

SOUTH AUSTRALIA

JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 7 July 1994.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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LEGISLATIVE HISTORY**

JURISDICTION OF COURTS (CROSS-VESTING) ACT 1987

being

Jurisdiction of Courts (Cross-vesting) Act 1987 No. 67 of 1987
[Assented to 29 October 1987]¹

as amended by

Statutes Amendment (Attorney-General's Portfolio) Act 1993 No. 34 of 1993 [Assented to 13 May 1993]²
Statutes Amendment (Attorney-General's Portfolio) Act 1994 No. 21 of 1994 [Assented to 26 May 1994]³

¹ Came into operation 1 July 1988: *Gaz.* 2 June 1988, p. 1798.

² Came into operation 13 December 1993: *Gaz.* 25 November 1993, p. 2546.

³ Came into operation 7 July 1994: *Gaz.* 7 July 1994, p. 4.

NOTE:

- Asterisks indicate repeal or deletion of text.
- For the legislative history of the Act see Appendix. Entries appearing in the Appendix in bold type indicate the amendments incorporated since the last reprint.

An Act relating to the cross-vesting of certain jurisdiction.

Preamble:

1. *Inconvenience and expense have occasionally been caused to litigants by jurisdictional limitations in federal, State and Territory courts:*
2. *It is desirable—*
 - (a) *to establish a system of cross-vesting of jurisdiction between those courts, without detracting from the existing jurisdiction of any court; and*
 - (b) *to structure the system in such a way as to ensure as far as practicable that proceedings concerning matters which, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, would be entirely or substantially within the jurisdiction (other than any accrued jurisdiction) of the Federal Court or the Family Court or the jurisdiction of a Supreme Court of a State or Territory are instituted and determined in that court, whilst providing for the determination by one court of federal and State matters in appropriate cases; and*
 - (c) *if a proceeding is instituted in a court that is not the appropriate court, to provide a system under which the proceeding will be transferred to the appropriate court:*

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. (1) In this Act—

"**Family Court**" means the Family Court of Australia;

"**Federal Court**" means the Federal Court of Australia;

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

"**judgment**" means a judgment, decree or order, whether final or interlocutory;

"**party**", in relation to a proceeding, includes a person who intervenes in the proceeding;

"**proceeding**" does not include a criminal proceeding;

"special federal matter" has the same meaning as in the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth¹;

"State" includes the Northern Territory and the Australian Capital Territory;

"State Family Court", in relation to a State, means a court of that State to which section 41 of the *Family Law Act 1975* of the Commonwealth applies by virtue of a proclamation made under section 41(2) of that Act;

"State matter" means—

- (a) a matter in which the Supreme Court has jurisdiction otherwise than by reason of a law of the Commonwealth or of another State; or
- (b) a matter removed to the Supreme Court under section 8;

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

(2) A reference in this Act, other than a reference in section 4(3), to the Supreme Court of a State includes, if there is a State Family Court of that State, a reference to that State Family Court.

(3) In this Act, a reference to a Commonwealth Act is a reference to that Act, as amended from time to time.

Vesting of additional jurisdiction in certain courts

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

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

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

¹ In the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth "special federal matter" means—

- (a) a matter arising under Part 4 (other than section 45D or 45E) of the *Trade Practices Act 1974*;
- (b) a matter involving the determination of questions of law on appeal from a decision of, or of questions of law referred or stated by, a tribunal or other body established by an Act or a person holding office under an Act, not being a matter for determination in an appeal or a reference or case stated to the Supreme Court of a State or Territory under a law of the Commonwealth that specifically provides for such an appeal, reference or case stated to such a court;
- (c) a matter arising under the *Administrative Decisions (Judicial Review) Act 1977*;
- (d) a matter arising under section 32 of the *National Crime Authority Act 1984*; or
- (e) a matter that is within the original jurisdiction of the Federal Court by virtue of section 39B of the *Judiciary Act 1903*,

being a matter in respect of which the Supreme Court of a State or Territory would not, apart from this Act, have jurisdiction.

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

(5) This section does not—

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

(b) confer on any such court,

jurisdiction with respect to criminal matters.

