



Jurisdiction of Courts Legislation Amendment Act 2000

No. 57, 2000



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

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Jurisdiction of Courts Legislation Amendment Act 2000

No. 57, 2000

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

[Assented to 30 May 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Jurisdiction of Courts Legislation
Amendment Act 2000*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) The items in Schedule 1, other than items 77 to 90, commence on a day or days to be fixed by Proclamation.
 - (3) If an item in Schedule 1 to which subsection (2) applies does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, that item commences on the first day after the end of that period.
 - (4) Schedule 3 is taken to have commenced immediately after the commencement of the items in Schedule 4 to the *Corporate Law Economic Reform Program Act 1999*.
 - (5) Schedule 4 commences on a day to be fixed by Proclamation.
 - (6) If Schedule 4 does not commence under subsection (5) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to inability of States to confer jurisdiction on federal courts

Administrative Appeals Tribunal Act 1975

1 After section 43A

Insert:

Part IVA—Appeals and references of questions of law to the Federal Court of Australia

43B Part applies whether Tribunal’s power conferred by an enactment or by a law of a State or the ACT

- (1) This Part applies in relation to a proceeding that was before the Tribunal before the commencement of this section, or that is before the Tribunal after that commencement, under power conferred on it by or under:
 - (a) an enactment; or
 - (b) a law of a State or of the Australian Capital Territory.
- (2) This Part has effect in relation to a proceeding before the Tribunal under power conferred on it by a law of a State or of the Australian Capital Territory as if a reference in this Part to a provision of this Act that is not in this Part were a reference to that provision as applying as a law of the State or of the Australian Capital Territory, as the case requires.

2 Effect of amended Act in relation to appellable State or Territory decisions

Definitions

- (1) In this item:
amended Act means the *Administrative Appeals Tribunal Act 1975* as in force after the commencement.

appellable State decision means a decision of the Tribunal made in the exercise of power conferred on the Tribunal by or under a law of a State.

appellable Territory decision means a decision of the Tribunal made in the exercise of power conferred on the Tribunal by or under a law of the Australian Capital Territory or of the Northern Territory.

commencement means the commencement of the amendments of the *Administrative Appeals Tribunal Act 1975* made by this Schedule.

State does not include the Northern Territory.

Tribunal has the same meaning as in the amended Act.

Appellable State decisions made before the commencement—situations in which period for appealing under amended Act is extended

- (2) In each of the following situations, the amended Act applies in relation to a person and an appellable State decision as if the 28 day period referred to in subsection 44(2A) of that Act began on the commencement:
- (a) the first situation—the decision was made before the commencement and that 28 day period would otherwise have begun during the period starting on 20 May 1999 and ending immediately before the commencement;
 - (b) the second situation—before 17 June 1999, the Federal Court of Australia, purporting to Act under subsection 44(2A) of the *Administrative Appeals Tribunal Act 1975* as purportedly applied as a law of a State, made an order allowing the person further time to make an appeal from that decision and that period of time had not expired by 17 June 1999;
 - (c) the third situation—immediately before 17 June 1999, proceedings by way of an appeal by the person from the decision were before the Federal Court of Australia under section 44 of the *Administrative Appeals Tribunal Act 1975* as purportedly applied as a law of a State.

Note: The power under subsection 44(2A) of the amended Act to extend the time for appealing from a decision of the Tribunal is available even if the decision is an appellable State decision and the 28 day time limit that would otherwise apply expired before the commencement.

Appellable Territory decisions—ACT and NT laws no longer operate to apply sections 44 to 46 of the AAT Act

- (3) A law of the Australian Capital Territory or the Northern Territory that provides for the application of the *Administrative Appeals Tribunal Act 1975* as a law of that Territory is of no effect after the commencement so far as that law purports to apply all or any of sections 44 to 46 of that Act in relation to an appellable Territory decision (whenever it was made).

Note: Part IVA of the amended Act applies to these decisions.

Appellable Territory decisions—proceedings under sections 44 to 46 continue after the commencement under the amended Act

- (4) If, immediately before the commencement, proceedings in relation to an appellable Territory decision were before a court under any of sections 44 to 46 of the *Administrative Appeals Tribunal Act 1975* as applying as a law of the Australian Capital Territory or the Northern Territory, then, from the commencement, those proceedings continue as if they had been commenced in that court under the amended Act.

Appellable Territory decisions—continued effect of orders made before the commencement under sections 44 to 46

- (5) An order made by a court before the commencement under any of sections 44 to 46 of the *Administrative Appeals Tribunal Act 1975* as applying as a law of the Australian Capital Territory or the Northern Territory has effect, from the commencement, as if it had been made by that court under the amended Act.

Administrative Decisions (Judicial Review) Act 1977

3 Subsection 3(1)

Insert:

Commonwealth authority means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act.

4 Subsection 3(1) (definition of *decision to which this Act applies*)

Repeal the definition, substitute:

decision to which this Act applies means a decision of an administrative character made, proposed to be made, or required to be made (whether in the exercise of a discretion or not and whether before or after the commencement of this definition):

- (a) under an enactment referred to in paragraph (a), (b), (c) or (d) of the definition of *enactment*; or
- (b) by a Commonwealth authority or an officer of the Commonwealth under an enactment referred to in paragraph (ca) or (cb) of the definition of *enactment*;

other than:

- (c) a decision by the Governor-General; or
- (d) a decision included in any of the classes of decisions set out in Schedule 1.

Note: Regulations for the purposes of section 19 can declare that decisions that are covered by this definition are not subject to judicial review under this Act.

5 Subsection 3(1) (definition of *enactment*)

Omit “, subject to section 3A”.

6 Subsection 3(1) (paragraph (a) of the definition of *enactment*)

Repeal the paragraph, substitute:

- (a) an Act, other than:
 - (i) the *Commonwealth Places (Application of Laws) Act 1970*; or
 - (ii) the *Northern Territory (Self-Government) Act 1978*; or
 - (iii) an Act or part of an Act that is not an enactment because of section 3A (certain legislation relating to the ACT); or

7 Subsection 3(1) (paragraph (b) of the definition of *enactment*)

Omit “Northern Territory;”, substitute “Australian Capital Territory or the Northern Territory; or”.

8 Subsection 3(1) (paragraph (c) of the definition of *enactment*)

After “Ordinance”, insert “, other than any such instrument that is not an enactment because of section 3A”.

9 Subsection 3(1) (after paragraph (c) of the definition of *enactment*)

Insert:

- (ca) an Act of a State, the Australian Capital Territory or the Northern Territory, or a part of such an Act, described in Schedule 3; or
- (cb) an instrument (including rules, regulations or by-laws) made under an Act or part of an Act covered by paragraph (ca); or

10 Subsection 3(1) (paragraph (d) of the definition of *enactment*)

Omit “a law” (first occurring), substitute “any other law”.

