

South Australia



**CORPORATIONS (SOUTH AUSTRALIA) (JURISDICTION)
AMENDMENT ACT 1995**

No. 6 of 1995

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SCHEDULE

Savings and Transitional Provisions



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ELIZABETHAE II REGINAE

A.D. 1995

No. 6 of 1995

An Act to amend the Corporations (South Australia) 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.

[Assented to 9 March 1995]

The Parliament of South Australia enacts as follows:

Short title

1. (1) This Act may be cited as the *Corporations (South Australia) (Jurisdiction) Amendment Act 1995*.

(2) The *Corporations (South Australia) Act 1990* is referred to in this Act as "the principal Act".

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Amendment of s. 40—Operation of Division

3. Section 40 of the principal Act is amended by striking out paragraph (a) of subsection (1) and substituting the following paragraph:

(a) the jurisdiction of courts in respect of civil matters arising under the Corporations Law of South Australia;.

Amendment of s. 41—Interpretation

4. Section 41 of the principal Act is amended—

(a) by inserting before the definition of "judgment" in subsection (1) the following definitions:

"civil matter" means a matter other than a criminal matter;

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

(b) by inserting after the definition of "judgment" in subsection (1) the following definitions:

"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;

"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.

Insertion of s. 42B

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

Jurisdiction of lower courts

42B. (1) 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 the lower courts of South Australia 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 South Australia.

(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

(b) is not subject to the court's other jurisdictional limits.

Amendment of s. 43—Appeals

6. Section 43 of the principal Act is amended by striking out subsection (4) and substituting the following subsection:

(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.

Amendment of s. 44A—Transfer of proceedings by Family Court and State Family Courts

7. Section 44A of the principal Act is amended—

(a) by striking out from subsection (2)(a) "the Supreme Court" and substituting "another court";

(b) by striking out from subsection (2)(b) "the Supreme Court" and substituting "another court";

(c) by striking out from subsection (2)(c) "the Supreme Court" and substituting "another court";

(d) by striking out from subsection (2) "that Supreme Court" and substituting "that other court".

Insertion of s. 44AA

8. The following section is inserted after section 44A of the principal Act:

Transfer of proceedings in lower courts

44AA. (1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of South Australia in a lower court (the "first court") having jurisdiction under section 42B.

(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.

(3) If the second court is also a lower court, the first court may transfer the proceeding or application to the second court.

(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.

(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).

(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.

(7) In this section—

"relevant Supreme Court" means the Supreme Court of the State or Territory of which the first court is a court.

Substitution of s. 44B

9. Section 44B of the principal Act is repealed and the following section is substituted:

Further matters for court to consider when deciding whether to transfer proceeding

44B. In deciding whether to transfer under section 44, 44A or 44AA 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; and

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- (c) the other courts that have jurisdiction to deal with the proceeding or application.

Amendment of s. 44C—Transfer may be made at any stage

10. Section 44C of the principal Act is amended by striking out "or 44A" and substituting ", 44A or 44AA".

Amendment of s. 44D—Transfer of documents

11. Section 44D of the principal Act is amended by striking out "or 44A" and substituting ", 44A or 44AA".

Amendment of s. 45—Conduct of proceedings

12. Section 45 of the principal Act is amended by striking out paragraphs (c) and (d) of the definition of "relevant jurisdiction" in subsection (3) and substituting the following paragraphs:

- (c) jurisdiction conferred on a court of South Australia with respect to civil matters arising under the Corporations Law of another State or the Capital Territory; or
- (d) jurisdiction conferred on a court of another State or the Capital Territory with respect to civil matters arising under the Corporations Law of South Australia.

Amendment of s. 46—Courts to act in aid of each other

13. Section 46 of the principal Act is amended by striking out ", the Judges of those courts".

Amendment of s. 47—Exercise of jurisdiction pursuant to cross-vesting provisions

14. Section 47 of the principal Act is amended—

- (a) by striking out "The Supreme Court" and substituting "A court";
- (b) by striking out "that Court" (wherever occurring) and substituting, in each case, "it".

