurisdiction, an expression has the same meaning in that Law and in the ASIC Regulations of this jurisdiction as in the Corporations Law of this jurisdiction.

[Section 60 amended by No. 28 of 1995 s. 18; No. 26 of 1999 s. 68(3), (4) and (6); No. 74 of 2003 s. 42(2).]

61. Giving information

A reference in the ASIC Law, and the ASIC Regulations, of Western Australia to giving information includes a reference to —

- (a) explaining or stating a matter; or
- (b) identifying a person, matter or thing; or

- (c) disclosing information; or
- (d) answering a question.

[Section 61 amended by No. 26 of 1999 s. 68(4).]

62. Interpretation law

- (1) Except so far as the contrary intention appears in the ASIC Law of Western Australia —
 - (a) Part 1.2 (except section 8) of the Corporations Law of Western Australia applies; and
 - (b) subject to paragraph (a), the *Acts Interpretation Act 1901* of the Commonwealth as in force at the commencement of section 5(5) of the ASIC Act applies as law of Western Australia —

in relation to the ASIC Law, and the ASIC Regulations, of Western Australia and any instrument made, granted or issued under that Law or those Regulations (other than application orders made for the purposes of that Law under section 111A of the Corporations Law of this jurisdiction) and so apply as if that Law were an Act of the Commonwealth and those Regulations or instruments were regulations or instruments made under such an Act.

- (2) The *Interpretation Act 1984* does not apply in relation to the ASIC Law, or the ASIC Regulations, of Western Australia or an application order or any other instrument made, granted or issued under that Law or those Regulations.

[Section 62 amended by No. 26 of 1999 s. 68(4).]

Division 2 — Citing the ASIC Law and the ASIC Regulations

[Heading amended by No. 74 of 2003 s. 42(3).]

63. Alternative citations of the ASIC Law, and the ASIC Regulations, of Western Australia

- (1) The ASIC Law of Western Australia may be referred to simply as the ASIC Law.
- (2) The ASIC Regulations of Western Australia may be referred to simply as the ASIC Regulations.
- (3) This section has effect subject to section 65.

[Section 63 amended by No. 26 of 1999 s. 68(4).]

64. References to ASIC Law, and ASIC Regulations, of another jurisdiction

- (1) This section has effect for the purposes of an Act, a law of Western Australia or an instrument made under an Act or under such a law.
- (2) Where a law of a jurisdiction other than Western Australia contains provisions corresponding to sections 5 and 6 of the Corporations Act and also provides for provisions of the ASIC Act to apply as law of that jurisdiction, those provisions of the ASIC Act, as so applying, are the ASIC Law of that jurisdiction.
- (3) Where a law of a jurisdiction other than Western Australia provides for the regulations under section 251 of the ASIC Act to apply for the purposes of the ASIC Law of that jurisdiction, those regulations as so applying are the ASIC Regulations of that jurisdiction.

[Section 64 amended by No. 26 of 1999 s. 68(4); No. 8 of 2001 s. 30(12).]

65. References to ASIC Law and ASIC Regulations

- (1) The object of this section is to help ensure that, so far as possible —

- (a) the bodies established by the ASIC Act and the staff of those bodies, can perform functions and exercise powers; and
- (b) persons can have dealings with those bodies —

as if the ASIC Act, the ASIC Law of Western Australia and the ASIC Law of each other State, constituted a single national ASIC Law applying of its own force throughout Australia.

- (2) Subject to this section, a reference in an instrument to the ASIC Law, or to the ASIC Regulations, is to be taken, for the purposes of the laws of Western Australia —
 - (a) to be a reference to the ASIC Law, or to the ASIC Regulations, of Western Australia; and
 - (b) to include a separate reference to the ASIC Law, or to the ASIC Regulations, of each jurisdiction other than Western Australia.
- (3) Subsection (2) has effect except so far as the contrary intention appears in the instrument, or the context of the reference otherwise requires.
- (4) Without limiting subsection (3), subsection (2) does not apply in relation to a reference expressed as a reference to the ASIC Law, or to the ASIC Regulations, of a jurisdiction.
- (5) In this section —

