

FIRST PRINT

**CORPORATIONS (NEW SOUTH WALES) AMENDMENT
BILL 1991**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

General objects

1. The objects of this Bill are to make a series of miscellaneous amendments to the Corporations (New South Wales) Act 1990 and to enact provisions consequent on the abolition of the National Companies and Securities Commission (the NCSC).

Background

2. The Corporations (New South Wales) Act 1990 is part of a legislative scheme that involves complementary legislation of the Commonwealth, the States and the Northern Territory. The scheme is based on an agreement reached at a meeting of Ministers at Alice Springs on 29 June 1990.

3. The Northern Territory is treated as a State for the purposes of the scheme, and accordingly references in this Explanatory Note to a State extend to the Northern Territory.

4. The Commonwealth component of the legislation is contained in the Corporations Act 1989 (the Corporations Act) and the Australian Securities Commission Act 1989.

5. The Corporations Legislation Amendment Act 1990 amended those Acts to separate the substantive law from the machinery provisions relating to the application of the law and supporting legislative infrastructure. The Commonwealth legislation is limited in its application to the Australian Capital Territory. The State Acts contain complementary machinery provisions that apply the substantive law to the respective States and provide similar supporting legislative infrastructure.

6. A major feature of the Commonwealth and State legislation is the use of legal devices to establish a framework that creates a uniform legal text that has the appearance and, for most practical purposes, the effect of a single national law.

7. The result is that amendments made to the substantive provisions by Commonwealth legislation automatically become part of the law of the States through the operation of the machinery provisions in the State legislation.

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8. Amendments to both the substantive and machinery provisions are to involve consultation with the Ministerial Council for Corporations.

9. Consistent with the establishment of a single national regulatory framework, the Australian Securities Commission (the ASC) was established as the principal administering authority, replacing the NCSC and the State Corporate Affairs offices.

The Corporations Legislation Amendment Act 1991

10. The Corporations Legislation Amendment Act 1991 of the Commonwealth (Act No. 110 of 1991) was assented to on 27 June 1991. For ease of reference, that Act is referred to in this Explanatory Note as "the Commonwealth Bill". Broadly, the Commonwealth Bill has three purposes:

- (a) to amend the substantive provisions (these amendments are applied automatically as law of the States);
- (b) to amend the machinery provisions;
- (c) to abolish the NCSC.

Some of the amendments are designed to bring the Corporations Act into conformity with the current text of the State Acts.

This Bill

11. This Bill amends the machinery provisions contained in the Corporations (New South Wales) Act 1990. Most of the amendments complement the amendments made to the Commonwealth machinery provisions by the Commonwealth Bill. The Bill also enacts complementary provisions relating to the abolition of the NCSC.

12. The bulk of the provisions of the Bill relate to the Family Court of Australia and the Family Court of Western Australia, and the abolition of the NCSC. These aspects are discussed in the following paragraphs. The provisions of the Bill are discussed in detail in the notes on provisions that follow paragraph 17.

Jurisdiction of the Family Courts

13. As mentioned above, the bulk of the amendments relate to the Family Courts of Australia and Western Australia. The Bill will confer cross-vested jurisdiction under the Corporations Law on the Family Courts. The amendments propose to restore to the Family Courts the jurisdiction those courts had in relation to companies and securities legislation immediately before the commencement of the Corporations Law on 1 January 1991.

14. Before the commencement of the Corporations Law, the Family Courts had jurisdiction to deal with matters under the co-operative companies and securities legislation by virtue of the general scheme for the cross-vesting of jurisdiction of Australian Courts. However, the corporations legislation excluded the general cross-vesting scheme and replaced it with a special regime for the vesting and cross-vesting of jurisdiction between the Federal Court and the State and Territory Courts on Corporations Law matters, in which all those Courts have full co-ordinate jurisdiction under the law.

15. The Bill, together with the complementary legislation of the Commonwealth and the other States, gives the Family Courts the same status under the Corporations Law as they had under the general cross-vesting legislation in relation to jurisdiction under the

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former Companies and Securities Codes. Those Courts are not given the full and direct co-ordinate jurisdiction conferred on the other courts for the reason that it is appropriate for the Family Courts to deal with Corporations Law matters only when they arise in an ancillary way in relation to Family Law proceedings.

16. For this reason the obligations on the Family Courts to transfer, in appropriate cases, Corporations Law matters to other courts follow closely the provisions of the general Jurisdiction of Courts (Cross-vesting) legislation. A Family Court will be able to transfer a case to any appropriate State Supreme Court or the Federal Court having jurisdiction under the Corporations Law.

Abolition of the NCSC

17. As the functions of the NCSC have been assumed by the ASC, and the further existence of that body is redundant, the NCSC is to be abolished by Commonwealth legislation. Powers and duties were imposed on the NCSC by the National Companies and Securities Commission (State Provisions) Act 1981. The Bill will repeal that Act, and require the tabling of certain reports and financial statements before the Parliament of the State.

PART 1—PRELIMINARY

Clause 1 provides for the citation of the proposed Act and states its purpose.

Clause 2 provides for the commencement of the proposed Act. Some amendments of a technical nature are taken to have commenced on 1 January 1991. The formal provisions of the Bill are to commence on assent, as are the transitional provisions relating to the reports and financial statements of the NCSC. The remaining provisions are to commence on a proclaimed day or days.

PART 2—AMENDMENTS

Clause 3 is a formal provision giving effect to the Schedule of amendments.

PART 3—ABOLITION OF NATIONAL COMPANIES AND SECURITIES COMMISSION

Clause 4 repeals the National Companies and Securities Commission (State Provisions) Act 1981. This complements the repeal of the National Companies and Securities Commission Act 1979 of the Commonwealth by section 14 of the Commonwealth Bill.

Clause 5 requires the Minister to table in Parliament a copy of each report of the operations of the NCSC and the financial statements of the NCSC prepared by the ASC under section 15 of the Commonwealth Bill, together with a copy of the report of the Auditor-General of the Commonwealth on those financial statements.

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) (a) amends the definition of "Commonwealth administrative laws" to include the regulations made under the relevant Commonwealth Acts. This amendment is made for the avoidance of doubt and is intended to make explicit what was intended

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to be implicit in the operation of the present provisions. This amendment is consistent with the amendment made to section 4 of the Corporations Act by Schedule 1 to the Commonwealth Bill.

Schedule 1 (1) (b) and (c) insert definitions of "Family Court" and "State Family Court", which correspond to the definitions inserted into section 50 of the Corporations Act by Schedule 1 to the Commonwealth Bill. Schedule 1 (1) (b) also inserts a definition of "Federal Court".

Schedule 1 (2) amends section 30 to make it clear that the Commonwealth laws applying as laws of the State to offences against the applicable provisions of another jurisdiction apply as if they were not laws of that jurisdiction, but as laws of the Commonwealth. This will bring section 30 into line with section 29, and complements amendments to section 42 of the Corporations Act made by Schedule 1 to the Commonwealth Bill.

Schedule 1 (3) amends the definition of "Corporations Law of New South Wales" in section 41 to include rules of court made by the Family Courts. This is consequential on the conferral of cross-vested jurisdiction on the Family Courts, and corresponds to an amendment to section 50 of the Corporations Act made by Schedule 1 to the Commonwealth Bill.

Schedule 1 (4) amends section 42 to omit words that become redundant as a consequence of the new definition of "Federal Court".

Schedule 1 (5) confers jurisdiction on the Family Court of Australia with respect to civil matters arising under the Corporations Law of this jurisdiction. Jurisdiction is also conferred on State Family Courts with respect to those matters. The conferral of this jurisdiction on a State Family Court is limited to the extent that a court of a State does not have jurisdiction to grant an injunction, a prerogative writ or a declaratory order in relation to certain decisions of an administrative character, in accordance with section 9 of the Administrative Decisions (Judicial Review) Act 1977. The clause corresponds to section 51A of the Corporations Act, as inserted by Schedule 1 to the Commonwealth Bill.

