

Queensland



FEDERAL COURTS (STATE JURISDICTION) BILL 1999

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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
about certain matters**

The Parliament of Queensland enacts—

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PART 1—PRELIMINARY

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Short title

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1. This Act may be cited as the *Federal Courts (State Jurisdiction) Act 1999*.

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Purpose

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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.

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Definitions

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3. In this Act—

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

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“Commonwealth administrative law” means—

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(a) any of the following Acts of the Commonwealth—

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(i) *Administrative Appeals Tribunal Act 1975*;

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(ii) *Administrative Decisions (Judicial Review) Act 1977*;

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(iii) *Freedom of Information Act 1982*;

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(iv) *Ombudsman Act 1976*;

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(v) *Privacy Act 1988*; or

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(b) any of the regulations in force under any of those Acts.

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

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“ineffective judgment” has the meaning given by section 4.	1
“judgment” means a judgment, decree or order, whether final or interlocutory, or a sentence.	2 3
“liability” includes a duty or obligation.	4
“proceeding” includes an initiating application.	5
“relevant State Act” means any of the following Acts—	6
(a) <i>Agricultural and Veterinary Chemicals (Queensland) Act 1994</i> ;	7
(b) <i>Civil Aviation (Carriers’ Liability) Act 1964</i> ;	8
(c) <i>Competition Policy Reform (Queensland) Act 1996</i> ;	9
(d) <i>Corporations (Queensland) Act 1990</i> ;	10
(e) <i>Gas Pipelines Access (Queensland) Act 1998</i> ;	11
(f) <i>Jurisdiction of Courts (Cross-vesting) Act 1987</i> ;	12
(g) <i>National Crime Authority (State Provisions) Act 1985</i> ;	13
(h) an Act prescribed under a regulation.	14
“right” includes an interest or status.	15
“State matter” means a matter—	16
(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	17 18 19
(b) that has been removed to the Supreme Court under the <i>Jurisdiction of Courts (Cross-vesting) Act 1987</i> , section 8; ¹ or	20 21
(c) in respect of which a relevant State Act purports or purported to confer jurisdiction on a federal court; or	22 23
(d) arising under or in respect of an applied administrative law.	24

¹ *Jurisdiction of Courts (Cross-vesting) Act 1987*, section 8 (Orders by Supreme Court)

Meaning of “ineffective judgment”

4.(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.

(2) If—

(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

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

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.

Act binds all persons

5. This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

PART 2—RIGHTS AND LIABILITIES**Rights and liabilities declared in certain cases**

6. 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 constituted by a single Supreme Court judge, or in the case of an ineffective judgment given or recorded on or after 14 December 1991, of the Trial Division 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 Full Court of the Supreme Court or, in the case of an ineffective judgment given or recorded on or after 14 December 1991, of the Court of Appeal.

Effect of declared rights and liabilities

7.(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 subsection (1) or section 6, 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 constituted by a single Supreme Court judge, or in the case of an ineffective judgment given or recorded on or after 14 December 1991, of the Trial Division of the Supreme Court.

Effect of things done or omitted to be done under or in relation to rights and liabilities 1
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8.(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— 3
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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 6
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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 purpose of any written or other law, 8
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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. 11
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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. 13
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(3) In this section— 19

“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— 20
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(a) contravenes; or 23

(b) acts in a specified way while there is in force, 24

a judgment, or a particular kind of judgment, given by a court. 25

Section 6 regarded as having ceased to have effect in certain cases 26

9.(1) If— 27

(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 28
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- (b) the new judgment replaced the earlier judgment, 1
 section 6 has no effect in respect of the earlier judgment. 2
- (2) For the purposes of subsection (1)(b), the new judgment replaced the 3
 earlier judgment if the new judgment— 4
- (a) purportedly conferred or imposed rights or liabilities similar to or 5
 different from those purportedly conferred or imposed by the 6
 earlier judgment; or 7
- (b) purportedly affected rights or liabilities in a way similar to or 8
 different from the way in which they were purportedly affected by 9
 the earlier judgment. 10
- Powers of Supreme Court in relation to declared rights and liabilities** 11
- 10.(1)** The Supreme Court may vary, revoke, set aside, revive or suspend 12
 a right or liability conferred, imposed or affected by section 6 as if it were a 13
 right or liability conferred, imposed or affected by the Supreme Court in or 14
 in relation to proceedings of the kind in or in relation to which the ineffective 15
 judgment was given or recorded. 16
- (2) In addition to its powers under subsection (1), the Supreme Court 17
 also has power to give a judgment achieving any other result that could have 18
 been achieved if— 19
- (a) the ineffective judgment had been a valid judgment of the 20
 Supreme Court given in or in relation to proceedings of the kind 21
 in or in relation to which the ineffective judgment was given or 22
 recorded; and 23
- (b) the Supreme Court had been considering whether— 24
- (i) to vary, revoke, set aside, revive or suspend that judgment; 25
 or 26
- (ii) to extend the time for the doing of any thing; or 27
- (iii) to grant a stay of proceedings. 28

Certain proceedings may be treated as proceedings in the Supreme Court	1 2
11.(1) In this section—	3
“limitation law” means—	4
(a) the <i>Limitation of Actions Act 1974</i> ; or	5
(b) any other law that provides for the limitation of liability or the barring of a right of action in respect of a claim by reference to the time when a proceeding on, or the arbitration of, the claim is commenced.	6 7 8 9
“relevant order” means—	10
(a) an order of a federal court, whether made before or after the commencement of this section, dismissing, striking out or staying a proceeding relating to a State matter for want of jurisdiction; or	11 12 13
(b) a declaration by a federal court, whether made before or after the commencement of this section, that it has no jurisdiction to hear and determine a proceeding relating to a State matter; or	14 15 16
(c) any other decision or determination by a federal court, whether made before or after the commencement of this section, that it has no jurisdiction to hear and determine a proceeding relating to a State matter.	17 18 19 20
(2) A person who was a party to a proceeding in which a relevant order is made may apply to the Supreme Court for an order that the proceeding be treated as a proceeding in the Supreme Court, and the Supreme Court may make such an order.	21 22 23 24
(3) If the Supreme Court makes an order under subsection (2), the proceeding, despite the relevant order—	25 26
(a) becomes, and must be recorded by the Supreme Court as, a proceeding in the Supreme Court; and	27 28
(b) for the purposes of any limitation law and for all other purposes, is deemed to have been brought in the Supreme Court on the day on which the proceeding was first recorded as a proceeding in the federal court.	29 30 31 32

(4) The Supreme Court may make such ancillary orders in relation to an order under subsection (2) as it considers necessary for the purposes of the proceeding being treated as, becoming and being recorded as, a proceeding in the Supreme Court.

Proceedings for contempt

12. 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.

Evidentiary

13. 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.

Act not to apply to certain judgments

14. 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).

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15. The Governor in Council may make regulations under this Act.	3
PART 4—CONSEQUENTIAL AMENDMENT	4
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16. This part amends the <i>Competition Policy Reform (Queensland) Act 1996</i> .	6 7
Omission of s 22 (Jurisdiction of courts of this jurisdiction)	8
17. Section 22—	9
<i>omit.</i>	10