

First print



New South Wales

Corporations (New South Wales) Amendment Bill 1995

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Corporations (New South Wales) Act 1990* so as:

- (a) to confer jurisdiction on lower courts to hear civil matters arising under the Corporations Law (further details below) and to enact consequential savings and transitional provisions, and
 - (b) to make an amendment that is consequential on the *Corporate Law Reform Act 1992* of the Commonwealth (further details below), and
 - (c) to make an amendment that is consequential on the *Evidence Act 1995* of the Commonwealth (further details below), and
 - (d) to make a minor amendment to clarify the powers of the Commonwealth Director of Public Prosecutions in relation to offences under the former companies and securities co-operative scheme laws (the *Companies (New South Wales) Code* and related laws) (further details below).
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Outline of provisions

Conferral of jurisdiction on lower courts (See Schedule 1 (1)–(23) and (27) and (28))

The Bill, in conjunction with parallel amendments made to the Corporations Acts of the other States and the Territories and complementary amendments to the Corporations Law, will confer jurisdiction in civil matters arising under the Corporations Law on lower courts (courts that are not superior courts) throughout Australia. The superior courts (the Federal Court of Australia, the Supreme Courts of the States and Territories, the Family Court and the State Family Courts) already have jurisdiction in civil matters arising under the Corporations Law by virtue of existing cross-vesting provisions in the Corporations Acts of the States and Territories.

The Bill's conferral of jurisdiction on lower courts will not extend to "superior court matters" (matters that the Corporations Law reserves to the jurisdiction of the superior courts) and will be subject to the monetary limits for civil claims which apply in the lower courts concerned.

The amendments made by the Bill are as follows:

- (a) Schedule 1 (2) inserts new definitions used in the proposed new provisions (such as "lower court", "superior court" and "superior court matter").
- (b) Schedule 1 (3) and (7) insert provisions that vest jurisdiction in all Australian lower courts in respect of civil matters arising under the Corporations Law (except superior court matters) and provide for the transfer of those matters between courts. The new provisions parallel existing provisions of the Act which "cross-vest" civil jurisdiction arising under the Corporations Law in superior courts.
- (c) Schedule 1 (1), (4)–(6) and (8)–(23) make consequential amendments.
- (d) Schedule 1 (27) and (28) enact savings and transitional provisions that are consequential on the above amendments.

Corporate Law Reform Act 1992—consequential amendment (See Schedule 1 (24))

The Bill will amend the definition of *officer* in section 60 of the Act to update a reference to an official manager of a body corporate. The amendment is consequential on the *Corporate Law Reform Act 1992* of the Commonwealth which replaced the official management provisions of the

Corporations Law with provisions for voluntary administration of bodies corporate, making the term "official manager" redundant. The Bill replaces "official manager" with "administrator" and "administrator of a deed of company arrangement".

**Evidence Act 1995—consequential amendment
(See Schedule 1 (25))**

The Bill will substitute section 75 of the Act which provides for the application of certain provisions of the *Evidence Act 1905* of the Commonwealth under the Corporations Law. The amendment is consequential on the enactment of the *Evidence Act 1995* of the Commonwealth and updates references to provisions of the 1905 Act with references to the equivalent provisions of the 1995 Act.

