

CORPORATIONS (QUEENSLAND) AMENDMENT BILL 1995

EXPLANATORY NOTES

GENERAL OUTLINE

OBJECTIVES OF THE LEGISLATION

The principal objective of the legislation is to confer jurisdiction on lower courts to hear civil matters arising under the Corporations Law and to provide for the transfer of those matters between courts. In particular, this Bill amends *Corporations (Queensland) Act 1990*: the State Act which declares that the Corporations Law applies in Queensland. Other States and the Northern Territory have passed similar legislation which means that there are separate but uniform Corporations Laws.

Accordingly, this Bill in conjunction with parallel amendments made to the Corporations Acts of the other States and Territories in complimentary 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 Bill will also make amendments consequential upon the Commonwealth *Corporate Law Reform Act 1992* and the *Evidence Act 1995*; and will clarify the powers of the Commonwealth Director of Public Prosecutions in relation to offences under the former Co-operative Companies and Securities Scheme.

REASONS FOR THE BILL

Recent court decisions prompted an examination by the Ministerial Council for Corporations (the body established by the Heads of Agreement of June 1990 between Commonwealth, State and Northern Territory

ministers to consider legislative proposals relating to the National Companies and Securities Scheme) as to whether the lower courts have jurisdiction to hear civil matters under the Corporations Law and to what extent, if any, lower courts should have jurisdiction to hear such matters. The court decisions potentially affected the validity of civil matters arising under the Corporations Law which had already been heard by a lower court. The Ministerial Council for Corporations agreed that lower courts should have jurisdiction under the Corporations Law subject to the court's general jurisdictional limits (so far as they relate to the amounts or value of property with which the courts may deal) with respect to civil matters involving debt recovery or monetary compensation.

ESTIMATED COSTS FOR GOVERNMENT IMPLEMENTATION

The costs of measures in the Bill are not significant. The primary costs for the Government involve the provision of additional library resources for the lower courts.

CONSULTATION

This Bill emanates from the Ministerial Council for Corporations (MINCO) which has the primary functions of making decisions on changes to the Uniform Companies and Securities Scheme. Also consulted were the Litigation Reform Commission, the Chief Judge of the District Court and the Chief Stipendiary Magistrate, the Bar Association of Queensland and the Queensland Law Society.

NOTES ON PROVISIONS

Clause 1 cites the short title of this Act.

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

Clause 3 cites the name of the Act being amended.

Clause 4 clarifies the jurisdiction of courts in relation to civil matters.

Clause 5 inserts new definitions used in the proposed new provisions such as "lower court", "superior court" and "superior court matter".

Clause 6 inserts a provision that vests jurisdiction in Queensland lower courts in respect of civil matters arising under Corporations Law (except superior court matters).

Clause 7 omits section 43(4) and inserts a new subsection. This provision parallels the other subsections of section 43 which “cross-vest” civil jurisdiction arising under the Corporations Law in superior courts.

Clause 8 makes a minor technical amendment.

Clause 9 provides for the transfer of civil matters arising under the Corporations Law (except superior court matters) between courts.

Clauses 10–16 inclusive make minor consequential amendments.

Clause 17 inserts a provision similar to section 51(2) of the Act because of the vesting of jurisdiction in Queensland lower courts.

Clause 18 amends the definition of “officer” in section 60 of the Act to update the reference to an official manager of a body corporate. The amendment is consequential on the *Corporate Law Reform Act 1992* which replaced the official management provisions of the Corporations Law with provisions for voluntary administration of bodies corporate, making the term “official manager” redundant. This clause replaces “official manager” with “administrator” and “administrator of a deed of company arrangement”.

Clause 19 amends 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. This amendment is consequential on the proposed 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.

Clause 20 amends section 91 of the Act to clarify the powers and functions of the Commonwealth Director of Public Prosecutions 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 Director of Public Prosecutions in relation to those offences by reference to the powers and functions conferred on the Commonwealth Director of Public Prosecutions 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 Director of Public Prosecutions has under the DPP Act in relation to offences against the laws of the Commonwealth.

Clause 21 inserts a new Division 6—Application and savings provisions relating to amendments to this Act. This Division contains savings and transitional provisions that are consequential on the above amendments.