

CORPORATIONS (CONSEQUENTIAL AMENDMENTS) BILL (NO. 2) 2001

Explanatory Memorandum

Overview of Bill

This Bill makes consequential amendments to State laws additional to those made by the *Corporations (Consequential Amendments) Act 2001* (WA). The *Corporations (Consequential Amendments) Act 2001* (WA) is one of the statutes associated with the referral of State corporations power to the Commonwealth Parliament by the *Corporations (Commonwealth Powers) Act 2001* (Clth).

The objects of this Bill are:

- (a) to replace references to the Corporations Law of Western Australia, ASIC Law of Western Australia and other previous State corporations legislation with references to corresponding provisions of the proposed new *Corporations Act 2001* and *Australian Securities and Investments Commission Act 2001* of the Commonwealth (the new federal legislation),
- (b) to amend various Acts to avoid inconsistency between the new federal legislation and State law;
- (c) to apply the new federal legislation as a State law to certain matters to which the Corporations Law is presently applicable; and
- (d) to make other consequential amendments to various Acts.

The amendments in the Bill, combined with those in the *Corporations (Consequential Amendments) Act 2001*, are intended to do no more than maintain the *status quo*. Some minor differences in language between the existing legislation and the proposed amendments can be attributed to modernisation of the language.

Background

The *Corporations Act 2001* (Clth) replaced the Corporations Law on 15 July 2001. The Corporations Law in turn had replaced the Companies (Western Australia) Code and related Acts, which constituted the co-operative scheme amongst the States, the Territories and the Commonwealth for the regulation of companies and related matters. Prior to the Companies (Western Australia) Code the *Companies Act 1961* (WA) applied.

Clause Notes

Part 1 - Preliminary

Clause 1 sets out the title of the proposed Act.

Clause 2 provides that the proposed Act is deemed to have come into operation immediately before the *Corporations Act 2001* (Clth) came into operation which occurred on 15 July 2001.

Part 2 – *Associations Incorporation Act 1987*

Clause 3 provides that the amendments in this Part are to the *Associations Incorporation Act 1987*.

Clause 4 amends section 30(4) of the *Associations Incorporation Act 1987* to include the correct cross-references to the appropriate provisions of the *Corporations Act 2001* (Clth).

Clause 5 amends section 32 of the *Associations Incorporation Act 1987* to include the correct cross-reference to the appropriate provisions of the *Corporations Act 2001* (Clth).

Part 3 – *Business Names Act 1962*

Clause 6 provides that the amendments in this Part are to the *Business Names Act 1962*.

Clause 7 amends the definitions of “corporation” and “secretary” in section 4 of the *Business Names Act 1962* so that they refer to a corporation and a secretary, respectively, using the meanings provided in the *Corporations Act 2001* (Clth).

Clause 8 amends section 5A of the *Business Names Act 1962*. Section 5A provides that in certain circumstances a person requires the leave of the District Court before they can use a business name. Section 5A(1)(c) previously provided that such leave was required if a person had been convicted of certain offences under the Companies (Western Australia) Code. Clause 8 amends the provision to include offences under a number of other companies statutes including the Corporations Law and the *Corporations Act 2001* (Clth).

Clause 9 amends section 19(1)(d) of the *Business Names Act 1962* to update the provisions to refer to a corporation being deregistered, which is the current concept in the *Corporations Act 2001* (Clth).

Clause 10 amends section 26(2)(a) of the *Business Names Act 1962* by inserting a reference to the *Corporations Act 2001* (Clth) rather than the previously applicable Companies (Western Australia) Code.

Part 4 – *Chattel Securities Act 1987*

Clause 11 provides that the amendments in this Part are to the *Chattel Securities Act 1987*.

Clause 12 amends section 8 of the *Chattel Securities Act 1987* to substitute references to the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Clause 13 amends section 10 of the *Chattel Securities Act 1987* to substitute references to the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Part 5 – *Co-operative and Provident Societies Act 1903*

Clause 14 amends section 46 of the *Co-operative and Provident Societies Act 1903* by correcting references to provisions of the *Corporations Act 2001* (Clth).