Transfer of proceedings

5. (1) Where—

(a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in the Supreme Court; and

(b) (i) it appears to the Supreme Court that the relevant proceeding arises out of, or is related to, another proceeding pending in the Federal Court or the Family Court and it is more appropriate that the relevant proceeding be determined by the Federal Court or the Family Court; or

(ii) it appears to the Supreme Court that having regard to—

(A) whether, in the opinion of the Supreme Court, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction and apart from any accrued jurisdiction of the Federal Court or the Family Court, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the Supreme Court and capable of being instituted in the Federal Court or the Family Court; and

(B) the extent to which, in the opinion of the Supreme Court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the Commonwealth and not within the jurisdiction of the Supreme Court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

(C) the interests of justice,

it is more appropriate that the relevant proceeding be determined by the Federal Court or the Family Court, as the case may be; or

(iii) it appears to the Supreme Court that it is otherwise in the interests of justice that the relevant proceeding be determined by the Federal Court or the Family Court,

the Supreme Court shall transfer the relevant proceeding to the Federal Court or the Family Court, as the case may be.

(2) Where—

(a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in the Supreme Court (in this subsection referred to as the "first court"); and

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- (b) (i) it appears to the first court that the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of another State or of a Territory and it is more appropriate that the relevant proceeding be determined by that other Supreme Court; or
- (ii) it appears to the first court that having regard to—
- (A) whether, in the opinion of the first court, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court of another State or Territory; and
 - (B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the State or Territory referred to in subparagraph (A) and not within the jurisdiction of the first court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and
 - (C) the interests of justice,
- it is more appropriate that the relevant proceeding be determined by that other Supreme Court; or
- (iii) it appears to the first court that it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of another State or of a Territory,

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

(3) Where—

- (a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in the Supreme Court of another State or of a Territory (in this subsection referred to as the "first court"); and
- (b) (i) it appears to the first court that the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court of South Australia and it is more appropriate that the relevant proceeding be determined by the Supreme Court of South Australia; or
- (ii) it appears to the first court that having regard to—
- (A) whether, in the opinion of the first court, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court of South Australia; and

(B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the State and not within the jurisdiction of the first court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

(C) the interests of justice,

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

(iii) it appears to the first court that it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court of South Australia,

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

(4) Where—

(a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in the Federal Court or the Family Court (in this subsection referred to as the "first court"); and

(b) (i) it appears to the first court that the relevant proceeding arises out of, or is related to, another proceeding pending in the Supreme Court and it is more appropriate that the relevant proceeding be determined by the Supreme Court; or

(ii) it appears to the first court that having regard to—

(A) whether, in the opinion of the first court, apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction, the relevant proceeding or a substantial part of the relevant proceeding would have been incapable of being instituted in the first court and capable of being instituted in the Supreme Court; and

(B) the extent to which, in the opinion of the first court, the matters for determination in the relevant proceeding are matters arising under or involving questions as to the application, interpretation or validity of a law of the State and not within the jurisdiction of the first court apart from this Act and any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and

(C) the interests of justice,

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

(iii) it appears to the first court that it is otherwise in the interests of justice that the relevant proceeding be determined by the Supreme Court,

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

(5) Where—

- (a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in the Federal Court or the Family Court (in this subsection referred to as the "first court"); and
- (b) it appears to the first court that—
 - (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the other of the courts referred to in paragraph (a) and it is more appropriate that the relevant proceeding be determined by that other court; or
 - (ii) it is otherwise in the interests of justice that the relevant proceeding be determined by the other of the courts referred to in paragraph (a),

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

(6) Where—

- (a) a court (in this subsection referred to as the "first court") transfers a proceeding to another court under a law or laws relating to cross-vesting of jurisdiction; and
- (b) it appears to the first court that—
 - (i) there is another proceeding pending in the first court that arises out of, or is related to, the first mentioned proceeding; and
 - (ii) it is in the interests of justice that the other proceeding be determined by the other court,

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

(7) A court may transfer a proceeding under this section on the application of a party to the proceeding, of its own motion or on the application of the Attorney-General of the Commonwealth or of a State or Territory.

