



# **Judiciary Legislation Amendment Act 2006**

**No. 151, 2006**

**An Act to amend the *Judiciary Act 1903*, and for  
related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Judiciary Legislation Amendment Act 2006

No. 151, 2006

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## **An Act to amend the *Judiciary Act 1903*, and for related purposes**

[Assented to 7 December 2006]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Judiciary Legislation Amendment Act 2006*.

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## **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

## **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Orders of non-judicial officers of State courts of summary jurisdiction**

### **Part 1—Amendments**

#### **Division 1—Main amendments**

##### *Judiciary Act 1903*

#### **1 Paragraph 39(2)(d)**

Repeal the paragraph.

Note: The heading to paragraph 39(2)(d) is deleted.

#### **2 Paragraph 39A(1)(b)**

Omit “the provisions of paragraphs (c) and (d) of that subsection (whether or not it is expressed to be invested subject to both or either of those provisions), so far as they are capable of application and are”, substitute “paragraph 39(2)(c) (whether or not the jurisdiction is expressed to be invested subject to that paragraph), so far as it can apply and is”.

#### **3 Subsection 68(3)**

Repeal the subsection.

#### **Division 2—Consequential amendments**

##### *Commonwealth Places (Application of Laws) Act 1970*

#### **4 Subsection 8(5)**

Repeal the subsection.

##### *Crimes Act 1914*

#### **5 Subsection 15A(1ACA)**

Repeal the subsection, substitute:

**Schedule 1** Orders of non-judicial officers of State courts of summary jurisdiction  
**Part 1** Amendments

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(1ACA) Paragraph 26(d) of the *Acts Interpretation Act 1901* does not apply in relation to subsections (1AA) and (1AC).

***Family Law Act 1975***

**6 Part XIVB**

Repeal the Part.



## Part 2—Past orders

### 7 Definitions

In this Part:

*ineffective order* has the meaning given by item 8.

*liability* includes a duty or obligation.

*non-judicial officer* of a court of summary jurisdiction of a State means an officer of the court who is not a magistrate, or arbitrator, of the kind described in paragraph 39(2)(d) of the *Judiciary Act 1903* just before the commencement of this Schedule.

Note: Just before the commencement of this Schedule, paragraph 39(2)(d) of the *Judiciary Act 1903* referred to:

- (a) Stipendiary, Police and Special Magistrates, and State Magistrates specially authorised by the Governor-General to exercise federal jurisdiction; and
- (b) arbitrators on whom all or part of the jurisdiction of a State court of summary jurisdiction was conferred by a prescribed law of the State.

*proceedings* includes an initiating application.

*proceedings for the order*, in relation to an ineffective order, means the proceedings in or in relation to which the order was purportedly made.

*right* includes an interest or status.

### 8 Meaning of *ineffective order*

- (1) A reference in this Part to an *ineffective order* is a reference to a purported order described in subitem (2). This subitem has effect subject to subitem (3) as it affects the meaning of a reference to an ineffective order in the context of a particular case.
- (2) An order that a non-judicial officer of a court of summary jurisdiction of a State has purported to make is an *ineffective order* if:
  - (a) the officer purported to make the order before the commencement of this Part; and
  - (b) the order was made in the purported exercise of the court's federal jurisdiction; and
  - (c) paragraph 39(2)(d) of the *Judiciary Act 1903* prohibited the exercise by the officer of the court's federal jurisdiction.

- (3) If a court, or a non-judicial officer of a court of summary jurisdiction of a State, has purported to affirm, vary, revoke, set aside, reverse, revive or suspend an ineffective order, a reference in this Part to the ineffective order is a reference to the order in the form in which, and to the extent to which, it purports or purported to have effect from time to time.

