



New South Wales

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.

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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.

First print



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New South Wales

Federal Courts (State Jurisdiction) Bill 1999

No , 1999

A Bill for

An Act relating to the ineffective conferral of jurisdiction on the Federal Court of Australia and the Family Court of Australia with respect to certain matters.

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act and purpose

- (1) This Act is the *Federal Courts (State Jurisdiction) Act 1999*.
- (2) The purpose of this Act is to provide that certain decisions of the Federal Court of Australia or the Family Court of Australia have effect as decisions of the Supreme Court and to make other provision relating to certain matters relating to the jurisdiction of those courts.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

In this Act:

applied administrative law means a law of the State applying a Commonwealth administrative law as a law of the State.

Commonwealth administrative law means:

- (a) any of the following Acts of the Commonwealth:
 - (i) *Administrative Appeals Tribunal Act 1975*
 - (ii) *Administrative Decisions (Judicial Review) Act 1977*
 - (iii) *Freedom of Information Act 1982*
 - (iv) *Ombudsman Act 1976*
 - (v) *Privacy Act 1988*, or
- (b) any of the regulations in force under any of those Acts.

federal court means the Federal Court of Australia or the Family Court of Australia.

ineffective judgment has the meaning given by section 4.

judgment means a judgment, decree or order, whether final or interlocutory, or a sentence.

liability includes a duty or obligation.

proceeding includes an initiating application.

relevant State Act means any of the following Acts:

- (a) *Agricultural and Veterinary Chemicals (New South Wales) Act 1994* 1 2 3
- (b) *Civil Aviation (Carriers' Liability) Act 1967* 4
- (c) *Competition Policy Reform (New South Wales) Act 1995* 5
- (d) *Corporations (New South Wales) Act 1990* 6
- (e) *Gas Pipelines Access (New South Wales) Act 1998* 7
- (f) *Jurisdiction of Courts (Cross-vesting) Act 1987* 8
- (g) *National Crime Authority (State Provisions) Act 1984* 9
- (h) *Poisons and Therapeutic Goods Act 1966* 10
- (i) a prescribed Act. 11

right includes an interest or status. 12

State matter means a matter: 13

- (a) in which the Supreme Court has jurisdiction otherwise than by reason of a law of the Commonwealth or of another State or a Territory, or 14 15 16
- (b) which has been removed to the Supreme Court under section 8 of the *Jurisdiction of Courts (Cross-vesting) Act 1987*, or 17 18
- (c) in respect of which a relevant State Act purports or purported to confer jurisdiction on a federal court, or 19 20
- (d) arising under or in respect of an applied administrative law. 21

4 Meaning of ineffective judgment 22

- (1) A reference in this Act to an **ineffective judgment** is a reference to a judgment of a federal court in a State matter given or recorded, before the commencement of this section, in the purported exercise of jurisdiction purporting to have been conferred on the federal court by a relevant State Act. 23 24 25 26 27
- (2) If: 28
 - (a) a Full Court of the Federal Court of Australia in its appellate jurisdiction has purported to affirm, reverse or vary an ineffective judgment, or 29 30 31

Clause 4 Federal Courts (State Jurisdiction) Bill 1999

Part 1 Preliminary

(b) a Full Court of the Family Court of Australia has purported to
affirm, reverse or vary an ineffective judgment,

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a reference in this Act to the ineffective judgment is a reference to the
ineffective judgment in the form in which, and to the extent to which,
it purports or purported to have effect from time to time.

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5 Act to bind Crown

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This Act binds the Crown in right of New South Wales and, in so far
as the legislative power of the Parliament of New South Wales permits,
the Crown in all its other capacities.

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Part 2 Rights and liabilities**6 Rights and liabilities declared in certain cases**

The rights and liabilities of all persons are, by force of this Act, declared to be, and always to have been, the same as if:

- (a) each ineffective judgment of:
 - (i) the Federal Court of Australia, otherwise than as a Full Court of the Federal Court of Australia, or
 - (ii) the Family Court of Australia, otherwise than as a Full Court of the Family Court of Australia,

had been a valid judgment of the Supreme Court in a Division constituted by a Judge of the Supreme Court, and

- (b) each ineffective judgment of:
 - (i) a Full Court of the Federal Court of Australia, or
 - (ii) a Full Court of the Family Court of Australia,

had been a valid judgment of the Supreme Court in the Court of Appeal.

