

2001

THE LEGISLATIVE ASSEMBLY  
FOR THE AUSTRALIAN CAPITAL TERRITORY

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(As presented)

(Attorney-General)

## Jurisdiction of Courts Legislation Amendment Bill 2001

### Contents

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		Page
1	Name of Act	2
2	Commencement	2
3	Acts amended	2
<b>Schedule 1</b>	<b>Acts amended</b>	<b>3</b>
<b>Part 1</b>	<b>Competition Policy Reform Act 1996</b>	<b>3</b>
<b>Part 2</b>	<b>Gas Pipelines Access Act 1998</b>	<b>6</b>
<b>Part 3</b>	<b>Jurisdiction of Courts (Cross-vesting) Act 1993</b>	<b>8</b>
<b>Part 4</b>	<b>National Crime Authority (Territory Provisions) Act 1991</b>	<b>12</b>

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## **Jurisdiction of Courts Legislation Amendment Bill 2001**

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### **A Bill for**

An Act to amend the law relating to the jurisdiction of courts and for other purposes

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The Legislative Assembly for the Australian Capital Territory enacts as follows:

**1 Name of Act**

This Act is the *Jurisdiction of Courts Legislation Amendment Act 2001*.

5 **2 Commencement**

This Act commences on the day it is notified in the Gazette.

**3 Acts amended**

This Act amends the Acts mentioned in Schedule 1.

## Schedule 1      Acts amended

(see s 3)

### Part 1      Competition Policy Reform Act 1996

#### [1.1] Sections 1 and 2

*substitute*

#### 1      Name of Act

This Act is the *Competition Policy Reform Act 1996*.

#### 2      Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1*    The dictionary at the end of this Act defines certain words and expressions used in this Act and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*officer*, for the Commonwealth—see the Trade Practices Act, section 150A.' means that the expression '*officer*' is defined in that section and the definition applies to this Act.

*Note 2*    A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

#### [1.2] Section 3 (1), definitions of modifications and officer

*omit*

#### [1.3] Section 3 (1)

*relocate the remaining definitions to the dictionary*

**[1.4] Section 3**

*omit the remainder, substitute*

**3 Words and expressions defined in Trade Practices Act**

A word or expression defined in the Trade Practices Act has the same meaning in this Act.

**[1.5] Section 29, definition of Commonwealth administrative laws, paragraph (a) (i) to (v)**

*substitute*

- (i) the *Administrative Appeals Tribunal Act 1975* (Cwlth), other than part IVA (Appeals and references of questions of law to the Federal Court of Australia);
- (ii) the *Freedom of Information Act 1982* (Cwlth);
- (iii) the *Ombudsman Act 1976* (Cwlth);
- (iv) the *Privacy Act 1988* (Cwlth); and

**[1.6] New section 33A**

*insert*

**33A Construction of references to Part IVA of Administrative Appeals Tribunal Act (Cwlth)**

For sections 30 and 31, a reference in a provision of the *Administrative Appeals Tribunal Act 1975* (Cwlth) (as that provision applies as a law of this jurisdiction) to part IVA (Appeals and references of questions of law to the Federal Court of Australia) of that Act, or any provision of that part, is a reference to the part or provision of that part as it has effect as a law of the Commonwealth.

**[1.7] Sections 42 to 45**

*omit*

**[1.8] New dictionary**

*insert*

**Dictionary**

5 (See s 2)

*officer*, of the Commonwealth—see the Trade Practices Act, section 150A.

## Part 2                      Gas Pipelines Access Act 1998

### [1.9] Sections 1 and 2

5                      *substitute*

#### 1                      Name of Act

This Act is the *Gas Pipelines Access Act 1998*.

#### 2                      Dictionary

The dictionary at the end of this Act is part of this Act.

10                      *Note 1*    The dictionary at the end of this Act defines certain words and  
expressions used in this Act.

*Note 2*    A definition in the dictionary applies to the entire Act unless the  
definition, or another provision of the Act, provides otherwise or the  
contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F  
15                      and s 11G).

