

WESTERN AUSTRALIA

**CORPORATIONS (WESTERN
AUSTRALIA) AMENDMENT
ACT 1995**

No. 28 of 1995

AN ACT to amend the *Corporations (Western Australia) Act 1990* to provide for the jurisdiction of lower courts in civil matters arising under the Corporations Law and to make other amendments of a minor or consequential nature.

[Assented to 18 September 1995.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Corporations (Western Australia) Amendment Act 1995*.

Commencement

2. This Act comes 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.*
For subsequent amendments see 1993 Index to
Legislation of Western Australia, Table 1, p. 49 and
Act No. 32 of 1994.]

Section 40 amended

4. Section 40 (1) of the principal Act is amended in paragraph (a) by deleting "matters other than criminal matters (in this Division called "civil" matters)" and substituting the following —

" civil matters ".

Section 41 amended

5. Section 41 (1) of the principal Act is repealed and the following subsection is substituted —

"

(1) In this Division —

"civil matter" means a matter other than a
criminal matter;

"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;

“superior court” means the Federal Court of Australia, the Supreme Court of a State or Territory, the Family Court or 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.

”.

Section 42B inserted

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

“

Jurisdiction of lower courts

42B. (1) 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 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 43 amended

7. Section 43 of the principal Act is amended —

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

“ of a court ”; and

- (b) by repealing subsection (4) and substituting the following subsection —

“

(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.

”.

Section 44A amended

8. Section 44A (2) of the principal Act is amended —

- (a) in paragraph (a) by deleting “the Supreme Court” and substituting the following —

“ another court ”;

- (b) in paragraph (b) by deleting “the Supreme Court” and substituting the following —

“ another court ”;

- (c) in paragraph (c) by deleting “the Supreme Court” and substituting the following —

“ another court ”; and

- (d) by deleting “that Supreme Court” and substituting the following —

“ that other court ”.

Section 44AA inserted

- 9.** After section 44A of the principal Act the following section is inserted —

“

Transfer of proceedings in lower courts

44AA. (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 44B amended

10. Section 44B of the principal Act is amended —

- (a) by deleting “or 44A” and substituting the following —
“ , 44A or 44AA ”; and

- (b) at the end of paragraph (b) by deleting the full stop and substituting the following —

“

; and

- (c) the other courts that have jurisdiction to deal with the proceeding or application.

”.

Section 44C amended

- 11.** Section 44C of the principal Act is amended by deleting “or 44A” and substituting the following —

“ , 44A or 44AA ”.

Section 44D amended

- 12.** Section 44D of the principal Act is amended by deleting “or 44A” and substituting the following —

“ , 44A or 44AA ”.

Section 45 amended

- 13.** Section 45 (3) of the principal Act is amended in the definition of “relevant jurisdiction” —

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

“ a court ”; and

- (b) in paragraph (d) by deleting “the Supreme Court of another State or the Capital Territory, or a State Family Court,” and substituting the following —

“
a court of another State or the Capital
Territory
”.

Section 46 amended

14. Section 46 of the principal Act is amended by deleting “, the Judges of those courts”.

Section 47 amended

15. Section 47 of the principal Act is amended —

- (a) by deleting “The Supreme Court of Western Australia or the Family Court” and substituting the following —

“ A court ”;

- (b) in paragraph (a) by deleting “that Court” and substituting the following —

“ it ”; and

- (c) in paragraph (b) by deleting “that Court” and substituting the following —

“ it ”.

Section 50 amended

16. Section 50 of the principal Act is amended —

(a) in subsection (1) —

- (i) by deleting “, the Supreme Court of Western Australia, or the Family Court” and substituting the following —

“ or a court ”; and

- (ii) by deleting “that Court” in the 2 places where it occurs and substituting in each place the following —

“ that court ”;
and

(b) in subsection (2) —

- (i) in paragraph (a) by deleting “or a State Family Court” and substituting the following —

“
 , 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

- (ii) by deleting “or that State Family Court” and substituting the following —

“
 , that State Family Court or that
 lower court
”.

Section 51 amended**17. Section 51 of the principal Act is amended —**

- (a) by inserting after subsection (1) the following subsection —

“

(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.

”;

- (b) in subsection (2) —

- (i) by deleting “the Supreme Court” and substituting the following —

“ a court ”; and

- (ii) by deleting “that Court” and substituting the following —

“ that court ”;

and

- (c) in subsection (3) —

- (i) by deleting “the Supreme Court” and substituting the following —

“ a court ”; and

- (ii) by deleting “that Court” and substituting the following —

“ that court ”.

Section 60 amended

18. Section 60 (1) of the principal Act is amended in the definition of "officer" by deleting paragraph (c) and substituting the following paragraph —

"

- (c) an administrator of the body or an administrator of a deed of company arrangement executed by the body;

".

Section 75 repealed and a section substituted

19. Section 75 of the principal Act is repealed and the following section is substituted —

"

Application of Commonwealth Evidence Act

75. (1) For the purposes of Part 3 of the ASC 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)

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 91 amended

20. Section 91 (1) of the principal Act is amended in paragraph (b) by deleting “as if the offence” and substituting the following —

“

in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law

”

Part 13, Division 6 inserted

21. After Division 5 of Part 13 of the principal Act the following Division is inserted —

“

Division 6 — Amending Acts

Savings and transitional provisions for amending Acts

95A. Schedule 1 has effect.

”

Schedule 1 added

22. After section 99 of the principal Act the following Schedule is added —

“

SCHEDULE 1

[Section 95A]

SAVINGS AND TRANSITIONAL PROVISIONS

***Corporations (Western Australia) Amendment Act
1995***

Interpretation

1. 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.

Application of jurisdiction amendments — general

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

Effect of decision that court did not have jurisdiction

3. (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.

Effect of absence of decision that court did not have jurisdiction

4. (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.

”.