7 Effect of declared rights and liabilities

- (1) A right or liability conferred, imposed or affected by section 6:
 - (a) is exercisable or enforceable, and
 - (b) is to be regarded as always having been exercisable or enforceable,

as if it were a right or liability conferred, imposed or affected by a judgment of the Supreme Court.

- (2) Without limiting section 6 or subsection (1) of this section, the rights and liabilities conferred, imposed or affected by section 6 include the right of a person who was a party to the proceeding or purported proceeding in which the ineffective judgment was given or recorded to appeal against that judgment.

- (3) For the purposes of subsection (2), each ineffective judgment of:
 - (a) the Federal Court of Australia, otherwise than as a Full Court of the Federal Court of Australia, or

(b) the Family Court of Australia, otherwise than as a Full Court of
 the Family Court of Australia,
is deemed to be a judgment of the Supreme Court in a Division
constituted by a Judge of the Supreme Court.

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**8 Effect of things done or omitted to be done under or in relation to
rights and liabilities**

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(1) Any act or thing done or omitted to be done before or after the
commencement of this section under or in relation to a right or liability
conferred, imposed or affected by section 6:

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(a) has the same effect, and gives rise to the same consequences,
 for the purposes of any written or other law, and

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(b) is to be regarded as always having had the same effect, and
 given rise to the same consequences, for the purposes of any
 written or other law,

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as if it were done, or omitted to be done, to give effect to, or under the
authority of, or in reliance on, a judgment of the Supreme Court.

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(2) For the purposes of an enforcement law, any act or thing done or
omitted to be done before or after the commencement of this section
gives rise to the same consequences, and is to be regarded as always
having given rise to the same consequences, as if each ineffective
judgment were a valid judgment of the Supreme Court given in or in
relation to the proceeding in or in relation to which the ineffective
judgment was given or recorded.

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(3) In this section:

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enforcement law means a provision of a law (other than a law relating
to contempt of court) that sets out a consequence for a person if the
person:

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(a) contravenes, or

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(b) acts in a specified way while there is in force,

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a judgment, or a particular kind of judgment, given by a court.

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9 Section 6 regarded as having ceased to have effect in certain cases

- (1) If:
- (a) before the commencement of this section, a court gave or recorded an ineffective judgment ("the new judgment") on the basis that an earlier ineffective judgment ("the earlier judgment") was or might be of no effect, and
 - (b) the new judgment replaced the earlier judgment,
- section 6 has no effect in respect of the earlier judgment.
- (2) For the purposes of subsection (1) (b), the new judgment replaced the earlier judgment if the new judgment:
- (a) purportedly conferred or imposed rights or liabilities similar to or different from those purportedly conferred or imposed by the earlier judgment, or
 - (b) purportedly affected rights or liabilities in a way similar to or different from the way in which they were purportedly affected by the earlier judgment.

10 Powers of Supreme Court in relation to declared rights and liabilities

- (1) The Supreme Court may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by section 6 as if it were a right or liability conferred, imposed or affected by the Supreme Court in or in relation to proceedings of the kind in or in relation to which the ineffective judgment was given or recorded.
- (2) In addition to its powers under subsection (1), the Supreme Court also has power to give a judgment achieving any other result that could have been achieved if:
- (a) the ineffective judgment had been a valid judgment of the Supreme Court given in or in relation to proceedings of the kind in or in relation to which the ineffective judgment was given or recorded, and
 - (b) the Supreme Court had been considering whether:
 - (i) to vary, revoke, set aside, revive or suspend that judgment, or
 - (ii) to extend the time for the doing of any thing, or
 - (iii) to grant a stay of proceedings.