Schedule 1 (6) repeals section 43 and inserts a new section that takes account of the inclusion of the Family Courts in the scheme. The section ensures that, despite the cross-vesting of jurisdiction, the normal hierarchy of appeals is to apply. The section corresponds to the new section 52 inserted in the Corporations Act by Schedule 1 to the Commonwealth Bill.

Schedule 1 (7) and (8) omit three subsections of section 44 and replace them with new sections 44B, 44C and 44D, which apply for the purposes of transfer of proceedings under section 44 and proposed section 44A.

Schedule 1 (8) also inserts section 44A, which establishes a regime for the transfer of proceedings in respect of civil matters arising under the Corporations Law instituted in a Family Court. It differs from the regime in section 44 that applies in relation to such proceedings instituted in other superior courts. The section 44A regime is similar to the provisions for the transfer of proceedings under the general cross-vesting arrangements established by the Jurisdiction of Courts (Cross-vesting) legislation. The provisions ensure that proceedings begun inappropriately in a Family Court, or related proceedings begun in separate courts, will be transferred to an appropriate court.

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The amendment made to section 44 corresponds to the amendment made to section 53 of the Corporations Act by Schedule 1 to the Commonwealth Bill. The new sections 44A–44D correspond to sections 53A–53D of the Corporations Act as inserted by that Schedule.

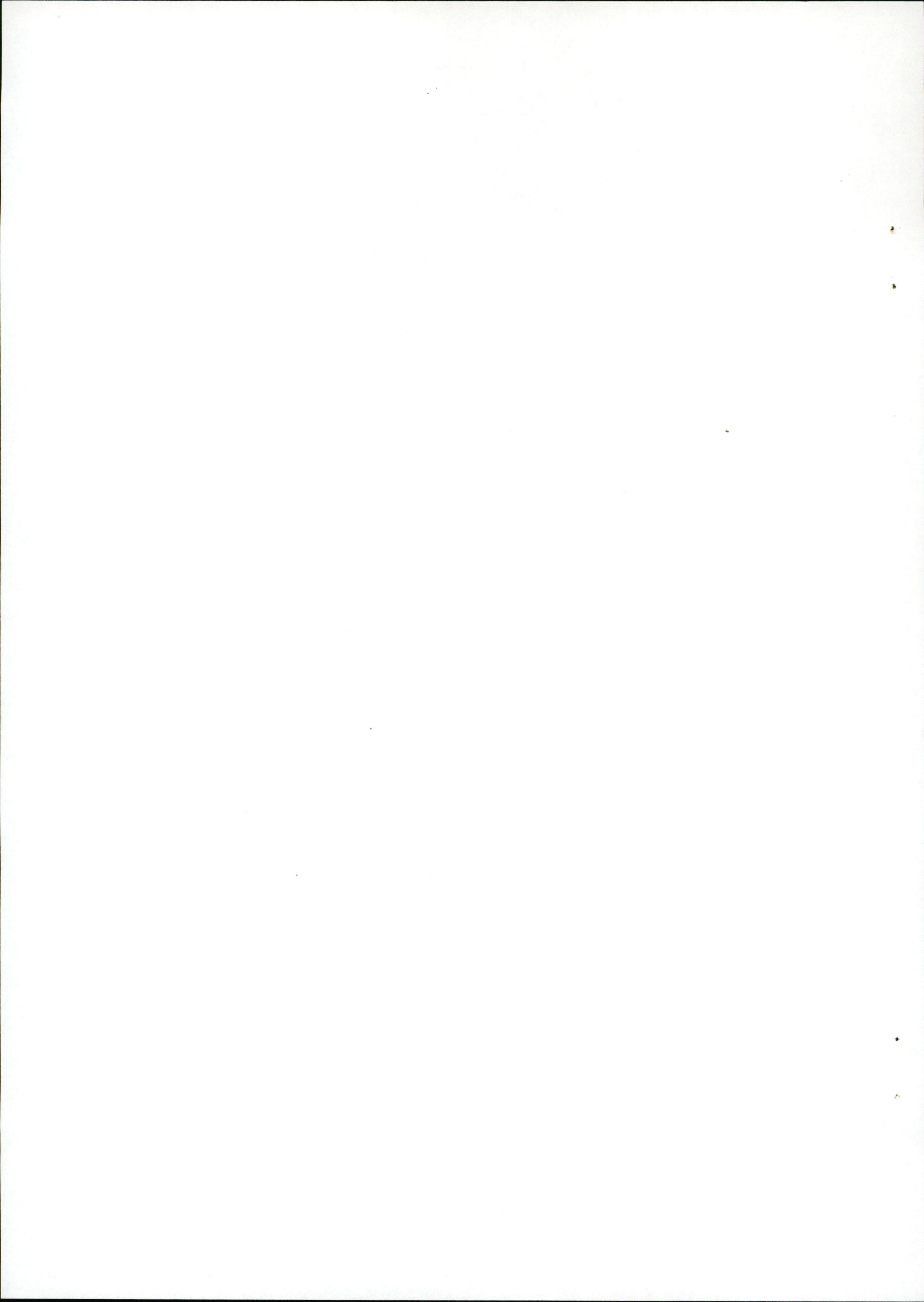
Schedule 1 (9) and (10) amend sections 45 and 50 in consequence of the inclusion of the Family Courts in the civil cross-vesting arrangements. These amendments correspond to the amendments to sections 54 and 59 of the Corporations Act by Schedule 1 to the Commonwealth Bill.

Schedule 1 (11) inserts a new section 52A relating to the rules of court that a Family Court should apply with respect to matters arising under the Corporations Law of this jurisdiction. The section corresponds to subsections (2)–(4) of section 61A inserted in the Corporations Act by Schedule 1 to the Commonwealth Bill.

Schedule 1 (12) replaces section 74 (3). The new subsection widens the scope of the provision to include all national scheme laws of the particular jurisdiction rather than only the ASC Law, and recognises for the purposes of the national scheme law of one jurisdiction that an offence under the Crimes Act 1914 of the Commonwealth as it applies in relation to an examination or hearing under the ASC Law of another jurisdiction is taken to be an offence under the ASC Law of that other jurisdiction. The purpose of the provision is to ensure that offences under Part III of the Crimes Act 1914 of the Commonwealth are “cross-federalised” for the purposes of enforcement of the ASC Law. The subsection corresponds to section 88 (1A) of the Australian Securities Commission Act 1989 of the Commonwealth, as amended by Schedule 7 to the Commonwealth Bill.

Schedule 1 (13) corrects a typographical error in section 85, and brings the section into line with section 76 of the Commonwealth Act.

Schedule 1 (14) replaces the definition of “instrument” in section 90. The effect of the new definition is to exclude the national scheme laws and regulations of this jurisdiction from the expression, so that the provisions construing references to co-operative scheme laws etc. will not apply to them. It is assumed that if a national scheme law refers to a co-operative scheme law it does so deliberately and the reference is not meant to be updated. The new definition corresponds to the definition inserted in section 80 of the Corporations Act by Schedule 1 to the Commonwealth Bill.



