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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

AMENDMENTS TO THE

JURISDICTION OF COURTS (MISCELLANEOUS AMENDMENTS) BILL 1987

EXPLANATORY MEMORANDUM

(In substitution for the copy presented to the
House of Representatives on 26 February 1987.)

(Circulated by authority of the Honourable Lionel Bowen M.P.,
Deputy Prime Minister and Attorney-General)

OUTLINE

The purpose of these amendments is to make some adjustments to the proposals on jurisdiction of courts contained in the Jurisdiction of Courts (Miscellaneous Amendments) Bill 1986. The adjustments follow consideration of comments received since the Bill was introduced into the House of Representatives in October 1986.

2. Clause 4 of the Bill as introduced leaves with the Supreme Courts all taxation matters which have been forwarded to those Courts prior to the date of commencement. Under the amendments any taxation proceeding for which the hearing in the Supreme Court has not commenced is to be transferred to the Federal Court.

3. The Bill as introduced confers on the Federal Court of Australia exclusive original civil jurisdiction in intellectual property matters. Under the amendments, original civil jurisdiction in intellectual property matters, other than appeals from the Commissioner of Patents or from the Registrars of Trade Marks and Designs, is to be vested concurrently in the Federal Court of Australia and the State and Territory Supreme Courts. However, appeals from decisions of the Commissioner of Patents and from the Registrars of Trade Marks and Designs are to lie to the Federal Court, but not to State and Territory Supreme Courts.

4. The Bill as introduced also confers on State and Territory courts original and appellate federal jurisdiction, concurrent with the Federal Court, in civil matters arising under Divisions 1 and 1A of Part V of the Trade Practices Act 1974 (the consumer protection provisions). In all cases but one (unconscionable conduct - section 52A) the Bill proposed that appeals from State and Territory courts were to lie within the respective State and Territory systems. Appeals in relation to matters under section 52A were to go to the Federal Court

or with special leave to the High Court. Under the amendments this exception will be removed and appeals from State and Territory courts on section 52A matters will also lie within the respective State and Territory systems.

5. These amendments are not expected to result in any significant financial impact.

NOTES ON AMENDMENTS

(1) Clause 4 - Transitional Provisions relating to Taxation Laws

Pursuant to sub-clause 4(2) of the Bill, where a taxpayer has requested that the Commissioner of Taxation refer a decision on objection to a Supreme Court, and at the date the relevant amendments come into operation the decision or objection has not been referred, the request is to be treated as a request to refer the matter to the Federal Court. However, under the Bill, proceedings already commenced in the Supreme Courts were to remain in those Courts. The amendment provides that any taxation proceeding for which the hearing in the Supreme Court has not commenced is to be transferred to the Federal Court.

2. New sub-section 4(5) provides that laws in force before the commencement day will continue to apply to cases which remain in Supreme Courts. New sub-section 4(6) makes it clear that appeals from Supreme Courts in such cases will continue to go to the Federal Court.

SCHEDULE OF AMENDMENTS OF ACTS

(2) Amendments of Advance Australia Logo Protection Act 1984

3. The Bill provides that infringement actions under the Act must be brought in the Federal Court. The effect of the amendments is to confer concurrent jurisdiction in infringement actions on the Federal Court and State and Territory Supreme Courts. Jurisdiction in compensation proceedings under section 16 of the Act is also to be conferred on the Federal Court, concurrently with the jurisdiction already vested in the various State and Territory courts.

(3) Amendments of Copyright Act 1968

4. The Bill confers exclusive jurisdiction on the Federal Court in civil actions under Part V of the Act. The effect of the amendments is to make the Federal Court's jurisdiction in these matters concurrent with the jurisdiction already vested in State and Territory Courts.

(4) Amendments of Designs Act 1906

5. The Bill confers on the Federal Court exclusive jurisdiction in all civil actions and proceedings under the Act. The effect of the amendments is to give the Federal Court concurrent original jurisdiction with the State and Territory Supreme Courts in civil matters arising under the Act, other than appeals from decisions of the Registrar of Designs. Criminal proceedings under the Act will continue to be instituted in State or Territory courts.

6. Appeals from the decisions of the Registrar of Designs will only be able to be taken to the Federal Court, apart from the High Court's jurisdiction under section 75 of the Constitution.

(5) Amendments of Patents Act 1952

7. The Bill confers on the Federal Court exclusive jurisdiction in all civil actions and proceedings under the Act. The effect of the amendments is to give the Federal Court concurrent original jurisdiction with the State and Territory Supreme Courts in civil matters arising under the Act, other than appeals from decisions of the Commissioner of Patents. Criminal proceedings under the Act will continue to be instituted in State or Territory courts.

8. Appeals from the decisions of the Commissioner of Patents will only be able to be taken to the Federal Court, apart from the High Court's jurisdiction under section 75 of the Constitution.

9. Minor drafting amendments of sub-section 66(3) of the Act are also made to deal with the case where the sealing of a standard patent is delayed by any proceedings in a court.

(6) Amendments of Trade Marks Act 1955

10. The Bill confers on the Federal Court exclusive jurisdiction in all civil actions and proceedings under the Act. The effect of the amendments is to give the Federal Court concurrent original jurisdiction with the State and Territory Supreme Courts in civil matters arising under the Act, other than appeals from decisions of the Registrar of Trade Marks. Criminal proceedings under the Act will continue to be instituted in State or Territory courts.

11. Appeals from the decisions of the Registrar of Trade Marks will only be able to be taken to the Federal Court, apart from the High Court's jurisdiction under section 75 of the Constitution.

12. Minor drafting amendments of sub-section 54(3) of the Act are also made to deal with the case where the registration of a trade mark is delayed by any proceedings in a court.

(7)-(8) Amendments of Trade Practices Act 1974

13. The amendment to new sub-section 86A(1) permits the court to transfer related matters.

14. The new section 86B proposed by the Bill provides that appeals from State and Territory courts in relation to matters under section 52A of the Act (unconscionable conduct) would be limited to the Federal Court or, with special leave, to the High Court. Appeals from State and Territory Courts in relation to all other matters arising under Divisions 1 and 1A of the Part V of the Act are to lie within the relevant State or Territory system.

15. Amendment (8), which omits the proposed new section 86B, will bring appeals on matters under section 52A into line with appeals on other matters under Divisions 1 and 1A of Part V. This means that appeals from State and Territory Courts in section 52A matters will also lie within the relevant State or Territory system.