“instrument” means —

 - (a) an Act or an instrument made under an Act; or
 - (b) a law of Western Australia or an instrument made under such a law; or
 - (c) an award or other industrial determination or order, or an industrial agreement; or
 - (d) any other order (whether executive, judicial or otherwise); or
 - (e) a notice, certificate or licence; or

- (f) an agreement; or
- (g) an application made, information laid, affidavit sworn, or warrant issued, for any purpose; or
- (h) an indictment, presentment, summons or writ; or
- (i) any other pleading in, or process issued in connection with, a legal or other proceeding; or
- (j) any other document whatever.

[Section 65 amended by No. 26 of 1999 s. 68(4).]

Division 3 — The Commission

66. Conferral of functions and powers on Commission

- (1) The Commission has the functions and powers conferred or expressed to be conferred on it under a national scheme law of this jurisdiction.
- (2) The Commission also has the functions and powers conferred or expressed to be conferred upon the NCSC by or under a Code that is a relevant Code for the purposes of the *Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code*.

[67. Repealed by No. 8 of 2001 s. 30(13).]

68. Conferral of other functions and powers for purposes of law in Western Australia

The Commission has power to do acts in Western Australia in the performance or exercise of any function or power —

- (a) expressed to be conferred on the Commission by a national scheme law of another jurisdiction; or

[(b) deleted]

[Section 68 amended by No. 8 of 2001 s. 30(13).]

[69. Repealed by No. 8 of 2001 s. 30(13).]

Division 4 — The Panel

70. Conferral of functions and powers on the Panel

- (1) The Panel has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.
- (2) The Panel has power to do acts in Western Australia in the performance or exercise of any function or power expressed to be conferred on the Panel by a national scheme law of another jurisdiction.

Division 5 — The Disciplinary Board

71. Conferral of functions and powers on the Disciplinary Board

- (1) The Disciplinary Board has the functions and powers conferred on it by or under a national scheme law of this jurisdiction.
- (2) The Disciplinary Board has power to do acts in Western Australia in the performance or exercise of any function or power expressed to be conferred on it by a national scheme law of another jurisdiction.

Division 6 — Miscellaneous

72. Acting appointments

Where a person is appointed under the ASIC Act to act in a particular office, the law of this jurisdiction applies in relation to that person while acting in that office as if the person were the holder of the office.

[Section 72 amended by No. 26 of 1999 s. 68(4).]

73. Alteration of names and constitutions

(1) Where —

- (a) the name of a body established by the ASIC Act is changed by law (whether or not the body is incorporated); or
- (b) the name of an office established by that Act is changed by law —

then, unless the contrary intention appears, a reference in —

- (c) any Act of this jurisdiction; or
- (d) any instrument under such an Act; or
- (e) any award or other industrial determination or order or any industrial agreement; or
- (f) any other order (whether executive, judicial or otherwise); or
- (g) any contract; or
- (h) any pleading in, or process issued in connection with, any legal or other proceeding; or
- (i) any other instrument —

to the body or the office under the former name, except in relation to matters that occurred before that change took place, is taken as a reference to the body or the office under the new name.

(2) Where the constitution of a body established by the ASIC Act is changed by law (whether or not the body is incorporated), then, unless the contrary intention appears, the alteration does not affect any functions or powers conferred or expressed to be conferred on that body by a national scheme law of this jurisdiction.

[Section 73 amended by No. 26 of 1999 s. 68(4).]

74. Application of Commonwealth Crimes Act

- (1) For the purposes of Part 3 of the ASIC Law of Western Australia, Part III of the *Crimes Act 1914* of the Commonwealth applies as a law of Western Australia.
- (2) For the purposes of Part III of the *Crimes Act 1914* of the Commonwealth as applying because of subsection (1), an examination or a hearing is a judicial proceeding.
- (3) For the purposes of a national scheme law of Western Australia —
 - (a) an offence under Part III of the *Crimes Act 1914* of the Commonwealth as applying because of subsection (1) in relation to an examination or hearing, is taken to be an offence against Part 3 of the ASIC Law of Western Australia; and
 - (b) an offence under Part III of the *Crimes Act 1914* of the Commonwealth as applying, in relation to an examination or hearing held under the ASIC Law of another jurisdiction, as a law of that jurisdiction is taken to be an offence against Part 3 of the ASIC Law of that jurisdiction.

