



TASMANIA

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**CORPORATIONS (TASMANIA) AMENDMENT ACT 1992**

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**No. 5 of 1992**

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## CORPORATIONS (TASMANIA) AMENDMENT ACT 1992

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No. 5 of 1992

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**AN ACT** to amend the *Corporations (Tasmania) Act 1990*, to repeal the *National Companies and Securities Commission (State Provisions) Act 1981* and for other purposes

[Royal Assent 26 May 1992]

**B**E it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

### PART 1

#### PRELIMINARY

##### Short title

**1**—This Act may be cited as the *Corporations (Tasmania) Amendment Act 1992*.

### Commencement

2—(1) Part 1 and section 18 commence on the day on which this Act receives the Royal Assent.

(2) Sections 4 (1), 5, 15 and 16 are taken to have commenced on 1 January 1991.

(3) The remaining provisions of this Act commence on a day or days to be proclaimed.

### Principal Act

3—In this Act, the *Corporations (Tasmania) Act 1990\** is referred to as the Principal Act.

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## PART 2

### AMENDMENT OF THE CORPORATIONS (TASMANIA) ACT 1990

#### Section 3 amended (Definitions)

4—(1) Section 3 of the Principal Act is amended by omitting paragraph (e) from the definition of “Commonwealth administrative laws” and substituting the following:—

(e) the *Privacy Act 1988* of the Commonwealth—  
and the provisions of the regulations in force for the time being under those Acts;

(2) Section 3 of the Principal Act is further amended as follows:—

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

“**Family Court**” means the Family Court of Australia;

“**Federal Court**” means the Federal Court of Australia;

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\* No. 41 of 1990.

(b) by inserting after the definition of “State” 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;

**Section 30 amended (Application of Commonwealth laws in relation to offences against applicable provisions of other jurisdictions)**

5—Section 30 (1) of the Principal Act is amended by inserting “and were not laws of that other jurisdiction” after “of the Commonwealth”.

**Section 41 amended (Interpretation)**

6—Section 41 (2) (a) of the Principal Act is amended by omitting subparagraph (vii) and substituting following subparagraphs:—

- (vii) rules of court made by the Supreme Court of Tasmania because of a provision of this Act; and
- (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); and

**Section 42 amended (Jurisdiction of Federal Court and State and Territory Supreme Courts)**

7—Section 42 (3) of the Principal Act is amended by omitting “of Australia”.

**Section 42A inserted**

8—After section 42 of the Principal Act, the following section is inserted:—

**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 Tasmania.

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

(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.

**Section 43 substituted**

9—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 Tasmania 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.

**Section 44 amended (Transfer of proceedings by the Federal Court and State and Territory Supreme Courts)**

**10**—Section 44 of the Principal Act is amended by omitting subsections (3), (4) and (5).

**Sections 44A, 44B, 44C and 44D inserted**

**11**—After section 44 of the Principal Act, the following sections are inserted:—

**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 Tasmania 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; or

(b) having regard to—

(i) whether, in the first court’s opinion, apart from this Division or a law of another State or of 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; and

(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 that proceeding to the Federal Court, or to the 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; and
  - (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.

**Section 45 amended (Conduct of proceedings)**

**12**—Section 45 of the Principal Act is amended as follows:—

- (a) by omitting from subsection (1) “and 52” and substituting “, 52 and 52A”;
- (b) by omitting from paragraph (a) of the definition of “relevant jurisdiction” in subsection (3) “of Australia” and substituting “or the Family Court”;
- (c) by omitting 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);
- (e) by inserting in paragraph (d) of the definition of “relevant jurisdiction” in subsection (3) “, or a State Family Court,” after “Territory”.

**Section 50 amended (Enforcement of judgments, &c.)**

**13**—Section 50 of the Principal Act is amended as follows:—

- (a) by inserting in subsection (1) “, the Family Court” after “Federal Court”;
- (b) by omitting from subsection (2) (a) “or the Supreme Court of Tasmania or of another State or of the Capital Territory” and substituting “, the Family Court, the Supreme Court of Tasmania or of another State or of the Capital Territory or a State Family Court”;
- (c) by omitting from subsection (2) “or the Supreme Court of Tasmania or of the other State or Territory” and substituting “, the Family Court, the Supreme Court of Tasmania or of the other State or Territory or that State Family Court”.

**Section 52A inserted**

**14**—After section 52 of the Principal Act, the following section is inserted in Division 1:—

### 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 Tasmania, 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 Tasmania, being jurisdiction 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 Tasmania” does not include rules of court.

### Section 74 amended (Application of Commonwealth Crimes Act)

15—Section 74 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:—

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

- (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 Tasmania; 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.

**Section 90 amended (References to co-operative scheme laws and regulations)**

**16**—Section 90 (1) of the Principal Act is amended by omitting 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; or
- (b) regulations under an Act that is such a law, or under this Act; or
- (c) Code regulations; or
- (d) a national scheme law of this jurisdiction, or the Corporations Regulations, or ASC Regulations, of Tasmania.

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**PART 3****ABOLITION OF NATIONAL COMPANIES AND SECURITIES COMMISSION****Repeal**

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

**Reports and financial statements**

**18**—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 15 (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 15 sitting days of that House after its receipt by the Minister.