### [1.10] Section 3 (1)

*relocate the definitions to the dictionary*

### [1.11] Section 3

*omit the remainder, substitute*

#### 20                      3                      Words and expressions used in Gas Pipelines Access (A.C.T.) Law

A word or expression used in the *Gas Pipelines Access (A.C.T.) Law*  
has the same meaning in this Act.

### [1.12] Sections 17 and 18

25                      *omit*



**[1.13] Section 20 (1) (c)**

*omit*

by the Federal Court, or

**[1.14] Section 20 (1) (e)**

5 *insert at the end*

or

**[1.15] Section 20 (1) (f)**

*omit*

**[1.16] Section 20 (1) (g)**

10 *renumber as section 20 (1) (f)*

**[1.17] Section 20 (2) and (3)**

*renumber as section 20 (3) and (4)*

**[1.18] New section 20 (2)**

*insert*

- 15 (2) However, the Supreme Court does not have jurisdiction to make a  
declaration or order about the validity, or affecting the operation, of  
a decision of a relevant Minister, relevant Regulator or arbitrator in  
relation to a cross-boundary pipeline that is a distribution pipeline  
20 unless the Territory has been determined to be the scheme  
participant most closely connected to the pipeline.

**[1.19] New dictionary**

*insert*

## Dictionary

(See s 2)

## Part 3 Jurisdiction of Courts (Cross-vesting) Act 1993

### [1.20] Sections 1 and 2

5 *substitute*

#### 1 Name of Act

This Act is the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

#### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

10 *Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

15 For example, the signpost definition '*special federal matter*—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).' means that the expression 'special federal matter' is defined in that subsection and the definition applies to this Act.

20 *Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

### [1.21] Section 3 (1), definition of special federal matter

*omit*

### [1.22] Section 3 (1)

25 *relocate the remaining definitions to the dictionary*

### [1.23] Section 3

*omit*

**[1.24] New section 3**

*insert*

**3 Reference to Supreme Court of State**

A reference in this Act, other than a reference in section 4 (3), to the Supreme Court of a State includes, if there is a State Family Court of that State, a reference to that State Family Court.

**[1.25] Section 6, heading**

*substitute*

**6 Special federal matters—general rules**

**[1.26] New section 6A**

*insert*

**6A Special federal matters—Commonwealth authorities or officers acting under Territory laws**

(1) This section applies to a proceeding (the *federal matter proceeding*) if—

- (a) a matter for determination in the proceeding is covered by the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1), definition of *special federal matter*, paragraph (c) or (e); and

*Note* Paragraph (c) of that definition is about matters arising under the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth), and paragraph (e) of that definition is about matters that are within the original jurisdiction of the Federal Court under the *Judiciary Act 1903* (Cwlth), s 39B.

- (b) the matter for determination in the proceeding involves or relates to the exercise, or purported or proposed exercise, of functions or powers given to a Commonwealth authority, or officer of the Commonwealth, by an enactment (the *ACT enactment*) mentioned in the *Administrative Decisions*

- (*Judicial Review*) Act 1977 (Cwlth), section 3 (1), definition of **enactment**, paragraph (ca) or (cb); and
- 5      (c) the matter for determination in the proceeding arises out of, or relates to, another proceeding (the **ACT matter proceeding**) pending in any ACT court, if the ACT matter proceeding—
- (i) arises, or a substantial part of it arises, under the ACT enactment or a corresponding enactment of another State; and
- 10          (ii) does not involve a matter for determination covered by the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1), definition of **special federal matter**, paragraph (c) or (e);
- regardless of which proceeding was begun first.
- (2) If—
- 15      (a) the federal matter proceeding is pending in the Federal Court or Family Court; and
- (b) having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction, the Federal Court or Family Court considers it
- 20      appropriate to transfer the proceeding to the Supreme Court;
- the Federal Court or Family Court may transfer the proceeding to the Supreme Court.
- (3) Section 5 (4) does not apply to a federal matter proceeding mentioned in subsection (2).
- 25      (4) If—
- (a) the federal matter proceeding is pending in the Supreme Court; and
- (b) the ACT matter proceeding is pending in any ACT court;

section 5 (1) and section 6 do not require the Supreme Court to transfer the federal matter proceeding to the Federal Court or Family Court.