[Section 74 amended by No. 51 of 1991 s. 16; No. 26 of 1999 s. 68(4).]

75. Application of Commonwealth Evidence Act

- (1) For the purposes of Part 3 of the ASIC Law of Western Australia, the following provisions of the *Evidence Act 1995* of the Commonwealth apply as a law of Western Australia —

Part 2.2 (Documents)

Section 69 (Exception: business records)

Section 70 (Exception: contents of tags, labels and writing)

Corporations (Western Australia) Act 1990

Part 11 The ASIC Law, and the ASIC Regulations, of Western Australia

Division 6 Miscellaneous

s. 75

Section 71 (Exception: telecommunications)

Section 147 (Documents produced by processes, machines and other devices in the course of business)

Division 2 (Proof of certain matters by affidavits or written statements) of Part 4.6.

- (2) Those provisions of the *Evidence Act 1995* of the Commonwealth apply to an examination in the same way as they apply to a proceeding to which that Act applies under section 4 of that Act.

[Section 75 inserted by No. 28 of 1995 s. 19; No. 26 of 1999 s. 68(4).]

Part 12 — General

Division 1 — Arrangements

76. Definition

In this Division —

“**relevant State law**” means —

- (a) a law of the State concerning the management or affairs of a body corporate; or
- (b) a law of the State concerning fraud or dishonesty; or
- (c) any other law of the State —
other than a co-operative scheme law.

77. Arrangements relating to applicable provisions

- (1) Where an arrangement between the Minister for this jurisdiction and the Commonwealth Minister provides —
 - (a) that an authority or officer of the Commonwealth has certain functions or powers under a relevant State law; or
 - (b) that, despite section 33 or 39, an authority or officer of the State has certain functions or powers under an applicable provision of this jurisdiction —
those functions or powers are conferred on that authority or officer.
- (2) Functions and powers conferred under an arrangement under subsection (1) are to be performed and exercised in accordance with the arrangement but are to be taken to have been validly performed or exercised despite any failure to comply with any condition or restriction under the arrangement.

78. Notice of arrangement

Notice of each arrangement under section 77 must be published in the *Government Gazette* and in the *Commonwealth of Australia Gazette* within 21 days after it is made.

Division 2 — Penalties and fines

79. Application of penalties and fines

All fines, penalties and other money (other than fees and taxes) which, under and by virtue of the applicable provisions of Western Australia, are authorised or directed to be imposed on any person must be paid to the Commonwealth.

Division 3 — Regulations

80. Regulations

- (1) The Governor may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act, being provisions not inconsistent with the national scheme laws of this jurisdiction.
- (3) Any such provision may, if the regulations so provide, take effect on the date of commencement of this section or a later date.
- (4) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Government Gazette*, the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of that publication;
or

- (b) to impose a liability on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of that publication.
- (5) Regulations containing provisions of a kind referred to in subsection (2) cease to have effect on the first anniversary of the day on which this section comes into operation.
- (6) Where regulations cease to have effect because of subsection (5), section 42(6) of the *Interpretation Act 1984* applies as if the regulations had been disallowed by the Parliament.

[Section 80 amended by No. 74 of 2003 s. 42(4).]

Part 13 — Transitional

Division 1 — Staff

81. Information previously acquired

A staff member who, before the commencement of this section, was an officer or employee of the Public Service of Western Australia engaged in the administration of a co-operative scheme law may disclose to the Commission information acquired while so engaged.

82. Staff

(1) A person who —

- (a) is a member of the Commission's staff appointed under the *Public Service Act 1922* of the Commonwealth; and
- (b) was so appointed under section 81B of that Act; and
- (c) immediately before that appointment, was an officer of the Public Service of Western Australia employed in the Corporate Affairs Department —

may —

- (d) at any time within 2 years after being so appointed, apply for appointment to an office in the Public Service of Western Australia; or
- (e) appeal against a recommendation for the promotion in that Public Service of a person to an office —

as if he or she were a public service officer within the meaning of the *Public Sector Management Act 1994*.

