

**Corporations (Consequential Amendments) Bill
(No. 2) 2001**

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Western Australia

LEGISLATIVE ASSEMBLY

(As amended in Committee)

**Corporations (Consequential Amendments) Bill
(No. 2) 2001**

A Bill for

An Act to amend various Acts as a consequence of the Commonwealth enacting the *Corporations Act 2001* and to make other minor amendments relating to the regulation of bodies corporate.

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Corporations (Consequential Amendments) Act (No. 2) 2001*.

5 **2. Commencement**

(1) This Act (other than Part 6) is deemed to have come into operation immediately after the *Corporations Act 2001* of the Commonwealth came into operation.

10 (2) Part 6 comes into operation on the day on which this Act receives the Royal Assent.

Part 2 — Associations Incorporation Act 1987

3. The Act amended

The amendments in this Part are to the *Associations Incorporation Act 1987**,

5 [* *Reprinted as at 20 August 1999.*
For subsequent amendments see Act No. 10 of 2001.]

4. Section 30 amended

Section 30(4) is amended by deleting “Parts 5.4 to 5.7” and inserting instead —

10 “ one or more of Parts 5.4 to 5.8 ”.

5. Section 32 amended

Section 32 is amended by deleting “5.7” and inserting instead —

“ 5.8 ”.

Part 3 — Business Names Act 1962

6. The Act amended

The amendments in this Part are to the *Business Names Act 1962**.

5 [*Reprinted as at 16 February 2001.]

7. Section 4 amended

Section 4 is amended as follows:

- (a) by deleting the definition of “corporation” and inserting instead —

10

“

“**corporation**” means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of section 66A of that Act;

15

”;

- (b) by deleting the definition of “secretary” and inserting instead —

“

“**secretary**”, includes —

20

- (a) any person performing the duties of secretary of the corporation; and
(b) the local agent of a foreign corporation within the meaning of the *Corporations Act 2001* of the Commonwealth;

25

”.

8. Section 5A amended

Section 5A(1)(c) is deleted and the following paragraph is inserted instead —

“

30

- (c) of an offence under —
(i) section 108, 229, 554, 555, 556, 559 or 560 of the *Companies (Western*

Australia) Code, section 44 of the
Companies (Acquisition of Shares)
(Western Australia) Code or section 129
of the *Securities Industry (Western*
Australia) Code;

5

(ii) any provision of an equivalent law of
another State or of a Territory of the
Commonwealth that corresponds with
any of the provisions in
subparagraph (i);

10

(iii) any provision of a law of the State, of
another State or of a Territory of the
Commonwealth that was in effect before
the provisions in subparagraph (i) and
that corresponds with any of the
provisions in subparagraph (i);

15

(iv) any provision of the Corporations Law
that corresponds with any of the
provisions in subparagraph (i); or

20

(v) any provision of the *Corporations*
Act 2001 of the Commonwealth that
corresponds with any of the provisions
in subparagraph (i).

”.

25 **9. Section 19 amended**

Section 19(1)(d) is amended by deleting “name of the
corporation has been struck off any register of corporations kept
under the *Companies (Western Australia) Code*, or the
corporation has been dissolved” and inserting instead —

30

“

corporation has been deregistered under the
Corporations Act 2001 of the Commonwealth

”.

s. 10

10. Section 26 amended

Section 26(2)(a) is amended by deleting “Companies (Western Australia) Code” and inserting instead —

“ *Corporations Act 2001* of the Commonwealth ”.

Part 4 — *Chattel Securities Act 1987*

11. The Act amended

The amendments in this Part are to the *Chattel Securities Act 1987**.

5 [*Act No. 101 of 1987.
For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 56.]

12. Section 8 amended

(1) Section 8(1)(c) is amended by deleting “Companies (Western
10 Australia) Code” and inserting instead —

“ *Corporations Act 2001* of the Commonwealth ”.

(2) Section 8(2) is amended by deleting “Companies (Western
Australia) Code are related to each other would be determined
under that Code” and inserting instead —

15 “
Corporations Act 2001 of the Commonwealth are
related bodies corporate would be determined under
that Act
”.

20 **13. Section 10 amended**

Section 10(2) is amended by deleting “Companies (Western
Australia) Code” and inserting instead —

“ *Corporations Act 2001* of the Commonwealth ”.

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

14. The *Co-operative and Provident Societies Act 1903* amended

Section 46(2) and (3) of the *Co-operative and Provident Societies Act 1903** are amended by inserting after “5.6” —

5 “ , 5.7B and 5.8 ”.