11 Subsection 3(1) (definition of *enactment*)

Omit “(b) or (c)”, substitute “(b), (c), (ca) or (cb)”.

12 Subsection 3(1) (at the end of the definition of *enactment*)

Add:

Note: Regulations for the purposes of section 19B can amend Schedule 3 (see section 19B).

13 Subsection 3(1)

Insert:

officer of the Commonwealth has the same meaning as in paragraph 75(v) of the Constitution.

14 Subsection 3(7)

After “another Act” (first occurring), insert “(including an Act of a State, the Australian Capital Territory or the Northern Territory)”.

15 After subsection 3(7)

Insert:

- (7A) If an Act of a State, the Australian Capital Territory or the Northern Territory, or a part of such an Act, described in Schedule 3 applies all or part of another enactment or instrument as a law of

the State or Territory, that other enactment or instrument, as so applying, is taken for the purposes of this Act to be included in the Act, or the part of the Act, of the State or Territory.

16 Subsection 3(9) (definition of *Commonwealth authority*)

Repeal the definition.

17 At the end of subsection 3A(1)

Add “except to the extent that they are covered by paragraph (ca) or (cb) of the definition of *enactment* in subsection 3(1)”.

18 At the end of subsection 9(1)

Add:

Note: This subsection has effect subject to the *Jurisdiction of Courts (Cross-vesting) Act 1987* and to subsection 51(2A) of the *Corporations Act 1989*.

19 Subsection 9(2) (paragraph (b) of the definition of *decision to which this section applies*)

Omit “, other than paragraphs (m) and (n)”.

20 Subsection 9(2) (definition of *officer of the Commonwealth*)

Repeal the definition.

21 Subsection 9(3)

Repeal the subsection.

22 Paragraph 17(d)

Repeal the paragraph, substitute:

- (d) if there is no person for the time being performing the duties of that office or that office no longer exists—the person specified:
 - (i) if the decision was made under an enactment referred to in paragraph (a), (b), (c) or (d) of the definition of *enactment* in subsection 3(1)—by the Minister administering that enactment, or by a person he or she authorises for the purpose; or

- (ii) if the decision was made under an enactment referred to in paragraph (ca) or (cb) of that definition—by the Attorney-General, or by a person he or she authorises for the purpose.

23 At the end of subsection 19A(1)

Add:

Note: Because of paragraphs (ca) and (cb) of the definition of *enactment* in subsection 3(1), certain laws of the Northern Territory are enactments without the need for a declaration under this subsection.

24 After section 19A

Insert:

19B Regulations may amend Schedule 3

The regulations may amend Schedule 3 to include, omit or alter a description of:

- (a) an Act of a State, the Australian Capital Territory or the Northern Territory, or a class of such Acts; or
- (b) a part of such an Act or a class of parts of such Acts.

Note: Schedule 3 identifies Acts of the States, the Australian Capital Territory and the Northern Territory, and parts of such Acts, that are enactments for the purposes of this Act.

25 Paragraphs (m) and (n) of Schedule 1

Repeal the paragraphs.

26 At the end of the Act

Add:

**Schedule 3—State, ACT and NT Acts, and
parts of such Acts, that are enactments
for the purposes of this Act**

Note: See paragraphs (ca) and (cb) of the definition of *enactment* in subsection 3(1).

1 What this Schedule does

This Schedule describes Acts of the States, the Australian Capital Territory and the Northern Territory, and parts of such Acts, that are enactments for the purposes of this Act.

Note: This Schedule can be amended by the regulations (see section 19B).

2 State, ACT and NT Acts, and parts of such Acts, that are enactments

The following are enactments for the purposes of this Act:

- (a) an Act of a State, the Australian Capital Territory or the Northern Territory that applies, as a law of the State or Territory, the Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* of the Commonwealth;
- (b) an Act of a State, the Australian Capital Territory or the Northern Territory that confers functions or powers on the Australian Sports Drug Agency established by the *Australian Sports Drug Agency Act 1990* of the Commonwealth;
- (c) an Act of a State or the Northern Territory that applies, as a law of the State or Territory, the Corporations Law set out in section 82 of the *Corporations Act 1989* of the Commonwealth;
- (d) the *Gas Pipelines Access (South Australia) Act 1997* of South Australia, or an Act of another State or of the Australian Capital Territory or the Northern Territory that applies Schedule 1 to that South Australian Act as a law of that other State or of that Territory;
- (e) an Act of a State, the Australian Capital Territory or the Northern Territory that applies, as a law of the State or Territory, the text set out in Part 1 of the Schedule to the *Trade Practices Act 1974* of the Commonwealth (which forms part of what is commonly known as the Competition Code);
- (f) an Act of a State, the Australian Capital Territory or the Northern Territory that applies, as a law of the State or Territory, the text set out in Part 2 of the Schedule to the

Trade Practices Act 1974 of the Commonwealth (which forms part of what is commonly known as the New Tax System Price Exploitation Code).

27 Effect of amendments in relation to reviewable State and Territory decisions

Definitions

- (1) In this item:

amended Act means the *Administrative Decisions (Judicial Review) Act 1977* as in force after the commencement.

commencement means the commencement of the amendments of the *Administrative Decisions (Judicial Review) Act 1977* made by this Schedule.

reviewable State decision means a decision:

- (a) to which the amended Act applies because of the application of paragraph (b) of the definition of ***decision to which this Act applies*** in subsection 3(1) of that Act; and
- (b) that was made under a law of a State.

reviewable Territory decision means a decision:

- (a) to which the amended Act applies because of the application of paragraph (b) of the definition of ***decision to which this Act applies*** in subsection 3(1) of that Act; and
- (b) that was made under a law of the Australian Capital Territory or the Northern Territory.

Reviewable State decisions made before the commencement—situations in which period for seeking review under amended Act is extended

- (2) In each of the following situations, the amended Act applies in relation to a person and a reviewable State decision as if the prescribed period for the purposes of paragraph 11(1)(c) of that Act began on the commencement and ended on the later of the 28th day after the commencement and the day on which that prescribed period would, apart from this subitem, have ended:
- (a) the first situation—the decision was made during the period starting on 20 May 1999 and ending immediately before the commencement;

- (b) the second situation—before 17 June 1999, the Federal Court of Australia, purporting to act under the *Administrative Decisions (Judicial Review) Act 1977* as purportedly applied as a law of a State, made an order allowing the person further time to make an application for an order of review of the decision and that period of time had not expired by 17 June 1999;
- (c) the third situation—immediately before 17 June 1999, proceedings by way of an application by the person for an order of review of the decision were before the Federal Court of Australia under the *Administrative Decisions (Judicial Review) Act 1977* as purportedly applied as a law of a State.

Note: The power under paragraph 11(1)(c) of the amended Act to extend the time for applying for judicial review of a decision is available even if the decision is a reviewable State decision and the 28 day time limit that would otherwise apply expired before the commencement.