Part 6 – *Criminal Property Confiscation Act 2000*

Clause 15 amends the Glossary of the *Criminal Property Confiscation Act 2000* so that it refers to the *Corporations Act 2001* (Clth) rather than Companies (Western Australia) Code in the definition of “corporation”.

Part 7 – *Employers’ Indemnity Supplementation Fund Act 1980*

Clause 16 provides that the amendments in this Part are to the *Employers’ Indemnity Supplementation Fund Act 1980*.

Clause 17 amends section 3 of the *Employers’ Indemnity Supplementation Fund Act 1980* by inserting a definition of “Corporations Act” for ease of reference in the rest of the Act.

Clause 18 deletes the present section 35 of the *Employers’ Indemnity Supplementation Fund Act 1980* which provided powers to liquidators by reference to the previous *Companies Act 1961* and substitutes a provision having equivalent operation which refers to the *Corporations Act 2001* (Clth). Subsection (2) declares the new provision to be a displacement provision so that the *Corporations Act 2001* (Clth) will not be inconsistent with the new provision.

Clause 19 amends section 36 of the *Employers’ Indemnity Supplementation Fund Act 1980* to substitute references to the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code. New subsection (4) will declare the “payment of an amount under subsection (1) or (2)” to be an excluded matter so that the *Corporations Act 2001* of the Commonwealth will not be inconsistent with the way such payments are dealt with by section 36.

Part 8 – *Gold Corporation Act 1987*

Clause 20 provides that the amendments in this Part are to the *Gold Corporation Act 1987*.

Clause 21 amends section 3 of the *Gold Corporation Act 1987* by deleting the definition of “Code” and inserting a definition of the “Corporations Act”. The definition of “subsidiary” is also amended to refer to the *Corporations Act 2001* (Clth).

Clause 22 amends three sections of the *Gold Corporation Act 1987* so that they refer to the *Corporations Act 2001* (Clth) rather than the previously applicable Companies (Western Australia) Code.

Clause 23 repeals the present section 72(3) of the *Gold Corporation Act 1987* and inserts a provision having equivalent operation referring to the *Corporations Act 2001* (Clth).

Clause 24 amends section 73 of the *Gold Corporation Act 1987* to delete a reference to the previously applicable Securities Industry (Western Australia) Code and inserts a reference to the equivalent provision of the *Corporations Act 2001* (Clth).

Clause 25 amends Schedule 1 of the *Gold Corporation Act 1987* to substitute references to the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Part 9 – *Housing Act 1980*

Clause 26 amends section 55 of the *Housing Act 1980* to substitute references to the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code. New subsection (4) will declare the security, charge and debt to be excluded matters so that the *Corporations Act 2001* (Clth) will not be inconsistent with the way they are dealt with in section 55.

Part 10 – *Housing Societies Act 1976*

Clause 27 amends section 71 of the *Housing Societies Act 1976* by correcting references to provisions of the *Corporations Act 2001* (Clth).

Part 11 – *Industrial Relations Act 1979*

Clause 28 amends section 93H of the *Industrial Relations Act 1979* to substitute an updated definition of “corporation”.

Part 12 – *Limited Partnerships Act 1909*

Clause 29 amends section 6 of the *Limited Partnerships Act 1909* to adopt provisions of the *Corporations Act 2001* (Clth) where provisions of the previously applicable Companies (Western Australia) Code were adopted. New subsection (4) adopts the Parts of the *Corporations Act 2001* (Clth) that are relevant to the winding up of limited partnerships. Those Parts are adopted as State law and the *Corporations (Ancillary Provisions) Act 2001* (WA) contains provisions that facilitate that adoption. New subsection (4a) modifies the language of those adopted Parts in their State application.

Part 13 – *Local Government Act 1995*

Clause 30 amends section 9.58(4)(b) of the *Local Government Act 1995* to delete a reference to the Commissioner for “Corporate Affairs” and substitute a reference to the Commissioner for “Fair Trading” to reflect a change in the administration of another Act.

Part 14 – *Petroleum Act 1967*

Clause 31 amends section 75 of the *Petroleum Act 1967* to substitute a reference to the Australian Securities and Investments Commission and the *Corporations Act 2001* (Clth) for references to the previously applicable National Companies and Securities Commission and the Companies (Western Australia) Code.