(2) A member of the Commission's staff to whom subsection (1) applies may at any time within 2 years after his or her appointment under section 81B of the *Public Service Act 1922* of the Commonwealth, by notice in writing given to the Public Service Commissioner², elect to become an officer of the Public Service of Western Australia.

- (3) A person who makes an election under subsection (2) becomes an officer of the Public Service of Western Australia and is entitled to occupy an office of the same classification as that which the person occupied before being appointed to the Commission's staff.
- (4) Subsections (1) and (2) do not apply to a member of the Commission's staff who has been promoted to an office the classification of which is at least one classification above that to which the officer was appointed under section 81B of the *Public Service Act 1922* of the Commonwealth upon ceasing to be an officer of the Public Service of Western Australia employed in the Corporate Affairs Department.

[Section 82 amended by No. 32 of 1994 s. 19.]

83. Election to continue in State superannuation scheme

- (1) A person who is or has been a member of the Commission's staff who —
 - (a) was appointed as such a member under section 81B of the *Public Service Act 1922* of the Commonwealth; and
 - (b) immediately before that appointment —
 - (i) was contributing to the Superannuation Fund established by the *Superannuation and Family Benefits Act 1938* in accordance with that Act,
 - [(ii) deleted]may, within 3 months after being so appointed, give to the Board within the meaning of the Acts referred to in paragraph (b) an election in writing for the purposes of this section.
- (2) A person who makes an election under subsection (1) and is not a contributor to a superannuation scheme provided under an Act of the Commonwealth —
 - (a) may continue to contribute to the Superannuation Fund referred to in subsection (1)(b)(i) or be a contributory or

non-contributory member of the scheme referred to in subsection (1)(b)(ii), as the case requires, while the person is appointed by the Commission as if the person were eligible under the relevant Act to do so and, as a person so eligible, were entitled to the same annual salary as that to which the person is actually entitled; and

- (b) in the case of such a continuation, the rights conferred by the relevant Act apply as if the person had, during the period of service as a member of the staff of the Commission, continued as an officer of the Public Service of the State.

[Section 83 amended by No. 43 of 2000 s. 37(1).]

Division 2 — Co-operative scheme laws

84. Co-operative scheme laws

For the purposes of this Act, the following are the co-operative scheme laws:

Companies (Application of Laws) Act 1981

Companies (Western Australia) Code

Companies (Acquisition of Shares) (Application of Laws) Act 1981

Companies (Acquisition of Shares) (Western Australia) Code

Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981

Companies and Securities (Interpretation and Miscellaneous Provisions) (Western Australia) Code

Securities Industry (Application of Laws) Act 1981

Securities Industry (Western Australia) Code

Futures Industry (Application of Laws) Act 1986

Futures Industry (Western Australia) Code

85. National scheme laws prevail over co-operative scheme laws

- (1) This section provides for the national scheme laws of this jurisdiction to supersede the co-operative scheme laws, which are to continue to operate of their own force only in relation to —
- (a) matters arising before the commencement of this section; and
 - (b) matters arising, directly or indirectly, out of such matters —

in so far as the national scheme laws or the Corporations legislation do not deal with those matters.

- (2) Where a co-operative scheme law is inconsistent with a national scheme law of this jurisdiction, the national scheme law prevails and, to the extent of the inconsistency, the co-operative scheme law does not operate.
- (3) For the purposes of subsection (2), a co-operative scheme law is inconsistent with a national scheme law 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.
- (4) In this section —

“Corporations legislation” means the Corporations legislation to which Part 1.1A of the *Corporations Act 2001* of the Commonwealth applies.

[Section 85 amended by No. 51 of 1991 s. 17; No. 8 of 2001 s. 30(14) and (15); correction in Gazette 18 December 2001 p.6497.]