Reviewable Territory decisions—ACT and NT laws no longer operate to apply the AD(JR) Act

- (3) A law of the Australian Capital Territory or the Northern Territory that provides for the application of the *Administrative Decisions (Judicial Review) Act 1977* as a law of that Territory is of no effect at any time after the commencement so far as that law purports to apply that Act in relation to a reviewable Territory decision (whenever it was made).

Note: The amended Act applies to these decisions.

Reviewable Territory decisions—review proceedings continue after the commencement under the amended Act

- (4) If, immediately before the commencement, proceedings in relation to a reviewable Territory decision were before a court under the *Administrative Decisions (Judicial Review) Act 1977* as applying as a law of the Australian Capital Territory or the Northern Territory, then, on and after the commencement, those proceedings continue as if they had been commenced in that court under the amended Act.

Reviewable Territory decisions—continued effect of orders made before the commencement

- (5) An order made by a court before the commencement under the *Administrative Decisions (Judicial Review) Act 1977* as applying as a law of the Australian Capital Territory or the Northern Territory has

effect, on and after the commencement, as if it had been made by that court under the amended Act.

Agricultural and Veterinary Chemicals Act 1994

28 Section 4 (paragraph (b) of the definition of *authority*)

Omit “court,”.

29 Subsection 20(4)

Omit “a State”, substitute “the Northern Territory”.

30 Subsection 20(4)

Omit “that State”, substitute “the Northern Territory”.

Australian Sports Drug Agency Act 1990

31 Subsection 9A(2)

Repeal the subsection, substitute:

- (2) If the Agency is authorised to exercise a power, or perform a function, under a law of a State or Territory, and that law confers a power or function on:
 - (a) the Administrative Appeals Tribunal; or
 - (b) a member or officer of that Tribunal; or
 - (c) a member or officer of the Federal Court of Australia;then, subject to the regulations, that Tribunal, member or officer may exercise the power, or perform the function, conferred by that law.
- (3) If the Agency is authorised to exercise a power, or perform a function, under a law of a Territory, and that law confers jurisdiction on the Federal Court of Australia, then, subject to the regulations, that Court may exercise that jurisdiction.

Corporations Act 1989

32 After paragraph 49(1)(b)

Insert:

and (baa) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to decisions made under the Corporations Law of a State or the Capital Territory by Commonwealth authorities and officers of the Commonwealth;

33 Subsection 50(1)

Insert:

Commonwealth authority means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act.

34 After subsection 51(2)

Insert:

(2A) Despite section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, jurisdiction is conferred on the Supreme Court of each State and the Capital Territory with respect to matters arising under that Act involving or related to decisions made, or proposed or required to be made, under the Corporations Law of a State or the Capital Territory by a Commonwealth authority or an officer of the Commonwealth.

Note 1: The Federal Court also has jurisdiction with respect to these matters under that Act.

Note 2: A Supreme Court may be required to transfer a proceeding with respect to such a matter to the Federal Court: see subsection 53(3).

(2B) Subsection (2A) applies to a decision made, or proposed or required to be made:

- (a) whether or not in the exercise of a discretion; and
- (b) whether before or after that subsection commences.

35 Subsection 51(3)

After “subsection (2)”, insert “or (2A)”.

36 Subsection 53(1)

Repeal the subsection, substitute:

- (1) This section applies to the following proceedings:

-
- (a) a proceeding with respect to a civil matter arising under the Corporations Law of the Capital Territory that is in a court having jurisdiction under subsection 51(1) or (2);
 - (b) a proceeding with respect to a matter referred to in subsection 51(2A) that is in a court having jurisdiction under that subsection or in the Federal Court.

37 Subsection 53(2)

Omit “Where”, substitute “Subject to subsections (3), (4) and (5), if”.

38 At the end of section 53

Add:

- (3) If a proceeding with respect to a matter referred to in subsection 51(2A) is pending in the Supreme Court of a State or the Capital Territory (the *relevant jurisdiction*), the court must transfer the proceeding to the Federal Court unless the matter for determination in it arises out of, or relates to, another proceeding pending in any court of the relevant jurisdiction:
 - (a) that arises, or a substantial part of which arises, under the Corporations Law of a State or the Capital Territory; and
 - (b) that is not with respect to a matter referred to in subsection 51(2A);regardless of which proceeding was commenced first.
- (4) Even if the Supreme Court of a State or the Capital Territory is not required by subsection (3) to transfer a proceeding with respect to a matter referred to in subsection 51(2A) to the Federal Court, it may nevertheless do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (5) If a proceeding with respect to a matter referred to in subsection 51(2A) is pending in the Federal Court, the Federal Court may only transfer the proceeding, or an application in the proceeding, to the Supreme Court of a State or the Capital Territory (the *relevant jurisdiction*) if:
 - (a) the matter arises out of, or relates to, another proceeding pending in any court of the relevant jurisdiction:

- (i) that arises, or a substantial part of which arises, under the Corporations Law of a State or the Capital Territory; and
 - (ii) that is not a proceeding with respect to a matter referred to in subsection 51(2A);
regardless of which proceeding was commenced first; and
 - (b) the Federal Court considers the transfer to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (6) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (7) The fact that some 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 other references to the interests of justice, in this section or elsewhere in this Act, do not include that matter.

39 At the end of section 53A

Add:

- (5) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

40 After subsection 53AA(6)

Insert:

- (6A) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

41 Subsection 54(3) (paragraph (b) of the definition of *relevant jurisdiction*)

Omit “a State”, substitute “the Northern Territory”.

42 Subsection 54(3) (at the end of the definition of *relevant jurisdiction*)

Add:

; or (e) jurisdiction conferred on a court of a State or the Capital Territory with respect to matters referred to in subsection 51(2A).

43 Section 55

After “Territory”, insert “, or in matters referred to in subsection 51(2A),”.

44 Subsection 56(2)

Omit “, the Family Court or a court of the Capital Territory”, substitute “or the Family Court”.

45 Paragraph 56(2)(a)

Omit “a State” (twice occurring), substitute “the Northern Territory”.

46 At the end of section 56

Add:

- (3) A court of the Capital Territory may:
 - (a) exercise jurisdiction (whether original or appellate) conferred on it by a law of a State corresponding to this Division with respect to matters arising under the Corporations Law of a State; and
 - (b) hear and determine a proceeding transferred to it under such a provision.

47 Subsection 59(1)

Repeal the subsection, substitute:

- (1) A judgment:
 - (a) of the Federal Court or the Family Court that is entirely or partly given in the exercise of jurisdiction conferred by this Division, or by a law of the Northern Territory that corresponds to this Division; or
 - (b) of a court of the Capital Territory that is entirely or partly given in the exercise of jurisdiction conferred by this Division, or by a law of a State that corresponds to this Division;

is enforceable in the Capital Territory as if the judgment had been given by that court entirely in the exercise of the jurisdiction of that court apart from this Division or any such law.