## **9 Rights and liabilities declared in certain cases**

The rights and liabilities of all persons are, by force of this item, declared to be, and always to have been, the same as if each ineffective order of a court of summary jurisdiction had been an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

## **10 Effect of declared rights and liabilities**

- (1) A right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction:

- (a) is exercisable or enforceable; and
- (b) is to be regarded as always having been exercisable or enforceable;

as if it were a right or liability conferred, imposed or affected by an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

- (2) The rights and liabilities conferred, imposed or affected by item 9 include (but are not limited to) the right of a person who was a party to the proceeding or purported proceeding in which the ineffective order was made to appeal against that order.

## **11 Effect of things done or omitted to be done under or in relation to rights and liabilities**

- (1) Any act or thing done or omitted to be done before, at or after the commencement of this Part under or in relation to a right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction:
- (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law; and
  - (b) is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law;

as if it were done or omitted to be done to give effect to, or under the authority of, or in reliance on, an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

- (2) Subject to subitem (3), for the purposes of an enforcement law (see subitem (4)), any act or thing done or omitted to be done before, at or after the commencement of this Part:
- (a) gives rise to the same consequences; and
  - (b) is to be regarded as always having given rise to the same consequences;

as if each ineffective order of a court of summary jurisdiction were an order made by that court, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

- (3) If, before the commencement of this Part, a court purported to convict a person of an offence against an enforcement law on the basis that an ineffective order was a valid order, nothing in this item is to be taken to validate or confirm that conviction.
- (4) In this item:

**enforcement law** means a provision of a law of the Commonwealth, other than a law relating to contempt of court, that sets out a consequence for a person if the person:

- (a) contravenes; or
- (b) acts in a specified way while there is in force;

an order, or a particular kind of order, made by a court exercising federal jurisdiction (whether or not the provision also applies to other orders of courts).

## **12 Powers of courts in relation to declared rights and liabilities**

- (1) A court may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction as if it were a right or liability conferred, imposed or affected by an order made by that court of summary jurisdiction, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order.

- (2) In addition to its powers under subitem (1), a court (the *review court*) also has power to make an order achieving any other result that could have been achieved if:
- (a) the ineffective order had been an order made by a court of summary jurisdiction, in the exercise of its federal jurisdiction, in or in relation to the proceedings for the order; and
  - (b) the review court had been considering whether:
    - (i) to vary, revoke, set aside, revive or suspend that order; or
    - (ii) to extend the time for the doing of anything in relation to the proceedings for the order; or
    - (iii) to grant a stay of the proceedings for the order.

### **13 Proceedings for contempt**

If (whether before, at or after the commencement of this Part) a person has:

- (a) interfered with a right conferred or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction; or
- (b) failed to satisfy or comply with a liability imposed or affected by item 9 in relation to an ineffective order of a court of summary jurisdiction;

the interference or failure is, and is taken always to have been, a matter that can be dealt with in the same manner as if the interference or failure had been in relation to a right conferred or affected, or a liability imposed or affected, by a valid judgment of that court.

### **14 Evidence**

The court record, or a copy of the court record, of an ineffective order may be adduced in evidence to show the existence, nature and extent of each right or liability conferred, imposed or affected by item 9.

### **15 Part does not apply to certain orders**

Nothing in this Part applies to an order declared to be invalid by a court before the commencement of this Part.

### **16 Jurisdiction of courts**

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*Conferral of jurisdiction*

- (1) Jurisdiction in matters arising under this Part is conferred on:
- (a) the Family Court of Australia; and
  - (b) the Federal Magistrates Court.

Note: Sections 39 and 39B of the *Judiciary Act 1903* give State courts and the Federal Court of Australia jurisdiction in matters arising under this Part.

*Limitation of jurisdiction*

- (2) A court has jurisdiction in a matter arising under this Part in relation to an ineffective order only if it had jurisdiction in the matter (the *initial matter*) in connection with which the order was purportedly made. The court's jurisdiction in the matter arising under this Part is subject to the same conditions and limitations as would apply to it in dealing with the initial matter.
- (3) Subitem (2) applies whether the court has jurisdiction in the matter arising under this Part because of subitem (1) or otherwise.
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[*Minister's second reading speech made in—*  
*Senate on 13 September 2006*  
*House of Representatives on 28 November 2006*]

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