

1985-86

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 22 October 1986

(*Attorney-General*)

A BILL

FOR

**An Act to amend provisions of certain Acts relating to
jurisdiction of courts, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

5 **1.** This Act may be cited as the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1986*.

Commencement

2. (1) Section 1, this section and sections 3, 4 and 5 shall come into operation on the day on which this Act receives the Royal Assent.

10 (2) The amendments made by this Act to an Act specified in the Schedule shall come into operation on such day as is fixed by Proclamation in relation to those amendments.

Amendments of Acts

3. The Acts specified in the Schedule are amended as set out in the Schedule.

Transitional provisions relating to taxation laws

4. (1) In this section— 5

“commencement day” means the day on which the amendments made by this Act to the *Income Tax Assessment Act 1936* come into operation;

“objection” means an objection under a relevant tax law, being an objection— 10

(a) as defined by section 3 of the *Taxation (Interest on Overpayments) Act 1983*; or

(b) under sub-section 40 (2) or (4) of the *Sales Tax Assessment Act (No. 1) 1930* or either of those sub-sections as applied for the purposes of any other Act providing for the assessment of sales tax; 15

“relevant tax law” means—

(a) the *Bank Account Debits Tax Administration Act 1982*;

(b) the *Estate Duty Assessment Act 1914*;

(c) the *Fringe Benefits Tax Assessment Act 1986*; 20

(d) the *Gift Duty Assessment Act 1941*;

(e) the *Income Tax Assessment Act 1936*;

(f) an Act providing for the assessment of sales tax;

(g) the *Taxation (Unpaid Company Tax) Assessment Act 1982*; or 25

(h) the *Trust Recoupment Tax Assessment Act 1985*;

“Supreme Court” means the Supreme Court of a State or of the Northern Territory or the Australian Capital Territory.

(2) Where, under a provision of a relevant tax law as in force before the commencement day— 30

(a) the Commissioner of Taxation had received a request to refer a decision on an objection to a Supreme Court; or

(b) the Commissioner of Taxation had received a request to treat an objection as an appeal to a Supreme Court and the request was, under section 226 of the *Taxation Boards of Review (Transfer of Jurisdiction) Act 1986*, treated as a request to refer the decision on the objection to a Supreme Court, 35

and the request had not been forwarded to a Supreme Court before the commencement day, the request shall, on and after the commencement day, be treated as a request to refer the decision on the objection to the Federal Court of Australia. 40

5 (3) The provisions of the relevant tax laws that are amended or repealed by this Act continue to apply to a decision on an objection, or an objection, that was forwarded to a Supreme Court before the commencement day as if those amendments and repeals had not been made.

Transitional provisions relating to intellectual property laws

10 5. (1) The amendments made by this Act to the *Advance Australia Logo Protection Act 1984*, the *Copyright Act 1968*, the *Designs Act 1906*, the *Patents Act 1952* and the *Trade Marks Act 1955* apply only in relation to actions or proceedings commenced after the commencement of those amendments.

15 (2) The provisions of the Acts referred to in sub-section (1) as in force immediately before the commencement of the amendments made by this Act to those Acts continue to apply in relation to actions or proceedings commenced under those Acts before that commencement.

SCHEDULE
AMENDMENTS OF ACTS

Section 3

Advance Australia Logo Protection Act 1984

Sub-section 11 (2)—

Omit “the Supreme Court of a State or a Territory”, substitute “the Federal Court of Australia”.

Sub-section 13 (1)—

Omit “11 or”.

After section 13—

Insert the following section:

Jurisdiction of Federal Court

“13A. To the extent that the Constitution permits, the Federal Court of Australia has exclusive jurisdiction with respect to matters arising under section 11.”.

Bank Account Debits Tax Administration Act 1982

Section 20—

Before the definition of “objector”, insert the following definition:
“ ‘Federal Court’ means the Federal Court of Australia;”.

Section 20 (definition of “Supreme Court”)—

Omit the definition.

Paragraph 23 (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

Paragraph 25A (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) if the application relates to a request to refer a decision to the Federal Court— send the application to that Court.”.

Sub-section 25A (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “Commissioner”.

Sub-section 25A (4)—

Omit “Supreme Court”, substitute “Federal Court”.

Sub-section 25B (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “the decision”.

Sub-section 26 (1)—

Omit “A Supreme Court hearing an appeal under this Part”, substitute “Where the Federal Court hears an appeal under this Part, the Court”.

SCHEDULE—continued

Sub-sections 26 (3), (4) and (5)—

Omit the sub-sections.

Sections 28 and 29—

Repeal the sections.

Sub-section 29A (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Section 62—

Omit the word and paragraphs after “may make” (second occurring), substitute the following:
“regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations.”.