86. Regulations may exclude residual operation of co-operative scheme laws

- (1) Regulations under section 80 may provide that prescribed provisions of co-operative scheme laws do not operate, either generally or as otherwise prescribed by the regulations.
- (2) Regulations in force because of subsection (1) have effect accordingly.

87. Effect of sections 85 and 86

- (1) To the extent that a co-operative scheme law ceases to operate because of section 85 or 86, the law is taken for the purposes of the *Interpretation Act 1984* to have been repealed by this Act.
- (2) Nothing in this Act revives, or otherwise affects the exclusion of, the provisions referred to in section 18(1) of the *Companies (Application of Laws) Act 1981* or section 16(1) of the *Securities Industry (Application of Laws) Act 1981*.
- (3) The amendment of the *Companies (Application of Laws) Act 1981* by section 26 of the *Corporations (Ancillary Provisions) Act 2001* does not revive, or otherwise affect the exclusion of, the provisions referred to in section 18(1) of the *Companies (Application of Laws) Act 1981*.
- (4) The amendment of the *Securities Industry (Application of Laws) Act 1981* by section 27 of the *Corporations (Ancillary Provisions) Act 2001* does not revive, or otherwise affect the exclusion of, the provisions referred to in section 16(1) of the *Securities Industry (Application of Laws) Act 1981*.
[Section 87 amended by No. 8 of 2001 s. 30(16).]

88. Regulations may modify co-operative scheme laws

- (1) Regulations under section 80 may provide that a specified co-operative scheme law, or specified provisions of a co-operative scheme law, has or have effect with such modifications as the regulations prescribe.

- (2) Regulations in force because of subsection (1) have effect accordingly, even if, because of section 85 or 86, the specified law does not operate of its own force, or the specified provisions do not operate of their own force, as the case requires.
- (3) However, a reference in section 85(2) to a co-operative scheme law includes a reference to such a law as it has effect, or to provisions of such a law as they have effect, because of this section.

89. Co-operative scheme laws not affected by certain Commonwealth regulations

The operation or effect of a co-operative scheme law is not modified or otherwise affected because regulations of a kind referred to in section 77 or 79 of the Corporations Act modify or otherwise affect the operation of a Co-operative Scheme Act within the meaning of Part 12 of the Corporations Act.

90. References to co-operative scheme laws and regulations

- (1) In this section —
- “**Code regulations**” means provisions applying as regulations made under a Code by reason of a provision of an Act that is a co-operative scheme law;
- “**instrument**” has the same meaning as in section 13, but does not include —
- (a) a co-operative scheme law; or
 - (b) regulations under an Act that is such a law, or under this Act; or
 - (c) Code regulations; or
 - (d) a national scheme law of this jurisdiction, or the Corporations Regulations, or ASIC Regulations, of Western Australia.

- (2) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to a co-operative scheme law is to be taken to include a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of the co-operative scheme law.
- (3) Subject to subsection (4) and to any regulations in force under subsection (7), a reference in an instrument to Code regulations is to be taken to include a reference to such provisions of the Corporations Regulations, or ASIC Regulations, of Western Australia as correspond to provisions of the Code regulations.
- (4) Subject to any regulations in force under subsection (7), a reference in an instrument to a provision of a co-operative scheme law or of Code regulations is to be taken to include a reference to the corresponding provision of a national scheme law of this jurisdiction or of the Corporations Regulations, or ASIC Regulations, of Western Australia, as the case may be.
- (5) Subject to any regulations in force under subsection (7), a reference in an instrument to the NCSC is to be taken to include a reference to the Commission.
- (6) Regulations under section 80 may declare that, for the purposes of this section —
 - (a) prescribed provisions of national scheme laws of this jurisdiction correspond to prescribed provisions of co-operative scheme laws; and
 - (b) prescribed provisions of the Corporations Regulations, or ASIC Regulations, correspond to prescribed provisions of Code regulations.
- (7) Regulations under section 80 —
 - (a) may declare that subsection (2), (3), (4) or (5) of this section does not apply in relation to prescribed references in prescribed instruments; or
 - (b) may declare that subsection (2), (3), (4) or (5) of this section has effect in relation to prescribed references in

prescribed instruments as if, in the subsection, the words “be taken to be” were substituted for the words “be taken to include”.

