

Jurisdiction of Courts (Cross-vesting) Bill

No.

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LEGISLATIVE COUNCIL

Read 1° 24 March 1987

(Brought in by the Honourable J. H. Kennan)

A BILL

relating to the cross-vesting of certain jurisdiction.

Jurisdiction of Courts (Cross-vesting) Act 1987

WHEREAS inconvenience and expense have occasionally been caused to litigants by jurisdictional limitations in federal, State and Territory courts, and whereas it is desirable—

- 5 (a) to establish a system of cross-vesting of jurisdiction between those courts, without detracting from the existing jurisdiction of any court;
- 10 (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 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 jurisdiction of a Supreme Court of a State or Territory are instituted and determined in that court, whilst
- 15 providing for the determination by one court of federal and State 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.

20 The Parliament of Victoria therefore enacts as follows:

Purpose.

1. The purpose of this Act is to make provision for the cross-vesting of certain jurisdiction.

Commencement.

2. This Act comes into operation on a day to be proclaimed.

Definitions.

3. (1) In this Act—

“**Family Court**” means the Family Court of Australia. 5

“**Federal Court**” means the Federal Court of Australia.

“**Full Court**”, in relation to a Supreme Court of a State, includes any court of the State to which appeals lie from a single judge of that Supreme Court.

“**Judgment**” means a judgment, decree or order, whether final or interlocutory. 10

“**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. 15

“**State**” includes the Northern Territory.

“**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 section 41 (2) of that Act. 20

“**State 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 25

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

“**Territory**” does not include the Northern Territory.

(2) 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. 30

(3) In this Act, a reference to a Commonwealth Act is a reference to that Act, if amended, as amended and in force for the time being.

Vesting of additional jurisdiction in certain courts.

4. (1) The Federal Court has and may exercise original and appellate jurisdiction with respect to State matters. 35

(2) The Family Court has and may exercise original and appellate jurisdiction with respect to State matters.

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

5 (4) The State Family Court of another State has and may exercise original and appellate jurisdiction with respect to State matters.

(5) Sub-section (1), (2), (3) or (4) does not—

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

10 (b) confer on any such court— jurisdiction with respect to criminal matters.

Transfer of proceedings.

5. (1) Where—

15 (a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in the Supreme Court; 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 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—

25 (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;

30 (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

35 (C) the interests of justice—
40 it is more appropriate that the relevant proceeding be determined by the Federal Court or the Family Court, as the case may be; or

- (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.

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(2) Where—

- (a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in the Supreme Court (in this sub-section referred to as the “first court”); and

- (b) it appears to the first court that—

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- (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;

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- (ii) having regard to—

- (A) whether, in the opinion of the first court, apart from this Act and any 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;

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- (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 State or Territory referred to in sub-sub-paragraph (A) and not within the jurisdiction of the first court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

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- (C) the interests of justice—

it is more appropriate that the relevant proceeding be determined by that other Supreme Court; or

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- (iii) it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of another State or of a Territory—

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

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(3) Where—

- (a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in the Supreme Court of another State or of a Territory (in this sub-section referred to as the “first court”); and

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(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 Victoria and it is more appropriate that the relevant proceeding be determined by the Supreme Court of Victoria;

(ii) having regard to—

(A) whether, in the opinion of the first court, apart from this Act and any 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 Victoria;

(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 State and not within the jurisdiction of the first court apart from this Act and any 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 Victoria; or

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

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

(4) Where—

(a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in the Federal Court or the Family Court (in this sub-section referred to as 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—

(A) whether, in the opinion of the first court, apart from this Act and any 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;
- (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 State and not within the jurisdiction of the first court apart from this Act and any 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; or
- (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—
- (a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in the Federal Court or the Family Court (in this sub-section referred to as 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 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
- (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 sub-section referred to as 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—
- (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—

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

5 (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.

10 (8) A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this sub-section referred to as 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—

- 15 (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—

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

Special federal matters.