Copyright Act 1968

Division 4A of Part V—

Repeal the Division, substitute the following Division:

“Division 4A—Jurisdiction of Federal Court

Jurisdiction of Federal Court

“131A. To the extent that the Constitution permits, the Federal Court of Australia has exclusive jurisdiction with respect to actions under this Part (other than prosecutions for offences against section 132).”.

Designs Act 1906

Sub-section 4 (1) (definition of “prescribed court”)—

Omit the definition, substitute the following definition:

“‘prescribed court’ means the Federal Court of Australia;”.

Section 5—

Repeal the section.

Section 31—

Omit all the words after “prescribed court” (first occurring).

Part VIB—

Repeal the Part, substitute the following Part:

“PART VIB—JURISDICTION OF FEDERAL COURT

Jurisdiction of Federal Court, &c.

“40G. (1) To the extent that the Constitution permits, the Federal Court of Australia has exclusive jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may be instituted in a prescribed court.

SCHEDULE—continued

“(2) The regulations may make provision prescribing the time within which any action or proceeding under this Act may be instituted or any other act or thing may be done, and providing for the extension of any such time.

Powers of Federal Court

“40H. Upon the hearing of an appeal from a decision of the Registrar, the Federal Court of Australia may—

- (a) admit further evidence, either orally or upon affidavit or otherwise;
- (b) permit the examination and cross-examination of witnesses, including witnesses who gave evidence orally or upon affidavit or otherwise at the hearing before the Registrar;
- (c) order an issue of fact to be tried in such manner as it directs;
- (d) affirm, reverse or modify the decision appealed from;
- (e) give such judgment, or make such order as it thinks fit, or refuse to make an order; and
- (f) order a party to pay costs to another party.”.

Estate Duty Assessment Act 1914

Sub-section 3 (1)—

After the definition of “estate”, insert the following definition:

“‘Federal Court’ means the Federal Court of Australia;”.

Paragraph 25 (1) (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

Paragraph 27A (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) if the application relates to a request to refer a decision to the Federal Court—send the application to that Court.”.

Sub-section 27A (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “Commissioner”.

Sub-section 27A (4)—

Omit “Supreme Court”, substitute “Federal Court”.

Sub-section 27B (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “the decision”.

Section 27E—

Repeal the section, substitute the following section:

Powers of Federal Court on appeal

“27E. Where the Federal Court hears an appeal under this Part, the Court may make such order in relation to the decision to which the appeal relates as it thinks fit, including an order confirming or varying the decision.”.

SCHEDULE—continued

Sections 28, 28A, 28AA and 28AB—

Repeal the sections.

Sub-section 28AC (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Section 28D—

Repeal the section.

Section 50—

Omit the word and paragraphs after “may make” (second occurring), substitute the following:

“regulations prescribing penalties not exceeding a fine of \$500 for offences against the regulations.”.

Fringe Benefits Tax Assessment Act 1986

Sections 79 and 79A—

Repeal the sections, substitute the following section:

Interpretation

“79. In this Part, ‘Federal Court’ means the Federal Court of Australia.”.

Paragraph 81 (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

Paragraph 84 (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) if the application relates to a request to refer a decision to the Federal Court—send the application to that Court.”.

Sub-section 84 (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “Commissioner”.

Sub-section 84 (4)—

Omit “Supreme Court”, substitute “Federal Court”.

SCHEDULE—continued

Sub-section 85 (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “the decision”.

Section 86B—

Repeal the section.

Sub-section 86C (1)—

Omit “A Supreme Court hearing an appeal under this Part”, substitute “Where the Federal Court hears an appeal under this Part, the Court”.

Sub-section 86C (2)—

Omit the sub-section.

Section 86D—

Repeal the section.

Sub-section 86E (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Section 87—

Repeal the section.

Gift Duty Assessment Act 1941

Sub-section 4 (1)—

After the definition of “donor”, insert the following definition:
 “‘Federal Court’ means the Federal Court of Australia;”.

Sub-section 4 (1) (definition of “Supreme Court”)—

Omit the definition.

Paragraph 32 (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

Paragraph 34A (1) (b)—

Omit the paragraph, substitute the following paragraph:

- “(b) if the application relates to a request to refer a decision to the Federal Court—send the application to that Court.”.

Sub-section 34A (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “Commissioner”.

SCHEDULE—continued

Sub-section 34A (4)—

Omit “Supreme Court”, substitute “Federal Court”.

Sub-section 34B (3)—

- (a) Omit “a Supreme Court”, substitute “the Federal Court”.
- (b) Omit all the words after “the decision”.

Sub-section 34E (1)—

Omit “A Supreme Court hearing an appeal under this Part”, substitute “Where the Federal Court hears an appeal under this Part, the Court”.

