

Corporations (Victoria) (Amendment) Bill

EXPLANATORY MEMORANDUM

Background

The purpose of this Bill is to amend the **Corporations (Victoria) Act 1990** (“the Act”) so as:

- (a) to confer jurisdiction on lower courts to hear civil matters arising under the Corporations Law 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; and
- (c) to make an amendment that is consequential on the proposed Evidence Act 1994 of the Commonwealth; 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 (Victoria) Code and related laws).

PART 1—PRELIMINARY

Part 1 (clauses 1, 2 and 3) contains purpose, commencement and principal Act clauses.

PART 2—CONFERRAL OF JURISDICTION ON LOWER COURTS

Part 2 provides for the conferral of jurisdiction on lower courts. The Bill, in conjunction with parallel amendments made to the Corporations Acts of the other States and 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.

Clause 4 amends section 40 and inserts new definitions in section 41 that are to be used in the proposed new provisions (“lower court”, “superior court” and “superior court matters”).

Clause 5 inserts a new section 42B in the Act to vest jurisdiction in all Australian lower courts in respect of civil matters arising under the Corporations Law (except superior court matters).

Clause 6 makes consequential amendments to sections 43 and 44A.

Clause 7 inserts a new section 44AA into the Act to provide for the transfer of civil matters between lower courts.

Clause 8 makes consequential amendments to Part 9.

Clause 9 makes consequential amendments to section 51.

PART 3—GENERAL

Clause 10 makes an amendment to section 60 consequential on the enactment of the Corporate Law Reform Act 1992 of the Commonwealth. The clause amends the definition of “officer” in section 60. The Corporate Law Reform Act replaces 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”.

Clause 11 amends section 75 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 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 proposed 1995 Act.

Clause 12 amends 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 13 enacts savings and transitional provisions that are consequential on the amendments made by the Bill.

Clause 14 repeals Part 15 which is now spent.