

1993
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Jurisdiction of Courts (Cross-vesting) Bill
1993**

**A BILL
FOR
An Act to make provision for the cross-vesting of
certain jurisdiction**

PREAMBLE

1. Inconvenience and expense have occasionally been caused to litigants by jurisdictional limitations in federal, State and Territory courts.
2. It is desirable—
 - (a) to establish a system of cross-vesting of jurisdiction between those courts without detracting from the existing jurisdiction of any court;
 - (b) to structure the system in such a way as to ensure as far as practicable that proceedings concerning matters which, apart from this Act and any law of the Commonwealth or another State or Territory relating to cross-vesting of jurisdiction, would be entirely or substantially within the jurisdiction (other than any accrued jurisdiction) of the Federal Court or the Family Court or the

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jurisdiction of a Supreme Court of a State or Territory are instituted and determined in that court, whilst providing for the determination by one court of federal, State and Territory matters in appropriate cases; and

- (c) if a proceeding is instituted in a court that is not the appropriate court, to provide a system under which the proceeding will be transferred to the appropriate court.

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

Short title

- 5 1. This Act may be cited as the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

- 10 (2) The remaining provisions commence on the day on which the definition of "State" in subsection 3 (1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth is amended to include the Australian Capital Territory.

Interpretation

3. (1) In this Act, unless the contrary intention appears—

15 "ACT matter" means a matter—

- (a) in which the Supreme Court has jurisdiction otherwise than by reason of a law of the Commonwealth or of another State; or

(b) removed to the Supreme Court under section 8;

20 "Family Court" means the Family Court of Australia;

"Federal Court" means the Federal Court of Australia;

"Full Court", in relation to a Supreme Court of a State, includes a court of the State to which appeals lie from a single judge of that Supreme Court;

25 "judgment" means a judgment, decree or order, whether final or interlocutory;

"party", in relation to a proceeding, includes a person who intervenes in the proceeding;

“proceeding” does not include a criminal proceeding;

“special federal matter” has the same meaning as in the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth;

5 “State” means the Australian Capital Territory, the Northern Territory or a State of the Commonwealth;

“State Family Court”, in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* of the Commonwealth applies by virtue of a Proclamation made under subsection 41 (2) of that Act;

10 “Territory” does not include the Australian Capital Territory or the Northern Territory.

(2) A reference in this Act, other than a reference in subsection 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.

15 **Vesting of additional jurisdiction in certain courts**

4. (1) The Federal Court has and may exercise original and appellate jurisdiction in respect of ACT matters.

(2) The Family Court has and may exercise original and appellate jurisdiction in respect of ACT matters.

20 (3) The Supreme Court of another State or of a Territory has and may exercise original and appellate jurisdiction in respect of ACT matters.

(4) The State Family Court of another State has and may exercise original and appellate jurisdiction in respect of ACT matters.

(5) Subsection (1), (2), (3) or (4) does not—

25 (a) invest the Federal Court, the Family Court or a Supreme Court with; or

(b) confer on any such court;

jurisdiction in respect of criminal matters.

Transfer of proceedings

30 5. (1) Where—

(a) a proceeding (in this subsection called the “relevant proceeding”) is pending in the Supreme Court; and

(b) it appears to the Supreme Court that—

5 (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Federal Court or the Family Court and it is more appropriate that the relevant proceeding be determined by the Federal Court or the Family Court;

(ii) having regard to—

10 (A) whether, in the opinion of the Supreme Court, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction and apart from any accrued jurisdiction of the Federal Court or the Family Court, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the Supreme Court and capable of being instituted in the Federal Court or the Family Court;

20 (B) the extent to which, in the opinion of the Supreme Court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the Commonwealth and not within the jurisdiction of the Supreme Court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

25 (C) the interests of justice;

it is more appropriate that the relevant proceeding be determined by the Federal Court or the Family Court, as the case may be; or

30 (iii) it is otherwise in the interests of justice that the relevant proceeding be determined by the Federal Court or the Family Court;

the Supreme Court shall transfer the relevant proceeding to the Federal Court or the Family Court, as the case may be.

(2) Where—

35 (a) a proceeding (in this subsection called the “relevant proceeding”) is pending in the Supreme Court (in this subsection called the “first court”); and

(b) it appears to the first court that—

- 5 (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of another State or of a Territory and it is more appropriate that the relevant proceeding be determined by that other Supreme Court;
- (ii) having regard to—
 - 10 (A) whether, in the opinion of the first court, apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court of another State or Territory;
 - 15 (B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of that other State or Territory and not within the jurisdiction of the first court apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and
 - 20 (C) the interests of justice;
- 25 it is more appropriate that the relevant proceeding be determined by that other Supreme Court; or
- (iii) it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of another State or Territory;

30 the first court shall transfer the relevant proceeding to that other Supreme Court.