- 11 Certain proceedings may be treated as proceedings in Supreme Court** 1
- (1) In this section: 2
- limitation law*** means: 3
- (a) the *Limitation Act 1969*, or 4
- (b) any other law that provides for the limitation of liability or the 5
barring of a right of action in respect of a claim by reference to 6
the time when a proceeding on, or the arbitration of, the claim 7
is commenced. 8
- relevant order*** means: 9
- (a) an order of a federal court, whether made before or after the 10
commencement of this section, dismissing, striking out or 11
staying a proceeding relating to a State matter for want of 12
jurisdiction, or 13
- (b) a declaration by a federal court, whether made before or after 14
the commencement of this section, that it has no jurisdiction to 15
hear and determine a proceeding relating to a State matter, or 16
- (c) any other decision or determination by a federal court, whether 17
made before or after the commencement of this section, that it 18
has no jurisdiction to hear and determine a proceeding relating 19
to a State matter. 20
- (2) A person who was a party to a proceeding in which a relevant order is 21
made may apply to the Supreme Court for an order that the proceeding 22
be treated as a proceeding in the Supreme Court, and the Supreme 23
Court may make such an order. 24
- (3) If the Supreme Court makes an order under subsection (2), the 25
proceeding, despite the relevant order: 26
- (a) becomes, and must be recorded by the Supreme Court as, a 27
proceeding in the Supreme Court, and 28
- (b) for the purposes of any limitation law and for all other 29
purposes, is deemed to have been brought in the Supreme 30
Court on the day on which the proceeding was first recorded as 31
a proceeding in the federal court. 32
- (4) The Supreme Court may make such ancillary orders in relation to an 33
order under subsection (2) as it considers necessary for the purposes of 34
the proceeding being treated as, becoming and being recorded as, a 35
proceeding in the Supreme Court. 36

12 Proceedings for contempt

If, before or after the commencement of this section, a person has:

- (a) interfered with a right conferred or affected by section 6, or
- (b) failed to satisfy or comply with a liability imposed or affected by section 6,

the interference or failure is, and is deemed always to have been, a matter that can be dealt with in the same manner as if the interference or failure had been in relation to a right conferred or affected, or a liability imposed or affected, by an order of the Supreme Court.

13 Evidentiary

A federal court record, or a copy of a federal court record, of an ineffective judgment may be adduced in evidence to show the existence, nature and extent of each right or liability conferred, imposed or affected by section 6.

14 Act not to apply to certain judgments

Nothing in this Act applies to:

- (a) a judgment given or recorded by the Federal Court of Australia that has been declared to be invalid, or has been quashed or overruled, by a Full Court of the Federal Court of Australia before the commencement of this section (otherwise than on the ground that the Court had no jurisdiction), or
- (b) a judgment given or recorded by the Family Court of Australia that has been declared to be invalid, or has been quashed or overruled, by a Full Court of the Family Court of Australia before the commencement of this section (otherwise than on the ground that the Court had no jurisdiction).

Part 3 General

15 Amendment of Competition Policy Reform (New South Wales) Act 1995 No 8

The *Competition Policy Reform (New South Wales) Act 1995* is amended by omitting section 22.

16 Regulations

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for or with respect to enabling jurisdiction conferred by or under a relevant State Act or by or under laws applied by the Act or referred to in the Act to be exercised by a court of the State, or confirming that such jurisdiction is exercisable by a court of the State, including (without limitation) provisions for or with respect to:
 - (a) conferring jurisdiction on courts of the State, and
 - (b) the construction of references in the Act or in laws applied by the Act to Commonwealth authorities and officers, and
 - (c) disapplying provisions of the Act or of laws applied by the Act, including provisions that contemplate the administration or enforcement of laws as if they were Commonwealth laws or that contemplate offences and other matters as being offences against and matters under Commonwealth laws, and
 - (d) the treatment of offences arising under the Act or under laws applied by the Act (including the specification of penalties), and
 - (e) prescribing modifications of the Act or of laws applied by the Act, and
 - (f) associated, procedural and consequential matters.
- (3) Without limiting subsection (1), the regulations may make provision for or with respect to the validation of:
 - (a) matters arising from or ancillary to ineffective judgments, and
 - (b) things done or omitted to be done under or in relation to ineffective judgments.

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- (4) Without limiting subsection (3), a reference to an ineffective judgment in that subsection includes a reference to the rights and liabilities conferred, imposed or affected by section 6 in relation to that judgment. That subsection extends to matters arising, and things done or omitted to be done, before the commencement of the regulation concerned.

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