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TABLE OF PROVISIONS

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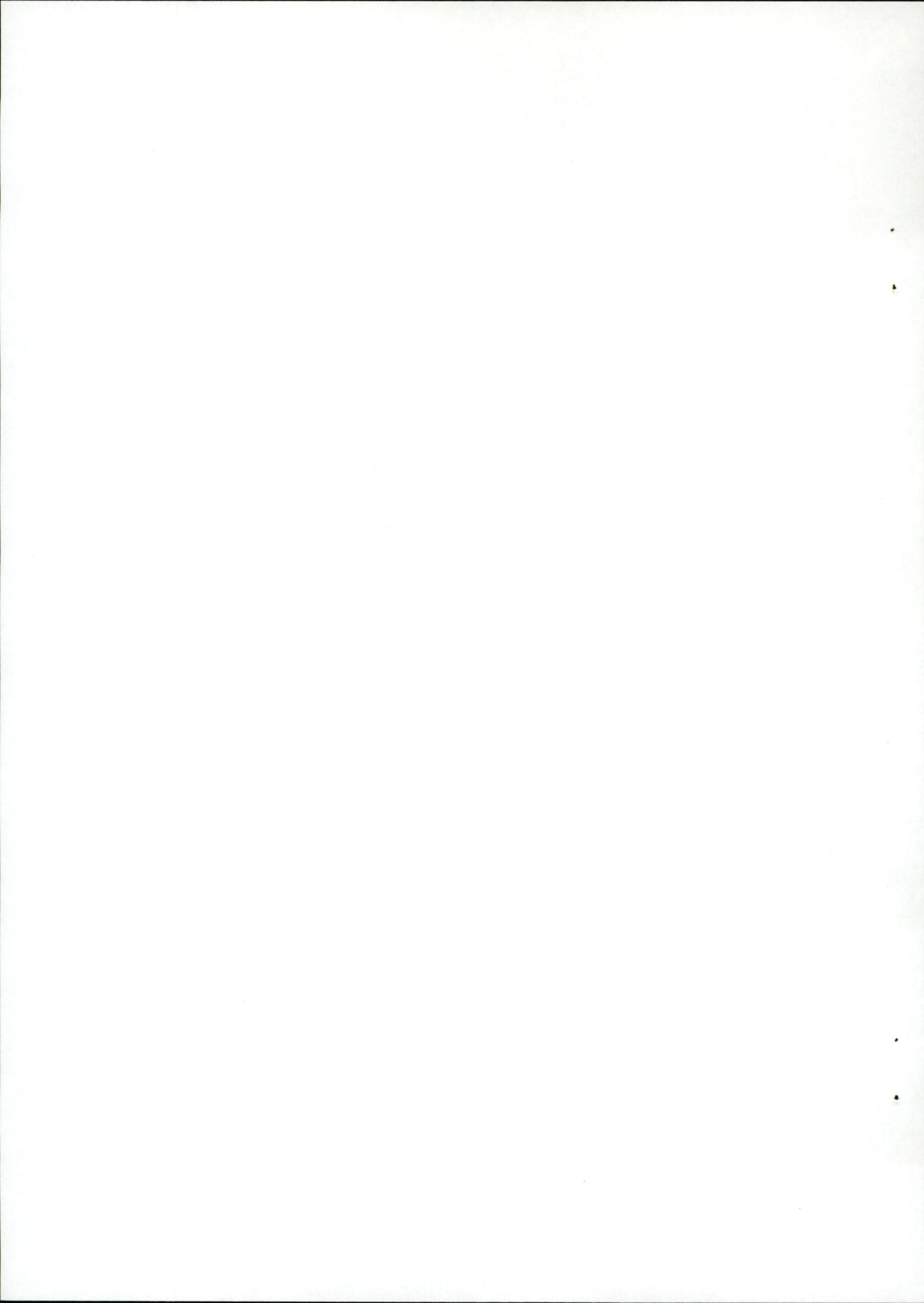
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3. Amendment of Corporations (New South Wales) Act 1990 No. 83

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SCHEDULE 1—AMENDMENTS



**CORPORATIONS (NEW SOUTH WALES) AMENDMENT
BILL 1991**

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No. , 1991

A BILL FOR

An Act to amend the Corporations (New South Wales) Act 1990 for the purpose of conferring certain jurisdiction on the Family Court of Australia and for other purposes; to repeal the National Companies and Securities (State Provisions) Act 1981; and for other purposes.

Corporations (New South Wales) Amendment 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title and purpose

1. (1) This Act may be cited as the Corporations (New South Wales) Amendment Act 1991.

(2) The purpose of this Act is to amend the Corporations (New South Wales) Act 1990.

Commencement

2. (1) Part 1 and section 5 commence on the date of assent to this Act.

(2) The provisions of Schedule 1 (1) (a), (2), (12) and (14), and section 3 in its application to them, are taken to have commenced on 1 January 1991.

(3) The remaining provisions of this Act commence on a day or days to be appointed by proclamation.

PART 2—AMENDMENTS

Amendment of Corporations (New South Wales) Act 1990 No. 83

3. The Corporations (New South Wales) Act 1990 is amended as set out in Schedule 1.

**PART 3—ABOLITION OF NATIONAL COMPANIES AND
SECURITIES COMMISSION**

Repeal

4. The National Companies and Securities Commission (State Provisions) Act 1981 No. 60 is repealed.

Reports and financial statements

5. The Minister administering the Corporations (New South Wales) Act 1990 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

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(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.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

(a) After paragraph (e) of the definition of “Commonwealth administrative laws” in section 3 (1), insert “and the provisions of the regulations in force for the time being under those Acts;”.

(b) After the definition of “corresponding law” in section 3 (1), insert:

“Family Court” means the Family Court of Australia;

“Federal Court” means the Federal Court of Australia;

(c) After the definition of “State” in section 3 (1), insert:

“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;

(2) Section 30 (**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**):

In section 30 (1), after “of the Commonwealth”, insert “and were not laws of that other jurisdiction”.

(3) Section 41 (**Interpretation**):

Omit section 41 (2) (a) (vii), insert instead:

(vii) rules of court made by the Supreme Court of New South Wales 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

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SCHEDULE 1—AMENDMENTS—*continued*

- (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
- (4) Section 42 (**Jurisdiction of Federal Court and State and Territory Supreme Courts**):
From section 42 (3), omit “of Australia”.
- (5) Section 42A:
After section 42, insert:
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 New South Wales.
(2) Subject to section 9 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth, as it applies as a law of New South Wales, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations Law of New South Wales.
(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.
- (6) Section 43:
Omit the section, insert instead:
Appeals
43. (1) An appeal may not be instituted from a decision of a court of New South Wales to a court of another State or of the Capital Territory or to the Federal Court or 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.

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SCHEDULE 1—AMENDMENTS—*continued*

(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.

(7) Section 44 (**Transfer of proceedings**):

Omit section 44 (3), (4) and (5).

(8) Sections 44A, 44B, 44C, 44D:

After section 44, insert:

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 New South Wales 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,

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SCHEDULE 1—AMENDMENTS—*continued*

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 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 first 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

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SCHEDULE 1—AMENDMENTS—*continued*

- (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.

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SCHEDULE 1—AMENDMENTS—*continued*

- (9) Section 45 (**Conduct of proceedings**):
- (a) In section 45 (1), omit “and 52”, insert instead “, 52 and 52A”.
 - (b) In section 45 (3), in paragraph (a) of the definition of “relevant jurisdiction”, omit “of Australia”, insert instead “or the Family Court”.
 - (c) In section 45 (3), in paragraph (b) of the definition of “relevant jurisdiction”:
 - (i) omit “of Australia”, insert instead “or the Family Court”;
 - (ii) after “Federal Court” where secondly occurring, insert “or the Family Court, as the case may be”.
 - (d) In section 45 (3), in paragraph (d) of the definition of “relevant jurisdiction”, after “Territory”, insert “, or a State Family Court,”.
- (10) Section 50 (**Enforcement of judgments etc.**):
- (a) In section 50 (1), after “Federal Court”, insert “, the Family Court”.
 - (b) In section 50 (2) (a), omit “or the Supreme Court of New South Wales or of another State or of the Capital Territory”, insert instead “, the Family Court, the Supreme Court of New South Wales or of another State or of the Capital Territory or a State Family Court”.
 - (c) In section 50 (2), omit “or the Supreme Court of New South Wales or of the other State or Territory”, insert instead “, the Family Court, the Supreme Court of New South Wales or of the other State or Territory or that State Family Court”.
- (11) Section 52A:
- After section 52, insert:
- 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 New South Wales, 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.