25 6. (1) Where a matter for determination in a proceeding that is pending in the Supreme Court is a special federal matter, the Supreme Court shall transfer the proceeding to the Federal Court unless the Supreme Court makes an order that the proceeding be determined by the Supreme Court.

30 (2) The Supreme Court shall not make an order under sub-section (1) that the court determine a proceeding unless it appears to the Supreme Court that, by reason of the particular circumstances of the case—

- (a) it is not appropriate that the proceeding be transferred to the Federal Court; and
(b) it is appropriate that the Supreme Court determine the proceeding.

35 (3) Where the Supreme Court makes an order under sub-section (1) in relation to a proceeding, it is the duty of the Supreme Court not to proceed to determine the proceeding until the Supreme Court is satisfied that—

- 40 (a) a notice in writing stating that the order has been made and specifying the nature of the special federal matter for determination in the proceeding has been given to the Attorney-General of the Commonwealth; and
(b) a reasonable time has elapsed since the giving of the notice for consideration by the Attorney-General of the

Commonwealth of the question whether action should be taken under sub-section (6) in relation to the proceeding.

- (4) For the purposes of this section, the Supreme Court—
- (a) may adjourn for such time as the Supreme Court thinks necessary a proceeding referred to in sub-section (1) that is pending and may make such order as to costs in relation to an adjournment as it thinks fit; and 5
 - (b) may direct a party to the proceeding to give a notice in accordance with sub-section (3).
- (5) Nothing in this section prevents the Supreme Court granting urgent relief of an interlocutory nature where it is in the interests of justice to do so. 10
- (6) The Attorney-General of the Commonwealth may request the Supreme Court to transfer to the Federal Court a proceeding referred to in sub-section (1) that is pending and, where such a request is made, the Supreme Court shall transfer the proceeding to the Federal Court. 15
- (7) Where, through inadvertence, the Supreme Court determines a proceeding of the kind referred to in sub-section (1) without—
- (a) the Supreme Court making an order under that sub-section that the proceeding be determined by the Supreme Court; or 20
 - (b) a notice in accordance with sub-section (3) being given to the Attorney-General of the Commonwealth in relation to the proceeding—
- nothing in this section invalidates the decision of the Supreme Court. 25
- (8) This section does not apply to a proceeding by way of an appeal that is instituted in the Full Court of the Supreme Court if—
- (a) the court the decision of which is the subject of the appeal had made an order under sub-section (1) in relation to the special federal matter; and 30
 - (b) the Attorney-General of the Commonwealth did not request the court referred to in paragraph (a) to transfer the proceeding to the Federal Court.

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. 35
- (2) An appeal shall not be instituted from the Federal Court or the Family Court to the other of those courts.
- (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)* 40

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.

5 (4) Subject to sub-sections (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 sub-section (5) applies) is a matter arising under an Act specified in the Schedule referred to in sub-section (3), that proceeding shall be instituted only in, and shall be determined only by—

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

(b) with special leave of the High Court, the High Court.

15 (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 sub-section (3); and

(b) another matter—

20 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—

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

25 (b) before the Court determines the proceeding, it appears to the Court that the proceeding is a proceeding to which sub-section (4) applies—

30 the Court shall, unless the interests of justice require that the Court 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—

(a) determines a proceeding to which sub-section (4) applies as mentioned in sub-section (6); or

35 (b) through inadvertence, determines a proceeding to which sub-section (4) applies—

nothing in this section invalidates the decision of that Court.

Orders by Supreme Court.

8. (1) Where—

40 (a) a proceeding (in this sub-section referred to as the “relevant proceeding”) is pending in—

(i) a court, other than the Supreme Court; or

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

(b) it appears to the Supreme Court that—

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

(ii) an order should be made under this sub-section in relation to the relevant proceeding so that consideration can be given to whether the relevant proceeding should be transferred to another court—

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 sub-section (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.