- 5 (5) However, the Supreme Court may transfer the federal matter proceeding mentioned in subsection (4) if it considers it appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (6) This section does not give a court jurisdiction that it would not otherwise have.
- 10 (7) The fact that references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that references to the interests of justice elsewhere in this Act do not include that matter.
- (8) In this section:
- 15 *Commonwealth authority* means an authority or other body (whether incorporated or not) that is established under a Commonwealth Act.
- officer of the Commonwealth*—see the Commonwealth Constitution, section 75 (v).

20 **[1.27] New dictionary**

*insert*

## Dictionary

(See s 2)

- 25 *special federal matter*—see the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cwlth), section 3 (1).

## Part 4 National Crime Authority (Territory Provisions) Act 1991

### [1.28] Section 1

5 *substitute*

#### 1 Name of Act

This Act is the *National Crime Authority (Territory Provisions) Act 1991*.

### [1.29] Section 3 (1), definition of special investigation

10 *omit*

### [1.30] Section 3 (1)

*relocate the remaining definitions to the dictionary*

### [1.31] Section 3

*omit the remainder, substitute*

#### 15 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain words and expressions used in this Act.

20 *Note 2* A definition in the dictionary applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see *Interpretation Act 1967*, s 11F and s 11G).

**[1.32] New sections 4 and 4A**

*insert*

**4 Words and expressions used in Commonwealth Act**

A word or expression used in the Commonwealth Act has the same meaning in this Act.

**4A Meaning of *relevant offence***

(1) An offence that is not a relevant offence as defined in the Commonwealth Act, section 4 (1) is taken to be a relevant offence for this Act if the authority suspects that the offence may be connected with activity involving the commission of a relevant offence (whether or not the authority has identified the nature of the relevant offence).

(2) An offence mentioned in subsection (1) is taken to be a relevant offence only for as long as the authority holds the suspicion.

**[1.33] Section 6, heading**

*omit*

**Performance**

*substitute*

**Exercise**

**[1.34] Section 6 (3)**

*omit*

performing

*substitute*

exercising

**[1.35] Section 6 (4) and (5)**

*omit*

performance

*substitute*

5      exercise

**[1.36] Section 6 (7)**

*omit*

performing

*substitute*

10      exercising

**[1.37] Section 6 (7)**

*omit*

performance

*substitute*

15      exercise

**[1.38] Section (7) (b)**

*omit*

performed or

**[1.39] Section (7) (b)**

20      *omit*

performance or



**[1.40] Section 7**

*omit*

shall perform the function

*substitute*

5 must exercise the function

**[1.41] Section 7**

*omit*

performance or

**[1.42] Section 7**

10 *omit*

performance of the function or exercise of the power

*substitute*

exercise of the function or power

**[1.43] Section 9 (1) and (2)**

15 *omit*

performing

*substitute*

exercising

**[1.44] Section 10**

20 *omit*

**[1.45] Section 15 (19)**

*substitute*

(19) A person must not be present at a hearing in contravention of subsection (12).

5      Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(20) A person must not make a publication in contravention of a direction given under subsection (14).

10      Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.46] Section 17 (3)**

*substitute*

(3) A person must not, without reasonable excuse, fail to comply with a notice served under this section on the person.

15      Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.47] Section 17 (4)**

*omit*

, inclusive,

20      **[1.48] Section 17B (1) and (3), penalty**

*substitute*

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

25      **[1.49] Section 18 (2) (a), (b) and (c), (4) (a) and (b), (5) (a) and (b), (7) (a) and (b), (9) (a) and (b) and (11) (a) and (b)**

*omit*

refuse or

**[1.50] Section 18 (13)**

*substitute*

- (13) A person who contravenes subsection (1), (2) or (3) commits an offence.

5       Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.51] Section 20**

*substitute*

**20     Claim of entitlement to refuse to answer question or  
10     produce document**

- (1) If a person claims—

(a) to be entitled to refuse to answer a question put to the person,  
or to produce a document that the person was required to  
produce, at a hearing before the authority; or

15       (b) to be entitled to refuse to produce a document that the person is  
required to produce by a notice under section 17;

the authority must decide, as soon as practicable, whether in its  
opinion the claim is justified and tell the person of its decision.

