

FEDERAL COURTS (CONSEQUENTIAL AMENDMENTS) BILL 2001

EXPLANATORY NOTES

GENERAL OUTLINE

Title of Bill

Federal Courts (Consequential Amendments) Bill 2001

Policy Objectives of the Bill

The main purposes of this Bill are—

- (a) to remove from State Acts provisions purporting to confer jurisdiction on a federal court;
- (b) to remove from State Acts any provisions purporting to apply the Commonwealth *Administrative Decisions (Judicial Review) Act 1977* ("ADJR Act") as a law of the State;
- (c) to make changes to the State cross-vesting schemes that are complementary to amendments to Commonwealth legislation made by the *Jurisdiction of Courts Legislation Amendment Act* that commenced operation on 1 July 2000.

Reasons for the Bill

The High Court held in 1999 that the act of a State vesting State jurisdiction in a federal court, and the Commonwealth consenting to the vesting of State jurisdiction in a federal court, is constitutionally invalid (*Re Wakim* 163 ALR 270).

The effect of the decision is that the national schemes to which the Commonwealth and the States are a party, relying on cross-vesting of jurisdiction, are invalid to that extent.

The reason for the Bill is to amend the following national scheme legislation to the extent that the legislation is invalid:

- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*
- *Competition Policy Reform (Queensland) Act 1996*
- *Corporations (Queensland) Act 1990*
- *Gas Pipelines Access (Queensland) Act 1998*
- *Jurisdiction of Courts (Cross-vesting) Act 1987*
- *National Crime Authority (State Provisions) Act 1985*
- *New Tax System Price Exploitation Code (Queensland) Act 1999*

Estimated Costs for Government Implementation

The financial implications for the Government are not capable of precise quantification; however, the trilogy of legislation addressing the effect of the High Court decision will clearly create impacts on court resources.

Consistency with Fundamental Legislative Principles

This Bill is consistent with fundamental legislative principles as outlined in s.4 of the *Legislative Standards Act 1992*.

Consultation

The Office of the Queensland Parliamentary Counsel drafted the legislation.

The Department of the Premier and Cabinet has consulted the Department of Primary Industries, Treasury, the former Department of Mines and Energy, the Department of Justice and Attorney-General, and the Queensland Police Service.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Short title

Clause 1 states the short title of the Bill.

PART 2—AGRICULTURAL AND VETERINARY CHEMICALS (QUEENSLAND) ACT 1994

Act amended in pt 2

Clause 2 explains that Part 2 amends the *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

Amendment of s3 (Definitions)

Clause 3 Sub-clause (1) amends the definition of the applied Commonwealth administrative laws to exclude Part IVA of the Commonwealth *Administrative Appeals Tribunal Act 1975* ("AAT Act") (appeals to the Federal Court).

Sub-clause (2) amends the definition of the applied Commonwealth administrative laws to exclude the ADJR Act (review by Federal Court).

Amendment of s8 (Ancillary offences (aiding, abetting, accessories, attempts, incitement or conspiracy))

Clause 4 makes a minor correction to section 8 by way of statute law revision to remove an obsolete reference to a paragraph of section 86 of the Commonwealth *Crimes Act 1914*.

Amendment of s16 (Application of Commonwealth administrative laws in relation to applicable provisions)

Clause 5 removes a reference to s13 of the Commonwealth ADJR Act.

Insertion of new s19

Clause 6 inserts a new section 19 which explains that for the purposes of section 16, references to the appeal provisions of the AAT Act are references to those provisions as they apply as Commonwealth law.

Replacement of pt 6 (Jurisdiction of courts)

Clause 7 repeals the Part of the Act that purports to confer jurisdiction on the Federal Court.

PART 3 – COMPETITION POLICY REFORM (QUEENSLAND) ACT 1996

Act amended in pt 3

Clause 8 explains that Part 3 amends the *Competition Policy Reform (Queensland) Act 1996*.