(8) A person who is entitled to practise as a barrister or a solicitor, or as both a barrister and a solicitor, in a court has, if a proceeding (in this subsection referred to as the "transferred proceeding") in that court is transferred to another court under a law or laws relating to cross-vesting of jurisdiction, the same entitlement to practise in relation to—

- (a) the transferred proceeding; and
- (b) any other proceeding out of which the transferred proceeding arises or to which the transferred proceeding is related, being another proceeding that is to be determined together with the transferred proceeding,

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

Special federal matters

6. (1) If—

- (a) a matter for determination in a proceeding that is pending in the Supreme Court is a special federal matter; and

- (b) the court does not make an order under subsection (3) in respect of the matter,

the court must transfer the proceeding in accordance with this section to the Federal Court or a court mentioned in subsection (2)(b).

- (2) If the court orders that a proceeding be transferred, the proceeding must be transferred—

- (a) if the matter for determination in the proceeding is a matter mentioned in paragraph (a), (b), (c), (d) or (e) of the definition of "special federal matter" in section 3(1) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth—to the Federal Court; or

- (b) if the matter for determination in the proceeding is a matter mentioned in paragraph (ab) of that definition—to whichever of the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory, in the opinion of the court, is appropriate in the circumstances.

(3) The Supreme Court may order that the proceeding be determined by that court if it is satisfied that there are special reasons for doing so in the particular circumstances of the proceeding other than reasons relevant to the convenience of the parties.

- (4) Before making an order under subsection (3), the court must be satisfied that—

- (a) a written notice specifying the nature of the special federal matter has been given to the Attorney-General of the Commonwealth and the Attorney-General of the State; and

- (b) a reasonable time has elapsed since the giving of the notice for the Attorneys-General to consider whether submissions to the court should be made in relation to the proceeding.

- (5) For the purposes of subsection (4), the court—

- (a) may adjourn the proceeding for such time as the court thinks necessary and may make such order as to costs in relation to an adjournment as it thinks fit; and

- (b) may direct a party to the proceeding to give a notice in accordance with that subsection.

(6) In considering whether there are special reasons for the purposes of subsection (3), the court must—

- (a) have regard to the general rule that special federal matters should be heard by the Federal Court or a court mentioned in subsection (2)(b), whichever is appropriate in the particular case; and

- (b) take into account any submission made in relation to the proceeding by an Attorney-General mentioned in subsection (4).

(7) Nothing in this section prevents the court granting urgent relief of an interlocutory nature if it is in the interests of justice to do so.

(8) If, through inadvertence, the Supreme Court determines a proceeding of the kind mentioned in subsection (1) without—

- (a) the court making an order under subsection (3) that the proceeding be determined by the court; or

(b) a notice mentioned in subsection (4) being given,

nothing in this section invalidates the decision of the court.

(9) This section does not apply to a proceeding by way of an appeal that is instituted in the Full Court of the Supreme Court if the court the decision of which is the subject of the appeal had made an order under subsection (3), or under section 6(1) as in force before the commencement of Part 3 of the *Statutes Amendment (Attorney-General's Portfolio) Act 1993*, in relation to the special federal matter.

Institution and hearing of appeals

7. (1) An appeal shall not be instituted from a decision of a single judge of the Federal Court or the Family Court to the Full Court of the Supreme Court.

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

(3) Where it appears that the only matters for determination in a proceeding by way of an appeal from a decision of a single judge of the Supreme Court are matters other than matters arising under an Act specified in the schedule to the *Jurisdiction of Courts (Cross-vesting) Act 1987* of the Commonwealth, that proceeding shall be instituted only in, and shall be determined only by, the Full Court of the Supreme Court.

(4) Subject to subsections (6) and (7), where it appears that a matter for determination in a proceeding by way of an appeal from a decision of a single judge of the Supreme Court (not being a proceeding to which subsection (5) applies) is a matter arising under an Act specified in the schedule referred to in subsection (3), that proceeding shall be instituted only in, and shall be determined only by—

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

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

(5) A proceeding by way of an appeal from a decision of a judge of a State Family Court, being a proceeding involving the determination of—

(a) a matter arising under an Act specified in the schedule referred to in subsection (3); and

(b) another matter,

may be dealt with as if no matter for determination in the proceeding were a matter arising under an Act specified in that schedule.