[* Reprinted as approved 30 September 1969.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 92 and Act No. 10 of 2001.]

Part 6 — Corporations (Ancillary Provisions) Act 2001

15. The Act amended

The amendments in this Part are to the *Corporations (Ancillary Provisions) Act 2001**.

5 [*Act No. 8 of 2001.]

16. Section 22 amended

Section 22(2) is amended as follows —

- (a) in paragraphs (b) and (c) by inserting after “1989” —
“ of the Commonwealth ”;
- 10 (b) after paragraph (e) by deleting “or”;
- (c) after paragraph (f) by deleting the full stop and
inserting —
“
; or
- 15 (g) an Act amending an Act referred to in
paragraph (e) or (f).

”.

17. Section 22A inserted

After section 22 the following section is inserted —

20 “

22A. Power to make interim regulations construing certain references in Acts

- (1) The Governor, on the recommendation of the Minister,
may make regulations providing that an affected
25 reference in an Act is to be construed as set out in the
regulations.

s. 17

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- (2) The Minister may make a recommendation under subsection (1) only if he or she considers that —
 - (a) each substantive provision of the proposed regulations is necessary as a consequence of the enactment, or the proposed enactment, by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act; and
 - (b) subject to subsection (3), the proposed regulations do not deal with any other matter.
 - (3) Regulations made under this section may deal with matters of a transitional nature (including matters of an application or savings nature) consequent on the enactment of the amending Act referred to in subsection (2)(a).
 - (4) Regulations made under this section have effect according to their terms.
 - (5) Regulations under this section cannot be made after the end of 12 months after the amending Act to which they relate (or the relevant provision of that Act) comes into operation.
 - (6) Regulations made under this section expire on the first anniversary of the day on which they are made unless they are revoked, or expressed to expire, on an earlier day.
 - (7) In this section —
 - “**affected reference**” means —
 - (a) a reference in an Act to a provision of the new ASIC Act or the new Corporations Act; or

(b) a reference in an Act to a term, expression or concept defined or used in the new ASIC Act or the new Corporations Act,

5

that is, or is to be, affected in any way by the enactment or proposed enactment by the Parliament of the Commonwealth of an Act amending the new ASIC Act or the new Corporations Act.

”.

10 **18. Section 25 amended**

Section 25(6) is amended by inserting after “relevant time” —

“

15

or, in the case of regulations made under section 22(2)(g) or 22A, the time when the amending Act (or the relevant provision of that Act) comes into operation or is taken to have come into operation

”.

Part 7 — Criminal Property Confiscation Act 2000

19. The Criminal Property Confiscation Act 2000 amended

5 The Glossary of the *Criminal Property Confiscation Act 2000**
is amended in paragraph (b) of the definition of “corporation”
by deleting “Companies (Western Australia) Code” and
inserting instead —

10 “
Corporations Act 2001 of the
Commonwealth, other than an exempt body
within the meaning of section 66A of that
Act
”.

[*Act No. 68 of 2000.

For subsequent amendments see Act No. 12 of 2001.]

**Part 8 — Employers' Indemnity Supplementation Fund
Act 1980**

20. The Act amended

5 The amendments in this Part are to the *Employers' Indemnity
Supplementation Fund Act 1980**.

[*Reprinted as at 7 December 1994.

For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 135 and Act No. 2 of 2001.]

21. Section 3 amended

10 Section 3 is amended by inserting the following definition in the
appropriate alphabetical position —

“

“Corporations Act” means the *Corporations Act 2001*
of the Commonwealth;

15

”.

22. Section 35 repealed

Section 35 is repealed and the following section inserted
instead —

“

20

35. Control of powers of liquidators of insurers

(1) The liquidator of an insurer may exercise his or her
powers under section 477 of the Corporations Act with
respect to any claim, judgment, order or award arising
out of or in relation to an employer's policy issued by
the insurer subject to the following —

25

- (a) the liquidator may not exercise his or her
powers under section 477(1) of the
Corporations Act without the authority of the
Insurance Commission;

s. 23

- (b) section 477(1)(b) applies as if “subject to the provisions of section 556,” were deleted;
 - (c) section 477(2A) and (2B) apply as if the references in them to the approval of the Court, of the committee of inspection or of a resolution of the creditors were references to the approval of the Insurance Commission.
- (2) Subsection (1) is declared to be a Corporations legislation displacement provision for the purposes of section 5G of the Corporations Act in relation to section 477 of that Act.
- ”.