Omission of pt 5, div 3 (Jurisdiction of courts)

Clause 9 repeals the Part of the Act that purports to confer jurisdiction on the Federal Court.

Amendment of s29 (Definition)

Clause 10 Sub-clause (1) amends the definition of the applied Commonwealth administrative laws to exclude Part IVA of the AAT Act (appeals to the Federal Court).

Sub-clause (2) amends the definition of the applied Commonwealth administrative laws to exclude the ADJR Act (review by Federal Court).

Insertion of new s33A

Clause 11 inserts a new section 33A which explains that, for the purposes of section 30 and section 31, references to the appeal provisions of the AAT Act are references to those provisions as they apply as Commonwealth law.

PART 4—CORPORATIONS (QUEENSLAND) ACT 1990

Act amended in pt 4

Clause 12 explains that Part 4 amends the *Corporations (Queensland) Act 1990*.

Amendment of s3 (Definitions)

Clause 13 Sub-clause 1 omits the definition of Family Court.

Sub-clause 2 inserts definitions of "Commonwealth authority" and "officer of the Commonwealth".

Sub-clause 3 amends the definition of the applied Commonwealth administrative laws to exclude Part IVA of the AAT Act (appeals to the Federal Court) and the ADJR Act (review by Federal Court).

Insertion of new s36A

Clause 14 inserts a new section 36A which explains that, for the purposes of section 35 and section 36, references to the appeal provisions of the AAT Act are references to those provisions as they apply as Commonwealth law.

Amendment of s40 (Operation of division)

Clause 15 inserts 2 new paragraphs into section 40 describing the additional matters to which Division 1 of Part 9 of the Act relates, namely jurisdiction in respect of decisions by Commonwealth authorities and officers.

Amendment of s41 (Interpretation)

Clause 16 amends the definitions in section 41 to remove inappropriate references to federal courts.

Amendment of s42 (Jurisdiction of Federal Court and State and Territory Supreme Courts)

Clause 17 Sub-clause (1) removes a provision applying the ADJR Act as a law of the State.

Sub-clause (2) inserts 2 new subsections in section 42. New sub-section (1A) complements the new section 51(2A) in the Commonwealth *Jurisdiction of Courts Legislation Amendment Act* that confers jurisdiction on the Supreme Court with respect to matter arising under the ADJR Act involving decisions made or proposed to be made under the Corporations Law of Queensland by a Commonwealth authority or officer. This is despite the express restriction in section 9 of the ADJR Act preventing

State Courts from exercising this kind of jurisdiction. The jurisdiction is conferred to enable the Commonwealth administrative law regime to apply to the relevant decisions without challenges having to be dealt with by the Federal Court. The jurisdiction may only be exercised by the Supreme Court in the limited circumstances referred to in the amended section 44 (see Clause 22, Clause 23 and Clause 24, below).

Amendment of s42A (Jurisdiction of Family Court and State Family Courts)

Clause 18 amends section 42A(1) to remove provisions purporting to confer jurisdiction on the Family Court, and amends section 42A(2) to remove a reference to the application as State law of the ADJR Act.

Insertion of new s42AA

Clause 19 complements the new section 51AA inserted in the Commonwealth *Corporations Act 1989* by item 10 of Schedule 2 to the *Jurisdiction of Courts Legislation Amendment Act*. That section gives the Supreme Court jurisdiction with respect to writs of mandamus or prohibition and injunctions against Commonwealth officers in relation to decisions to prosecute under the State Corporations Law where proceedings, or an appeal, are before the State court. The Commonwealth section also takes that jurisdiction away from the Federal Court.

Amendment of s42B (Jurisdiction of lower courts)

Clause 20 amends section 42B to remove a reference to the application as State law of the ADJR Act.

Amendment of s43 (Appeals)

Clause 21 amends section 43 to remove references to a federal court.

