

Federal Courts (State Jurisdiction) Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

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 existing ineffective judgments of a federal court in the purported exercise of State jurisdiction are taken to be 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.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act and its purpose.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

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 as constituted by a single Judge or as 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 judgments 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.

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 repeals section 22 of the *Competition Policy Reform (New South Wales) Act 1995*. That section provides that State courts do not have jurisdiction with respect to matters arising under the Competition Code. That section is repealed because it is intended that State courts will be able to exercise that jurisdiction in the future, following the High Court's decision that State jurisdiction cannot be conferred on federal courts.

Clause 16 empowers the Governor to make regulations in connection with matters arising under the proposed Act. Regulations may be made 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. Regulations may also be made to validate matters arising under or in connection with ineffective judgments.