- (8) Regulations in force because of subsection (6) or (7) have effect accordingly.

[Section 90 amended by No. 51 of 1991 s. 18; No. 26 of 1999 s. 68(4).]

91. Conferral of functions and powers in relation to co-operative scheme laws

- (1) The Commonwealth Director of Public Prosecutions —
- (a) has the same enforcement powers in relation to the co-operative scheme laws as has the Crown in right of the State of Western Australia acting by the Attorney General or such other person as may be prescribed by regulations; and
 - (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the *Director of Public Prosecutions Act 1983* of the Commonwealth in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law were an offence against a national scheme law of this jurisdiction.
- (2) The Australian Federal Police —
- (a) have the same enforcement powers in relation to the co-operative scheme laws as has the police force of Western Australia; and
 - (b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Australian Federal Police in relation to offences against the laws of the Commonwealth as if the offence against the

co-operative scheme law were an offence against a national scheme law of this jurisdiction.

- (3) The Commonwealth Minister has, in respect of the prosecution of offences against the co-operative scheme laws, the same functions and powers as he or she has in respect of the prosecution of offences against a national scheme law of this jurisdiction.
- (4) For the purposes of the exercise of enforcement powers, and other functions and powers conferred by this section, including the obtaining of warrants to arrest, an offence against a co-operative scheme law is taken to be an offence against a national scheme law of this jurisdiction.
- (5) In this section, “enforcement power” means a function or power relating to —
 - (a) the investigation of an offence; or
 - (b) the arrest and custody of persons charged with an offence; or
 - (c) the institution and carrying on of a prosecution of an offence; or
 - (d) matters relating to such an investigation, arrest, custody or prosecution.

[Section 91 amended by No. 28 of 1995 s. 20.]

92. Arrangements affecting exercise of investigation powers by State authorities and officers

- (1) Where an arrangement between the Minister for this jurisdiction and the Commonwealth Minister makes provision in relation to the exercise by a State authority or officer of enforcement powers within the meaning of section 91 in relation to the co-operative scheme laws —
 - (a) the State authority or officer is authorised to act in accordance with that arrangement; and

- (b) the State authority or officer must not exercise an enforcement power except in accordance with that arrangement; and
 - (c) the exercise of, or failure to exercise, an enforcement power by a State authority or officer is to be taken to have been validly performed or withheld, despite any failure to comply with any conditions in the arrangement.
- (2) Notice of each arrangement under subsection (1) must be published in the *Government Gazette* and in the *Commonwealth of Australia Gazette* within 21 days after it is made.

[Division 3 (s. 93) repealed by No. 26 of 1999 s. 68(7).]

Division 4 — Australian Stock Exchange Limited

94. Saving of provisions about Australian Stock Exchange Limited

- (1) Section 85 does not apply in relation to Part IIA of the *Securities Industry (Western Australia) Code*.
- (2) Part IIA has effect, as provided in this section, despite the national scheme laws of this jurisdiction.
- (3) A reference in Part IIA to a relevant Code, except in relation to a time before the commencement of this section, is taken to be a reference to a national scheme law of this jurisdiction.
- (4) Subject to subsection (5), a reference in Part IIA to a particular co-operative scheme law, except in relation to a time before that commencement, is taken to be a reference to such provisions of the national scheme laws of this jurisdiction as correspond to provisions of that law.
- (5) A reference in Part IIA to a provision of a co-operative scheme law (other than a provision of Part IIA itself), except in relation to a time before that commencement, is taken to be a reference to the corresponding provision of a national scheme law of this jurisdiction.

- (6) Regulations in force because of section 90(6) also have effect for the purposes of this section.

**Division 5 — Companies Auditors and Liquidators
Disciplinary Board**

95. Board to continue in existence for certain purposes

The Companies Auditors and Liquidators Disciplinary Board established under section 13 of the *Companies (Administration) Act 1982* may perform the functions and exercise the powers conferred on it under Division 2 of Part II of the *Companies (Western Australia) Code* in respect of applications made to it under Subdivision B of that Division before the commencement of this section.