(3) Where a proceeding is removed to the Supreme Court in accordance with an order made under sub-section (1), the Supreme Court may, if the Supreme Court 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—

(a) may exercise jurisdiction (whether original or appellate) conferred on that court by a provision of this Act or a law of the Commonwealth or a State relating to cross-vesting of jurisdiction; and

(b) may hear and determine a proceeding transferred to that court under such a provision.

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

10. Where—

(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;

(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

5 (e) a court of the State, other than the Supreme Court, has jurisdiction with respect to all of the 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.

10 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 conferred by this Act or by a law of the Commonwealth or a State relating to cross-vesting of jurisdiction—

15 (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);

20 (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

25 (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.

30 (2) The reference in sub-section (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.

35 (3) Where a proceeding is transferred or removed to a court (in this sub-section referred to as the “transferee court”) from another court (in this sub-section referred to as 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.

Orders as to costs.

40 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.

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
 - (b) as to which rules of evidence and procedure are to be applied pursuant to section 11 (1). 5

Enforcement and effect of judgments.

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 State as if the judgment had been given entirely in the exercise of the jurisdiction of that court apart from any such law. 10

(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 State as if the judgment had been given entirely in the exercise of the jurisdiction of the Supreme Court apart from any such law. 15

(3) Where—

- (a) a provision of a law of the State (not being a law relating to the enforcement of judgments) refers to a thing done by the Supreme Court; and 20
- (b) that thing is done by another court in exercise of jurisdiction conferred by this Act—

the reference in that provision to the Supreme Court shall be read as a reference to that other court. 25

Construction of Act to be subject to legislative power of State.

15. This Act shall be read and construed so as not to exceed the legislative power of the State, to the intent that if this Act would, but for this section, have been construed as being in excess of that power, it shall nevertheless be valid to the extent to which it is not in excess of that power. 30

Suspension or cessation of operation of Act.

16. (1) Subject to sub-section (2), the Governor in Council may, if a proclamation has not been made under sub-section (4), by proclamation published in the *Government Gazette* declare that the operation of this Act is suspended from a day (being a day not earlier than 3 years after the commencement of this Act) specified in the proclamation and, where such a proclamation is made, this Act ceases to be in force from that day until a proclamation is made under sub-section (3) revoking the first-mentioned proclamation. 35
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(2) The Governor in Council shall not make a proclamation under sub-section (1) having effect from a particular day unless the Governor in Council is satisfied that the Attorney-General has given notice of his or her intention to seek the making of such a proclamation to the Commonwealth and to each other State (other than a State in relation to which a proclamation under sub-section (5) has been made) not less than 6 months before that day.

(3) Where the Governor in Council has made a proclamation under sub-section (1), the Governor in Council may, by proclamation published in the *Government Gazette*, revoke the first-mentioned proclamation.

(4) Where the Governor in Council 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 of Victoria 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 Governor in Council may, by proclamation published in the *Government Gazette*, declare that this Act shall, on a day specified in the proclamation, cease to be in force and, where such a proclamation is made, this Act ceases to be in force on that day.

(5) Where the Governor in Council 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 Governor in Council may, by proclamation published in the *Government Gazette*, declare that this Act shall, on a day specified in the proclamation, cease to be in force in relation to the Commonwealth or a Territory or in relation to that State and, where such a proclamation is made, this Act ceases to be in force in relation to the Commonwealth or a Territory or that State on that day.

(6) Where—

(a) the Governor in Council has made a proclamation under sub-section (5) in relation to the Commonwealth or a Territory or a State; and

(b) the Governor in Council 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—

the Governor in Council may, by proclamation published in the *Government Gazette*, declare that this Act again applies in relation to the Commonwealth or the Territory or that State from a day specified in the proclamation and, where such a proclamation is made, this Act applies in relation to the Commonwealth or Territory or that State on and after that day.