48 Subsection 60(2)

Omit “a State” (twice occurring), substitute “the Northern Territory”.

49 Subsection 61A(2)

Omit “a State” (twice occurring), substitute “the Northern Territory”.

Gas Pipelines Access (Commonwealth) Act 1998

50 Subsection 5(1)

Insert:

Federal Court means the Federal Court of Australia.

51 Subsection 16(2)

Repeal the subsection, substitute:

- (2) The Federal Court has, and may exercise, the jurisdiction conferred on the Court by the gas pipelines access legislation of the Australian Capital Territory or the Northern Territory with respect to civil and criminal matters arising under the Gas Pipelines Access Law of that Territory.

52 Section 17

Omit “a scheme participant other than the Commonwealth”, substitute “the Australian Capital Territory or the Northern Territory”.

Note: The heading to section 17 is altered by inserting “**by Territories**” after “**Federal Court**”.

53 Section 19

Repeal the section.

54 Paragraph 22(1)(c)

Omit “Federal Court, or by the Supreme Court, or the”.

55 Paragraph 22(1)(f)

Omit “Federal Court, or by the Supreme Court, or”.

Judiciary Act 1903

56 At the end of section 38

Add:

Note: Under the *Jurisdiction of Courts (Cross-vesting) Act 1987*, State Supreme Courts are, with some exceptions and limitations, invested with the same civil jurisdiction as the Federal Court has, including jurisdiction under section 39B of this Act.

Jurisdiction of Courts (Cross-vesting) Act 1987

57 Preamble

After “desirable”, insert “, so far as is constitutionally possible”.

58 Subsection 3(1) (at the end of paragraph (aa) of the definition of *special federal matter*)

Add “of the Australian Capital Territory or the Northern Territory”.

59 Subsection 3(1) (paragraph (d) of the definition of *special federal matter*)

After “section 32”, insert “(other than as it has effect because of section 32B)”.

60 Subsection 3(4)

After “*Trade Practices Act 1974*”, insert “, of the Australian Capital Territory or the Northern Territory,”.

61 Subparagraph 5(4)(b)(ii)

Repeal the subparagraph, substitute:

(ii) having regard to:

- (A) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it would have been incapable of being instituted in that court, apart from this Act and any law of the Australian Capital Territory or the Northern Territory relating to cross-vesting of jurisdiction; and
- (B) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it

would have been capable of being instituted in the Supreme Court of a State or Territory, apart from this Act and any law of a State or Territory relating to cross-vesting of jurisdiction; and

- (C) 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-subparagraph (B) and not within the jurisdiction of the first court apart from this Act and any law of the Australian Capital Territory or the Northern Territory relating to cross-vesting of jurisdiction; and

- (D) the interests of justice;

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

62 At the end of section 5

Add:

- (9) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

Note: This section has effect subject to section 6 (Special federal matters: general rules) and section 6A (Special federal matters: Commonwealth authorities or officers acting under the laws of States).

63 At the end of subsection 6(1)

Add:

Note: This section has effect subject to section 6A (Special federal matters: Commonwealth authorities or officers acting under the laws of States).

Note: The heading to section 6 is altered by adding at the end “: **general rules**”.

64 After subsection 6(1)

Insert:

- (1A) However, the court must only transfer so much of the proceeding as is, in the opinion of the court, within the jurisdiction (including

the accrued jurisdiction) of the Federal Court, or the court mentioned in paragraph (2)(b), as the case may be.

65 Subsection 6(2)

Omit “be transferred, the proceeding”, substitute “or part of a proceeding be transferred, the proceeding or part of the proceeding”.

66 Paragraph 6(9)(b)

Omit “subsection (2)”, substitute “subsection (4)”.

67 After section 6

Insert:

6A Special federal matters: Commonwealth authorities or officers acting under the laws of States

- (1) This section applies to a proceeding (the *federal matter proceeding*) if:
- (a) a matter for determination in the proceeding is covered by paragraph (c) or (e) of the definition of *special federal matter* in subsection 3(1); and
 - (b) the matter for determination in the proceeding involves or relates to the exercise, or purported or proposed exercise, of functions or powers conferred on a Commonwealth authority, or officer of the Commonwealth, by an enactment (the *State enactment*) referred to in paragraph (ca) or (cb) of the definition of *enactment* in subsection 3(1) of the *Administrative Decisions (Judicial Review) Act 1977*; and
 - (c) the matter for determination in the proceeding arises out of, or relates to, another proceeding (the *State matter proceeding*) pending in any court of any State:
 - (i) that arises, or a substantial part of which arises, under the State enactment or a corresponding enactment of another State; and
 - (ii) none of the matters for determination in which are covered by paragraph (c) or (e) of the definition of *special federal matter* in subsection 3(1);regardless of which proceeding was commenced first.

Note: Paragraph (c) of the definition of *special federal matter* in subsection 3(1) refers to matters arising under the *Administrative Decisions*

Schedule 1 Amendments relating to inability of States to confer jurisdiction on federal courts

(*Judicial Review*) Act 1977, and paragraph (e) of that definition refers to matters that are within the original jurisdiction of the Federal Court by virtue of section 39B of the *Judiciary Act 1903*.

- (2) If:
- (a) the federal matter proceeding is pending in the Federal Court or the 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 the Family Court considers it appropriate to transfer the proceeding to the Supreme Court of the State in which the State matter proceeding is pending; the Federal Court or the Family Court may transfer the proceeding to that Supreme Court. Subsection 5(4) does not apply to the federal matter proceeding.
- (3) If:
- (a) the federal matter proceeding is pending in the Supreme Court of a State; and
 - (b) the State matter proceeding is pending in any court of that State;
- neither subsection 5(1) nor section 6 applies to require the Supreme Court to transfer the federal matter proceeding to the Federal Court or the Family Court. However, the Supreme Court may do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.
- (4) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (5) 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.
- (6) In this section:
- Commonwealth authority*** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act.
- officer of the Commonwealth*** has the same meaning as in paragraph 75(v) of the Constitution.
-

68 Subsection 9(2)

Omit “Federal Court, the Family Court or the”.

69 At the end of section 9

Add:

- (3) The Federal Court or the Family Court may:
- (a) exercise jurisdiction (whether original or appellate) conferred on that court by a provision of this Act or of a law of the Australian Capital Territory or the Northern Territory relating to cross-vesting of jurisdiction; and
 - (b) hear and determine a proceeding transferred to that court under such a provision.

National Crime Authority Act 1984

70 Paragraph 27(2)(a)

After “subsection 32(2)”, insert “(other than as it has effect because of section 32B)”.

71 Paragraph 27(2)(aa)

After “subsection 32(8)”, insert “(other than as it has effect because of section 32B)”.

