

NORTHERN TERRITORY OF AUSTRALIA

CORPORATIONS (NORTHERN TERRITORY)
AMENDMENT BILL 1994

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Corporations
(Northern Territory) Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Corporations (Northern Territory) Amendment Act 1994*.

2. COMMENCEMENT

The provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

3. PRINCIPAL ACT

The *Corporations (Northern Territory) Act* is in this Act referred to as the Principal Act.

4. OPERATION OF DIVISION

Section 40(1)(a) of the Principal Act is amended by omitting "matters other than criminal matters (in this Division called 'civil matters')" and substituting "civil matters".

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5. INTERPRETATION

Section 41 of the Principal Act is amended by omitting subsection (1) and substituting the following:

"(1) In this Division -

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

'Corporations Law' has the extended meaning given in subsection (2);

'judgment' means a judgment, decree or order, whether final or interlocutory;

'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 Corporation Law clearly intends (for example, by use of the expression 'the Court') to be dealt with only by a superior court."

6. NEW SECTION

The Principal Act is amended by inserting after section 42A the following:

"42B. JURISDICTION OF LOWER COURTS

"(1) Subject to section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, as it applies as a law of the Northern Territory, jurisdiction is conferred on the lower courts of the Northern Territory and of each State and the Capital Territory with respect to civil matters, other than superior court matters, arising under the Corporations Law of the Northern Territory.

"(2) The jurisdiction conferred on a lower court by subsection (1) is -

(a) 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) not subject to the court's other jurisdictional limits."

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7. APPEALS

Section 43 of the Principal Act is amended by omitting subsection (4) and substituting the following:

"(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."

8. TRANSFER OF PROCEEDINGS BY FAMILY COURT AND STATE FAMILY COURTS

Section 44A of the Principal Act is amended -

- (a) by omitting from subsection (2) (a), (b) and (c) "the Supreme Court" and substituting "another court"; and
- (b) by omitting from subsection (2) "that Supreme Court" and substituting "that other court".

9. NEW SECTION

The Principal Act is amended by inserting after section 44A the following:

"44AA. TRANSFER OF PROCEEDINGS IN LOWER COURTS

"(1) This section applies to a proceeding with respect to a civil matter arising under the Corporations Law of the Northern Territory 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 proceedings 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.

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"(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."

10. FURTHER MATTERS FOR A COURT TO CONSIDER WHEN DECIDING WHETHER TO TRANSFER A PROCEEDING

Section 44B of the Principal Act is amended -

- (a) by omitting "or 44A" and substituting ", 44A or 44AA";
- (b) by omitting from paragraph (a) "application; and" and substituting "application;";
- (c) by omitting from paragraph (b) "took place." and substituting "took place; and "; and
- (d) by adding at the end the following:
"(c) the other courts that have jurisdiction to deal with the proceeding or application."

11. TRANSFER MAY BE MADE AT ANY STAGE

Section 44C of the Principal Act is amended by omitting "or 44A" and substituting ", 44A or 44AA".

12. TRANSFER OF DOCUMENTS

Section 44D of the Principal Act is amended by omitting "or 44A" and substituting ", 44A or 44AA".

13. CONDUCT OF PROCEEDINGS

Section 45(3) of the Principal Act is amended -

- (a) by omitting from paragraph (c) "the Supreme Court" and substituting "a court"; and

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- (b) by omitting from paragraph (d) "the Supreme Court of another State or the Capital Territory, or a State Family Court" and substituting "a court of another State or the Capital Territory".

14. COURTS TO ACT IN AID OF EACH OTHER

Section 46 of the Principal Act is amended by omitting ", the Judges of those courts".

15. EXERCISE OF JURISDICTION PURSUANT TO CROSS-VESTING PROVISIONS

Section 47 of the Principal Act is amended -

- (a) by omitting "The Supreme Court" and substituting "A court"; and
- (b) by omitting "that Court" (wherever occurring) and substituting "it".