Amendment of s44 (Transfer of proceedings by the Federal Court and State and Territory Supreme Courts)

Clause 22 amends section 44 in a manner complementary to the amendments to section 53 of the Commonwealth *Corporations Act 1989* made by the *Jurisdiction of Courts Legislation Amendment Act*. The

purpose of the amendments is to enable judicial review of decisions of Commonwealth officers and authorities to be dealt with by a State court if there are proceedings in that court under the State Corporations Law. Without those amendments, all judicial review of those decisions would have to be dealt with by the Federal Court.

Amendment of s44A (Transfer of proceedings by Family Court and State Family Courts)

Clause 23 amends section 44A in a manner complementary to the amendments to section 53A of the Commonwealth *Corporations Act 1989* made by the *Jurisdiction of Courts Legislation Amendment Act*.

Amendment of s44AA (Transfer of proceedings in lower courts)

Clause 24 amends section 44AA in a manner complementary to the amendments to section 53AA of the Commonwealth *Corporations Act 1989* made by the *Jurisdiction of Courts Legislation Amendment Act*.

Amendment of s45 (Conduct of proceedings)

Clause 25 amends section 45 to remove references to a federal court.

Amendment of s46 (Courts to act in aid of each other)

Clause 26 amends section 46 to remove references to a federal court.

Amendment of s50 (enforcement of judgments etc.)

Clause 27 amends section 50 to remove references to a federal court and explains the enforcement of judgments.

Omission of s52 (Rules of the Federal Court)

Clause 28 removes section 52 to remove references to a federal court.

Amendment of s52A (Rules of the Family Court or State Family Court)

Clause 29 removes section 52A to remove references to a federal court.

Amendment to s54 (Interpretation)

Clause 30 amends section 54 to remove references to a federal court.

Insertion of new s96E

Clause 31 inserts a transitional provision, new section 96E, to make it clear when the amendments relating to the new section 42AA apply. The effect of the transitional provision is that section 42AA will apply to actions or decisions taken in the criminal justice process after the commencement of the amendments and also to challenges to actions or decisions taken before that commencement, whether or not any Federal Court review proceedings are on foot. This transitional provision complements the transitional provision in item 16 of Part 2 of the Commonwealth *Jurisdiction of Courts Legislation Amendment Act*.

PART 5—GAS PIPELINES ACCESS (QUEENSLAND) **ACT 1998**

Act amended in pt 5

Clause 32 explains that Part 5 amends the *Gas Pipelines Access (Queensland) Act 1998*.

Amendment of s11 (Interpretation of some expressions in the Gas Pipelines Access (Queensland) Law and the Gas Pipelines Access (Queensland) Regulations)

Clause 33 amends section 11 to remove a reference to the Federal Court.

Omission of pt 3, division 1 hdg

Clause 34 removes a heading which is superfluous.

Omission of pt 3, divisions 2 and 3

Clause 35 repeals the Divisions that purport to confer jurisdiction on the Federal Court or to apply the ADJR Act.

Amendment of s55 (Actions in relation to cross-boundary pipelines)

Clause 36 Sub-clause (1) amends section 55 to include in the reference to actions in relation to cross-boundary pipelines, either an action taken under, or an action taken in relation to, the gas pipelines access legislation.

Sub-clause (2) inserts a new sub-section (1A) in section 55 to provide that the Supreme Court does not have jurisdiction to make a declaration or order about the validity, or affecting the operation, of a decision about a cross-boundary pipeline unless the State has been determined to be the scheme participant most closely connected to the pipeline.

PART 6—JURISDICTION OF COURTS (CROSSVESTING) ACT 1987

Act amended in pt 6

Clause 37 explains that Part 6 amends the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

Amendment of s3 (Interpretation)

Clause 38 corrects a reference to a section number following renumbering of the section.

Amendment of s4 (Vesting of additional jurisdiction in certain courts)

Clause 39 amends section 4 to remove references to a federal court.

Amendment of s5 (Transfer of proceedings)

Clause 40 Sub-clause (1) to (3) amends section 5(1) to remove references to a federal court.