72 After section 32A

Insert:

32B Application of section 32 to requirements under State laws

- (1) Section 32 applies, with the modifications set out in this section, in relation to the following matters under laws of the States:
- (a) a requirement (whether made before or after the commencement of this section) to answer a question, or to produce a document, at a hearing before the Authority under a law of a State;
 - (b) a requirement (whether made before or after the commencement of this section) to produce a document pursuant to a notice under a provision of a law of a State that corresponds to section 29.

- (2) Subsection 32(1) is taken to be omitted.
 - (3) Subsection 32(2) has effect as if the reference to the decision were instead a reference to a decision of the Authority under a provision of a law of a State that corresponds to subsection 32(1).
 - (4) Subsection 32(4) has effect as if the reference to a decision of the Authority under subsection (1) were instead a reference to a decision of the Authority under a provision of a law of a State that corresponds to subsection 32(1).
 - (5) Subsection 32(5) has effect as if the reference in subparagraph (b)(iii) to an undertaking of a kind referred to in subsection 30(5) or (7) were instead a reference to an undertaking of a kind referred to in a provision of a law of a State that corresponds to either of those subsections.
 - (6) Subsection 32(6) is taken to be omitted.
 - (7) Subsection 32(8) has effect as if:
 - (a) the reference to a notice under section 29 were instead a reference to a notice under a provision of a law of a State that corresponds to section 29; and
 - (b) the reference to a hearing before the Authority were instead a reference to a hearing before the Authority under a law of a State; and
 - (c) the reference in paragraph (d) to an undertaking of a kind referred to in subsection 30(5) or (7) were instead a reference to an undertaking of a kind referred to in a provision of a law of a State that corresponds to either of those subsections.
 - (8) Subsection 32(11) is taken to be omitted.
 - (9) Subsection 32(13) has effect as if:
 - (a) paragraph (a) of the definition of *relevant day* were omitted; and
 - (b) paragraph (b) of that definition related to a decision of the Authority under a provision of a law of a State that corresponds to subsection 32(1).
 - (10) Subsection 32(14) has effect as if the reference to a decision of the Authority under subsection (1) were instead a reference to a
-

decision of the Authority under a provision of a law of a State that corresponds to subsection 32(1).

32C Application of section 32A to requirements under State laws

- (1) Section 32A applies, with the modifications set out in this section, in relation to the following matters under laws of the States:
 - (a) a requirement (whether made before or after the commencement of this section) to answer a question, or to produce a document, at a hearing before the Authority under a law of a State;
 - (b) a requirement (whether made before or after the commencement of this section) to produce a document pursuant to a notice under a provision of a law of a State that corresponds to section 29.
- (2) Subsection 32A(1) has effect as if:
 - (a) the reference in subparagraph (a)(i) to a hearing were instead a reference to a hearing under a law of a State; and
 - (b) the reference in subparagraph (a)(ii) to section 29 were instead a reference to a provision of a law of a State that corresponds to section 29; and
 - (c) the reference in paragraph (c) to a special investigation were a reference to a special investigation under this Act or under a law of a State.

Note: The references in subsection 32A(1) to provisions of section 32 are also modified—see subsection (4).

- (3) Subsection 32A(2) has effect as if the reference in paragraph (a) to a document that the person is required to produce pursuant to a notice under section 20 were omitted.

Note: The references in subsection 32A(2) to provisions of section 32 are also modified—see subsection (4).

- (4) Section 32A has effect as if:
 - (a) a reference in the section to section 32 (in general terms) were instead a reference to section 32 as it has effect because of section 32B; and
 - (b) a reference in the section to subsection 32(1) were instead a reference to a provision of a law of a State that corresponds to subsection 32(1); and

- (c) a reference in the section to some other provision of section 32 were instead a reference to that provision of section 32 as it has effect because of section 32B.

Note 1: The heading to section 32 is altered by adding at the end “—**requirements made under this Act**”.

Note 2: The heading to section 32A is altered by adding at the end “—**requirements made under this Act**”.

73 Subsection 55A(1)

Repeal the subsection, substitute:

- (1) It is hereby declared to be the intention of the Parliament that the operation of a provision of a law of a State that confers or imposes on the Authority, or on a Judge of the Federal Court, a power, function or duty that is also conferred or imposed by this Act is not prevented or limited by reason of the provisions made by this Act.

74 Subsection 55A(3)

Repeal the subsection.

75 Subparagraph 61(2)(g)(i)

After “subsection 32(2)”, insert “(other than as it has effect because of section 32B)”.

76 Effect of amendments in relation to reviewable State and Territory requirements

Definitions

- (1) In this item:

amended Act means the *National Crime Authority Act 1984* as in force after the commencement, including as it has effect because of sections 32B and 32C of that Act.

commencement means the commencement of the amendments of the *National Crime Authority Act 1984* made by this Schedule.

reviewable State requirement means:

- (a) a requirement, made before the commencement, to answer a question, or to produce a document, at a hearing before the Authority under a law of a State; or

- (b) a requirement, made before the commencement, to produce a document pursuant to a notice under a provision of a law of a State that corresponded to section 29 of the *National Crime Authority Act 1984* as then in force.

reviewable Territory requirement means:

- (a) a requirement, made before the commencement, to answer a question, or to produce a document, at a hearing before the Authority under a law of the Australian Capital Territory or the Northern Territory; or
- (b) a requirement, made before the commencement, to produce a document pursuant to a notice under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 29 of the *National Crime Authority Act 1984* as then in force.

State does not include the Australian Capital Territory or the Northern Territory.

Reviewable State requirements—situations in which period for applying under subsection 32(2) of the amended Act is extended

- (2) For the purpose of a person making an application under subsection 32(2) of the amended Act concerning a decision made before the commencement in relation to a reviewable State requirement under a provision of a law of a State that corresponded to subsection 32(1) of the *National Crime Authority Act 1984* as then in force, paragraph 32(12)(c) of the amended Act applies in each of the following situations as if the 5 day period referred to in that paragraph began on the commencement:
 - (a) the first situation—the decision was made during the period starting on 12 June 1999 and ending immediately before the commencement;
 - (b) the second situation—before 17 June 1999, a court, purporting to Act under a provision of a law of a State that corresponded to subsection 32(12) of the *National Crime Authority Act 1984* as then in force, made an order allowing the person further time to make an application in relation to the decision and that period of time had not expired by 17 June 1999;
 - (c) the third situation—immediately before 17 June 1999, proceedings by way of an application by the person in relation to the decision under a provision of a law of a State

Schedule 1 Amendments relating to inability of States to confer jurisdiction on federal courts

that corresponded to subsection 32(2) of the *National Crime Authority Act 1984* as then in force were before a court.

Note: The power under subsection 32(12) of the amended Act to extend the time for applying under subsection 32(2) of that Act in relation to a decision is available even if the decision relates to a reviewable State requirement and the 28 day time limit that would otherwise apply expired before the commencement.