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

(2) When a State Family Court of another State is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, 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, with such alterations as are necessary.

(3) In this section:

“Corporations Law of New South Wales” does not include rules of court.

(12) Section 74 (**Application of Commonwealth Crimes Act**):

Omit section 74 (3), insert instead:

(3) For the purposes of a national scheme law of New South Wales:

- (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 New South Wales; 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.

(13) Section 85 (**National scheme laws prevail over co-operative scheme laws**):

Omit section 85 (1) (b), insert instead:

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

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

(14) Section 90 (**References to co-operative scheme laws and regulations**):

In section 90 (1), omit the definition of “instrument”, insert instead:

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

“**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 New South Wales.
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CORPORATIONS (NEW SOUTH WALES) (AMENDMENT)
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SECOND READING

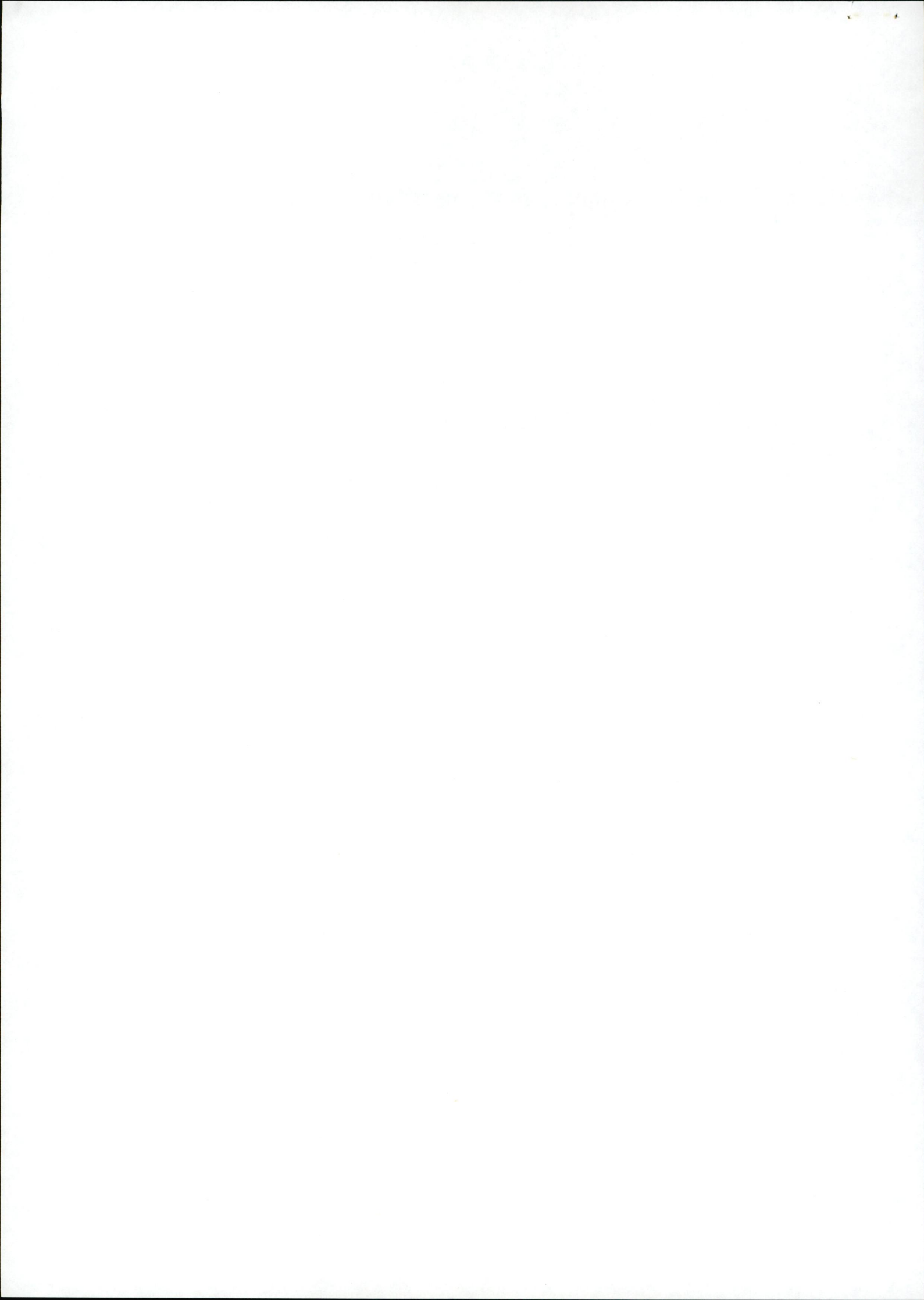
LEGISLATIVE COUNCIL

(NOTICE OF MOTION CALLED IN NAME OF MINISTER)

MR PICKERING TO SAY:

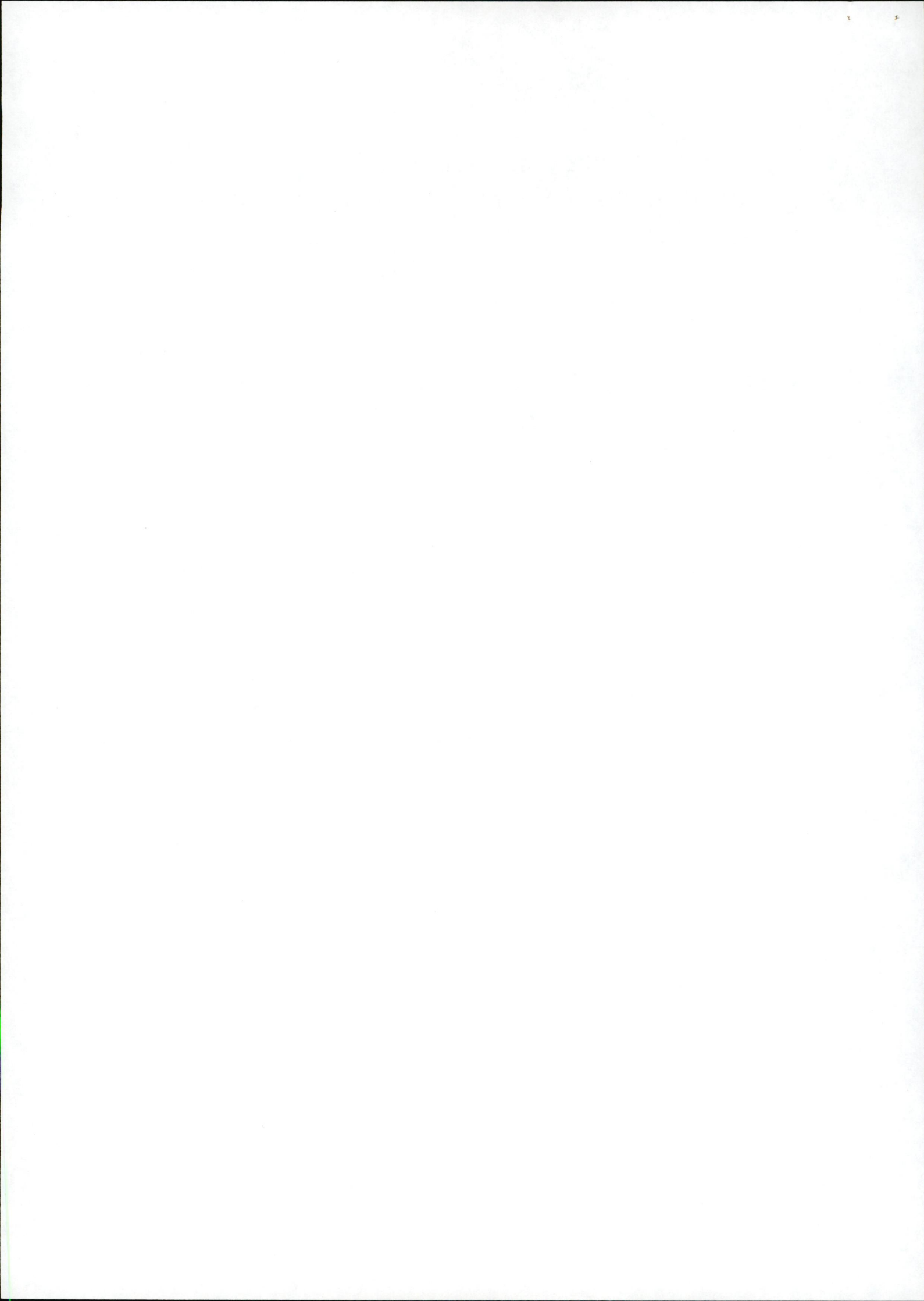
MR PRESIDENT,

I MOVE THAT THIS BILL BE READ A SECOND TIME.