16. ENFORCEMENT OF JUDGMENTS, &c.

Section 50 of the Principal Act is amended -

- (a) by omitting from subsection (1) "the Supreme Court" and substituting "a court";
- (b) by omitting from subsection (1) "that Court" (wherever occurring) and substituting "that court";
- (c) by omitting from subsection (2) "or a State Family Court" and substituting "a State Family Court or a particular lower court of the Northern Territory or of another State or the Capital Territory"; and
- (d) by omitting from subsection (2) "or that State Family Court" and substituting ", that State Family Court or that lower court".

17. RULES OF THE SUPREME COURT

Section 51 of the Principal Act is amended -

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

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

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- (b) by omitting from subsections (2) and (3) "the Supreme Court" (wherever occurring) and substituting "a court"; and
- (c) by omitting from subsections (2) and (3) "that Court" (wherever occurring) and substituting "that court".

18. INTERPRETATION OF SOME EXPRESSIONS IN ASC LAW, AND ASC REGULATIONS, OF THE NORTHERN TERRITORY

Section 60(1) of the Principal Act is amended by omitting paragraph (c) from the definition of "officer" and substituting the following:

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

19. REPEAL AND SUBSTITUTION

Section 75 of the Principal Act is repealed and the following substituted:

"75. APPLICATION OF COMMONWEALTH EVIDENCE ACT

"(1) For the purposes of Part 3 of the ASC Law of the Northern Territory, the following provisions of the Evidence Act 1994 of the Commonwealth apply as a law of the Northern Territory:

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 (Proof of certain matters by affidavits or written statements) of Part 4.6

"(2) Those provisions of the Evidence Act 1994 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."

20. CONFERRAL OF FUNCTIONS AND POWERS IN RELATION TO CO-OPERATIVE SCHEME LAWS

Section 90(1)(b) of the Principal Act is amended by omitting "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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21. NEW DIVISION

The Principal Act is amended by adding at the end of Part 13 the following:

"Division 6 - Amending Acts

"94A. SAVINGS AND TRANSITIONAL PROVISIONS FOR AMENDING ACTS

"Schedule 1 has effect."

22. NEW SCHEDULE

The Principal Act is amended by adding at the end the following:

"SCHEDULE 1

Section 94A

SAVINGS AND TRANSITIONAL PROVISIONS
(AMENDING ACTS)

"1. INTERPRETATION

"In this Schedule:

'Court' means the Federal Court of Australia or the Supreme Court of a State or Territory;

'jurisdiction amendments' means the amendments made by sections 4 to 14 to the *Corporations (Northern Territory) Amendment Act 1994*;

'jurisdiction commencement' means the commencement of the jurisdiction amendments.

"2. APPLICATION OF JURISDICTION AMENDMENTS - GENERAL

"The jurisdiction amendments apply to proceedings commenced, or recommenced, after the jurisdiction commencement, whether the cause of action arose before or after that commencement.

"3. EFFECT OF DECISION THAT COURT DID NOT HAVE JURISDICTION

"(1) This clause applies if -

- (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of the Northern Territory were commenced in a court (the 'first court') other than the Court;

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- (b) the first court, or another court on appeal from a decision of the first court, decided before the jurisdiction commencement that the first court did not have jurisdiction in respect of the matter;
- (c) the decision that the first court did not have jurisdiction still stands at the jurisdiction commencement; and
- (d) the first court would have had jurisdiction in respect of the matter if the jurisdiction amendments 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 jurisdiction amendments.

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

"4. EFFECT OF ABSENCE OF DECISION THAT COURT DID NOT HAVE JURISDICTION

"(1) This clause applies if -

- (a) before the jurisdiction commencement, proceedings in respect of a civil matter under the Corporations Law of the Northern Territory were commenced in a court (the 'first court') other than the Court; and
- (b) either -
 - (i) no court expressly decided, before the jurisdiction commencement, 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 jurisdiction commencement.

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