Division 6 — Amending Acts

[Heading inserted by No. 28 of 1995 s. 21.]

95A. Savings and transitional provisions for amending Acts

Schedule 1 has effect.

[Section 95A inserted by No. 28 of 1995 s. 21.]

**Division 7 — Functions of Commonwealth authorities and
officers of the Commonwealth**

[Heading inserted by No. 8 of 2001 s. 30(17).]

95B. Definitions

In this Division —

“**function**” includes a power;

“**old corporations legislation**” has the same meaning as in the *Corporations (Ancillary Provisions) Act 2001*;

“**perform**” includes exercise.

[Section 95B inserted by No. 8 of 2001 s. 30(17).]

95C. Functions of Commonwealth authorities and officers of the Commonwealth

If a Commonwealth authority or an officer of the Commonwealth has a function expressed to be conferred on the authority or officer by or under the old corporations legislation, the authority or officer is not under a duty to perform that function.

[Section 95C inserted by No. 8 of 2001 s. 30(17).]

Part 14 — Provisions affecting Corporations Law

96. Certain transfers by companies not to constitute reduction of share capital

- (1) Where land under the operation of the *Transfer of Land Act 1893* is comprised in —
- (a) a plan registered under the *Strata Titles Act 1985*; or
 - (b) a plan of a prescribed kind registered under a prescribed Act —

and, at the time of registration of the plan, the proprietor of that land was a company, the transfer by the company of —

- (c) a lot on the plan registered under the *Strata Titles Act 1985*; or
- (d) a prescribed unit or entity on the plan registered under the prescribed Act —

in exchange for or in satisfaction of a right of the kind referred to in section 195(13) of the Corporations Law, does not of itself constitute, and is to be taken never to have constituted, a reduction of the share capital of the company.

- (2) Subsection (1) does not apply to a transfer made on or after the commencement of section 68(8) of the *Acts Amendment and Repeal (Financial Sector Reform) Act 1999*.

[Section 96 amended by No. 26 of 1999 s. 68(8).]

[Part 15 omitted under the Reprints Act 1984 s. 7(4)(c).]

Part 16 — Special provisions for Western Australia

99. Further application of Part 5.1 of Corporations Law

- (1) Part 5.1 of the Corporations Law applies as if references to a Part 5.1 body included reference to a Part 5.7 body.
- (2) In relation to the further law for this State that applies because of subsection (1), the Governor may, by regulations, make like provision as would apply under this Act if that further law were part of the Corporations Law.
- (3) Section 615 of the Corporations Law does not apply in relation to an acquisition of shares under a compromise or arrangement approved under —
 - (a) Part 5.1 of the Corporations Law as applied by subsection (1); or
 - (b) section 315 of the *Companies (Western Australia) Code*.

Schedule 1

[Section 95A]

Savings and transitional provisions

Corporations (Western Australia) Amendment Act 1995

1. Interpretation

In this Schedule —

“**Court**” means the Federal Court of Australia or the Supreme Court of a State or Territory;

“**jurisdiction amendments**” means the amendments made to this Act by sections 4 to 17 of the *Corporations (Western Australia) Amendment Act 1995*;

“**jurisdiction commencement**” means the commencement of the jurisdiction amendments.

2. Application of jurisdiction amendments — general

The jurisdiction amendments apply to proceedings commenced, or recommenced, after the jurisdiction commencement, whether the cause of action arose before or after that commencement.

3. Effect of decision that court did not have jurisdiction

(1) This clause applies if —

- (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of Western Australia were commenced in a court (the “**first court**”) other than the Court; and
- (b) the first court, or another court on appeal from a decision of the first court, decided before the jurisdiction commencement that the first court did not have jurisdiction in respect of the matter; and
- (c) the decision that the first court did not have jurisdiction still stands at the jurisdiction commencement; and

- (d) the first court would have had jurisdiction in respect of the matter if the jurisdiction amendments had commenced before the cause of action arose.
- (2) The validity of the decision that the first court did not have jurisdiction is not affected by the jurisdiction amendments.
- (3) That decision does not affect a recommencement of the proceedings after the jurisdiction commencement.

