



ANNO QUADRAGESIMO

# ELIZABETHAE II REGINAE

A.D. 1991

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No. 79 of 1991

**An Act to amend the Corporations (South Australia) Act 1990; to repeal the National Companies and Securities Commission (State Provisions) Act 1981; and for other purposes.**

*[Assented to 12 December 1991]*

The Parliament of South Australia enacts as follows:

## PART I

### PRELIMINARY

#### Short title

1. This Act may be cited as the *Corporations (South Australia) (Miscellaneous) Amendment Act 1991*.

#### Commencement

2. (1) Subject to this section, this Act will come into operation on a day to be fixed by proclamation.

(2) Sections 4, 6, 16, 17 and 18 will be taken to have come into operation on 1 January 1991.

(3) Section 20 will come into operation on the day on which this Act is assented to by the Governor.

## PART II

### AMENDMENT OF CORPORATIONS (SOUTH AUSTRALIA) ACT 1990

#### Principal Act

3. The *Corporations (South Australia) Act 1990* is referred to in this Part as “the principal Act”.

#### Definitions—“Commonwealth administrative laws”

4. Section 3 of the principal Act is amended by inserting after paragraph (e) of the definition of “Commonwealth administrative laws” in subsection (1) “and the provisions of the regulations in force for the time being under those Acts”.

**Definitions**

5. Section 3 of the principal Act is amended—

(a) by inserting after the definition of “corresponding law” in subsection (1) the following definitions:

“Family Court” means the Family Court of Australia;

“Federal Court” means the Federal Court of Australia;

and

(b) by inserting after the definition of “State” in subsection (1) the following definition:

“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.

**Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions**

6. Section 30 of the principal Act is amended by inserting in subsection (1) “and were not laws of that other jurisdiction” after “of the Commonwealth”.

**Interpretation**

7. Section 41 of the principal Act is amended by striking out subparagraph (vii) of paragraph (a) of subsection (2) and the word “and” appearing before that paragraph and substituting the following paragraphs:

(vii) rules of court made by the Supreme Court of South Australia because of a provision of this Act;

(viii) rules of court applied by the Federal Court, or the Family Court, because of a provision of this Act;

and

(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);

**Jurisdiction of Federal Court and State and Territory Supreme Courts**

8. Section 42 of the principal Act is amended by striking out from subsection (3) “of Australia”.

**Insertion of s. 42A**

9. The following section is inserted after section 42 of the principal Act:

**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 South Australia.

(2) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, as it applies as a law of South Australia, jurisdiction is conferred on each State Family Court with respect to civil matters arising under the Corporations Law of South Australia.

(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.

**Substitution of s. 43**

10. Section 43 of the principal Act is repealed and the following section is substituted:

**Appeals**

43. (1) An appeal may not be instituted from a decision of a court of South Australia 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.

(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.

**Transfer of proceedings by the Federal Court and State and Territory Supreme Courts**

11. Section 44 of the principal Act is amended by striking out subsections (3), (4) and (5).

**Insertion of ss. 44A, 44B, 44C and 44D**

12. The following sections are inserted after section 44 of the principal Act:

**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 South Australia 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;

(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, the proceeding, or a substantial part of it, would have been incapable of being instituted in the first court;

(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

(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;

(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.

### Conduct of proceedings

13. Section 45 of the principal Act is amended—

(a) by striking out from subsection (1) “and 52” and substituting “, 52 and 52A”;

(b) by striking out from paragraph (a) of the definition of “relevant jurisdiction” in subsection (3) “of Australia” and substituting “or the Family Court”;

(c) by striking out from paragraph (b) of the definition of “relevant jurisdiction” in subsection (3) “of Australia” and substituting “or the Family Court”;

(d) by inserting in paragraph (b) of the definition of “relevant jurisdiction” in subsection (3) “or the Family Court, as the case may be,” after “Federal Court” (second occurring);

and

(e) by inserting in paragraph (d) of the definition of “relevant jurisdiction” in subsection (3) “, or a State Family Court,” after “Territory”.

### Enforcement of judgments, etc.

14. Section 50 of the principal Act is amended—

(a) by inserting in subsection (1) “, the Family Court” after “Federal Court”;

(b) by striking out from paragraph (a) of subsection (2) “or the Supreme Court of South Australia or of another State or of the Capital Territory” and substituting “, the Family Court, the Supreme Court of South Australia or of another State or of the Capital Territory or a State Family Court”;

(c) by striking out from subsection (2) “or the Supreme Court of South Australia or of the other State or Territory” and substituting “, the Family Court, the Supreme Court of South Australia or of the other State or Territory or that State Family Court”.

### Insertion of s. 52A

15. The following section is inserted after section 52 of the principal Act:

#### 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 South Australia, 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.

(2) When a State Family Court of another State is exercising jurisdiction with respect to matters arising under the Corporations Law of South Australia, being juris-

diction 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 South Australia” does not include rules of court.

#### **Application of Commonwealth Crimes Act**

16. Section 74 of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) For the purposes of a national scheme law of South Australia—

(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 South Australia;

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.

#### **References to co-operative scheme laws and regulations**

17. Section 90 of the principal Act is amended by striking out from subsection (1) the definition of “instrument” and substituting the following definition:

“instrument” has the same meaning as in section 13, but does not include—

(a) a co-operative scheme law;

(b) regulations under an Act that is such a law, or under this Act;

(c) Code regulations;

or

(d) a national scheme law of this jurisdiction, or the Corporations Regulations, or ASC Regulations, of South Australia.

#### **Conferral of functions and powers in relation to co-operative scheme laws**

18. Section 91 of the principal Act is amended by striking out subsection (1) and substituting the following subsection:

(1) The Commonwealth Director of Public Prosecutions—

(a) has the same enforcement powers in relation to the co-operative scheme laws as has the Crown in right of South Australia acting by the Attorney-General or the Director of Public Prosecutions of South Australia;

and

(b) may, in relation to an offence against a co-operative scheme law, perform the functions and exercise the powers conferred on the Director of Public Prosecutions by the *Director of Public Prosecutions Act 1983* of the Commonwealth as if the offence were an offence against a national scheme law of this jurisdiction.

## PART III

REPEAL OF NATIONAL COMPANIES AND SECURITIES COMMISSION  
(STATE PROVISIONS) ACT 1981**Repeal**

19. The *National Companies and Securities Commission (State Provisions) Act 1981* is repealed.

**Reports and financial statements**

20. The Minister 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 14 (1), (7) or (8) of the *Corporations Legislation Amendment Act 1991* of the Commonwealth;

and

(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 12 sittings days of that House after its receipt by the Minister.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

ROMA MITCHELL Governor