(6) Where—

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

(b) before the Court determines the proceeding, it appears to the Court that the proceeding is a proceeding to which subsection (4) applies,

the Court shall, unless the interests of justice require that the Court proceed to determine the proceeding, transfer the proceeding to the Full Court of the Federal Court or of the Family Court, as the case requires.

(7) Where the Full Court of the Supreme Court—

- (a) determines a proceeding to which subsection (4) applies as mentioned in subsection (6); or
- (b) through inadvertence, determines a proceeding to which subsection (4) applies,

nothing in this section invalidates the decision of that Court.

Orders by Supreme Court

8. (1) Where—

- (a) a proceeding (in this subsection referred to as the "relevant proceeding") is pending in—
 - (i) a court, other than the Supreme Court, of the State; or
 - (ii) a tribunal established by or under an Act; and
- (b) it appears to the Supreme Court that—
 - (i) the relevant proceeding arises out of, or is related to, another proceeding pending in the Federal Court, the Family Court or the Supreme Court of another State or of a Territory and, if an order is made under this subsection in relation to the relevant proceeding, there would be grounds on which that other proceeding could be transferred to the Supreme Court; or
 - (ii) an order should be made under this subsection in relation to the relevant proceeding so that consideration can be given to whether the relevant proceeding should be transferred to another court,

the Supreme Court may, on the application of a party to the relevant proceeding or of its own motion, make an order removing the relevant proceeding to the Supreme Court.

(2) Where an order is made under subsection (1) in relation to a proceeding, this Act applies in relation to the proceeding as if it were a proceeding pending in the Supreme Court.

(3) Where a proceeding is removed to the Supreme Court in accordance with an order made under subsection (1), the Supreme Court may, if the Supreme Court considers it appropriate to do so, remit the proceeding to the court or tribunal from which the proceeding was removed.

Exercise of jurisdiction pursuant to cross-vesting laws

9. The Supreme Court—

- (a) may exercise jurisdiction (whether original or appellate) conferred on that court by a provision of this Act or of a law of the Commonwealth or a State relating to cross-vesting of jurisdiction; and
- (b) may hear and determine a proceeding transferred to that court under such a provision.

Transfer of matters arising under Division 1 of 1A of Part V of the *Trade Practices Act* (Cth.)

10. Where—

- (a) a proceeding is pending in the Federal Court, the Family Court, the Supreme Court or the Supreme Court of another State or of a Territory; and

- (b) a matter for determination in the proceeding is a matter arising under Division 1 or 1A of Part 5 of the *Trade Practices Act 1974* of the Commonwealth; and
- (c) no matter for determination in the proceeding is a special federal matter; and
- (d) the proceeding is not a proceeding by way of an appeal from a judgment of a court; and
- (e) a court of the State, other than the Supreme Court, has jurisdiction with respect to all of the matters for determination in the proceeding,

the court referred to in paragraph (a) may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the court referred to in paragraph (e).

Conduct of proceedings

11. (1) Where it appears to a court that the court will, or will be likely to, in determining a matter for determination in a proceeding, be exercising jurisdiction conferred by this Act or by a law of the Commonwealth or a State relating to cross-vesting of jurisdiction—

- (a) subject to paragraphs (b) and (c), the court shall, in determining that matter, apply the law in force in the State or Territory in which the court is sitting (including choice of law rules); and
- (b) subject to paragraph (c), if that matter is a right of action arising under a written law of another State or Territory, the court shall, in determining that matter, apply the written and unwritten law of that other State or Territory; and
- (c) the rules of evidence and procedure to be applied in dealing with that matter shall be such as the court considers appropriate in the circumstances, being rules that are applied in a superior court in Australia or in an external Territory.

(2) The reference in subsection (1)(a) to the State or Territory in which the court is sitting is, in relation to the Federal Court or the Family Court, a reference to the State or Territory in which any matter for determination in the proceeding was first commenced in or transferred to that court.