23. Section 36 amended

- (1) Section 36(1) and (2) are amended by deleting “section 441 of the Companies (Western Australia) Code” and inserting instead —
- “ section 556 of the Corporations Act ”.
- (2) After section 36(3) the following subsection is inserted —
- “
- (4) The payment of an amount referred to in subsection (1) or (2) is declared to be an excluded matter for the purposes of section 5F of the Corporations Act in relation to that Act to the extent to which the payment of the amount is governed by subsection (1) or (2).
- ”.

Part 9 — Gold Corporation Act 1987

24. The Act amended

The amendments in this Part are to the *Gold Corporation Act 1987**.

5 [*Reprinted as at 2 January 2001.
For subsequent amendments see Act No. 43 of 2000.]

25. Section 3 amended

Section 3(1) is amended as follows:

- 10 (a) by deleting the definition of “Code”;
(b) by inserting the following definition in the appropriate alphabetical position —

“

“Corporations Act” means the *Corporations Act 2001* of the Commonwealth;

15 ”;

- (c) by deleting paragraph (c) of the definition of “subsidiary” and inserting instead —

“

- 20 (c) any body corporate that would be a subsidiary of Gold Corporation within the meaning of the Corporations Act if that Act applied to Gold Corporation;

”.

26. Sections 4, 35 and 48 amended

25 Sections 4(2)(d)(ii), 35(3)(d)(ii) and 48(2)(d)(ii) are amended by deleting “might have been attributed to a public company incorporated pursuant to the Code” and inserting instead —

“

30 are attributed to a public company registered under the Corporations Act

”.

s. 27

27. Section 72 amended

Section 72(3) is repealed and the following subsection is inserted instead —

“

- 5 (3) In relation to a body corporate other than Gold Bank or Gold Corporation or a subsidiary of Gold Bank or Gold Corporation, “**officer**” means —
- 10 (a) an officer within the meaning of the Corporations Act; and
 - (b) any authorised person (not already covered by paragraph (a)) who enters into possession or assumes control of property of the body corporate under the Corporations Act for the purposes of enforcing a charge.

15

”.

28. Section 73 amended

Section 73(5) is amended by deleting “Part X of the Securities Industry (Western Australia) Code, or of the provisions of a law in force in a State or Territory that is a participating State or participating Territory for the purposes of that Code being provisions that correspond with the Part of the Code” and inserting instead —

20

“ Part 7.11 of the Corporations Act ”.

29. Schedule 1 amended

- 25 (1) Schedule 1 clause 2(2)(b) is amended by deleting “section 5 of the Code” and inserting instead —

“ the Corporations Act ”.

- (2) Schedule 1 clause 10(2)(b)(i) is amended by deleting “(not being a substantial shareholding within the meaning of Division 4 of Part IV of the Code)” and inserting instead —

“

5

(not being a substantial holding within the meaning of the Corporations Act)

”.

Part 10 — *Housing Act 1980*

30. The *Housing Act 1980* amended

- (1) The amendments in this Part are to the *Housing Act 1980**.

 [*Reprinted as at 27 May 1999.

5 *For subsequent amendments see 2000 Index to Legislation of
 Western Australia, Table 1, p. 205 and Act No. 12 of 2001.]*

- (2) Section 55(4) is repealed and the following subsection is
 inserted instead —

 “

10 (4) The floating security and charge and the debt owing to
 the Crown are declared to be excluded matters for the
 purposes of section 5F of the *Corporations Act 2001* of
 the Commonwealth in relation to Chapter 5 of that Act,
 to the extent to which subsections (1), (2) and (3) of
15 this section provide for them in a way that would be
 inconsistent with that Chapter but for this declaration
 and section 5F of that Act.

 ”.

- 20 (3) Section 55(5) is amended by deleting “Part XII of the
 Companies (Western Australia) Code or a corresponding law”
 and inserting instead —

 “

 Chapter 5 of the *Corporations Act 2001* of the
 Commonwealth

25

 ”.

Part 11 — *Housing Societies Act 1976*

31. The *Housing Societies Act 1976* amended

Section 71(2) and (2a) of the *Housing Societies Act 1976** are amended by inserting after “5.6” —

5 “ , 5.7B and 5.8 ”.