Amendment of s. 50—Enforcement of judgments

15. Section 50 of the principal Act is amended—

- (a) by striking out from subsection (1) "the Supreme Court" and substituting "a court";
- (b) by striking out from subsection (1) "that Court" (wherever occurring) and substituting, in each case, "that court";
- (c) by striking out from subsection (2) "or a State Family Court" and substituting ", a State Family Court or a particular lower court of South Australia or of another State or of the Capital Territory";
- (d) by striking out from subsection (2) "or that State Family Court" and substituting ", that State Family Court or that lower court".

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Amendment of s. 51—Rules of the Supreme Court

16. Section 51 of the principal Act is amended—

(a) by inserting after subsection (1) the following subsection:

(1a) When a lower court of South Australia is exercising jurisdiction with respect to matters arising under the Corporations Law of South Australia, the court must apply the rules of court made under subsection (1), with such alterations as are necessary.;

(b) by striking out from subsection (2) "the Supreme Court" and "that Court" and substituting, respectively, "a court" and "that court";

(c) by striking out from subsection (3) "the Supreme Court" and "that Court" and substituting, respectively, "a court" and "that court".

Amendment of s. 60—Interpretation of some expressions in ASC Law, and ASC Regulations, of South Australia

17. Section 60 of the principal Act is amended by striking out paragraph (c) of the definition of "officer" in subsection (1) and substituting the following paragraph:

(c) an administrator of the body or an administrator of a deed of company arrangement executed by the body.;

Substitution of s. 75

18. Section 75 of the principal Act is repealed and the following section is substituted:

Application of Commonwealth Evidence Act

75. (1) For the purposes of Part 3 of the ASC Law of South Australia, the following provisions of the *Evidence Act 1995* of the Commonwealth apply as a law of South Australia:

Part 2.2—Documents

Section 69—Exception: business records

Section 70—Exception: contents of tags, labels and writing

Section 71—Exception: telecommunications

Section 147—Documents produced by processes, machines and other devices in the course of business

Division 2 of Part 4.6—Proof of certain matters by affidavits or written statements.

(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.

Amendment of s. 91—Conferral of functions and powers in relation to co-operative scheme laws

19. Section 91 of the principal Act is amended by striking out from subsection (1)(b) "as if the offence" and substituting "in relation to offences against the laws of the Commonwealth as if the offence against the co-operative scheme law".

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Insertion of schedule

20. The following schedule is inserted after Part 14 of the principal Act:

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Interpretation

1. In this schedule—

“amending provisions” means sections 3 to 16 (inclusive) of the *Corporations (South Australia) (Jurisdiction) Amendment Act 1995*;

“Court” means the Federal Court of Australia or the Supreme Court of a State or Territory.

Application of amendments

2. The amendments made by the amending provisions apply to proceedings commenced, or recommenced, after the commencement of the amending provisions, whether the cause of action arose before or after that commencement.

Effect of decision that court did not have jurisdiction

3. (1) This clause applies if—

- (a) before the commencement of the amending provisions, proceedings in respect of a civil matter under the Corporations Law of South Australia were commenced in a court (the “first court”) other than the Court; and
- (b) the first court, or another court on appeal from a decision of the first court, decided before the commencement of the amending provisions that the first court did not have jurisdiction in respect of the matter; and
- (c) the decision that the first court did not have jurisdiction still stands at the commencement of the amending provisions; and
- (d) the first court would have had jurisdiction in respect of the matter if the amending provisions had commenced before the cause of action arose.

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

(3) That decision does not affect a recommencement of the proceedings after the commencement of the amending provisions.

Effect of absence of decision that court did not have jurisdiction

4. (1) This clause applies if—

- (a) before the commencement of the amending provisions, proceedings in respect of a civil matter under the Corporations Law of South Australia were commenced in a court (the “first court”) other than the Court; and

(b) either—

- (i) no court expressly decided, before the commencement of the amending provisions, whether the first court had jurisdiction in respect of the matter; or
- (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 commencement of the amending provisions.

(2) For the purposes of any consideration by a court, after the commencement of the amending provisions, 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 amending provisions had commenced before the cause of action arose.

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

ROMA MITCHELL Governor