(3) Where a proceeding is transferred or removed to a court (in this subsection referred to as the "transferee court") from another court (in this subsection referred to as the "transferor court"), the transferee court shall deal with the proceeding as if, subject to any order of the transferee court, the steps that had been taken for the purposes of the proceeding in the transferor court (including the making of an order), or similar steps, had been taken in the transferee court.

Orders as to costs

12. Where a proceeding is transferred or removed to a court, that court may make an order as to costs that relate to the conduct of the proceeding before the transfer or removal if those costs have not already been dealt with by another court.

Limitation on appeals

13. An appeal does not lie from a decision of a court—

- (a) in relation to the transfer or removal of a proceeding under this Act; or
- (b) as to which rules of evidence and procedure are to be applied pursuant to section 11(1).

Enforcement and effect of judgments

14. (1) A judgment of the Federal Court or the Family Court that is given, in whole or in part, in the exercise of jurisdiction conferred by a law or laws relating to cross-vesting of jurisdiction is enforceable in the State as if the judgment had been given entirely in the exercise of the jurisdiction of that court apart from any such law.

(2) A judgment of the Supreme Court that is given, in whole or in part, in the exercise of jurisdiction conferred by a law or laws relating to cross-vesting of jurisdiction is enforceable in the State as if the judgment had been given entirely in the exercise of the jurisdiction of the Supreme Court apart from any such law.

(3) Where—

(a) a provision of a law of the State (not being a law relating to the enforcement of judgments) refers to a thing done by the Supreme Court; and

(b) that thing is done by another court in exercise of jurisdiction conferred by this Act,

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

Suspension or cessation of operation of Act

15. (1) Subject to subsection (2), the Governor may by proclamation—

(a) suspend the operation of this Act from a day (being a day not earlier than three years after the commencement of this Act) specified in the proclamation; and

(b) revoke any such suspension.

(2) The Governor shall not make a proclamation suspending the operation of this Act unless satisfied that the Attorney-General has given notice of intention to seek the making of such a proclamation to the Attorney-General of the Commonwealth and to the Attorneys-General of each other State (other than a State in relation to which a proclamation under subsection (4) has been made) not less than 6 months before the suspension is to take effect.

(3) If the Governor is satisfied that the Acts of the Commonwealth and other States relating to cross-vesting of jurisdiction are not effective to invest the Supreme Court of South Australia with, or confer on that Court, jurisdiction of the Federal Court, the Family Court or the Supreme Court of another State or of a Territory, the Governor may, by proclamation, fix a day on which this Act will expire.

(4) If the Governor is satisfied that an Act of the Commonwealth or another State relating to cross-vesting of jurisdiction has been repealed, rendered inoperative, suspended or altered in a substantial manner, the Governor may, by proclamation, modify the operation of this Act so that it does not apply in relation to the Commonwealth or a Territory or in relation to that State.

(5) If—

(a) the Governor has made a proclamation under subsection (4) in relation to the Commonwealth or a Territory or a State; and

- (b) the Governor is satisfied that there is in force an Act of the Commonwealth or that State relating to cross-vesting of jurisdiction, being an Act in terms substantially corresponding to the terms of this Act,

the Governor may, by proclamation, revoke the proclamation under subsection (4).

(6) The Governor shall not make a proclamation under this section except on resolution of both Houses of Parliament.

APPENDIX

LEGISLATIVE HISTORY

Transitional Provisions

(Transitional provision from Statutes Amendment (Attorney-General's Portfolio) Act 1993, s. 7)

7. Despite the amendments of the *Jurisdiction of Courts (Cross-vesting) Act 1987* made by this Act, that Act as in force immediately before the commencement of those amendments continues to apply in relation to a proceeding pending in a court to which section 6 of that Act applied before that commencement.

Legislative History

(entries in bold type indicate amendments incorporated since the last reprint)

Section 3(1):

definition of "State" substituted by 21, 1994, s. 8(a)

Section 6:

definition of "Territory" substituted by 21, 1994, s. 8(b)

substituted by 34, 1993, s. 6