

WESTERN AUSTRALIA

**CORPORATIONS (WESTERN
AUSTRALIA) AMENDMENT ACT
1991**

No. 51 of 1991

AN ACT to amend the *Corporations (Western Australia) Act 1990*, to repeal the *National Companies and Securities Commission (State Provisions) Act 1980* and for other purposes.

[Assented to 17 December 1991]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title and purpose

1. (1) This Act may be cited as the *Corporations (Western Australia) Amendment Act 1991*.

(2) The purpose of this Act is to amend the *Corporations (Western Australia) Act 1990*.

Commencement

2. (1) Part 1 and section 20 come into operation on the day on which this Act receives the Royal Assent.

(2) Sections 4, 6, 16 and 18 are deemed to have come into operation on 1 January 1991.

(3) The remaining provisions of this Act shall come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Corporations (Western Australia) Act 1990** is referred to as the principal Act.

[* *Act No. 105 of 1990.*]

**PART 2 — CORPORATIONS (WESTERN AUSTRALIA) ACT
1990**

Section 3 amended

4. Section 3 (1) of the principal Act is amended in the definition of “Commonwealth administrative laws” by —

(a) deleting the semi-colon at the end of paragraph (e) and substituting a dash; and

(b) inserting after paragraph (e) the following —

“ and the provisions of the regulations in force for the time being under those Acts; ”.

Section 3 further amended

5. Section 3 (1) of the principal Act is amended by —

(a) inserting after the definition of “corresponding law” the following definitions —

“ “Family Court” means the Family Court of Australia;

“Federal Court” means the Federal Court of Australia; ”;

and

(b) inserting after the definition of “State” the following definition —

“ “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

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applies because of a proclamation
made under section 41 (2) of that Act; ”.

Section 30 amended

6. Section 30 (1) of the principal Act is amended by inserting after “of the Commonwealth” the following —

“ and were not laws of that other jurisdiction ”.

Sections 41 and 42 amended

7. (1) Section 41 (2) (a) of the principal Act is amended by deleting subparagraph (vii) and substituting the following subparagraphs —

“ (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) rules of court applied by the Federal Court, or the Family Court, because of a provision of this Act; and

(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); ”.

(2) Section 42 (3) of the principal Act is amended by deleting “of Australia”.

Section 42A inserted

8. After section 42 of the principal Act the following section is inserted —

**Jurisdiction of Family Court and
State Family Courts**

“ 42A. (1) Jurisdiction is conferred on the Family Court with respect to civil matters arising under the Corporations Law of Western Australia.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, as it applies as a law of Western Australia, 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 43 repealed and a section substituted

9. Section 43 of the principal Act is repealed and the following section is substituted —

Appeals

“ 43. (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 the Supreme Court of another State to the Federal Court or to the Family Court or to a court of any State or of the Capital Territory, except to the Full Court of that Supreme Court.

(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 44 amended

10. Section 44 of the principal Act is amended by repealing subsections (3), (4) and (5).

Sections 44A to 44D inserted

11. After section 44 of the principal Act the following sections are inserted —

**Transfer of proceedings by Family Court
and State Family Courts**

“ 44A. (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 the Supreme 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 the Supreme Court of a State or of the Capital Territory, is the

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most appropriate court to determine the proceeding; or

- (c) it is otherwise in the interests of justice that the Federal Court, or the Supreme 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 Supreme 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.

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

44B. In deciding whether to transfer under section 44 or 44A 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.

Transfer may be made at any stage

44C. A court may transfer under section 44 or 44A a proceeding or application —

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

Transfer of documents

44D. Where, under section 44 or 44A, 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 45 amended

12. Section 45 of the principal Act is amended —

- (a) in subsection (1) by deleting “and 52” and substituting the following —

“ , 52 and 52A ”;

- (b) in subsection (3), in paragraph (a) of the definition of “relevant jurisdiction”, by deleting “of Australia” and substituting the following —

“ or the Family Court ”;

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(c) in subsection (3), in paragraph (b) of the definition of “relevant jurisdiction” —

(i) by deleting “of Australia” and substituting the following —

“ or the Family Court ”;

and

(ii) by inserting after “Federal Court” (where second occurring) the following —

“ or the Family Court, as the case may be, ”;

(d) in subsection (3), in paragraph (c) of the definition of “relevant jurisdiction” by inserting after “Western Australia” the following —

“ or the Family Court of Western Australia ”;

and

(e) in subsection (3), in paragraph (d) of the definition of “relevant jurisdiction”, by inserting after “Territory” the following —

“ , or a State Family Court, ”.

Section 47 amended

13. Section 47 of the principal Act is amended by inserting after “Western Australia” the following —

“ or the Family Court of Western Australia ”.

Section 50 amended

14. Section 50 of the principal Act is amended —

- (a) in subsection (1) by deleting “or the Supreme Court of Western Australia” and substituting the following —

“ , the Family Court, the Supreme Court of Western Australia, or the Family Court of Western Australia ”;

- (b) in subsection (2) (a) by deleting “or the Supreme Court of Western Australia or of another State or of the Capital Territory” and substituting the following —

“ , the Family Court, the Supreme Court of Western Australia or of another State or of the Capital Territory, the Family Court of Western Australia or a State Family Court ”;

and

- (c) in subsection (2) by deleting “or the Supreme Court of Western Australia or of the other State or Territory” and substituting the following —

“ , the Family Court, the Supreme Court of Western Australia or of the other State or Territory, the Family Court of Western Australia or that State Family Court ”.

Sections 52A and 52B inserted

15. After section 52 of the principal Act the following sections are inserted —

**Rules of the Family Court or
State Family Court**

“ 52A. (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 88A of the *Family Court Act 1975*, with such alterations as are necessary.

(3) In this section —

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

Rules of the Family Court of Western Australia

52B. (1) The power to make rules conferred by section 88A of the *Family Court Act 1975* 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 —

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- (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 74 amended

16. Section 74 (3) of the principal Act is repealed and the following subsection is substituted —

“ (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 ASC 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 ASC Law of another jurisdiction, as a law of that jurisdiction is taken to be an offence against Part 3 of the ASC Law of that jurisdiction.

”.

Section 85 amended

17. Section 85 (1) of the principal Act is amended by deleting paragraph (b) and substituting the following —

“ (b) matters arising, directly or indirectly, out of such matters —

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

”.

Section 90 amended

18. Section 90 (1) of the principal Act is amended by deleting the definition of “instrument” and substituting the following definition —

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“ “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 ASC Regulations, of Western Australia.

”.

PART 3 — ABOLITION OF NATIONAL COMPANIES AND SECURITIES COMMISSION

Repeal

19. The *National Companies and Securities Commission (State Provisions) Act 1980** is repealed.

[* Act No. 60 of 1980.]

Reports and financial statements

20. 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.
