

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

NEW SOUTH WALES



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4 The National Companies and Securities Commission (State Provisions) Act 1981 No. 60 is repealed.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

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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

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
- (ii) 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”.
 - (6) 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.

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SCHEDULE 1—AMENDMENT—*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:

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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]*