[* *On 13 July 2001 the Building Societies Act 1976 was renamed the Housing Societies Act 1976 by the Building Societies Amendment Act 2001.*

10 *The Building Societies Act 1976 was reprinted as approved 14 April 1986.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 46, and Acts Nos. 10 and 12 of 2001.]

Part 12 — Industrial Relations Act 1979

32. The Industrial Relations Act 1979 amended

Section 96H(3) of the *Industrial Relations Act 1979** is repealed and the following subsection is inserted instead —

5

“

(3) In this section —

10

“**corporation**” means a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth, other than an exempt body within the meaning of section 66A of that Act.

”.

[* Reprinted as at 4 February 2000.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 213 and Act No. 10 of 2001.]

Part 13 — *Limited Partnerships Act 1909*

33. The *Limited Partnerships Act 1909* amended

- (1) The amendments in this Part are to the *Limited Partnerships Act 1909**.

5 [* *Reprinted as approved 15 April 1985.*
 For subsequent amendments see 2000 Index to Legislation of
 Western Australia, Table 1, p. 251.]

- (2) Section 6(4) is repealed and the following subsections are inserted instead —

10 “

- (4) The winding up of a limited partnership is declared to be an applied Corporations legislation matter for the purposes of Part 3 of the *Corporations (Ancillary Provisions) Act 2001* in relation to Parts 5.4, 5.4A, 5.4B, 5.6, 5.7B and 5.8 (winding up) of the *Corporations Act 2001* of the Commonwealth.

- (4a) The following modifications to the text of Parts 5.4, 5.4A, 5.4B, 5.6, 5.7B and 5.8 of the *Corporations Act 2001* of the Commonwealth apply for the purposes of subsection (4) —

- (a) a reference to a company is to be read as a reference to a limited partnership;
- (b) a reference to the directors of a company is to be read as a reference to the general partners of a limited partnership;
- (c) a reference to ASIC is to be read as a reference to the Registrar;
- (d) a reference to the Court is to be read as a reference to the Supreme Court.

30

”.

Part 14 — *Local Government Act 1995*

34. *The Local Government Act 1995* amended

5 Section 9.58(4)(b) of the *Local Government Act 1995** is amended by deleting “Corporate Affairs” and inserting instead —

“ Fair Trading ”.

10 [* *Reprinted as at 18 February 2000.*
For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 257 and Acts Nos. 36 of 1999 and 10 of 2001.]

Part 15 — *Petroleum Act 1967*

35. The *Petroleum Act 1967* amended

- (1) The amendments in this Part are to the *Petroleum Act 1967**.

[* *Reprinted as at 14 January 2000.*

5 *For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 336.]*

- (2) Section 75(8) is amended by deleting “the National Companies
and Securities Commission relating to the creation of that
charge pursuant to section 201 of the Companies (Western
10 Australia) Code or pursuant to the corresponding provision of a
law of the Commonwealth or another State or a Territory” and
inserting instead —

“

15 the Australian Securities and Investments Commission
relating to the creation of that charge pursuant to
section 263 of the *Corporations Act 2001* of the
Commonwealth

”.

- (3) Section 75(15) is amended by deleting “section 201 of the
20 Companies (Western Australia) Code” and inserting instead —

“ the *Corporations Act 2001* of the Commonwealth ”.

Part 16 — Petroleum Pipelines Act 1969

36. The Petroleum Pipelines Act 1969 amended

- (1) The amendments in this Part are to the *Petroleum Pipelines Act 1969**.

5 [* *Reprinted as at 12 May 2000.*
 For subsequent amendments see 2000 Index to Legislation of
 Western Australia, Table 1, p. 337.]

- (2) Section 47(8) is amended by deleting “the National Companies
10 and Securities Commission relating to the creation of that
 charge pursuant to section 201 of the Companies (Western
 Australia) Code or pursuant to the corresponding provision of a
 law of the Commonwealth or another State or a Territory” and
 inserting instead —

15 “
 the Australian Securities and Investments Commission
 relating to the creation of that charge pursuant to
 section 263 of the *Corporations Act 2001* of the
 Commonwealth
 ”.

- 20 (3) Section 47(15) is amended by deleting “section 201 of the
 Companies (Western Australia) Code” and inserting instead —
 “ the *Corporations Act 2001* of the Commonwealth ”.

Part 17 — Petroleum (Registration Fees) Act 1967

37. The Petroleum (Registration Fees) Act 1967 amended

- (1) The amendments in this Part are to the *Petroleum (Registration Fees) Act 1967**.