Sub-section 34E (2)—

Omit the sub-section.

Sections 35, 36, 36A and 36B—

Repeal the sections.

Sub-section 36C (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Section 38A—

Repeal the section.

Section 47—

Omit all the words and paragraphs after “Act” (last occurring), substitute the following:

“, and, in particular, for prescribing penalties not exceeding a fine of \$500 for offences against the regulations.”.

Income Tax Assessment Act 1936

Sub-section 177 (1)—

Omit “(except in proceedings on appeal against the assessment)” and substituting “, except in proceedings under Part V on a review or appeal relating to the assessment,”.

Sections 184A and 184C—

Repeal the sections, substitute the following section:

Interpretation

“184. In this Division, ‘Federal Court’ means the Federal Court of Australia.”.

Paragraph 187 (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

SCHEDULE—continued

Paragraph 188B (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) if the application relates to a request to refer a decision to the Federal Court—send the application to that Court.”.

Sub-section 188B (3)—

(a) Omit “a Supreme Court”, substitute “the Federal Court”.

(b) Omit all the words after “Commissioner”.

Sub-section 188B (4)—

Omit “Supreme Court”, substitute “Federal Court”.

Sub-section 189 (3)—

(a) Omit “a Supreme Court”, substitute “the Federal Court”.

(b) Omit all the words after “the decision”.

Sections 196A and 198—

Repeal the sections.

Sub-section 199 (1)—

Omit “A Supreme Court hearing an appeal under this Part”, substitute “Where the Federal Court hears an appeal under this Part, the Court”.

Sub-section 199 (2)—

Omit the sub-section.

Sections 200 and 200A—

Repeal the sections.

Sub-section 200B (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

(a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or

(b) if that decision is a decision of the Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Sub-section 266 (2)—

Omit the sub-section.

Patents Act 1952

Section 6 (definition of “prescribed court”)—

Omit the definition, substitute the following definition:

“‘prescribed court’ means the Federal Court of Australia;”.

Section 6A—

Repeal the section.

SCHEDULE—continued

Section 113—

Omit all the words after “prescribed court” (first occurring).

Sub-section 121 (4)—

Omit all the words after “prescribed court” (first occurring).

Sections 146, 147 and 148—

Repeal the sections, substitute the following section:

Jurisdiction of Federal Court of Australia, &c.

“146. (1) To the extent that the Constitution permits, the Federal Court of Australia has exclusive jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in a prescribed court.

“(2) The regulations may make provision prescribing the time within which any action or proceeding under this Act may be instituted or any other act or thing may be done, and providing for the extension of any such time.”.

Sales Tax Assessment Act (No. 1) 1930

Section 39A—

Before the definition of “objector”, insert the following definition:

“ ‘Federal Court’ means the Federal Court of Australia;”.

Section 39A (definition of “Supreme Court”)—

Omit the definition.

Section 39C—

Repeal the section.

Paragraph 41 (b)—

Omit “a specified Supreme Court”, substitute “the Federal Court”.

Paragraph 42B (1) (b)—

Omit the paragraph, substitute the following paragraph:

“(b) if the application relates to a request to refer a decision to the Federal Court— send the application to that Court.”.

Sub-section 42B (3)—

(a) Omit “a Supreme Court”, substitute “the Federal Court”.

(b) Omit all the words after “Commissioner”.

Sub-section 42B (4)—

Omit “Supreme Court”, substitute “Federal Court”.

Sub-section 42C (3)—

(a) Omit “a Supreme Court”, substitute “the Federal Court”.

(b) Omit all the words after “the decision”.

Sub-sections 42G (1), (2), (4) and (5)—

Omit the sub-sections.

SCHEDULE—continued

Sub-section 42G (3)—

Omit “A Supreme Court hearing an appeal under this Part”, substitute “Where the Federal Court hears an appeal under this Part, the Court”.

Sub-section 42H (2)—

Omit the sub-section, substitute the following sub-section:

“(2) For the purposes of determining when a decision of the Tribunal or of the Federal Court becomes final—

- (a) if that decision is a decision of the Tribunal, or of the Federal Court constituted by a single Judge, and no appeal is lodged within the period for lodging an appeal—that decision becomes final at the end of that period; or
- (b) if that decision is a decision of a Full Court of the Federal Court and an application is not made for special leave to appeal to the High Court within the period of 30 days after the making of the decision—that decision becomes final at the end of that period.”.

Paragraph 73 (aa)—

Add at the end “and”.

Paragraph 73 (ab)—

Omit the paragraph.

Taxation (Unpaid Company Tax) Assessment Act 1982

Sub-section 4 (7)—

Omit the sub-section.

Trade Marks Act 1955

Sub-section 6 (1) (definition of “prescribed court”)—

Omit the definition, substitute the following definition:
“‘prescribed court’ means the Federal Court of Australia;”.

