

[Act 1995 No 20]



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).
-

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.