Reviewable State requirements—situations in which period for applying under subsection 32(8) of the amended Act is extended

- (3) For the purpose of a person making an application under subsection 32(8) of the amended Act concerning a reviewable State requirement in relation to which a notice was given before the commencement under a provision of a law of a State that corresponded to subsection 32(8A) of the *National Crime Authority Act 1984* as then in force, paragraph 32(12)(c) of the amended Act applies in each of the following situations as if the 5 day period referred to in that paragraph began on the commencement:
- (a) the first situation—the notice was given during the period starting on 12 June 1999 and ending immediately before the commencement;
 - (b) the second situation—before 17 June 1999, a court, purporting to Act under a provision of a law of a State that corresponded to subsection 32(12) of the *National Crime Authority Act 1984* as then in force, made an order allowing the person further time to make an application in relation to the requirement and that period of time had not expired by 17 June 1999;
 - (c) the third situation—immediately before 17 June 1999, proceedings by way of an application by the person in relation to the requirement under a provision of a law of a State that corresponded to subsection 32(8) of the *National Crime Authority Act 1984* as then in force were before a court.

Note: The power under subsection 32(12) of the amended Act to extend the time for applying under subsection 32(8) of that Act in relation to a decision is available even if the decision relates to a reviewable State requirement and the 28 day limit that would otherwise apply expired before the commencement.

Reviewable State requirements—if subitem (3) applies, notice is taken to have been given under subsection 32(8A) of amended Act

- (4) In a situation to which subitem (3) applies, the notice referred to in that subitem is, for the purposes of section 32 of the amended Act, taken to have been given under subsection 32(8A) of that Act.

Reviewable Territory requirements—ACT and NT provisions that correspond to sections 32 and 32A no longer operate

- (5) A provision of a law of the Australian Capital Territory or the Northern Territory that corresponds to a provision of section 32 or 32A of the amended Act is of no effect after the commencement so far as it provides for applications to be made to a court in relation to reviewable Territory requirements, or for how such applications are to be dealt with.

Note 1: Section 32 (as modified by section 32B) and section 32A (as modified by section 32C) of the amended Act provide for applications to courts in relation to reviewable Territory requirements.

Note 2: A provision of a law of the ACT or NT that corresponds to subsection 32(1), (6) or (11) is still effective as these subsections do not provide for applications to be made to, or dealt with by, a court.

Reviewable Territory requirements—proceedings under ACT and NT provisions that correspond to sections 32 and 32A continue after the commencement under the amended Act

- (6) If, immediately before the commencement, proceedings in relation to a reviewable Territory requirement were before a court under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 32 or 32A of the *National Crime Authority Act 1984* as then in force, then, from the commencement, those proceedings continue as if they had been commenced in that court under whichever of sections 32 and 32A of the amended Act is applicable.

Reviewable Territory requirements—continued effect of orders made before the commencement under ACT and NT provisions that correspond to sections 32 and 32A

- (7) An order that relates to a reviewable Territory requirement and that was made by a court before the commencement under a provision of a law of the Australian Capital Territory or the Northern Territory that corresponded to section 32 or 32A of the *National Crime Authority Act*

1984 as then in force has effect, from the commencement, as if it had been made by that court under whichever of sections 32 and 32A of the amended Act is applicable.

Trade Practices Act 1974

77 Before subsection 86(1)

Insert:

(1AA) A reference in this section to this Act, or to a Part or Division of this Act, is a reference to this Act, or to that Part or Division, as it has effect as a law of the Commonwealth.

78 Section 150D

After “application law”, insert “of a Territory”.

Note: The heading to section 150D is altered by adding at the end “**of Territories**”.

79 Section 150O

After “application law”, insert “of a Territory”.

Note: The heading to section 150O is altered by adding at the end “**of Territories**”.

80 Subsection 163(1)

Omit “shall be brought only in the Court”, substitute “may be brought in any court having jurisdiction in the matter”.

81 Subsection 163(2)

Repeal the subsection, substitute:

(2) In so far as this section has effect as a law of the Commonwealth, the Federal Court has jurisdiction to hear and determine prosecutions for offences to which subsection (1) applies, and no other court has such jurisdiction.

82 Subsection 163(4)

Omit “before the Court”.

83 Subsection 163A(1)

Omit “institute a proceeding in the Court seeking, in relation to a matter arising under this Act,”, substitute “, in relation to a matter arising under this Act, institute a proceeding in a court having jurisdiction to hear and determine proceedings under this section seeking”.

Note: The heading to section 163A is replaced by the heading “**Declarations and orders**”.

84 Subsection 163A(1)

Omit all the words after “such an order”.

85 Subsection 163A(2)

Omit “in the Court” (wherever occurring).

86 Subsection 163A(2)

Omit “in any other court”, substitute “otherwise than under this section”.

87 Subsection 163A(3)

Omit “in the Court”.

88 Subsection 163A(3)

Omit “in the Court or in any other court”, substitute “under this section or otherwise”.

89 After subsection 163A(3)

Insert:

(3A) In so far as this section has effect as a law of the Commonwealth, the Federal Court has jurisdiction to hear and determine proceedings under this section.

90 Subsection 163A(4)

Omit “Court”, substitute “Federal Court under subsection (3A)”.

Workplace Relations Act 1996

91 Subsections 5(7) and (9)

Repeal the subsections.

Schedule 2—Amendments relating to review of decisions made in the criminal justice process

Part 1—Amendments

Administrative Decisions (Judicial Review) Act 1977

1 After section 9

Insert:

9A Limitation of jurisdiction to review related criminal justice process decisions

- (1) Subject to subsection (2), at any time when:
 - (a) a prosecution for an offence against a law of the Commonwealth, a State or a Territory is before any court; or
 - (b) an appeal arising out of such a prosecution is before any court;no court has jurisdiction to hear, continue to hear or determine an application under this Act, by the person who is or was the defendant in the prosecution, in relation to a related criminal justice process decision.
- (2) Subsection (1) does not apply if an applicant has commenced an application under this Act before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.
- (3) Where subsection (2) applies, the prosecutor may apply to the court for a permanent stay of proceedings in the hearing and determination of the application and the court may grant such a stay if the court determines that:
 - (a) the matters that are the subject of the application are more appropriately dealt with in the criminal justice process; and
 - (b) a stay of proceedings will not substantially prejudice the applicant.
- (4) In this section:

appeal includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

related criminal justice process decision, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
- (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
- (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
- (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
- (e) a decision in connection with an appeal arising out of the prosecution.

Note: A decision to prosecute a person for an offence is not reviewable under this Act: see paragraph (xa) of Schedule 1.

2 After paragraph (x) of Schedule 1

Insert:

- (xa) decisions to prosecute persons for any offence against a law of the Commonwealth, a State or a Territory;

Note: An application under this Act in relation to other criminal justice process decisions cannot be heard or determined in certain circumstances: see section 9A.

3 Subparagraph (e)(i) of Schedule 2

After “investigation”, insert “, committal for trial”.