20       *Note*     See the Commonwealth Act, s 32 (as modified by s 32B) and s 32A (as  
modified by s 32C), which provide for applications to the Federal Court  
in relation to requirements to answer questions and produce documents.

- (2) A prosecution for an offence against section 17 (3) or 18 (13) must  
not be begun for a failure by a person to answer a question until—

25       (a) if the person has claimed to be entitled to refuse to answer the  
question, and the authority decides under subsection (1) that, in  
its opinion, the claim is not justified—the end of 5 days  
(excluding days when the registry of the Federal Court is  
closed) immediately after the relevant day for the decision; or

- 5 (b) if the person has made an application under the Commonwealth Act, section 32 (2) (as it has effect because of section 32B of that Act) to the Federal Court for an order of review for a decision by the authority that, in its opinion, a claim by the person to be entitled to refuse to answer the question is not justified—the application, and any appeal from an order made by the Federal Court on the application, have been decided or otherwise disposed of.
- 10 (3) A prosecution for an offence against section 17 (3) or 18 (13) must not be begun for a failure by a person to produce a document until—
- 15 (a) if the person has claimed to be entitled to refuse to produce the document, and the authority decides under subsection (1) that, in its opinion, the claim is not justified—the end of 5 days (excluding days when the registry of the Federal Court is closed) immediately after the relevant day for the decision; or
- 20 (b) if the person has made an application under the Commonwealth Act, section 32 (2) (as it has effect because of section 32B of that Act) to the Federal Court for an order of review for a decision by the authority that, in its opinion, a claim by the person to be entitled to refuse to produce the document is not justified—the application and any appeal from an order made by the Federal Court on the application, have been decided or otherwise disposed of; or
- 25 (c) if the person has given the authority a notice about the document in accordance with the Commonwealth Act, section 32 (8A) (as it has effect because of section 32B of that Act)—the end of 5 days (excluding days when the registry of the Federal Court is closed) immediately after the relevant day for the notice; or
- 30 (d) if the person has made an application about the document under the Commonwealth Act, section 32 (8) (as it has effect because of section 32B of that Act)—the application, and any appeal from an order made by the Federal Court on the application, have been decided or otherwise disposed of.

(4) In this section:

*document* includes a thing.

*prescribed notice* means a notice stating as mentioned in the Commonwealth Act, section 32A (2) (c) (as it has effect because of section 32C of that Act).

*relevant day* means—

(a) for a decision of the authority under subsection (1)—the day when the authority gives to the person to whom the decision relates a prescribed notice about the decision; and

(b) for a notice given by a person under the Commonwealth Act, section 32 (8A) (as it has effect because of section 32B of that Act)—the day when the authority gives to the person a prescribed notice about the notice given by the person.

**[1.52] Section 21**

*omit*

**[1.53] Section 22, penalty**

*substitute*

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.54] Section 24**

*substitute*

**24 Contempt of authority**

(1) A person must not obstruct or hinder the authority or a member in the exercise of the special functions of the authority.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

(2) A person must not disrupt a hearing before the authority.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.55] Section 28 (1)**

5

*omit*

performance of functions, or the exercise of powers

*substitute*

exercise of functions or powers

**[1.56] Section 29 (2)**

10

*substitute*

(2) A person to whom this section applies must not, except for a relevant Act—

(a) make a record of information; or

(b) divulge or communicate information to anyone;

15

if the information was acquired by the person in the exercise of the person's duties under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

**[1.57] Section 29 (3)**

20

*omit*

performance

*substitute*

exercise

**[1.58] Section 29 (4), definition of member of the staff of the Authority**

*omit*

performs

5      *substitute*

exercises

**[1.59] Section 29 (4), definition of member of the staff of the Authority**

*omit*

10      performance

*substitute*

exercise

**[1.60] Section 29 (4), definition of produce**

*substitute*

15      *produce* includes permit access to.

**[1.61] New dictionary**

*insert*

## Dictionary

(See s 2)

20      *special investigation* means an investigation that the authority is conducting in the exercise of its special functions.

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## Endnote

### Penalty units

The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

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