

Passed by both Houses



New South Wales

Federal Courts (Consequential Provisions) Bill 2000

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2000*



New South Wales

Federal Courts (Consequential Provisions) Bill 2000

Act No , 2000

An Act to amend certain Acts so as to omit provisions that purport to confer State jurisdiction on federal courts; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Federal Courts (Consequential Provisions) Act 2000*.

2 Commencement

This Act commences on the date of assent.

3 Amendments

Each Act listed in Schedule 1 is amended as set out in that Schedule.

Schedule 1 Amendments

(Section 3)

1.1 Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53

[1] Section 3 Definitions

Insert “(excluding Part IVA)” after “Commonwealth” in paragraph (a) (i) of the definition of *Commonwealth administrative laws* in section 3 (1).

[2] Section 3 (1), definition of “Commonwealth administrative laws”

Omit paragraph (a) (ii) from the definition.

[3] Section 8 Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy)

Omit “because of paragraph (a) of that subsection” from section 8 (1) (b).

[4] Section 16 Application of Commonwealth administrative laws in relation to applicable provisions

Omit “, or section 13 of the *Administrative Decisions (Judicial Review) Act 1977*, of the Commonwealth as those sections apply as laws” from section 16 (2).

Insert instead “of the Commonwealth as that section applies as a law”.

[5] Section 18A

Insert after section 18:

18A Construction of references to Part IVA of Commonwealth AAT Act

For the purposes of section 16, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is

taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

[6] Part 6 Jurisdiction of courts

Omit the Part.

1.2 Competition Policy Reform (New South Wales) Act 1995 No 8

[1] Part 5, Division 3 Jurisdiction of courts

Omit the Division.

[2] Section 29 Definition

Insert “(excluding Part IVA)” after “Commonwealth” in paragraph (a) (i) of the definition of *Commonwealth administrative laws*.

[3] Section 29

Omit paragraph (a) (ii).

[4] Section 33A

Insert after section 33:

33A Construction of references to Part IVA of Commonwealth AAT Act

For the purposes of sections 30 and 31, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

1.3 Co-operatives Act 1992 No 18

Schedule 4 Receivers, and other controllers, of property of co-operatives

Omit “a federal court or” from clause 4 (3) (c).

1.4 Corporations (New South Wales) Act 1990 No 83

[1] Section 3 Definitions

Insert “(excluding Part IVA)” after “Commonwealth” in paragraph (a) of the definition of *Commonwealth administrative laws* in section 3 (1).

[2] Section 3 (1), definition of “Commonwealth administrative laws”

Omit paragraph (b) from the definition.

[3] Section 3 (1), definition of “Family Court”

Omit the definition.

[4] Section 15 Corporations Law of New South Wales

Insert after section 15 (1):

(1A) Chapters 6, 6A, 6B, 6C and 6D of the *Corporations Law* of New South Wales:

- (a) bind the Crown in right of the Commonwealth so far as the legislative power of the Parliament permits, but
- (b) do not bind the Crown in right of the State of New South Wales, of any other State, of the Capital Territory, of the Northern Territory or of Norfolk Island.

[5] Section 36A

Insert after section 36:

36A Construction of references to Part IVA of Commonwealth AAT Act

For the purposes of sections 35 and 36, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.

[6] Section 40 Operation of Division

Insert at the end of section 40 (1) (b):

and

- (c) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth involving or related to decisions made under the *Corporations Law* of a State or the Capital Territory by Commonwealth authorities and officers of the Commonwealth, and
- (d) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the *Corporations Law* of a State or the Capital Territory and related criminal justice process decisions,

[7] Section 41 Interpretation

Insert in alphabetical order in section 41 (1):

Commonwealth authority means an authority or body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth.

officer of the Commonwealth has the same meaning as in section 75 (v) of the Commonwealth Constitution.

[8] Section 41 (1), definition of “superior court”

Omit the definition. Insert instead:

superior court means the Supreme Court of a State or Territory or a State Family Court.

[9] Section 41 (2) (a) (viii)

Omit the subparagraph.

[10] Section 42 Jurisdiction of Federal Court and State and Territory Supreme Courts

Omit “as it applies as a law of New South Wales,” from section 42 (1).