5 [* Reprinted as at 16 January 1992.
For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 338.]

- (2) Section 4(4)(a)(i) and (7)(a)(i) are deleted and the following
subparagraph is inserted instead —

10

“

- (i) they are related bodies corporate within
the meaning of the *Corporations*
Act 2001 of the Commonwealth;

”.

Part 19 — *Petroleum (Submerged Lands) Registration Fees Act 1982*

39. The *Petroleum (Submerged Lands) Registration Fees Act 1982* amended

5 (1) The amendments in this Part are to the *Petroleum (Submerged Lands) Registration Fees Act 1982**.

[*Reprinted as at 18 March 1992.]

(2) Section 4(4)(a)(i) and (7)(a)(i) are deleted and the following subparagraph is inserted instead —

10

“

- (i) they are related bodies corporate within the meaning of the *Corporations Act 2001* of the Commonwealth;

”.

Part 20 — Pharmacy Act 1964

40. The Pharmacy Act 1964 amended

Section 5(1) of the *Pharmacy Act 1964** is amended by deleting the definition of “Company” and inserting instead —

5

“

“**Company**” means a company, within the meaning of the *Corporations Act 2001* of the Commonwealth, that is taken to be registered in Western Australia;”

10

[* *Reprinted as at 29 January 1999.*
For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 340.]

Part 21 — *Property Law Act 1969*

41. The *Property Law Act 1969* amended

5 Section 88(2) of the *Property Law Act 1969** is amended by deleting “and not in derogation of the provisions of section 35 of the *Companies Act 1961*” and inserting instead —

“

the provisions of the *Corporations Act 2001* of the Commonwealth

”.

10 [* Reprinted as at 21 May 1999.]

Part 22 — Sale of Land Act 1970

42. The Act amended

The amendments in this Part are to the *Sale of Land Act 1970**.

[* *Reprint approved 8 May 1978.*

5 *For subsequent amendments see 2000 Index to Legislation of
Western Australia, Table 1, p. 402.]*

43. Section 19A amended

10 Section 19A(2)(d)(i) is amended by deleting “would, within the
meaning of subsection (5) of section 7 of the Companies
(Western Australia) Code, be deemed to be related to each
other” and inserting instead —

“

15 are related bodies corporate within the
meaning of the *Corporations Act 2001*
of the Commonwealth

”.

44. Section 19B amended

20 Section 19B(1)(a) is amended by deleting “a deed that is an
approved deed under and for the purposes of Division 6 of
Part IV of the Companies (Western Australia) Code” and
inserting instead —

“

25 a managed investment scheme that is registered
under Part 5C.1 of the *Corporations Act 2001*
of the Commonwealth

”.

Part 23 — *Suitors' Fund Act 1964*

45. The Act amended

The amendments in this Part are to the *Suitors' Fund Act 1964**.

[* *Reprinted as at 29 October 1999.*]

5 **46. Section 3 amended**

Section 3 is amended as follows:

- (a) by deleting the definition of “company” and of “foreign company”;
- (b) by inserting the following definitions in the appropriate alphabetical positions —

10

“

“company” has the same meaning as it has in the
Corporations Act 2001 of the Commonwealth;

15

“foreign company” means a foreign company within
the meaning of the *Corporations Act 2001* of the
Commonwealth, and a registrable Australian body
(within the meaning of that Act) other than such a
body formed or incorporated in the State;

”.

20 **47. Section 15A amended**

Section 15A is amended by deleting “is, under and for the purposes of the Companies (Western Australia) Code, deemed to be a subsidiary of, or related to,” and inserting instead —

“

25

is, for the purposes of the *Corporations Act 2001* of the
Commonwealth, a related body corporate of

”.

Part 24 — *Supreme Court Act 1935*

48. The Act amended

The amendments in this Part are to the *Supreme Court Act 1935**.

5 [* Reprinted as at 9 February 2001.
For subsequent amendments see Act No. 27 of 2000.]

49. Section 60 amended

Section 60(1)(f)(iii) is repealed.

50. Section 145 amended

10 Section 145(3) is repealed.

Part 25 — Unclaimed Money Act 1990

51. The Unclaimed Money Act 1990 amended

5 Section 7(5) of the *Unclaimed Money Act 1990** is amended by deleting “Companies (Western Australia) Code” and inserting instead —

“ *Corporations Act 2001* of the Commonwealth ”.

[* *Reprinted as at 5 November 1999.*]

=====