

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

JURISDICTION OF COURTS (MISCELLANEOUS AMENDMENTS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister representing the
Attorney-General, Senator the Honourable Gareth Evans, O.C.)

This memorandum takes account of amendments made by the House
of Representatives to the Bill as introduced.

OUTLINE OF BILL

The purpose of the Jurisdiction of Courts (Miscellaneous Amendments) Bill 1987 is to make some adjustments to the jurisdiction of the courts in the hearing of matters arising under federal jurisdiction.

2. The Bill confers on the Federal Court of Australia civil jurisdiction in intellectual property matters. This jurisdiction is exclusive for appeals from the Commissioner of Patents and the Registrars of Designs and Trade Marks and concurrent with State and Territory Supreme Courts for other matters. Jurisdiction in appeals from these Courts will continue to be exercised by the Federal Court. The Bill also confers exclusive jurisdiction on the Federal Court to hear and determine appeals by taxpayers against decisions under Commonwealth taxation laws. The federal jurisdiction in both these areas is, under existing legislation, exercisable by State and Territory Supreme Courts.

3. The Bill 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. These Divisions relate to consumer protection. Excepted from the conferral of jurisdiction on State and Territory courts are civil proceedings instituted by the Minister or the Trade Practices Commission.

4. These jurisdictional changes should not have a significant financial impact.

NOTES ON CLAUSES

Clause 1: Short title

1. This clause contains the short title of the Bill.

Clause 2: Commencement

2. This clause provides for the commencement of the various sections of the Bill. The amendments to the specific Acts in the Schedule may be brought into operation on different dates. Other amendments come into effect on Royal Assent.

Clause 3: Amendments of Acts

3. This clause amends the various Acts specified in the Schedule.

Clause 4: Transitional provisions relating to taxation laws

4. This clause contains transitional provisions relating to the amendments to taxation laws. In essence it provides that -
 - (a) where a taxpayer has requested the Commissioner of Taxation to refer an objection to a Supreme Court, and at the date the relevant amendments come into operation the objection has not been referred, the request is to be treated as a request to refer the matter to the Federal Court; and

- (b) where the hearing (other than an interlocutory hearing) on an objection which has been forwarded to a Supreme Court has not begun before these amendments come into operation, the proceeding is to be transferred to the Federal Court.

5. Sub-clause 4(5) provides that laws in force before the commencement of these amendments will continue to apply to cases which remain in Supreme Courts. Sub-clause 4(6) makes it clear that appeals from Supreme Courts in such cases will continue to go to the Federal Court.

Clause 5: Transitional provisions relating to intellectual property laws

6. This clause contains transitional provisions relating to intellectual property matters. The amendments are only to apply to proceedings commenced after the commencement of the amendments, and the pre-existing law is to continue to apply to proceedings already commenced.

SCHEDULE OF AMENDMENTS OF ACTS

Advance Australia Logo Protection Act 1984

7. Section 11 of the Act provides a right of action for infringement of the monopoly in the design of the Advance Australia logo. The effect of the amendment to sub-section 11(2) is to allow infringement actions to be brought in the Federal Court, as well as in Supreme Courts which currently hold jurisdiction.

8. New sub-section 13(1A) formally confers original jurisdiction in infringement actions on the Federal Court. It also gives it jurisdiction in compensation proceedings, concurrent with that already vested in the various State and Territory courts.

Bank Account Debits Tax Administration Act 1982

9. The amendments to this Act remove references to the Supreme Courts of the States and Territories and substitute references to the Federal Court. Thus in section 20 a new definition of "Federal Court" is inserted and the definition of "Supreme Court" is omitted.

10. Under Section 23 as amended an objector who is dissatisfied with a decision of the Commissioner may request that the decision be referred either to the Administrative Appeals Tribunal or to the Federal Court. Under section 25A, as amended, applications for extensions of time shall also be referred to either the Tribunal or the Federal Court.

11. Section 26 presently deals with the powers of Supreme Courts, and with appeals and cases stated therefrom. The amendment to this section removes the unnecessary provisions. It will now provide that the Federal Court may make such orders as it thinks fit in relation to the decision on the objection.

12. Sections 28 and 29 are repealed as they deal with appeals from Supreme Courts and with their practice and procedure.

13. New sub-section 29A(2) provides when a decision of the Federal Court becomes final. Under sub-section 29A(1) the Commissioner is required to give effect to a decision within 60 days of it becoming final.

Copyright Act 1968

14. Division 4A of Part V (sections 131A and 131B) currently deals with the exercise of jurisdiction by Supreme Courts and with appeals from those courts. New section 131C confers jurisdiction on the Federal Court in all civil proceedings under Part V, concurrent with the jurisdiction already vested in State and Territory courts.

Designs Act 1906

15. 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.

16. 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.

Estate Duty Assessment Act 1914

17. The amendments to this Act remove references to the Supreme Courts of the States and Territories and substitute references to the Federal Court. Provisions which relate to the exercise of jurisdiction by the Supreme Courts, their procedure and appeals are repealed.

18. New section 27E gives the Federal Court power to make such orders in relation to an appeal by an administrator as it thinks fit. The purpose of new sub-section 28AC(2) is to determine when the decision of the Court or the Administrative Appeals Tribunal is to be regarded as final. This is relevant to the duty of the Commissioner to implement the decision.