[11] Section 42 (1A) and (1B)

Insert after section 42 (1):

(1A) Despite section 9 of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, jurisdiction is conferred on the Supreme Court of New South Wales and of each other State and the Capital Territory with respect to matters arising under that Act involving or related to decisions made, or proposed to be made, under the *Corporations Law* of a State or the Capital Territory by a Commonwealth authority or an officer of the Commonwealth.

(1B) Subsection (1A) applies to a decision made, or proposed or required to be made:

- (a) whether or not in the exercise of a discretion, and
- (b) whether before or after the commencement of Schedule 1 [11] to the *Federal Courts (Consequential Provisions) Act 2000*.

[12] Section 42 (2)

Insert “or (1A)” after “subsection (1)”.

[13] Section 42 (3)

Omit the subsection. Insert instead:

- (3) This section has effect subject to section 42AA.

[14] Section 42A Jurisdiction of Family Court and State Family Courts

Omit section 42A (1).

[15] Section 42A (2)

Omit “as it applies as a law of New South Wales,”.

[16] Section 42A (4)

Insert after section 42A (3):

(4) This section has effect subject to section 42AA.

[17] Section 42AA

Insert after section 42A:

42AA Jurisdiction of Supreme Court in relation to certain decisions made by Commonwealth officers

(1) If a decision to prosecute a person for an offence against the *Corporations Law* of New South Wales has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of New South Wales, jurisdiction is conferred on the Supreme Court with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision.

(2) At any time when:

- (a) a prosecution for an offence against the *Corporations Law* of New South Wales is before a court of New South Wales, or
- (b) an appeal arising out of such a prosecution is before a court of New South Wales,

jurisdiction is conferred on the Supreme Court with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision.

(3) Subsections (1) and (2) have effect despite anything in this Act or in any other law.

(4) In this section:

appeal includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

related criminal justice process decision, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant, and
- (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation, and
- (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant, and
- (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses, and
- (e) a decision in connection with an appeal arising out of the prosecution.

[18] Section 42B Jurisdiction of lower courts

Omit “as it applies as a law of New South Wales,” from section 42B (1).

[19] Section 43 Appeals

Omit “or to the Federal Court or to the Family Court” from section 43 (1).

[20] Section 43 (2) and (3)

Omit the subsections.

[21] Section 43 (4)

Omit “to the Federal Court, to the Family Court,”.

[22] Section 43 (5)

Omit “or to the Family Court”.

[23] Section 43 (6)

Omit “to the Federal Court,”.

[24] Section 44 Transfer of proceedings

Omit section 44 (1). Insert instead:

- (1) This section applies to the following:
 - (a) a proceeding with respect to a civil matter arising under the *Corporations Law* of New South Wales that is in a court having jurisdiction under section 42 (1) or (2),
 - (b) a proceeding with respect to a matter referred to in section 42 (1A) that is in a court having jurisdiction under that subsection or in the Federal Court.

[25] Section 44 (2)

Omit “Where”. Insert instead “Subject to subsections (3), (4) and (5), if”.

[26] Section 44 (3)–(7)

Insert after section 44 (2):

- (3) If a proceeding with respect to a matter referred to in section 42 (1A) is pending in the Supreme Court of a State or the Capital Territory (the *relevant jurisdiction*), the court must transfer the proceeding to the Federal Court unless the matter for determination in it arises out of, or relates to, another proceeding pending in any court of the relevant jurisdiction:
 - (a) that arises, or a substantial part of which arises, under the *Corporations Law* of a State or the Capital Territory, and
 - (b) that is not with respect to a matter referred to in section 42 (1A),regardless of which proceeding was commenced first.
- (4) Even if the Supreme Court of a State or the Capital Territory is not required by subsection (3) to transfer a proceeding with respect to a matter referred to in section 42 (1A) to the Federal

Court, it may nevertheless do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.