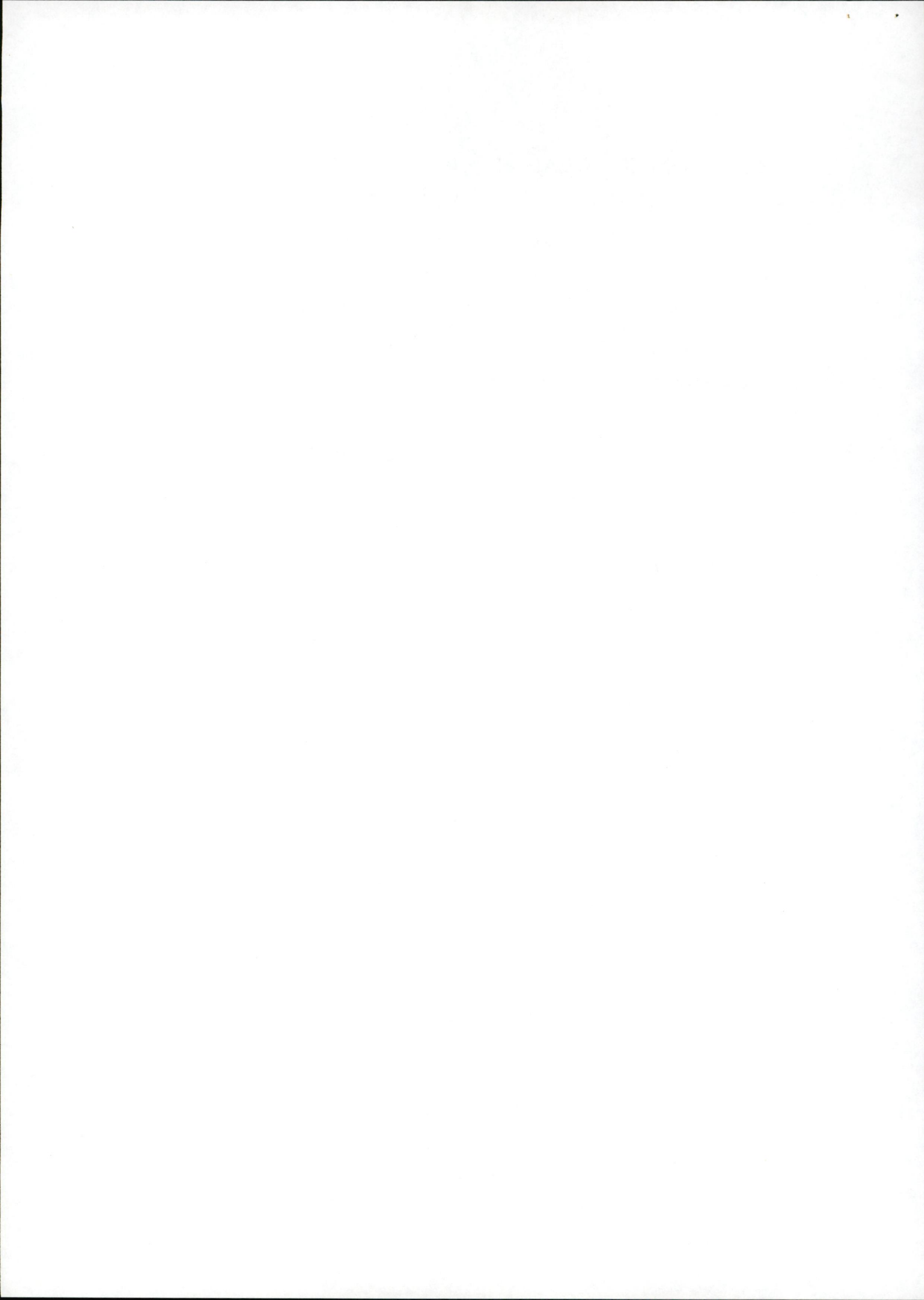
AS HONOURABLE MEMBERS ARE AWARE, THE NEW NATIONAL CORPORATIONS SCHEME WAS ESTABLISHED LAST YEAR. THIS BILL, A UNIFORM STATE BILL, AMENDS THE NEW SOUTH WALES CORPORATIONS LEGISLATION IN CONSEQUENCE OF AMENDMENTS MADE BY THE COMMONWEALTH CORPORATIONS LEGISLATION AMENDMENT ACT 1991. THE CORPORATIONS SCHEME PROVIDES FOR THE CORPORATIONS LAW OF THE COMMONWEALTH TO BE APPLIED IN THE STATES AND THE NORTHERN TERRITORY.

THE CORPORATIONS (NEW SOUTH WALES) ACT 1990 APPLIES THE CORPORATIONS LAW AS THE LAW IN NEW SOUTH WALES AND ALLOWS AMENDMENTS MADE TO THE SUBSTANTIVE PROVISIONS OF THE CORPORATIONS LAW TO AUTOMATICALLY BECOME PART OF NEW SOUTH WALES LAW.



THE COMMONWEALTH CORPORATIONS LEGISLATION AMENDMENT ACT 1991 AMENDS THE CORPORATIONS LEGISLATION TO UPDATE THE CORPORATIONS LAW AND PROVIDE FOR SOME MATTERS WHICH WERE OVERLOOKED IN ITS RUSHED INTRODUCTION. IN PARTICULAR, THE COMMONWEALTH ACT AMENDS THE CORPORATIONS LEGISLATION IN RELATION TO:

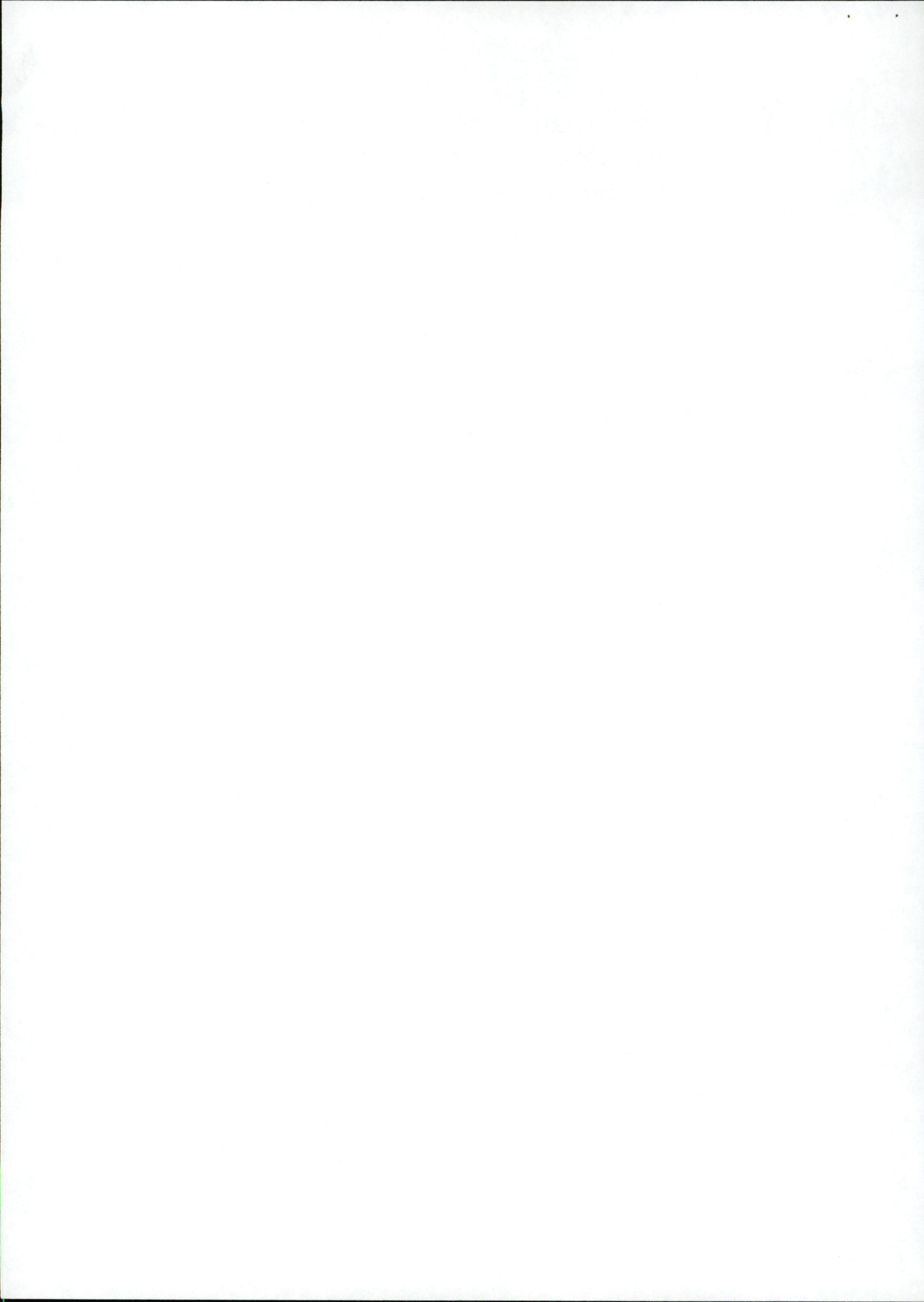
- I) THE WINDING UP OF THE NATIONAL COMPANIES AND SECURITIES COMMISSION;
- II) THE CONFERMENT OF JURISDICTION UNDER THE CORPORATIONS LAW ON THE FAMILY COURT OF AUSTRALIA;
- III) THE REFORM OF THE REGULATION OF INSIDER TRADING;
- IV) THE CONSOLIDATION OF THE ACCOUNTS OF GROUPS OF COMPANIES;



- V) THE MORATORIUM ON THE AUSTRALIAN COMPANY NUMBER (ACN) AND THE AUSTRALIAN REGISTERED BODY NUMBER (ARBN); AND
- VI) A NUMBER OF TECHNICAL AND CLARIFYING AMENDMENTS.

THE AMENDMENTS IN THIS BILL IMPLEMENT THE NON-SUBSTANTIVE OR MACHINERY AMENDMENTS MADE BY THE COMMONWEALTH ACT.

MOST OF THE PROVISIONS OF THIS BILL RELATE TO THE CONFERMENT OF JURISDICTION ON THE FAMILY COURT WITH RESPECT TO CIVIL MATTERS ARISING UNDER THE CORPORATIONS LAW OF NEW SOUTH WALES, AND TO THE WINDING UP OF THE NATIONAL COMPANIES AND SECURITIES COMMISSION.

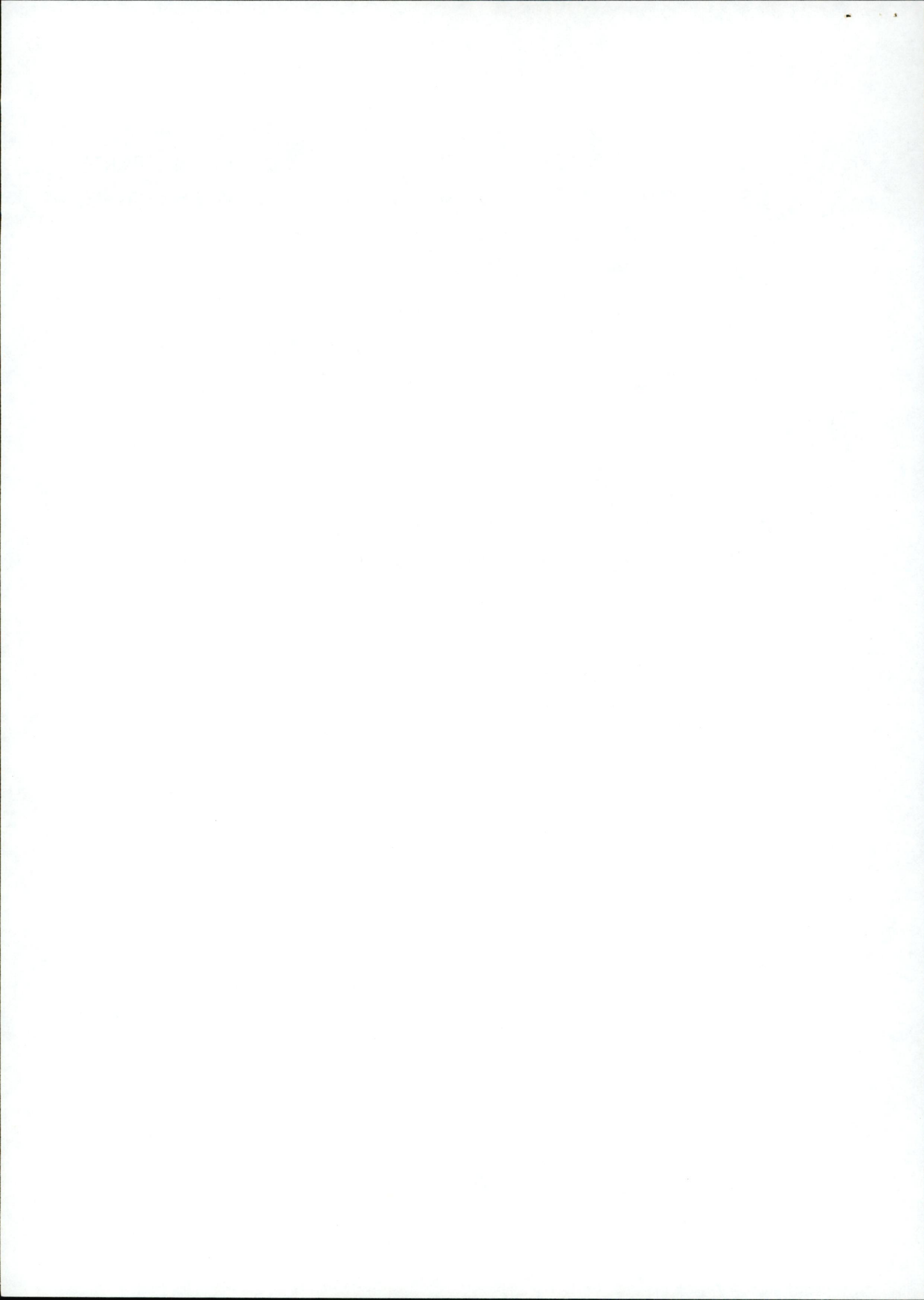


SCHEDULE 1(1)(B) TO (11) OF THE BILL DEALS WITH THE CONFERMENT OF CROSS-VESTED JURISDICTION UNDER THE CORPORATIONS LAW ON THE FAMILY COURT. BEFORE THE COMMENCEMENT OF THE CORPORATIONS LAW, THE FAMILY COURTS HAD JURISDICTION TO DEAL WITH MATTERS UNDER THE CO-OPERATIVE COMPANIES AND SECURITIES LEGISLATION BY VIRTUE OF THE GENERAL SCHEME FOR THE CROSS-VESTING OF JURISDICTION OF AUSTRALIAN COURTS.