**Powers of the Director of Public Prosecutions
(See Schedule 1 (26))**

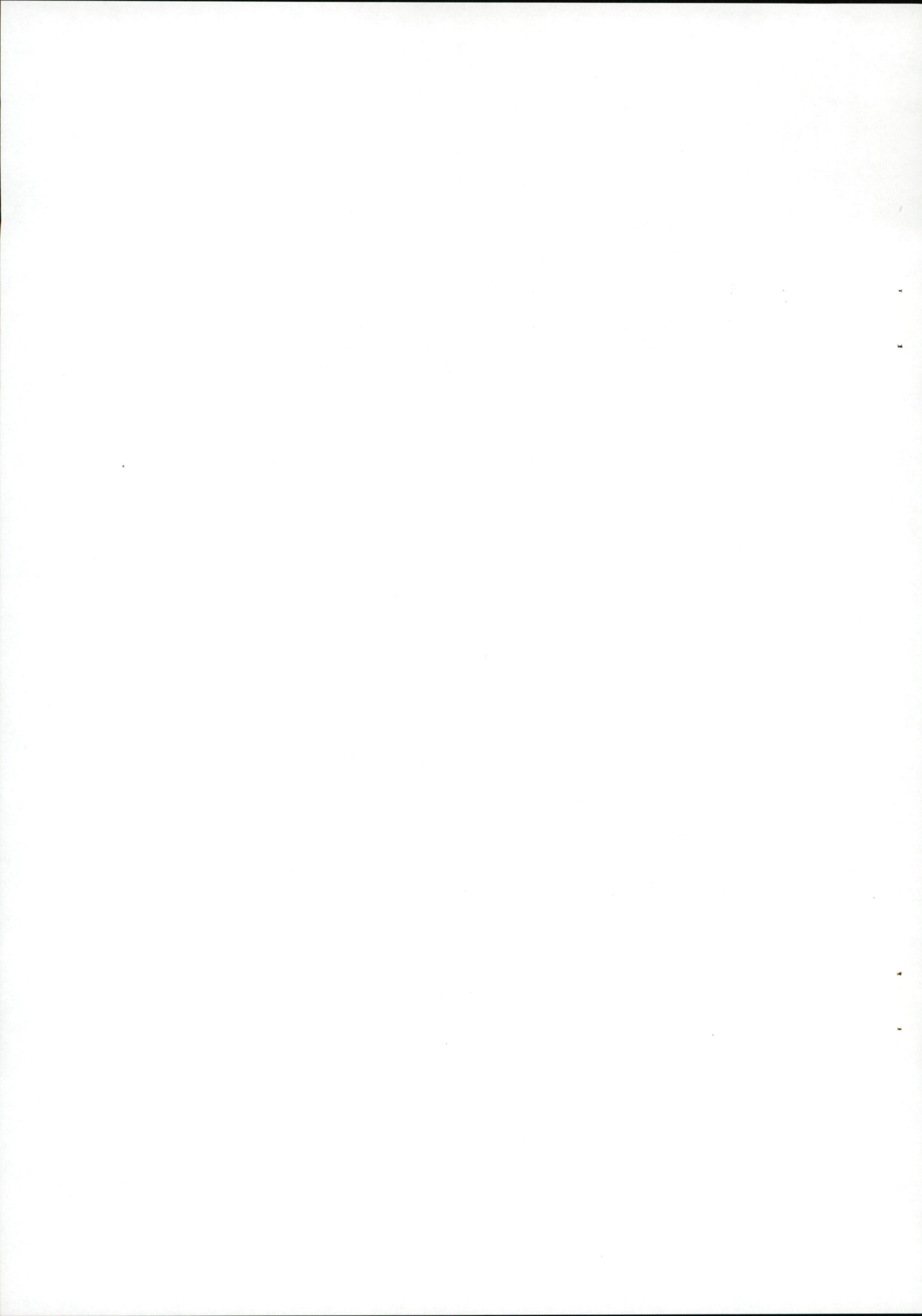
The Bill will amend section 91 of the Act to clarify the powers and functions of the Commonwealth DPP in relation to offences under the former *Companies Codes* (and the other legislation of the former co-operative scheme for companies and securities). The section currently operates to confer powers and functions on the Commonwealth DPP in relation to those offences by reference to the powers and functions conferred on the Commonwealth DPP by the *Director of Public Prosecutions Act 1983* of the Commonwealth ("the DPP Act") in relation to offences against the Corporations Law (and other "national scheme laws"). There may be a concern that the DPP Act does not directly confer powers and functions in relation to offences under national scheme laws (and instead does so as a result of those laws being treated under the national scheme as laws of the Commonwealth). To address that possible concern, the section will be amended to provide that the powers and functions which are conferred by the section are those that the Commonwealth DPP has under the DPP Act in relation to offences against the laws of the Commonwealth.

Clause 1 specifies the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 gives effect to the Schedule of amendments to the *Corporations (New South Wales) Act 1990*.

Schedule 1 makes the amendments explained above.