(3) Where—

- 35 (a) a proceeding (in this subsection called the “relevant proceeding”) is pending in the Supreme Court of another State or of a Territory (in this subsection called the “first court”); and
- (b) it appears to the first court that—
 - (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of the Australian Capital Territory and it is more appropriate that

the relevant proceeding be determined by the Supreme Court of the Australian Capital Territory;

(ii) having regard to—

(A) whether, in the opinion of the first court, apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court of the Australian Capital Territory;

(B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the Australian Capital Territory and not within the jurisdiction of the first court apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

(C) the interests of justice;

it is more appropriate that the relevant proceeding be determined by the Supreme Court of the Australian Capital Territory; or

(iii) it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of the Australian Capital Territory;

the first court shall transfer the relevant proceeding to the Supreme Court of the Australian Capital Territory.

(4) Where—

(a) a proceeding (in this subsection called the “relevant proceeding”) is pending in the Federal Court or the Family Court (in this subsection called the “first court”); and

(b) it appears to the first court that—

(i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court and it is more appropriate that the relevant proceeding be determined by the Supreme Court;

(ii) having regard to—

5 (A) whether, in the opinion of the first court, apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court;

10 (B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the Australian Capital Territory and not within the jurisdiction of the first court apart from this Act and a law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

15 (C) the interests of justice; it is more appropriate that the relevant proceeding be determined by the Supreme Court; or

20 (iii) it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court;

the first court shall transfer the relevant proceeding to the Supreme Court.

(5) Where—

25 (a) a proceeding (in this subsection called the “relevant proceeding”) is pending in the Federal Court or the Family Court (in this subsection called the “first court”); and

(b) it appears to the first court that—

30 (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the other of the courts referred to in paragraph (a) and it is more appropriate that the relevant proceeding be determined by the other of the courts referred to in paragraph (a); or

35 (ii) it is otherwise in the interests of justice that the relevant proceeding be determined by the other of the courts referred to in paragraph (a);

the first court shall transfer the relevant proceeding to that other court.

(6) Where—

(a) a court (in this subsection called the “first court”) transfers a proceeding to another court under a law or laws relating to cross-vesting of jurisdiction; and

(b) it appears to the first court that—

5 (i) there is another proceeding pending in the first court that arises out of, or is related to, the first-mentioned proceeding; and

(ii) it is in the interests of justice that the other proceeding be determined by the other court;

10 the first court shall transfer the other proceeding to the other court.

(7) A court may transfer a proceeding under this section on the application of a party to the proceeding, of its own motion or on the application of the Attorney-General of the Commonwealth or of a State or Territory.

15 (8) A person who is entitled to practise as a barrister or solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection called the “transferred proceeding”) in that court is transferred to another court under a law or laws relating to cross-vesting of jurisdiction, the same entitlement to practise in relation to—

20 (a) the transferred proceeding; and

(b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding;

25 in the other court that the person would have if the other court were a federal court exercising federal jurisdiction.

Special federal matters

6. (1) If—

30 (a) a matter for determination in a proceeding that is pending in the Supreme Court is a special federal matter; and

(b) the court does not make an order under subsection (3) in respect of the matter;

the court shall transfer the proceeding in accordance with this section to the Federal Court or a court mentioned in paragraph (2) (b).

35 (2) If the Supreme Court orders that a proceeding be transferred, the proceeding shall be transferred—

5 (a) if the matter for determination in the proceeding is a matter mentioned in paragraph (a), (b), (c), (d) or (e) of the definition of "special federal matter" in subsection 3 (1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth—to the Federal Court; or

10 (b) if the matter for determination in the proceeding is a matter mentioned in paragraph (ab) of that definition—to whichever of the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory, in the opinion of the court, is appropriate in the circumstances.

(3) The Supreme Court may order that the proceeding be determined by that court if it is satisfied that there are special reasons for doing so in the particular circumstances of the proceeding other than reasons relevant to the convenience of the parties.

15 (4) Before making an order under subsection (3), the Supreme Court shall be satisfied that—

20 (a) a written notice specifying the nature of the special federal matter has been given to the Attorney-General of the Commonwealth and the Attorney-General of the Australian Capital Territory; and

(b) a reasonable time has elapsed since the giving of the notice for the Attorneys-General to consider whether submissions to the court should be made in relation to the proceeding.

(5) For the purposes of subsection (4), the Supreme Court—

25 (a) may adjourn the proceeding for such time as the court thinks necessary and may make such order as to costs in relation to an adjournment as it thinks fit; and

(b) may direct a party to the proceeding to give a notice in accordance with that subsection.

30 (6) In considering whether there are special reasons for the purposes of subsection (3), the Supreme Court shall—

(a) have regard to the general rule that special federal matters should be heard by the Federal Court or a court mentioned in paragraph (2) (b), whichever is appropriate in the particular case; and

35 (b) take into account any submission made in relation to the proceeding by an Attorney-General mentioned in subsection (4).

