

Federal Courts (State Jurisdiction) Bill

Circulation Print

EXPLANATORY MEMORANDUM

General

The High Court has held that the State Parliaments are not able to confer State jurisdiction on federal courts (the Federal Court of Australia and the Family Court of Australia), and that the Commonwealth Parliament is able neither to confer nor to consent to the conferral of State jurisdiction on federal courts. The decision was given on 17 June 1999, in the following proceedings:

Re Wakim; Ex parte McNally (S74/1998)

- *Re Wakim; Ex parte Darvall* (S107/98)

Re Brown; Ex parte Amann (S118/98)

Spinks v Prentice (S140/98)

This decision has implications not only for the cross-vesting schemes (where provision is made for the cross-vesting of jurisdiction in a wide range of cases and specifically under the Corporations Law, and under which State jurisdiction has been conferred on the Federal Court and the Family Court), but also for certain of the applied law schemes (where laws of another jurisdiction are applied as State law, and under which State jurisdiction has been conferred on the Federal Court).

The objects of this Bill are—

- (a) to provide that the rights and liabilities of persons under ineffective judgments of a federal court in the purported exercise of State jurisdiction are taken to be rights and liabilities under judgments of the Supreme Court; and
- (b) to provide for the transfer of current proceedings before a federal court in relation to State matters to the Supreme Court; and

- (c) to enable State courts to deal with matters that arise under applied law schemes and that would otherwise have been dealt with by a federal court.

The existing schemes will continue to apply to the courts referred to in them, except federal courts to the extent that the laws establishing the existing schemes are incapable of applying to federal courts.

Clause Notes

PART 1—PRELIMINARY

- Clause 1 states the purpose of the Bill.
- Clause 2 provides for the commencement of the provisions of the Bill.
- Clause 3 defines certain words and expressions used in the proposed Act.
- Clause 4 defines the expression "ineffective judgment". In short, it is defined as a judgment of a federal court in a State matter already given in the purported exercise of jurisdiction conferred by a State Act. The definition will apply to judgments of a federal court as affirmed, reversed or varied following an appeal in the federal court concerned. The definition will extend to judgments substituted by the High Court on appeal, as these judgments are made in lieu of judgments of the federal court concerned.
- Clause 5 provides that the proposed Act binds the Crown in all its capacities.

PART 2—RIGHTS AND LIABILITIES

- Clause 6 declares that all rights and liabilities are to be the same as if each ineffective judgment had been given by the Supreme Court, either in the Trial Division or in the Court of Appeal, as appropriate.
- Clause 7 specifically provides that such rights and liabilities are exercisable and enforceable as if they were rights and liabilities under valid judgments of the Supreme Court. The clause expressly provides that a party has the same right to appeal as the party would have had if the ineffective judgment had been a valid judgment of the Supreme Court.

- Clause 8 specifically provides that any act or omission done under or in relation to such rights and liabilities have the same effect and consequences as if they were done under or in relation to rights and liabilities under judgments of the Supreme Court.
- Clause 9 provides that clause 6 does not apply to a judgment that was replaced by a later judgment of a federal court. This preserves the effect of the replacing judgment by making that judgment the one to which section 6 applies. Clause 4(2) deals with the situation where an ineffective judgment has been affirmed, reversed or varied on appeal.
- Clause 10 specifically empowers the Supreme Court to vary or otherwise deal with any such rights and liabilities.
- Clause 11 provides a mechanism for current proceedings before a federal court in relation to State matters to be transferred to the Supreme Court.
- Clause 12 specifically provides that interference with any such rights and liabilities can be dealt with as contempt of an order of the Supreme Court.
- Clause 13 enables federal court records to be produced to show the existence, nature and extent of any such rights and liabilities.
- Clause 14 provides that the proposed Act does not apply to judgments already declared invalid, quashed or overruled by a federal court, otherwise than on the ground that the court had no jurisdiction.

PART 3—GENERAL

- Clause 15 provides that any provision of a relevant State law that purports to confer jurisdiction on a federal court is taken not to have that effect, and that any provision of a law applied by a relevant State Act that excludes or limits the jurisdiction of any or all State courts is taken not to have that effect.
- Clause 16 provides that it is the intention of Part 2 to alter or vary section 85 of the **Constitution Act 1975**.
- Clause 17 provides for the making of Regulations.

PART 4—AMENDMENT OF CERTAIN ACTS

- Clause 18 amends the **Competition Policy Reform (Victoria) Act 1995** to confer jurisdiction on the Supreme Court and other Victorian Courts with respect to all civil and criminal matters arising under the Competition Code.
- Clause 19 amends the **New Tax System Price Exploitation Code (Victoria) Act 1999** to confer jurisdiction on the Supreme Court and other Victorian Courts with respect to all civil and criminal matters arising under the New Tax System Price Exploitation Code.