HOWEVER, THE CORPORATIONS LEGISLATION EXCLUDED THE GENERAL CROSS-VESTING SCHEME AND REPLACED IT WITH A SPECIAL REGIME FOR THE VESTING AND CROSS-VESTING OF JURISDICTION BETWEEN THE FEDERAL COURT AND THE STATE AND TERRITORY COURTS ON CORPORATIONS LAW MATTERS.

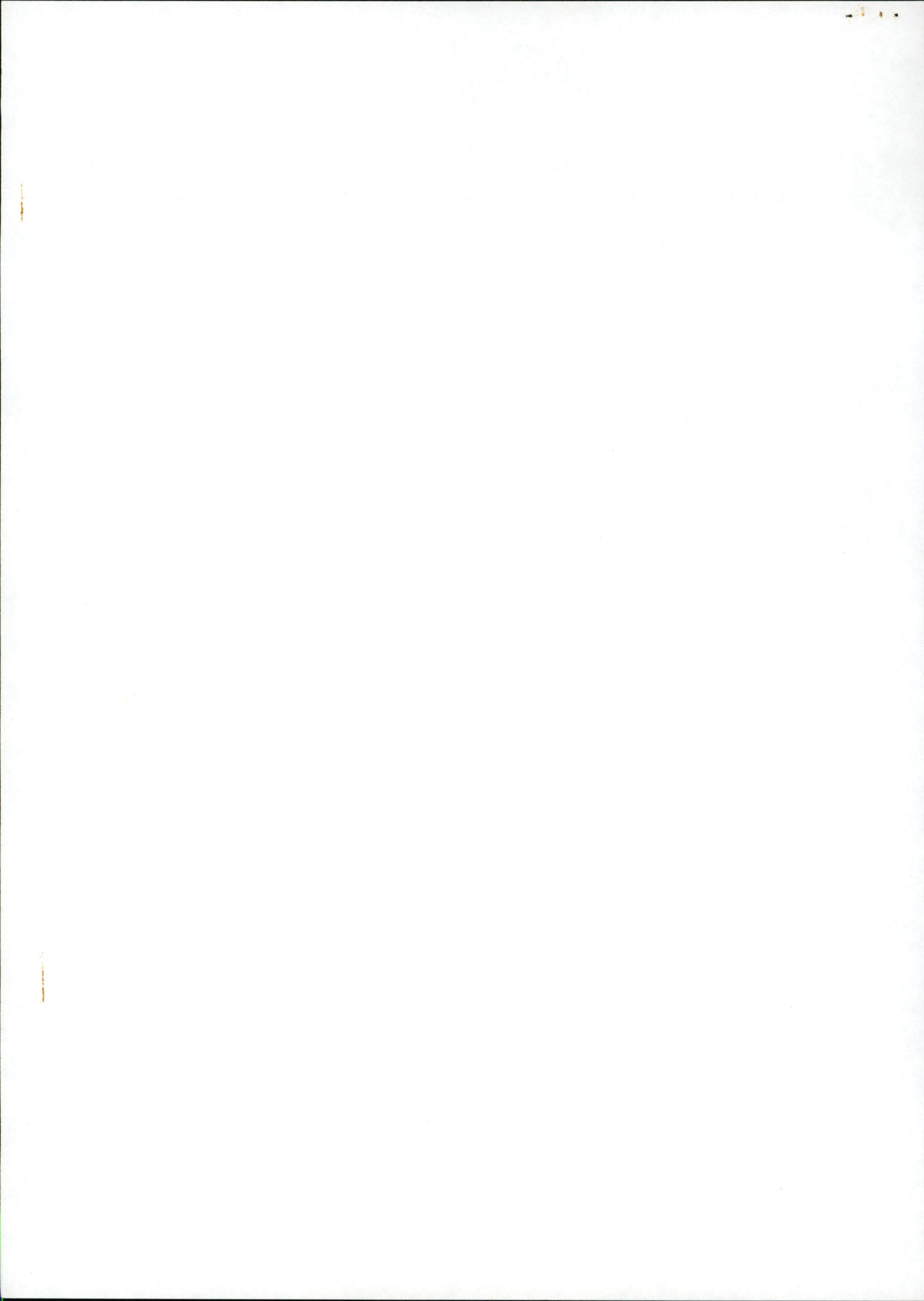
THIS BILL, TOGETHER WITH THE COMPLEMENTARY LEGISLATION OF THE COMMONWEALTH AND THE OTHER STATES, GIVES THE FAMILY COURTS THE SAME STATUS UNDER THE CORPORATIONS LAW AS THEY HAD UNDER THE FORMER COMPANIES AND SECURITIES CODES, AND ALLOWS THEM TO DEAL WITH ISSUES ARISING UNDER THE CORPORATIONS LAW IN RELATION TO MATTERS BEFORE THEM.

CLAUSES 4 AND 5 OF THE BILL FACILITATE THE WINDING UP OF THE NATIONAL COMPANIES AND SECURITIES COMMISSION BY REPEALING THE NATIONAL COMPANIES AND SECURITIES COMMISSION (STATE PROVISIONS) ACT 1981. THE FUNCTIONS OF THE NCSC HAVE NOW, AFTER AN ORDERLY TRANSFER OF RESPONSIBILITIES, BEEN ASSUMED BY THE AUSTRALIAN SECURITIES COMMISSION AND SO THE NCSC IS TO BE ABOLISHED.



THE REMAINING AMENDMENTS IN THE BILL ARE OF A MINOR MACHINERY NATURE AND IMPLEMENT THOSE MADE BY THE COMMONWEALTH ACT.

I COMMEND THE BILL TO THE HOUSE.