- (5) If a proceeding with respect to a matter referred to in section 42 (1A) is pending in the Federal Court, the Federal Court may only transfer the proceeding, or an application in the proceeding, to the Supreme Court of a State or the Capital Territory (the *relevant jurisdiction*) if:
 - (a) the matter arises out of, or relates to, another proceeding pending in any court of the relevant jurisdiction:
 - (i) that arises, or a substantial part of which arises, under the *Corporations Law* of a State or the Capital Territory, and
 - (ii) that is not a proceeding with respect to a matter referred to in section 42 (1A),regardless of which proceeding was commenced first, and
 - (b) the Federal Court considers the transfer to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (6) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (7) The fact that some references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that other references to the interests of justice, in this section or elsewhere in this Act, do not include that matter.

[27] Section 44A Transfer of proceedings by Family Court and State Family Courts

Omit “a court” from section 44A (1).
Insert instead “a State Family Court”.

[28] Section 44A (2) (a)

Omit “in the Federal Court, or”.

[29] Section 44A (2) (b)

Omit “the Federal Court, or”.

[30] Section 44A (2) (c)

Omit the paragraph. Insert instead:

- (c) it is otherwise in the interests of justice that another court of a State or of the Capital Territory determine the proceeding,

[31] Section 44A (2)

Omit “to the Federal Court, or to that other court, as the case may be”.

Insert instead “to that other court”.

[32] Section 44A (3) (a) and (b)

Omit “another court” wherever occurring.

Insert instead “another State Family Court”.

[33] Section 44A (5)

Insert after section 44A (4):

- (5) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

[34] Section 44AA Transfer of proceedings in lower courts

Insert after section 44AA (6):

- (6A) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

[35] Section 45 Conduct of proceedings

Omit paragraphs (a) and (b) from the definition of *relevant jurisdiction* in section 45 (3).

[36] Section 45 (3), definition of “relevant jurisdiction”

Insert after paragraph (d) of the definition:

- , or
- (e) jurisdiction conferred on a court of a State or the Capital Territory with respect to matters referred to in section 42 (1A).

[37] Section 46 Courts to act in aid of each other

Insert “, or in matters referred to in section 42 (1A)” after “New South Wales”.

[38] Section 50 Enforcement of judgments

Omit section 50 (1). Insert instead:

- (1) A judgment of a court of New South Wales that is entirely or partly given in the exercise of jurisdiction conferred by this Division, or by a law of another State that corresponds to this Division, is enforceable in New South Wales as if the judgment had been given by that court entirely in the exercise of the jurisdiction of that court apart from this Division or any such law.

[39] Section 50 (2)

Omit “the Federal Court, the Family Court,” wherever occurring.

[40] Section 52 Rules of the Federal Court

Omit the section.

[41] Section 52A Rules of a State Family Court

Omit section 52A (1).

[42] Section 54 Interpretation

Omit “, and rules of court applied by the Federal Court because of a provision of this Act,” from section 54 (2) (a) (vii).

[43] Section 60 Interpretation of some expressions in the ASIC Law, and the ASIC Regulations, of New South Wales

Insert in alphabetical order in section 60 (1):

Panel proceedings means proceedings before the Panel on:

- (a) an application made to the Panel under the *Corporations Law*, or
- (b) a reference of a decision to the Panel for review under the *Corporations Law*.

[44] Section 60 (1)

Omit the definition of *witness*. Insert instead:

witness means:

- (a) in relation to a hearing before the Commission—a person appearing at the hearing to give evidence, or
- (b) in relation to Panel proceedings—a person appearing in the proceedings to give evidence.

[45] Schedule 2 Savings and transitional provisions (amending Acts)

Insert after the heading to the Schedule:

Part 1

[46] Schedule 2, clause 1 (Interpretation)

Omit “Schedule” where firstly occurring. Insert instead “Part”.

[47] Schedule 2, Part 2

Insert at the end of the Schedule:

Part 2

Federal Courts (Consequential Provisions) Act 2000

5 Application of section 42AA

(1) Section 42AA applies in relation to:

- (a) a decision made on or after the commencement of that section to prosecute a person for an offence, even if the conduct alleged to give rise to the offence occurred before that commencement, or
- (b) a related criminal justice process decision made on or after the commencement of that section in relation to an offence, even if either or both of the following apply:
 - (i) the conduct alleged to give rise to the offence occurred before that commencement,
 - (ii) the prosecution of the offence, or an appeal arising out of the prosecution, was commenced before that commencement.