4 Subparagraph (e)(iii) of Schedule 2

Omit “search warrants”, substitute “warrants, including search warrants and seizure warrants,”.

5 Subparagraphs (e)(iv) and (v) of Schedule 2

Repeal the subparagraphs, substitute:

- (iv) decisions under a law of the Commonwealth or of a Territory requiring the production of documents, the giving of information or the summoning of persons as witnesses;
- (v) decisions in connection with an appeal (including an application for a new trial or a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge) arising out of the prosecution of persons for any offences against a law of the Commonwealth or of a Territory;

Corporations Act 1989

6 After paragraph 49(1)(b)

Insert:

- and (ba) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations Law of a State or the Capital Territory and related criminal justice process decisions;

7 Subsection 50(1)

Insert:

officer of the Commonwealth has the same meaning as in paragraph 75(v) of the Constitution.

8 At the end of section 51

Add:

- (4) This section has effect subject to section 51AA.

9 At the end of section 51A

Add:

- (4) This section has effect subject to section 51AA.

10 After section 51A

Insert:

51AA Jurisdiction of courts: decisions to prosecute and related criminal justice process decisions made by Commonwealth officers

- (1) If a decision to prosecute a person for an offence against the Corporations Law of a State or the Capital Territory has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of a State or the Capital Territory:
 - (a) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and
 - (b) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced.
- (2) Subject to subsection (3), at any time when:
 - (a) a prosecution for an offence against the Corporations Law of a State or the Capital Territory is before a court of a State or the Capital Territory; or
 - (b) an appeal arising out of such a prosecution is before a court of a State or the Capital Territory;the following apply:
 - (c) neither the Federal Court nor the Family Court has jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;
 - (d) jurisdiction with respect to any such matter is conferred on the Supreme Court of the State or Territory in which the prosecution or appeal is before a court.
- (3) Subsection (2) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.

Schedule 2 Amendments relating to review of decisions made in the criminal justice process

Part 1 Amendments

- (4) Where subsection (3) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection and the court may grant such a stay if the court determines that:
- (a) the matters that are the subject of the proceedings are more appropriately dealt with in the criminal justice process; and
 - (b) a stay of proceedings will not substantially prejudice the person.
- (5) Subsections (1), (2), (3) and (4) have effect despite anything in this Act or in any other law. In particular:
- (a) neither this Act, nor any other law, has the effect of giving the Federal Court or the Family Court jurisdiction contrary to subsection (1) or (2); and
 - (b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State or the Capital Territory the jurisdiction given to that Court by subsection (1) or (2).
- (6) In this section:

appeal includes an application for a new trial and a proceeding to review or call in question the proceedings, decision or jurisdiction of a court or judge.

related criminal justice process decision, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
 - (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
 - (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
 - (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
 - (e) a decision in connection with an appeal arising out of the prosecution.
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Judiciary Act 1903

11 Section 38

Omit “section 44”, substitute “sections 39B and 44”.

12 Subsection 39B(1)

Omit “The”, substitute “Subject to subsections (1B) and (1C), the”.

13 After subsection 39B(1A)

Insert:

- (1B) If a decision to prosecute a person for an offence against a law of the Commonwealth, a State or a Territory has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of a State or Territory:
- (a) the Federal Court of Australia does not have jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and
 - (b) the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced is invested with, or has conferred on it, jurisdiction with respect to any such matter.
- (1C) Subject to subsection (1D), at any time when:
- (a) a prosecution for an offence against a law of the Commonwealth, a State or a Territory is before a court of a State or Territory; or
 - (b) an appeal arising out of such a prosecution is before a court of a State or Territory;
- the following apply:
- (c) the Federal Court of Australia does not have jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;
 - (d) the Supreme Court of the State or Territory in which the prosecution or appeal is before a court is invested with, or

has conferred on it, jurisdiction with respect to any such matter.

- (1D) Subsection (1C) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.
- (1E) Where subsection (1D) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection, and the court may grant such a stay if the court determines that:
- (a) the matters the subject of the proceedings are more appropriately dealt with in the criminal justice process; and
 - (b) a stay of proceedings will not substantially prejudice the person.
- (1F) Subsections (1B), (1C), (1D) and (1E) have effect despite anything in any other law. In particular:
- (a) neither the *Jurisdiction of Courts (Cross-vesting) Act 1987*, nor any other law, has the effect of giving the Federal Court of Australia jurisdiction contrary to subsection (1B) or (1C); and
 - (b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State or Territory the jurisdiction given to that Court by subsection (1B) or (1C).

14 Subsection 39B(2)

After “subsection (1)”, insert “, (1B) or (1C)”.

15 At the end of section 39B

Add:

- (3) In this section:

related criminal justice process decision, in relation to an offence, means a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:

- (a) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
- (b) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
- (c) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
- (d) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
- (e) a decision in connection with an appeal arising out of the prosecution.

Part 2—Application of amendments

16 Application of amendments

- (1) In this item:

commencement means the commencement of the amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule.

related criminal justice process decision, in relation to an offence, has the same meaning as in the following provisions (as amended by Part 1 of this Schedule):

- (a) section 9A of the *Administrative Decisions (Judicial Review) Act 1977*;
- (b) section 51AA of the *Corporations Act 1989*;
- (c) section 39B of the *Judiciary Act 1903*.

- (2) The amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule apply in relation to:

- (a) a decision made on or after the commencement to prosecute a person for an offence, even if the conduct alleged to give rise to the offence occurred before the commencement; or
- (b) a related criminal justice process decision made on or after the commencement in relation to an offence, even if either or both of the following apply:
 - (i) the conduct alleged to give rise to the offence occurred before the commencement;
 - (ii) the prosecution of the offence, or an appeal arising out of the prosecution, was commenced before the commencement.

- (3) The amendments of the *Administrative Decisions (Judicial Review) Act 1977*, the *Corporations Act 1989* and the *Judiciary Act 1903* made by Part 1 of this Schedule also apply in relation to:

- (a) a decision made before the commencement to prosecute a person for an offence, unless that decision is the subject of an application that is before a court at 13 April 2000; or
 - (b) a related criminal justice process decision made before the commencement in relation to an offence, unless the decision
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is the subject of an application that is before a court at 13
April 2000.

Schedule 3—Amendments relating to dealings in securities

Australian Securities and Investments Commission Act 1989

1 At the end of Division 2 of Part 2

Add:

Subdivision J—Dealings in securities

12JA Operation of this Subdivision

In applying this Subdivision, the other Subdivisions of this Division are to be disregarded.