(7) Nothing in this section prevents the Supreme Court granting urgent relief of an interlocutory nature if it is in the interests of justice to do so.

(8) If, through inadvertence, the Supreme Court determines a proceeding of the kind referred to in subsection (1) without—

(a) the court making an order under subsection (3) that the proceeding be determined by that court; or

(b) a notice mentioned in subsection (4) being given;

nothing in this section invalidates the decision of that court.

5 **Institution and hearing of appeals**

7. (1) An appeal shall not be instituted from a decision of a single judge of the Federal Court or the Family Court to the Full Court of the Supreme Court.

10 (2) An appeal shall not be instituted from the Federal Court or the Family Court to the other of those courts.

15 (3) Where it appears that the only matters for determination in a proceeding by way of an appeal from a decision of a single judge of the Supreme Court are matters other than matters arising under an Act specified in the Schedule to the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth, that proceeding shall be instituted only in, and shall be determined only by, the Full Court of the Supreme Court.

20 (4) Subject to subsections (6) and (7), where it appears that a matter for determination in a proceeding by way of an appeal from a decision of a single judge of the Supreme Court (not being a proceeding to which subsection (5) applies) is a matter arising under an Act specified in the Schedule referred to in subsection (3), that proceeding shall be instituted only in, and shall be determined only by—

(a) the Full Court of the Federal Court or of the Family Court, as the case requires; or

25 (b) with special leave of the High Court—the High Court.

(5) A proceeding by way of an appeal from a decision of a judge of a State Family Court, being a proceeding involving the determination of—

(a) a matter arising under an Act specified in the Schedule referred to in subsection (3); and

30 (b) another matter;

may be dealt with as if no matter for determination in the proceeding were a matter arising under an Act specified in that Schedule.

(6) Where—

35 (a) the Full Court of the Supreme Court commences to hear a proceeding by way of an appeal; and

(b) before the court determines the proceeding, it appears to it that the proceeding is a proceeding to which subsection (4) applies;

it shall, unless the interests of justice require that it proceed to determine the proceeding, transfer the proceeding to the Full Court of the Federal Court or of the Family Court, as the case requires.

(7) Where the Full Court of the Supreme Court—

- 5 (a) determines a proceeding to which subsection (4) applies as mentioned in subsection (6); or
- (b) through inadvertence, determines a proceeding to which subsection (4) applies;

nothing in this section invalidates the decision of that Court.

10 **Orders by Supreme Court**

8. (1) Where—

(a) a proceeding (in this subsection called the “relevant proceeding”) is pending in—

15 (i) a court of the Australian Capital Territory, other than the Supreme Court; or

(ii) a tribunal established by or under an Act; and

(b) it appears to the Supreme Court that—

20 (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Federal Court, the Family Court, the Supreme Court of another State or of a Territory or a State Family Court and, if an order is made under this subsection in relation to the relevant proceeding, there would be grounds on which the other proceeding could be transferred to the Supreme Court; or

25 (ii) an order should be made under this subsection in relation to the relevant proceeding so that consideration can be given to whether the relevant proceeding should be transferred to another court;

30 the Supreme Court may, on the application of a party to the relevant proceeding or of its own motion, make an order removing the relevant proceeding to the Supreme Court.

(2) Where an order is made under subsection (1) in relation to a proceeding, this Act applies in relation to the proceeding as if it were a proceeding pending in the Supreme Court.

35 (3) Where a proceeding is removed to the Supreme Court in accordance with an order made under subsection (1), the Supreme Court

may, if it considers it appropriate to do so, remit the proceeding to the court or tribunal from which the proceeding was removed.

Exercise of jurisdiction pursuant to cross-vesting laws

9. The Supreme Court may—

- 5
- (a) exercise jurisdiction (whether original or appellate) conferred on that court by this Act or a law of the Commonwealth or a State relating to cross-vesting of jurisdiction; and
 - (b) hear and determine a proceeding transferred to that court under this Act or such a law.

10 Transfer of matters arising under Division 1 or 1A of Part V of the Trade Practices Act

10. Where—

- 15
- (a) a proceeding is pending in the Federal Court, the Family Court, the Supreme Court or the Supreme Court of another State or of a Territory;
 - (b) a matter for determination in the proceeding is a matter arising under Division 1 or 1A of Part V of the *Trade Practices Act 1974* of the Commonwealth;
 - 20 (c) no matter for determination in the proceeding is a special federal matter;
 - (d) the proceeding is not a proceeding by way of an appeal from a judgment of a court; and
 - 25 (e) a court of the Australian Capital Territory, other than the Supreme Court, has jurisdiction in respect of all matters for determination in the proceeding;

the court referred to in paragraph (a) may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the court referred to in paragraph (e).