Section 6A—

Repeal the section.

Section 67—

Omit all the words after “prescribed court” (first occurring).

Sections 112, 113 and 114—

Repeal the sections, substitute the following section:

Jurisdiction of Federal Court of Australia, &c.

“112. (1) To the extent that the Constitution permits, the Federal Court of Australia has exclusive jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in a prescribed court.

“(2) The regulations may make provision prescribing the time within which any action or proceeding under this Act may be instituted or any other act or thing may be done, and providing for the extension of any such time.”.

SCHEDULE—continued

Sub-section 124 (4)—

Omit all the words after “prescribed court” (first occurring).

Trade Practices Act 1974

Section 75B—

Add at the end the following sub-section:

“(2) In this Part, unless the contrary intention appears—

- (a) a reference to the Court in relation to a matter is a reference to any court having jurisdiction in the matter;
- (b) a reference to the Federal Court is a reference to the Federal Court of Australia; and
- (c) a reference to a judgment is a reference to a judgment, decree or order, whether final or interlocutory.”.

Section 86—

Repeal the section, substitute the following sections:

Jurisdiction of courts

“86. (1) Jurisdiction is conferred on the Federal Court in any matter arising under this Act in respect of which a civil proceeding has, whether before or after the commencement of this section, been instituted under this Part.

“(2) The several courts of the States are invested with federal jurisdiction within the limits of their several jurisdictions, whether those limits are as to locality, subject-matter or otherwise, and, subject to the Constitution, jurisdiction is conferred on the several courts of the Territories, with respect to any matter arising under Division 1 or 1A of Part V in respect of which a civil proceeding is instituted by a person other than the Minister or the Commission.

“(3) Nothing in sub-section (2) shall be taken to enable an inferior court of a State or Territory to grant a remedy other than a remedy of a kind that the court is able to grant under the law of that State or Territory.

“(4) The jurisdiction conferred by sub-section (1) on the Federal Court is exclusive of the jurisdiction of any other court other than the jurisdiction of the several courts of the States and Territories under sub-section (2) and the jurisdiction of the High Court under section 75 of the Constitution.

Transfer of matters

“86A. (1) Where—

- (a) a civil proceeding instituted (whether before or after the commencement of this section) by a person other than the Minister or the Commission is pending in the Federal Court; and
- (b) a matter for determination in the proceeding arose under Division 1 or 1A of Part V,

the Federal Court may, subject to sub-section (2), upon the application of a party or of the Federal Court’s own motion, transfer to a court of a State or Territory the matter referred to in paragraph (b).

“(2) The Federal Court shall not transfer a matter to another court under sub-section (1) unless the other court has power to grant the remedies sought before the Federal Court in the matter and it appears to the Federal Court that—

- (a) the matter arises out of or is related to a proceeding that is pending in the other court; or

SCHEDULE—continued

(b) it is otherwise in the interests of justice that the matter be determined by the other court.

“(3) Where the Federal Court transfers a matter to another court under sub-section (1)—

- (a) further proceedings in the matter shall be as directed by the other court; and
- (b) the judgment of the other court in the matter is enforceable throughout Australia and the external Territories as if it were a judgment of the Federal Court.

“(4) Where—

- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and
- (b) a matter for determination in the proceeding arose under Division 1 or 1A of Part V,

the court shall, if directed to do so by the Federal Court, transfer to the Federal Court the matter referred to in paragraph (b) and such other matters for determination in the proceeding the determination of which would, apart from any law of a State or of the Northern Territory relating to cross-vesting of jurisdiction, be within the jurisdiction of the Federal Court as the Federal Court determines.

“(5) Where—

- (a) a proceeding is pending in a court (other than the Supreme Court) of a State or Territory; and
- (b) a matter for determination in the proceeding arose under Division 1 or 1A of Part V,

the court may, subject to sub-section (6), upon the application of a party or of the court's own motion, transfer to a court (other than the Supreme Court) of a State or Territory other than the State or Territory referred to in paragraph (a) the matter referred to in paragraph (b).

“(6) A court shall not transfer a matter to another court under sub-section (5) unless the other court has power to grant the remedies sought before the first-mentioned court in the matter and it appears to the first-mentioned court that—

- (a) the matter arises out of or is related to a proceeding that is pending in the other court; or
- (b) it is otherwise in the interests of justice that the matter be determined by the other court.

“(7) Where a court transfers a matter to another court under sub-section (5), further proceedings in the matter shall be as directed by the other court.

Appeals

“86B. An appeal does not lie from a judgment of a court of a State or Territory in a matter arising under section 52A except—

- (a) to the Federal Court; or
- (b) with special leave of the High Court, to the High Court.”.