4. Effect of absence of decision that court did not have jurisdiction

- (1) This clause applies if —
 - (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of Western Australia were commenced in a court (the “**first court**”) other than the Court; and
 - (b) either —
 - (i) no court expressly decided, before the jurisdiction commencement, whether the first court had jurisdiction in respect of the matter; or
 - (ii) a decision of the first court, or of another court on appeal from a decision of the first court, that the first court did have jurisdiction in respect of the matter still stands at the jurisdiction commencement.
- (2) For the purposes of any consideration by a court, after the jurisdiction commencement, of whether the first court had jurisdiction in respect of the matter, the first court is taken to have had jurisdiction in respect of the matter if it would have had that jurisdiction if the jurisdiction amendments had commenced before the cause of action arose.

[Schedule 1 inserted by No. 28 of 1995 s. 22.]

Notes

¹ This is a compilation of the *Corporations (Western Australia) Act 1990* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Corporations (Western Australia) Act 1990</i>	105 of 1990	2 Jan 1991	1 Jan 1991 (see s. 2)
<i>Corporations (Western Australia) Amendment Act 1991</i> ³	51 of 1991	17 Dec 1991	Pt. 1 and s. 20: 17 Dec 1991; s. 4, 6, 16, and 18: 1 Jan 1991; balance: 31 Jul 1992 (see s. 2 and <i>Gazette</i> 24 Jul 1992 p. 3599)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Corporations (Western Australia) Amendment Act 1995</i>	28 of 1995	18 Sep 1995	16 Oct 1995 (see s. 2 and <i>Gazette</i> 13 Oct 1995 p. 4797)
<i>Acts Amendment and Repeal (Family Court) Act 1997</i> s. 30	41 of 1997	9 Dec 1997	26 Sep 1998 (see s. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 37 ^{1a}	43 of 2000	2 Nov 2000	s. 37(1): 17 Feb 2001 (see s. 2(2) and <i>Gazette</i> 16 Feb 2001 p. 903); s. 37(2) to be proc.
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 68	26 of 1999	29 Jun 1999	18 May 2001 (see s. 2 and <i>Gazette</i> 18 May 2001 p. 2403)
<i>Corporations (Ancillary Provisions) Act 2001</i> s. 30	8 of 2001	28 Jun 2001	Operative immediately before the beginning of 15 Jul 2001 (see s. 2 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)

Reprint of the *Corporations (Western Australia) Act 1990* as at 17 Aug 2001
(includes amendments listed above) (correction to reprint in *Gazette* 18 Dec 2001 p.6497)

Short title	Number and year	Assent	Commencement
<i>Acts Amendment (Federal Courts and Tribunals) Act 2001 Part 3</i>	32 of 2001	21 Dec 2001	1 July 2000 (see s. 2(2))
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 42</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and are not included in this compilation. For the text of the provisions see the endnote referred to after the short title.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 37(2)</i> ⁵	43 of 2000	2 Nov 2000	To be proc. (see s. 2(2))

² Under the *Public Sector Management Act 1994* (No. 31 of 1994) s. 112(2) a reference in a written law to the Public Service Commissioner is to be construed as if it had been amended to be a reference to the Minister for Public Sector Management.

³ The *Corporations (Western Australia) Amendment Act 1991* s. 20 reads as follows:

“

20. Reports and financial statements

The Minister must cause —

- (a) a copy of each report of the operations of the National Companies and Securities Commission and the financial statements of the National Companies and Securities Commission prepared by the Australian Securities Commission in accordance with section 15(1), (7) or (8) of the *Corporations Legislation Amendment Act 1991* of the Commonwealth; and

(b) a copy of the report of the Auditor-General for the Commonwealth on those financial statements —

being reports and financial statements copies of which have been submitted to the Minister by the Australian Securities Commission under section 15(3) of that Act, to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

”

⁴ Footnote no longer applicable.

⁵ On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 37(2) had not come into operation. It reads:

“

(2) Section 83 of the *Corporations (Western Australia) Act 1990* is repealed.

”