

FEDERAL COURTS (STATE JURISDICTION) BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill:

- (i) Provides that existing ineffective judgments of federal courts given in the purported exercise of State jurisdiction are taken to be judgments of the Supreme Court;
- (ii) Provides for the transfer of current proceedings before a federal court in relation to State matters to the Supreme Court; and
- (iii) Enables State courts to deal with matters that arise under applied law schemes and that would otherwise have been dealt with by a federal court.

Reasons for the objectives and how they will be achieved

The legislation is a response to the High Court decision of 17 June 1999 in four cases—Re Wakim, Ex.P. McNally and Anor; Re Wakim Ex.P. Darvall; Re Brown and Ors Ex.P. Amann and Anor and Spinks and Ors v. Prentice—which involved the constitutional validity of the general cross-vesting scheme and the corporations law cross-vesting scheme.

By a majority of six-to-one the High Court held that State Parliaments were unable to confer State jurisdiction on federal courts (the Federal Court of Australia and the Family Court of Australia) and that the Commonwealth Parliament could neither confer nor consent to the conferral of State jurisdiction on federal courts.

The decision has implications not only for the general and corporations law cross-vesting schemes but also for certain 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 decision necessitates the enactment of legislation which ensures the validity of existing judgments and provides for the transfer of pending proceedings in which the federal courts lack jurisdiction.

The Bill achieves its objectives by declaring that the rights and liabilities of a person under a current judgment of the Federal Court or Family Court, including current judgments of the Full Court of the Federal Court or the Full Court of the Family Court of Australia, in the purported exercise of State jurisdiction are the same as if it had been a valid judgment given by the Supreme Court.

The Bill also provides that such rights and liabilities are exercisable and enforceable as if they were rights and liabilities under judgments of the Supreme Court. Any acts or omissions in relation to such rights and liabilities are also taken to have the same effect and consequences as if occurring under a judgment of the Supreme Court.

The Supreme Court is given power to vary or otherwise deal with any such rights and liabilities.

The Bill also provides a mechanism for the transfer to the Supreme Court of current proceedings in federal courts relating to State matters where a federal court determines it has no jurisdiction to determine State matters.

Administrative cost to Government of implementation

It is not possible to quantify with any precision the financial implications for Government.

Fundamental legislative principles

The Bill raises two issues regarding consistency with fundamental legislative principles contained in section 4 of the *Legislative Standards Act 1992*. Section 4 requires that legislation has sufficient regard to:

1. Rights and liberties of individuals; and
2. The institution of Parliament.

With respect to the rights and liberties of individuals, the Bill essentially validates ineffective judgments of the federal courts by giving them the same legal effect that they would have had had they been given by the Supreme Court.

The Bill achieves this by declaring that the rights and liabilities under a current judgment of the Federal Court or Family Court, including current judgments of the Full Court of the Federal Court or the Full Court of the Family Court in the purported exercise of State jurisdiction to be the same as if it had been a valid judgment of the Supreme Court. The Bill also provides that those rights and liabilities are exercisable and enforceable as if they had been conferred under a Supreme Court judgment and that any acts or omissions in relation to such rights and liabilities are taken to have the same effect and consequences as if they were done under a Supreme Court judgment.

Accordingly, the Bill will adversely affect the rights and liabilities and impose obligations retrospectively on some parties to the proceedings which resulted in the ineffective judgments.

This is a remedial measure which is necessary in the interests of justice. The general cross-vesting scheme has been operating for ten years and the Bill is necessary to overcome the serious consequences that would otherwise flow from the High Court determination that the exercise by the Federal and Family Courts of jurisdiction conferred by State Acts was invalid.

With respect to the institution of Parliament, the Bill includes a definition of “relevant State Act” which includes “an Act prescribed under a regulation” (Clause 3).

Although this has the appearance of a “Henry VIII Clause”, in substance it is not. The Bill does not effectively remove the exercise of delegated legislative power from the scrutiny of the Legislative Assembly and cannot be regarded as an infringement of fundamental legislative principles.

The purpose of defining a “relevant State Act” is for reference in Clause 4 (Meaning of “ineffective judgment”).

The objective of the Bill is to validate all “ineffective judgments” which have already been given by federal courts in the purported exercise of jurisdiction conferred by a State Act. The “relevant State Acts” in Clause 3 are those that have been identified as providing for the conferral of State jurisdiction on federal courts. The inclusion of “an Act prescribed by regulation” is to cover the possibility that there may be additional State legislation which has this effect but has not yet been identified.

The scope of the Bill is already circumscribed by the language of Clause 4. The meaning of an “ineffective judgment”, which is pivotal to the operation of the Bill, cannot be amended or expanded by subordinate legislation. It can only mean a judgment of a federal court in a State matter which has been given or recorded in the purported exercise of jurisdiction purporting to have been conferred on the federal court by State legislation.

The Parliament, in its scrutiny of the Bill, is fully apprised of the parameters of its operation.

Consultation

A draft Federal Courts (State Jurisdiction) Bill which was prepared through the Standing Committee of Attorneys-General, in conjunction with the Special Committee of Solicitors-General and the Parliamentary Counsel’s Committee was publicly released in Victoria on 20 June 1999. It has been available for viewing on the Internet since that date.

The Chief Justice of the Supreme Court of Queensland and Chief Judge of the District Courts were kept informed during the drafting of the model legislation.

All government departments were consulted in relation to the impact of the High Court decision.

There has been consultation on the specific provisions of the Bill with the following agencies:

1. Department of Mines and Energy
2. Department of Transport
3. Department of Treasury
4. Department of Primary Industries
5. Queensland Police Service

NOTES ON PROVISIONS

Part 1—Preliminary

Clause 1 sets out the short title of the Act.

Clause 2 sets out the purpose of the Act.

Clause 3 defines certain words and expressions used in the 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 Act binds all persons, including the State, and to the extent that the legislative power of the Parliament permits, the Commonwealth and other States.

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 Full Court or 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 a Supreme Court judgment.

Clause 8 specifically provides that any act or omission done under or in relation to such rights and liabilities has the same effect and consequences as if they were done under or in relation to rights and liabilities under a Supreme Court judgment.

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 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 the Governor-in-Council may make regulations under the Act.

Clauses 16 and 17 repeal section 22 of the *Competition Policy Reform (Queensland) 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.