Sub-clause (4) substitutes a new section 5(4)(b)(ii) so that the provision does not include references to a federal court.

Sub-clause (5) repeals a sub-section purporting to direct transfers between federal courts.

Sub-clause (6) inserts a new sub-section clarifying that section 5 does not confer jurisdiction on a court that it does not otherwise have.

Amendment of s6 (Special federal matters)

Clause 41 amends section 6 in relation to the transfer of a part of proceedings to a federal court.

Insertion of new s6A

Clause 42 inserts a new section relating to special federal matters (as defined in the Commonwealth *Jurisdiction of Courts (Cross-vesting) Act 1987*. Special federal matters include matters within the original jurisdiction of the Federal Court because of section 39B of the Commonwealth *Judiciary Act 1903* or matters arising under the ADJR Act. Generally, if a special federal matter is pending in a State court, the court must transfer the matter to the Federal Court. The new section 6A, and a corresponding provision inserted in the Commonwealth *Jurisdiction of Courts Legislation Amendment Act*, will permit a State court to exercise jurisdiction over matters arising under the ADJR Act or the original jurisdiction of the Federal Court in very limited circumstances where—

- the matter for determination involves or relates to the exercise, or purported exercise of a function or power conferred on a Commonwealth/State co-operative scheme listed in Schedule 3 of the ADJR Act; and
- the matter for determination in the proceeding arises out of or relates to another proceeding (not a judicial review matter) which arises under the same enactment.

Amendment of s10 (Transfer of matters arising under Part V, Division 1 or 1A of the Trade Practices Act)

Clause 43 amends section 10 to remove references to federal courts.

Amendment of s11 (Conduct of proceedings)

Clause 44 amends section 11 to remove references to federal courts.

Amendment of s14 (Enforcement of effective judgments)

Clause 45 amends section 14 to remove references to federal courts.

PART 7—NATIONAL CRIME AUTHORITY (STATE PROVISIONS) ACT 1985

Act amended in pt 7

Clause 46 explains that Part 7 amends the *National Crime Authority (State Provisions) Act 1985*.

Amendment of s12 (Search warrants)

Clause 47 amends the Act to remove references to the Federal Court and provisions purporting to confer jurisdiction on the Federal Court.

Amendment of s20 (Warrant for arrest of witness)

Clause 48 amends the Act to remove references to the Federal Court and provisions purporting to confer jurisdiction on the Federal Court.

Amendment of s21 (Applications to Federal Court of Australia)

Clause 49 amends section 21, which corresponds with section 32 of the Commonwealth Act. The section deals with production of documents and answering questions in relation to matters involving a Commonwealth reference, a Commonwealth and State reference or a reference from more than one State.

Amendment of s22 (Applications to Supreme Court of Queensland)

Clause 50 repeals section 22, which corresponds with section 32A in the Commonwealth Act. The section deals with production of documents and answering questions in relation to matters involving a Commonwealth reference, a Commonwealth and State reference or a reference from more than one State.

PART 8—NEW TAX SYSTEM PRICE EXPLOITATION CODE (QUEENSLAND) ACT 1999

Act amended in pt 8

Clause 51 explains that Part 8 amends the *New Tax System Price Exploitation Code (Queensland) Act*.

Amendment of s26 (Definition)

Clause 52 amends the definition of the applied Commonwealth Administrative laws to exclude Part IVA of the AAT Act (appeals to the Federal Court).

Amendment of s27 (Application of Commonwealth administrative laws to New Tax System Price Exploitation Code of this jurisdiction)

Clause 53 repeals a section of the Act which is superfluous.

Amendment of s28 (Application of Commonwealth administrative laws to New Tax System Price Exploitation Codes of other jurisdictions)

Clause 54 repeals a section of the Act which is superfluous.

Insertion of new s30A

Clause 55 inserts a new section 30A which makes it clear that, in the application of the AAT Act, references to the appeal provisions have effect as references to those provisions as they apply as Commonwealth law.