12JB Definitions

In this Subdivision, unless the contrary intention appears:

applied law means the securities provisions, as they have effect in accordance with this Subdivision.

constitutional corporation means any of the following:

- (a) a body corporate to which paragraph 51(xx) of the Constitution applies;
- (b) a body corporate that is incorporated in the Australian Capital Territory or the Northern Territory;
- (c) a body corporate that carries on, as its sole or principal business, the business of:
 - (i) banking (other than State banking not extending beyond the limits of the State concerned); or
 - (ii) insurance (other than State insurance not extending beyond the limits of the State concerned);
- (d) a body corporate that is a holding company of a body corporate covered by any of the above paragraphs.

securities provisions means the following provisions, so far as they relate to dealings in securities by a constitutional corporation:

- (a) sections 670A, 726, 727, 728 and 995 of the Corporations Law (the *primary provisions*);
- (b) the other provisions of the Corporations Law, the Corporations Regulations, the ASC Law or the ASC Regulations, so far as those provisions are incidental to the operation of the primary provisions;
- (c) the provisions of any Act (including this Act), or of a law of a State or Territory that corresponds to the *Corporations Act 1989*, so far as those provisions are incidental to the operation of the primary provisions.

12JC Application of securities provisions as Commonwealth law

- (1) The securities provisions apply as a law of the Commonwealth by force of this section.

Note: The Corporations Law consists of separate laws for the various Australian jurisdictions. Subsection (1) will therefore have the effect of applying the securities provisions with their separate operations in the various Australian jurisdictions.

- (2) The application of the securities provisions in accordance with this Subdivision is in addition to the application that they have apart from this Subdivision.
- (3) The securities provisions, as they have effect in accordance with this Subdivision, are referred to in this Subdivision as the *applied law*.
- (4) A person is not liable to be prosecuted for an offence under the applied law.

12JD Federal Court has jurisdiction under the applied law

- (1) Jurisdiction is conferred on the Federal Court with respect to civil matters arising under the applied law.
- (2) The jurisdiction conferred by subsection (1) is exclusive of the jurisdiction of any other court (other than the High Court).
- (3) This section has effect despite anything to the contrary in the applied law.

12JE Concurrent operation of securities provisions

- (1) Subject to this section, this Subdivision is not intended to exclude the concurrent operation of the securities provisions.
- (2) A person is not entitled to institute a proceeding under the applied law in respect of loss or damage arising out of a contravention of the applied law if:
 - (a) the person has recovered in respect of the loss or damage in an action brought under the securities provisions; or
 - (b) the person has brought proceedings under the securities provisions to recover in respect of the loss or damage, but judgment has been entered for the defendant in those proceedings.
- (3) A person is not entitled to institute a proceeding under the securities provisions in respect of loss or damage arising out of a contravention of the securities provisions if:
 - (a) the person has recovered in respect of the loss or damage in an action brought under the applied law; or
 - (b) the person has brought proceedings under the applied law to recover in respect of the loss or damage, but judgment has been entered for the defendant in those proceedings.

2 After section 243C

Insert:

243CA Recognition of things done under Commonwealth law relating to dealings in securities

Anything done under, or for the purposes of, the applied law referred to in Subdivision J of Division 2 of Part 2 of the ASC Act is taken, for the purposes of a national scheme law of this jurisdiction, to have been done under, or for the purposes of, the corresponding provision of the relevant national scheme law of this jurisdiction.

Schedule 4—Amendments relating to takeover bids

Corporations Act 1989

1 After section 59

Insert:

59A Court proceedings before end of bid period for takeover bid etc.

- (1) The object of this section is to ensure that section 659B of the Corporations Law has the same effect in relation to proceedings in courts exercising federal jurisdiction as that section has in relation to proceedings in other courts exercising jurisdiction under the Corporations Law.
- (2) Section 659B of the Corporations Law applies as a law of the Commonwealth, by force of this section, as if a reference in the relevant definition to proceedings were a reference to the following proceedings before the Federal Court or before another court exercising federal jurisdiction:
 - (a) proceedings under the *Administrative Decisions (Judicial Review) Act 1977*;
 - (b) proceedings in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth.

For the purposes of this subsection, ***relevant definition*** means the definition of ***court proceedings in relation to a takeover bid or proposed takeover bid*** in subsection 659B(4) of the Corporations Law.

- (3) The application of section 659B of the Corporations Law in accordance with this section is in addition to the application that it has apart from this section.
- (4) Nothing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

Schedule 5—Amendments relating to the appeal powers of the DPP and DPP staff

Director of Public Prosecutions Act 1983

1 Subsection 3(1)

Insert:

appeal includes:

- (a) a proceeding of the same nature as an appeal; and
- (b) a review or rehearing, or a proceeding of the same nature as a review or rehearing.

2 At the end of paragraphs 6(1)(a) to (k)

Add “and”.

3 After paragraph 6(1)(m)

Insert:

- (ma) if the Director is authorised by or under a law of a State to institute and carry on appeals arising out of prosecutions of offences against the laws of the State, being prosecutions by the Director as mentioned in paragraph (m) or by members of the staff of the Office as mentioned in subsection 17(1)—to institute and carry on such appeals in accordance with requirements of or under that law; and

4 Paragraph 6(1)(n)

Omit “(m)”, substitute “(ma)”.

5 Subsection 9(8A)

Repeal the subsection, substitute:

(8A) If:

- (a) proceedings for the summary conviction of a person in respect of an offence against a law of the Commonwealth were instituted by a person (the *relevant person*) other than the Director; and

(b) the Director subsequently carried on the proceedings;
then:

- (c) in addition to any other rights of appeal the Director has, the Director may exercise, in respect of the proceedings, such rights of appeal as (disregarding the effect of paragraph (d)) are exercisable by the relevant person; and
- (d) except where the Attorney-General is the relevant person—the relevant person cannot exercise those rights of appeal.

(8B) If:

(a) proceedings for the summary conviction of a person in respect of an offence against a law of the Commonwealth were instituted by a person (the *relevant person*) other than the Director; and

(b) the proceedings were not carried on by the Director;

then:

- (c) if the relevant person institutes an appeal in respect of the proceedings, the Director may carry on that appeal on behalf of the relevant person; and
- (d) if the defendant in the proceedings institutes an appeal in respect of the proceedings, the Director may act on behalf of the respondent in the appeal.

6 At the end of section 17

Add:

- (2) If a member of the staff of the Office is authorised by or under a law of a State to institute and carry on appeals arising out of prosecutions of offences against the laws of the State, being prosecutions by the Director as mentioned in paragraph 6(1)(m) or by members of the staff of the Office as mentioned in subsection (1) of this section, the first-mentioned staff member may institute and carry on such appeals in accordance with requirements of or under that law.

Note: The heading to section 17 is replaced by the heading “**States may give members of staff of Office prosecution and appeal functions relating to State offences**”

7 Application of amendments

The amendments made by items 3, 5 and 6 apply in relation to prosecutions, and proceedings for summary conviction, whether instituted before, on or after the commencement of those items.

Schedule 5 Amendments relating to the appeal powers of the DPP and DPP staff

*[Minister's second reading speech made in—
House of Representatives on 8 March 2000
Senate on 11 April 2000]*

(25/00)