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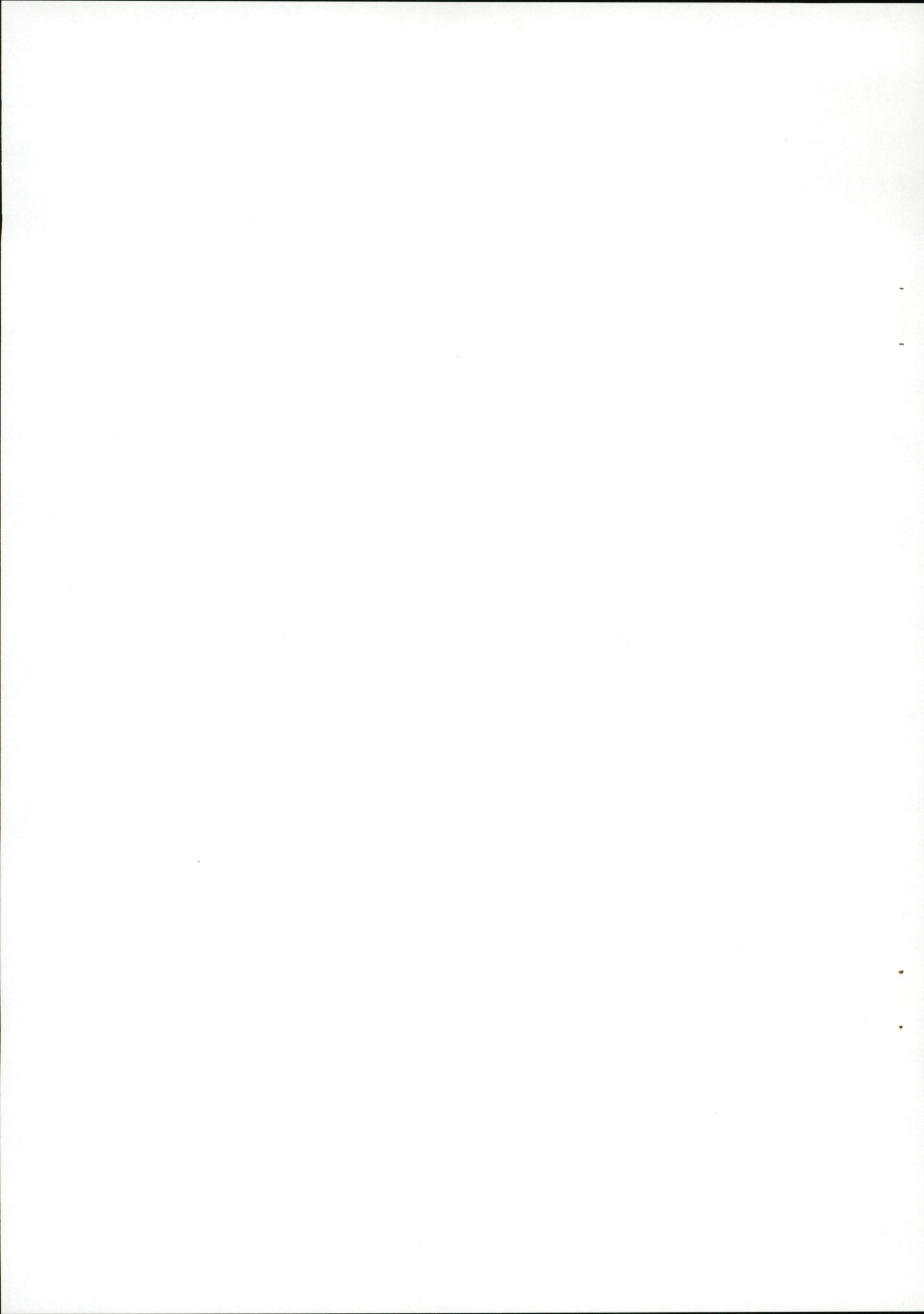


New South Wales

Corporations (New South Wales) Amendment Bill 1995

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New South Wales

Corporations (New South Wales) Amendment Bill 1995

No. , 1995

A Bill for

An Act to amend the *Corporations (New South Wales) 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.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Corporations (New South Wales) Amendment Act 1995*.

2 Commencement

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This Act commences on a day or days to be appointed by proclamation.

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

The *Corporations (New South Wales) Act 1990* is amended as set out in Schedule 1. 10

Schedule 1 Amendments

(Section 3)

[1] Section 40 Operation of Division

Omit "matters other than criminal matters (in this Division called 'civil' matters)" from section 40 (1) (a).
Insert instead "civil matters".

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[2] Section 41 Interpretation

Insert in alphabetical order in section 41 (1):

civil matter means a matter other than a criminal matter.

Corporations Law has the extended meaning given by subsection (2).

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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.

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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.

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[3] Section 42B

Insert after section 42A:

42B Jurisdiction of lower courts

- (1) 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 the lower courts of New South Wales 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 New South Wales.

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Schedule 1 Amendments

- (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 5
 - (b) is not subject to the court's other jurisdictional limits.
- [4] Section 43 Appeals**
- Omit section 43 (4). Insert instead: 10
- (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. 15
- [5] Section 44A Transfer of proceedings by Family Court and State Family Courts**
- Omit "the Supreme Court" wherever occurring from section 44A (2).
Insert instead "another court". 20
- [6] Section 44A (2)**
- Omit "that Supreme Court". Insert instead "that other court".
- [7] Section 44AA**
- Insert after section 44A:
- 44AA Transfer of proceedings in lower courts** 25
- (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of New South Wales in a lower court (the *first court*) having jurisdiction under section 42B.