**CORPORATIONS (NEW SOUTH WALES) AMENDMENT
ACT 1991 No. 52**

NEW SOUTH WALES



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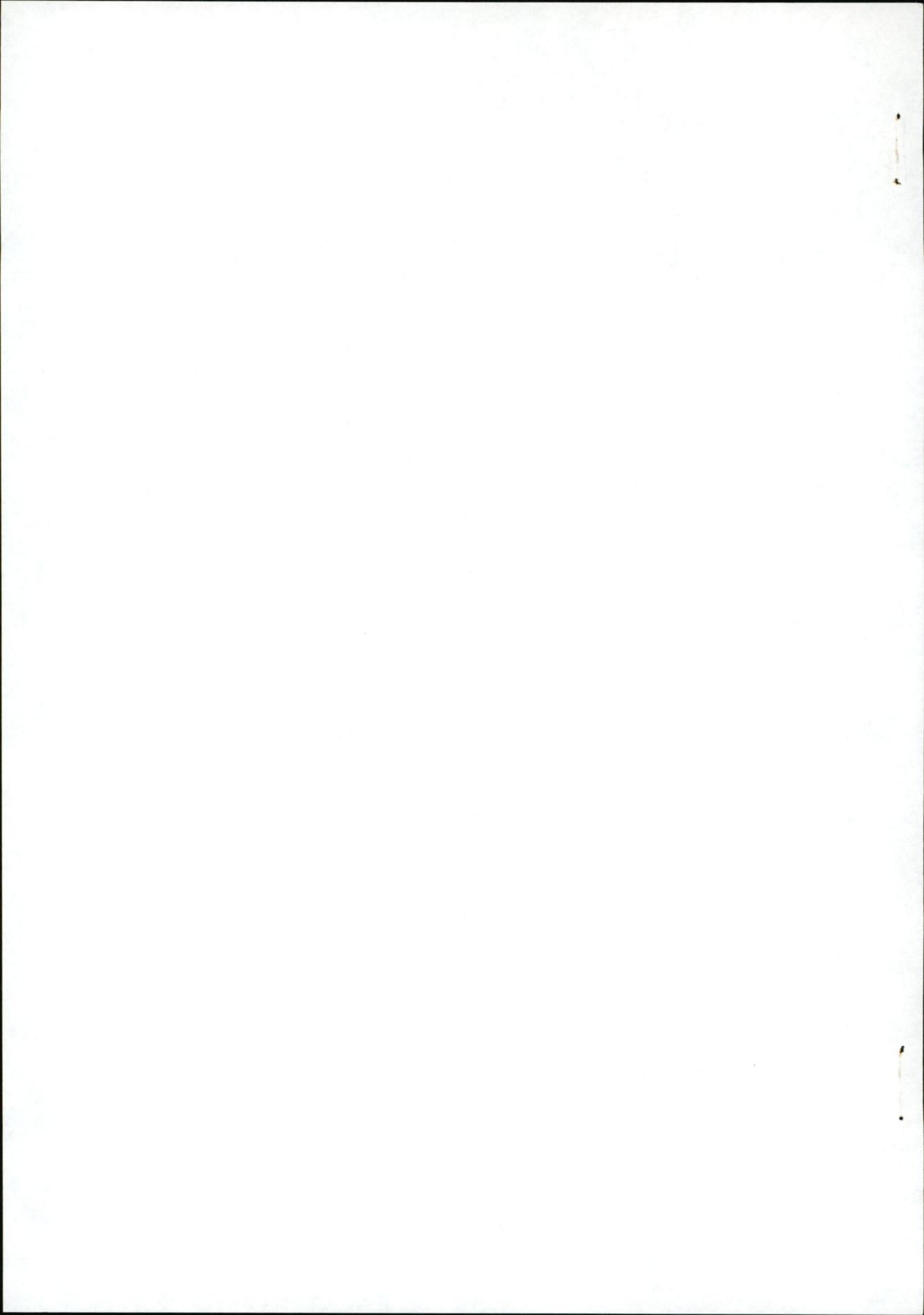
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SCHEDULE 1—AMENDMENTS



**CORPORATIONS (NEW SOUTH WALES) AMENDMENT
ACT 1991 No. 52**

NEW SOUTH WALES



Act No. 52, 1991

An Act to amend the Corporations (New South Wales) Act 1990 for the purpose of conferring certain jurisdiction on the Family Court of Australia and for other purposes; to repeal the National Companies and Securities (State Provisions) Act 1981; and for other purposes. [Assented to 11 December 1991]

Corporations (New South Wales) Amendment 1991

The Legislature of New South Wales enacts:

PART 1—PRELIMINARY

Short title and purpose

1. (1) This Act may be cited as the Corporations (New South Wales) Amendment Act 1991.

(2) The purpose of this Act is to amend the Corporations (New South Wales) Act 1990.

Commencement

2. (1) Part 1 and section 5 commence on the date of assent to this Act.

(2) The provisions of Schedule 1 (1) (a), (2), (12) and (14), and section 3 in its application to them, are taken to have commenced on 1 January 1991.

(3) The remaining provisions of this Act commence on a day or days to be appointed by proclamation.

PART 2—AMENDMENTS

Amendment of Corporations (New South Wales) Act 1990 No. 83

3. The Corporations (New South Wales) Act 1990 is amended as set out in Schedule 1.

**PART 3—ABOLITION OF NATIONAL COMPANIES AND
SECURITIES COMMISSION**

Repeal

4. The National Companies and Securities Commission (State Provisions) Act 1981 No. 60 is repealed.

Reports and financial statements

5. The Minister administering the Corporations (New South Wales) Act 1990 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

Corporations (New South Wales) Amendment 1991

- (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.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Section 3 (**Definitions**):

- (a) After paragraph (e) of the definition of "Commonwealth administrative laws" in section 3 (1), insert "and the provisions of the regulations in force for the time being under those Acts;".

- (b) After the definition of "corresponding law" in section 3 (1), insert:

"Family Court" means the Family Court of Australia;

"Federal Court" means the Federal Court of Australia;

- (c) After the definition of "State" in section 3 (1), insert:

"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;

(2) Section 30 (**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**):

In section 30 (1), after "of the Commonwealth", insert "and were not laws of that other jurisdiction".

(3) Section 41 (**Interpretation**):

Omit section 41 (2) (a) (vii), insert instead:

(vii) rules of court made by the Supreme Court of New South Wales 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

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

- (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
- (4) Section 42 (**Jurisdiction of Federal Court and State and Territory Supreme Courts**):
From section 42 (3), omit “of Australia”.
- (5) Section 42A:
After section 42, insert:
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 New South Wales.
(2) Subject to section 9 of the Administrative Decisions (Judicial Review) Act 1977 of the Commonwealth, as it applies as a law of New South Wales, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations Law of New South Wales.
(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.
- (6) Section 43:
Omit the section, insert instead:
Appeals
43. (1) An appeal may not be instituted from a decision of a court of New South Wales to a court of another State or of the Capital Territory or to the Federal Court or 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.

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

(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.

(7) Section 44 (**Transfer of proceedings**):

Omit section 44 (3), (4) and (5).

(8) Sections 44A, 44B, 44C, 44D:

After section 44, insert:

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 New South Wales 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,

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

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 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 first 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

SCHEDULE 1—AMENDMENTS—*continued*

- (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.

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SCHEDULE 1—AMENDMENTS—*continued*

(9) Section 45 (**Conduct of proceedings**):

- (a) In section 45 (1), omit “and 52”, insert instead “, 52 and 52A”.
- (b) In section 45 (3), in paragraph (a) of the definition of “relevant jurisdiction”, omit “of Australia”, insert instead “or the Family Court”.
- (c) In section 45 (3), in paragraph (b) of the definition of “relevant jurisdiction”:
 - (i) omit “of Australia”, insert instead “or the Family Court”;
 - (ii) after “Federal Court” where secondly occurring, insert “or the Family Court, as the case may be”.
- (d) In section 45 (3), in paragraph (d) of the definition of “relevant jurisdiction”, after “Territory”, insert “, or a State Family Court,”.

(10) Section 50 (**Enforcement of judgments etc.**):

- (a) In section 50 (1), after “Federal Court”, insert “, the Family Court”.
- (b) In section 50 (2) (a), omit “or the Supreme Court of New South Wales or of another State or of the Capital Territory”, insert instead “, the Family Court, the Supreme Court of New South Wales or of another State or of the Capital Territory or a State Family Court”.
- (c) In section 50 (2), omit “or the Supreme Court of New South Wales or of the other State or Territory”, insert instead “, the Family Court, the Supreme Court of New South Wales or of the other State or Territory or that State Family Court”.

(11) Section 52A:

After section 52, insert:

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 New South Wales, 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.

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

(2) When a State Family Court of another State is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, 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, with such alterations as are necessary.

(3) In this section:

“Corporations Law of New South Wales” does not include rules of court.

(12) Section 74 (**Application of Commonwealth Crimes Act**):

Omit section 74 (3), insert instead:

(3) For the purposes of a national scheme law of New South Wales:

(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 New South Wales; 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.

(13) Section 85 (**National scheme laws prevail over co-operative scheme laws**):

Omit section 85 (1) (b), insert instead:

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

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

(14) Section 90 (**References to co-operative scheme laws and regulations**):

In section 90 (1), omit the definition of “instrument”, insert instead:

Corporations (New South Wales) Amendment 1991

SCHEDULE 1—AMENDMENTS—*continued*

“**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 New South Wales.

[*Minister's second reading speech made in—
Legislative Assembly on 16 October 1991
Legislative Council on 4 December 1991*]