Fringe Benefits Tax Assessment Act 1986

19. The effect of the amendments specified in relation to this Act is to take away the jurisdiction of State and Territory Supreme Courts, to confer jurisdiction on the Federal Court, and to replace references to Supreme Courts with appropriate references to the Federal Court.

20. Under section 81, as amended, an employer who is dissatisfied with an assessment decision may request the Commissioner to refer the decision to either the Federal Court or to the Administrative Appeals Tribunal and the Commissioner is required to comply with the request.

21. Sections 86B, 86C, and 86D which provide for cases stated from the Supreme Court to the Federal Court, for the powers of Supreme Courts, and for appeals from the Supreme and Federal Courts, are repealed. The matter of appeals from the Federal Court to the High Court is governed by the Federal Court of Australia Act.

22. Existing section 87 which deals with the practice and procedure of Supreme Courts is repealed. The practice and procedure of the Federal Court is governed by the Federal Court Rules.

Gift Duty Assessment Act 1941

23. The amendments to this Act take away the jurisdiction of State and Territory Supreme Courts, confer jurisdiction on the Federal Court, and replace references to the Supreme Courts with references to the Federal Court.

24. Under the Act, as amended, an objector who is dissatisfied with a decision may request the Commissioner to refer the decision to either the Administrative Appeals Tribunal or to the Federal Court (section 32), and the Commissioner is required to comply with the request (section 34B).

25. Provisions in the Act dealing with the powers of the Supreme Court (section 34E), appeals (section 35), cases stated to the Federal Court (section 36), appeals to the High Court (section 36A), and transfer of proceedings from one Supreme Court to another (section 36B), are no longer necessary and are repealed.

26. Sub-section 36C(1) requires the Commissioner to give effect to a decision of the court or the Administrative Appeals Tribunal within 60 days after the decision becomes final. New sub-section 36C(2) specifies when the decision becomes final. The new provision is in substitution for a similar existing provision.

27. The amendment to section 47 has the effect of removing paragraph (a) in the regulation-making power which enables regulations to be made in relation to the practice and procedure of Supreme Courts. This provision is no longer necessary with the transfer of jurisdiction to the Federal Court.

Income Tax Assessment Act 1936

28. The effect of these amendments is to confer jurisdiction on the Federal Court in respect of appeals by taxpayers against decisions of the Commissioner, in place of the jurisdiction now exercised by the Supreme Courts.

29. Under section 187, as amended, a taxpayer may request the Commissioner to refer the decision to either the Administrative Appeals Tribunal or to the Federal Court, and under sections 189 and 189A the Commissioner is required to comply with the request. A taxpayer may also request the Commissioner to refer an application for an extension of time to the Tribunal or the Court (section 188B).

30. Present sections 196A and 198 deal with the practice and procedure of Supreme Courts and with cases stated to the Federal Court. With the transfer of jurisdiction to the Federal Court, these provisions are superfluous.

31. Section 200B provides for the implementation of decisions of the Court and the Tribunal. Sub-section (1) requires the Commissioner to implement a decision within a specified time. Replacement sub-section (2) determines when a decision of the Tribunal or the Federal Court becomes final.

Patents Act 1952

32. The effect of the amendments is to give the Federal Court original jurisdiction concurrent 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.

33. 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.

34. 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.

Sales Tax Assessment Act (No.1) 1930

35. The amendments made to the provisions of this Act remove references to Supreme Courts, substitute references to the Federal Court, and have the effect of conferring jurisdiction on the Federal Court in relation to objections against assessment decisions.

36. As with other taxation legislation, a taxpayer who is dissatisfied with a decision may request the Commissioner to refer the decision either to the Administrative Appeals Tribunal or to the Federal Court (section 41), and the Commissioner is required to comply with the request (section 42C).

37. Section 42G, which deals with appeals and statement of cases from Supreme Courts is no longer necessary and is repealed, and a substituted sub-section 42H(2) provides a mechanism for determining when a decision of the Administrative Appeals Tribunal or the Federal Court becomes final. The significance of this provision is that the Commissioner is required to give effect to a decision within 60 days after the decision becomes final.

Taxation (Unpaid Company Tax) Assessment Act 1982

38. Jurisdiction under the Act in relation to promoters recoupment tax is already vested in the Federal Court, not in Supreme Courts. Sub-section 4(7) now provides that, in relation to assessments in respect of promoters recoupment tax, relevant references in the Income Tax Assessment Act to Supreme Courts are to be read as references to the Federal Court. With the transfer of jurisdiction to the Federal Court provided for in the Income Tax Assessment Act by this Bill, sub-section 4(7) is no longer necessary.

Trade Marks Act 1955

39. The effect of the amendments is to give the Federal Court original jurisdiction concurrent 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.

40. 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.

41. 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.

Trade Practices Act 1974

42. The amendments to this Act confer jurisdiction on State courts concurrent with the Federal Court in civil matters arising under the consumer protection provisions of the Act (Divisions 1 and 1A of Part V), except where proceedings are instituted by the Minister or the Trade Practices Commission.

43. The conferral of jurisdiction on State and Territory courts is accomplished by new section 86. The new jurisdiction is conferred on all State courts within the limits of their several jurisdictions. It is also provided that State and Territory inferior courts are only authorised to grant remedies of a kind they are able to grant under State and Territory law.

44. New section 86A contains extensive provisions providing for the transfer of matters from the Federal Court to the appropriate State court, from a State court to the Federal Court, and from one State court to that of another State. The receiving State court must be able to grant the remedy sought, and the transfer must be in the interests of justice.