(2) Section 42AA also applies in relation to:

- (a) a decision made before the commencement of that section to prosecute a person for an offence, even if that decision is the subject of an application that is before a court at that commencement, or
- (b) a related criminal process decision made before the commencement of that section in relation to an offence, even if either or both of the following apply:
 - (i) the decision is the subject of an application that is before a court at that commencement,
 - (ii) the prosecution of the offence, or an appeal arising out of that prosecution, was commenced before that commencement.

1.5 Gas Pipelines Access (New South Wales) Act 1998 No 41

[1] Section 9 Interpretation of some expressions in Gas Pipelines Access (New South Wales) Law and Gas Pipelines Access (New South Wales) Regulations

Omit “or the Federal Court” from the definition of *the Court* in section 9 (1).

[2] Part 3, Divisions 2 (Federal Court) and 3 (Administrative decisions)

Omit the Divisions.

[3] Section 21 Actions in relation to cross-boundary pipelines

Omit “the Federal Court, or by” from section 21 (1) (c).

[4] Section 21 (1) (f)

Omit “the Federal Court, or by”.

[5] Section 21 (1A)

Insert after section 21 (1):

(1A) Despite subsection (1), the Supreme Court does not have jurisdiction to make a declaration or order about the validity, or affecting the operation, of a decision of a relevant Minister, relevant Regulator or arbitrator in relation to a cross-boundary distribution pipeline unless this State has been determined to be the scheme participant most closely connected to the pipeline.

1.6 Jurisdiction of Courts (Cross-vesting) Act 1987 No 125

[1] Section 4 Vesting of additional jurisdiction in certain courts

Omit section 4 (1) and (2).

[2] Section 4 (5)

Omit the subsection. Insert instead:

- (5) Subsection (3) or (4) does not:
 - (a) invest a Supreme Court or a State Family Court with, or
 - (b) confer on any such court,
jurisdiction with respect to criminal matters.

[3] Section 5 Transfer of proceedings

Omit section 5 (1) (b) (i) and (iii).

[4] Section 5 (1) (b) (ii) (A)

Omit “this Act and”.

[5] Section 5 (1) (b) (ii)

Omit “or” where lastly occurring.

[6] Section 5 (4) (b) (ii)

Omit the subparagraph. Insert instead:

- (ii) having regard to:
 - (A) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it would have been incapable of being instituted in that court, apart from any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, and
 - (B) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it would have been capable of being instituted in the Supreme Court, apart from any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, and

- (C) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the State and not within the jurisdiction of the first court apart from any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, and
- (D) the interests of justice,
it is more appropriate that the relevant proceeding be determined by the Supreme Court, or

[7] Section 5 (5)

Omit the subsection.

[8] Section 5 (9)

Insert after section 5 (8):

- (9) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

[9] Section 6 Special federal matters

Insert after section 6 (1):

- (1A) However, the court must only transfer so much of the proceeding as is, in the opinion of the court, within the jurisdiction (including the accrued jurisdiction) of the Federal Court, or the court mentioned in subsection (2) (b), as the case may be.

[10] Section 6 (2)

Omit “be transferred, the proceeding”.

Insert instead “or part of a proceeding be transferred, the proceeding or part of the proceeding”.

[11] Section 6A

Insert after section 6:

6A Special federal matters: Commonwealth authorities or officers acting under the laws of States

- (1) This section applies to a proceeding (in this section referred to as the *federal matter proceeding*) if:
- (a) a matter for determination in the proceeding is covered by paragraph (c) or (e) of the definition of *special federal matter* in section 3 (1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth, and
 - (b) the matter for determination in the proceeding involves or relates to the exercise, or purported or proposed exercise, of functions or powers conferred on a Commonwealth authority, or an officer of the Commonwealth, by an enactment (in this subsection referred to as *the State enactment*) referred to in paragraph (ca) or (cb) of the definition of *enactment* in section 3 (1) of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth, and
 - (c) the matter for determination in the proceeding arises out of, or relates to, another proceeding (in this section referred to as the *State matter proceeding*) pending in any court of this State:
 - (i) that arises, or a substantial part of which arises, under the State enactment or a corresponding enactment of another State, and
 - (ii) none of the matters for determination in which are covered by paragraph (c) or (e) of the definition of *special federal matter* in section 3 (1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth,
- regardless of which proceeding was commenced first.
- (2) If:
- (a) the federal matter proceeding is pending in the Federal Court or the Family Court, and

- (b) having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction, the Federal Court or the Family Court considers it appropriate to transfer the proceedings to the Supreme Court,

the Federal Court or the Family Court may transfer the proceeding to the Supreme Court. Section 5 (4) does not apply to the federal matter proceeding.