Conduct of proceedings

30 **11. (1)** Where it appears to a court that the court will, or will be likely to, in determining a matter for determination in a proceeding, be exercising jurisdiction invested or conferred by this Act or by a law of the Commonwealth or another State relating to cross-vesting of jurisdiction—

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- (a) subject to paragraphs (b) and (c), the court shall, in determining that matter, apply the law in force in the State or Territory in which the court is sitting (including choice of law rules);

(b) subject to paragraph (c), if that matter is a right of action arising under a written law of another State or Territory, the court shall, in determining that matter, apply the written and unwritten law of that other State or Territory; and

5 (c) the rules of evidence and procedure to be applied in dealing with that matter shall be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory of Australia.

10 (2) The reference in paragraph (1) (a) to the State or Territory in which the court is sitting is, in relation to the Federal Court or the Family Court, a reference to the State or Territory in which any matter for determination in the proceeding was first commenced in or transferred to that court.

15 (3) Where a proceeding is transferred or removed to a court (in this subsection called the "transferee court") from another court (in this subsection called the "transferor court"), the transferee court shall deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

20 **Orders as to costs**

12. Where a proceeding is transferred or removed to a court, that court may make an order as to costs that relate to the conduct of the proceeding before the transfer or removal if those costs have not already been dealt with by another court.

25 **Limitation on appeals**

13. An appeal does not lie from a decision of a court—

(a) in relation to the transfer or removal of a proceeding under this Act; or

30 (b) as to which rules of evidence and procedure are to be applied pursuant to paragraph 11 (1) (c).

Enforcement and effect of judgments

35 14. (1) A judgment of the Federal Court or the Family Court that is given, in whole or in part, in the exercise of jurisdiction conferred by a law or laws relating to cross-vesting of jurisdiction is enforceable in the Australian Capital Territory as if the judgment had been given entirely in the exercise of the jurisdiction of that court apart from any such law.

(2) A judgment of the Supreme Court that is given, in whole or in part, in the exercise of jurisdiction conferred by a law or laws relating to cross-vesting of jurisdiction is enforceable in the Australian Capital Territory

as if the judgment had been given entirely in the exercise of the jurisdiction of the Supreme Court apart from any such law.

(3) Where—

- 5 (a) a provision of a law of the Australian Capital Territory (not being a law relating to the enforcement of judgments) refers to a thing done by the Supreme Court; and
- (b) that thing is done by another court in exercise of jurisdiction conferred by this Act;

10 the reference in that provision to the Supreme Court shall be read as a reference to that other court.

Suspension or cessation of operation of Act

15 15. (1) Subject to subsection (2), the Executive may, if a notice has not been published under subsection (4), by notice in the *Gazette*, declare that the operation of this Act is suspended from a day specified in the notice and, where such a notice is published this Act ceases to be in force from that day until a notice is published under subsection (3) revoking the first-mentioned notice.

20 (2) The Executive shall not make a notice under subsection (1) having effect from a particular day unless satisfied that the Attorney-General has given notice of his or her intention to seek the making of such a notice to the Commonwealth and to each other State (other than a State in relation to which a notice under subsection (5) has been made) not earlier than 6 months before that day.

25 (3) Where the Executive has made a notice under subsection (1), it may, by notice in the *Gazette*, revoke the first-mentioned notice.

30 (4) Where the Executive is satisfied that the Acts of the Commonwealth and other States relating to cross-vesting of jurisdiction are not effective to invest the Supreme Court with, or confer on that court, jurisdiction of the Federal Court, the Family Court or a Supreme Court of another State or of a Territory, the Executive may, by notice in the *Gazette*, declare that this Act shall, on a day specified in the notice, cease to be in force and, where such a notice is published, this Act ceases to be in force on that day.

35 (5) Where the Executive is satisfied that an Act of the Commonwealth or another State relating to cross-vesting of jurisdiction has been repealed, rendered inoperative, suspended or altered in a substantial manner, the Executive may, by notice in the *Gazette*, declare that this Act shall, on a day specified in the notice, cease to be in force in relation to the Commonwealth or a Territory or in relation to that State and, where such a notice is

published, this Act ceases to be in force in relation to the Commonwealth or that Territory or State on that day.

(6) Where—

- 5 (a) the Executive has published a notice under subsection (5) in relation to the Commonwealth or a Territory or a State; and
- (b) the Executive is satisfied that there is in force an Act of the Commonwealth or that State relating to cross-vesting of jurisdiction, being an Act in terms substantially corresponding to the terms of this Act;
- 10 the Executive may, by notice in the *Gazette*, declare that this Act again applies in relation to the Commonwealth or that Territory or State from a day specified in the notice and, where such a notice is published, this Act applies in relation to the Commonwealth or that Territory or State on and after that day.