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- (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. 5
- (3) If the second court is also a lower court, the first court may transfer the proceeding or application to the second court. 10
- (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. 15
- (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). 20
- (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. 25
- (7) In this section:
- relevant Supreme Court* means the Supreme Court of the State or Territory of which the first court is a court.
- [8] Section 44B Further matters for a court to consider when deciding whether to transfer a proceeding 30**
- Omit "or 44A". Insert instead " , 44A or 44AA".

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Schedule 1 Amendments

- [9] Section 44B (c)**
Insert at the end of section 44B (b):
 , and
 (c) the other courts that have jurisdiction to deal with
 the proceeding or application. 5
- [10] Section 44C Transfer may be made at any stage**
Omit "or 44A". Insert instead ", 44A or 44AA".
- [11] Section 44D Transfer of documents**
Omit "or 44A". Insert instead ", 44A or 44AA".
- [12] Section 45 Conduct of proceedings** 10
Omit "the Supreme Court" from paragraph (c) of the definition of
relevant jurisdiction in section 45 (3).
Insert instead "a court".
- [13] Section 45 (3)**
Omit "the Supreme Court of another State or the Capital Territory, or
a State Family Court," from paragraph (d) of the definition of
relevant jurisdiction. 15
Insert instead "a court of another State or the Capital Territory".
- [14] Section 46 Courts to act in aid of each other**
Omit ", the Judges of those courts". 20
- [15] Section 47 Exercise of jurisdiction pursuant to cross-vesting provisions**
Omit "The Supreme Court". Insert instead "A court".

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- [16] Section 47**
Omit "that Court" wherever occurring. Insert instead "it".
- [17] Section 50 Enforcement of judgments**
Section 50 (1)
Omit "the Supreme Court". Insert instead "a court". 5
- [18] Section 50 (1)**
Omit "that Court" wherever occurring. Insert instead "that court".
- [19] Section 50 (2)**
Omit "or a State Family Court".
Insert instead ", a State Family Court or a particular lower court of New South Wales or of another State or of the Capital Territory". 10
- [20] Section 50 (2)**
Omit "or that State Family Court".
Insert instead ", that State Family Court or that lower court".
- [21] Section 51 Rules of the Supreme Court** 15
Section 51 (1A)
Insert after section 51 (1):
(1A) When a lower court of New South Wales is exercising jurisdiction with respect to matters arising under the Corporations Law of New South Wales, the court must apply the rules of court made under subsection (1), with such alterations as are necessary. 20
- [22] Section 51 (2) and (3)**
Omit "the Supreme Court" wherever occurring.
Insert instead "a court". 25

[23] Section 51 (2) and (3)

Omit "that Court" wherever occurring. Insert instead "that court".

[24] Section 60 Interpretation of some expressions in the ASC Law, and the ASC Regulations, of New South Wales

Omit paragraph (c) of the definition of *officer* in section 60 (1). 5
Insert instead:

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

[25] Section 75 10

Omit the section. Insert instead:

75 Application of Commonwealth Evidence Act

- (1) For the purposes of Part 3 of the ASC Law of New South Wales, the following provisions of the *Evidence Act 1995* of the Commonwealth apply as a law of New South Wales: 15

Part 2.2 (Documents)

Section 69 (Exception: business records)

Section 70 (Exception: contents of tags, labels and writing) 20

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. 25

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- (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.
- [26] **Section 91 Conferral of functions and powers in relation to co-operative scheme laws** 5
- Omit “as if the offence” from section 91 (1) (b).
Insert instead “in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law”. 10
- [27] **Part 13, Division 7**
- Insert after Division 6 of Part 13:
- Division 7 Amending Acts**
- 96A Savings and transitional provisions for amending Acts**
- Schedule 2 has effect. 15
- [28] **Schedule 2**
- Insert after Schedule 1:
- Schedule 2 Savings and transitional provisions (Amending Acts)**
- (Section 96A) 20
- Corporations (New South Wales) Amendment Act 1995*
- 1 Interpretation**
- In this Schedule:
- Court** means the Federal Court of Australia or the Supreme Court of a State or Territory. 25
- jurisdiction amendments** means the amendments made by Schedule 1 (1)–(23) to the *Corporations (New South Wales) Amendment Act 1995*.
- jurisdiction commencement** means the commencement of the jurisdiction amendments. 30

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.

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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 New South Wales were commenced in a court (the **first court**) other than the Court, and

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(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

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(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.

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(2) The validity of the decision that the first court did not have jurisdiction is not affected by the jurisdiction amendments.

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(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

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(1) This clause applies if:

(a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of New South Wales were commenced in a court (the **first court**) other than the Court, and

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- (b) either:
 - (i) no court expressly decided, before the jurisdiction commencement, whether the first court had jurisdiction in respect of the matter, or 5
 - (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. 10
- (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. 15