- (3) If:

- (a) the federal matter proceeding is pending in the Supreme Court, and
- (b) the State matter proceeding is pending in any court of this State,

neither section 5 (1) nor section 6 applies to require the Supreme Court to transfer the federal matter proceeding to the Federal Court or the Family Court. However, the Supreme Court may do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.

- (4) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (5) The fact that references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that references to the interests of justice elsewhere in this Act do not include that matter.
- (6) In this section:

Commonwealth authority means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth.

officer of the Commonwealth has the same meaning as in section 75 (v) of the Commonwealth Constitution.

[12] Section 10 Transfer of matters arising under Division 1 or 1A of Part V of the Trade Practices Act

Omit “the Federal Court, the Family Court,” from section 10 (a).

[13] Section 11 Conduct of proceedings

Omit section 11 (2).

[14] Section 14 Enforcement and effect of judgments

Omit section 14 (1).

1.7 National Crime Authority (State Provisions) Act 1984 No 157

[1] Section 12 Search warrants

Omit section 12 (11) (a).

[2] Section 15 Order for delivery to Authority of passport of witness

Omit the section.

[3] Section 20 Warrant for arrest of witness

Omit “a Judge of the Federal Court sitting in chambers or” from section 20 (1).

[4] Section 20 (1) (a)

Omit “section 15”. Insert instead “section 24 of the Commonwealth Act”.

[5] Section 20 (1)

Omit “the Judge or”.

[6] Section 20 (3)

Omit “before a Judge of the Federal Court or the Supreme Court and the Judge or the Supreme Court may”.

Insert instead “before the Supreme Court, and the Supreme Court may”.

[7] Section 20 (3)

Omit “the Judge or” wherever occurring.

[8] Section 20 (4)

Omit “a Judge of the Federal Court or”.

[9] Section 20 (4)

Omit “a Judge or” wherever occurring.

[10] Section 20 (4)

Omit “the Judge or”.

[11] Section 21 Applications to Federal Court of Australia

Omit section 21 (2)–(5).

[12] Section 21 (6) (b)

Omit “subsection (2)”.

Insert instead “section 32 (2) of the Commonwealth Act (as it has effect because of section 32B of that Act)”.

[13] Section 21 (7)–(11), (13), (14), (16) and (17)

Omit the subsections.

[14] Section 21 (12) (a)

Omit “sub-section (9)”.

Insert instead “section 32 (8A) of the Commonwealth Act (as it has effect because of section 32B of that Act)”.

[15] Section 21 (12) (b)

Omit “subsection (8)”.

Insert instead “section 32 (8) of the Commonwealth Act (as it has effect because of section 32B of that Act)”.

[16] Section 21 (15), definition of “prescribed notice”

Omit “section 22 (2) (c)”.

Insert instead “section 32A (2) (c) of the Commonwealth Act”.

[17] Section 21 (15), paragraph (a) of the definition of “relevant day”

Omit “or”.

[18] Section 21 (15), paragraph (b) of the definition of “relevant day”

Omit the paragraph.

[19] Section 22 Applications to Supreme Court of State

Omit the section.

1.8 Price Exploitation Code (New South Wales) Act 1999 No 55

[1] Section 26 Definition

Insert “(excluding Part IVA)” after “Commonwealth” in paragraph (a) (i) of the definition of *Commonwealth administrative laws*.

[2] Section 30A

Insert after section 30:

30A Construction of references to Part IVA of Commonwealth AAT Act

For the purposes of sections 27 and 28, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* of the Commonwealth (as that provision applies as a law of this jurisdiction) to the whole or any part of Part IVA of that Act is taken to be a reference to the whole or any part of that Part as it has effect as a law of the Commonwealth.