Part 15 – *Petroleum Pipelines Act 1969*

Clause 32 amends section 47 of the *Petroleum Pipelines Act 1969* to substitute a reference to the Australian Securities and Investments Commission and the *Corporations Act 2001* (Clth) for references to the previously applicable National Companies and Securities Commission and the Companies (Western Australia) Code.

Part 16 – *Petroleum (Registration Fees) Act 1967*

Clause 33 amends section 4 of the *Petroleum (Registration Fees) Act 1967* to substitute references to related bodies corporate within the meaning of the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Part 17 – *Petroleum (Submerged Lands) Act 1982*

Clause 34 amends section 81 of the *Petroleum (Submerged Lands) Act 1982* to substitute a reference to the Australian Securities and Investments Commission and the *Corporations Act 2001* (Clth) for references to the previously applicable National Companies and Securities Commission and the Companies (Western Australia) Code. The clause also amends a reference in section 81(16) so it refers to the *Corporations Act 2001* (Clth).

Part 18 – *Petroleum (Submerged Lands) Registration Fees Act 1982*

Clause 35 amends section 4 of the *Petroleum (Submerged Lands) Registration Fees Act 1982* to substitute references to related bodies corporate within the meaning of the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Part 19 – *Pharmacy Act 1964*

Clause 36 amends section 5 of the *Pharmacy Act 1964* to substitute an updated definition of “company”. The present definition effectively confines “company” to those incorporated in the State. Although a company’s registration under the *Corporations Act 2001* (Clth) is now Australian wide, section 119A of the *Corporations Act 2001* (Clth) provides that a company must nominate a “home” jurisdiction. This is the jurisdiction in which a company is taken to be registered.

Part 20 – *Property Law Act 1969*

Clause 37 amends section 88 of the *Property Law Act 1969* so that it provides that the provisions of Part VIII of the *Property Law Act 1969* are in addition to the provisions of the *Corporations Act 2001* (Clth) rather than of the previously applicable *Companies Act 1961*. Section 5E of the *Corporations Act 2001* (Clth) provides that it is to operate concurrently with State legislation.

Part 21 – *Sale of Land Act 1970*

Clause 38 provides that the amendments in this Part are to the *Sale of Land Act 1970*.

Clause 39 amends section 19A of the *Sale of Land Act 1970* to substitute a reference to related bodies corporate within the meaning of the *Corporations Act 2001* (Clth) for references to the previously applicable Companies (Western Australia) Code.

Clause 40 amends section 19B of the *Sale of Land Act 1970* to substitute a reference to a “managed investment scheme” registered under the *Corporations Act 2001* (Clth) for references to “approved deeds” as applied under the previously applicable Companies (Western Australia) Code.

Part 22 – *Suitors’ Fund Act 1964*

Clause 41 provides that the amendments in this Part are to the *Suitors’ Fund Act 1964*.

Clause 42 amends section 3 of the *Suitors’ Fund Act 1964* by deleting existing definitions of “company” and “foreign company” which refer to the former law and inserting equivalent definitions referring to the *Corporations Act 2001* (Clth). The definition of “foreign company” is a little unclear on its face because it has to reflect, in *Corporations Act 2001* (Clth) terms, a concept that, when enacted in terms of the Companies (Western Australia) Code, relied upon the other States and Territories being separate jurisdictions. The *Corporations Act 2001* (Clth) treats the whole of Australia as a single jurisdiction.

Clause 43 amends section 15A of the *Suitors' Fund Act 1964* so that it refers to the *Corporations Act 2001* (Clth) rather than the previously applicable Companies (Western Australia) Code.

Part 23 – *Supreme Court Act 1935*

Clause 44 provides that the amendments in this Part are to the *Supreme Court Act 1935*.

Clause 45 repeals section 60(1)(f)(iii) of the *Supreme Court Act 1935* which is no longer necessary.

Clause 46 repeals section 145(3) of the *Supreme Court Act 1935* which is no longer necessary.

Part 24 – *Unclaimed Money Act 1990*

Clause 47 amends section 7(5) of the *Unclaimed Moneys Act 1990* so that it refers to the *Corporations Act 2001* (Clth) rather than the previously applicable Companies (Western Australia) Code.