

LEGISLATIVE ASSEMBLY

Justice Legislation Amendment Bill (No 3) 2018

First print

Proposed amendments

No. 1 **Federal proceedings in Civil and Administrative Tribunal**

Page 9, Schedule 1.6. Insert after line 22:

[1] Part 3A, heading

Omit “Diversity”. Insert instead “Federal”.

[2] Section 34A Definitions

Omit the definition of *federal diversity jurisdiction*. Insert instead:

federal jurisdiction means jurisdiction of a kind referred to in section 75 or 76 of the Commonwealth Constitution.

[3] Section 34B Applications or appeals involving federal jurisdiction may be made to authorised court

Omit section 34B (2) (b). Insert instead:

- (b) the determination of the application or appeal by the Tribunal would involve an exercise of federal jurisdiction, and

[4] Section 34C Proceedings after leave granted

Omit “diversity” from section 34C (3).

No. 2 **Federal proceedings in Civil and Administrative Tribunal**

Page 9, Schedule 1.6. Insert after line 27:

In *Burns v Corbett* [2018] HCA 15, the High Court decided that the Civil and Administrative Tribunal could not exercise jurisdiction of the kind referred to in section 75 or 76 of the Commonwealth Constitution (commonly called *federal jurisdiction*) because only courts could exercise federal jurisdiction. It was common ground between the parties in that case that the Tribunal was not a court of the State, so the High Court was not required to decide the issue.

An Appeal Panel of the Tribunal decided in *Johnson v Dibbin; Gatsby v Gatsby* [2018] NSWCATAP 45 that the Tribunal was a court of the State and could, as a result, exercise federal jurisdiction. However, the Court of Appeal decided in *Attorney General for New South Wales v Gatsby* [2018] NSWCA 254 that the Tribunal was not a court of the State for this purpose.

Items [2]–[4] of the proposed amendments extend the current provisions of Part 3A of the *Civil and Administrative Tribunal Act 2013* to enable certain persons to commence proceedings in the District Court or Local Court for the determination of original applications and external appeals that the Civil and Administrative Tribunal cannot determine because they involve the exercise of federal jurisdiction. Currently, Part 3A is limited to exercises of federal diversity jurisdiction (that is, jurisdiction referred to in section 75 (iv) of the Commonwealth Constitution). Item [1] makes a consequential amendment.

No. 3

Federal proceedings in Civil and Administrative Tribunal

Page 9, Schedule 1.6, line 28. Omit “The proposed amendment”. Insert instead “Item [5]”.