

Legislative Council—No 20

As received from the House of Assembly and read a first time, 20 June 2018

South Australia

**Statutes Amendment (SACAT Federal Diversity
Jurisdiction) Bill 2018**

A BILL FOR

An Act to amend the *Magistrates Court Act 1991* and the *South Australian Civil and Administrative Tribunal Act 2013*.

Contents

Part 1—Preliminary

- 1 Short title
- 2 Amendment provisions

Part 2—Amendment of *Magistrates Court Act 1991*

- 3 Amendment of section 3—Interpretation
- 4 Amendment of section 38—Minor civil actions
- 5 Amendment of section 41—Reservation of questions of law

Part 3—Amendment of *South Australian Civil and Administrative Tribunal Act 2013*

- 6 Amendment of section 4—Relevant Acts prevail
- 7 Insertion of Part 3A

Part 3A—Diversity proceedings

- 38A Interpretation
 - 38B Transfer of applications involving federal diversity jurisdiction to Magistrates Court
 - 38C Magistrate Court proceedings, jurisdiction, powers and functions etc
 - 38D Modifications of certain functions, powers and procedures etc
 - 38E Compulsory conferences
 - 38F References to Tribunal in other Acts or regulations
 - 38G Bailiffs
 - 38H Relationship of this Part to this Act and other laws
 - 38I Enforcement, variation or revocation of purported orders
-

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Statutes Amendment (SACAT Federal Diversity Jurisdiction) Act 2018*.

2—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Magistrates Court Act 1991*

10 3—Amendment of section 3—Interpretation

- (1) Section 3(1), definition of *minor statutory proceeding*—after paragraph (bc) insert:
 - (bd) a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*; or
- (2) Section 3(4)—delete "If" and substitute:

- 15 Subject to subsection (4a), if

(3) Section 3—after subsection (4) insert:

(4a) Subsection (4) does not apply to a minor statutory proceeding that is a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013* (and the Court may deal with the proceeding as a minor statutory proceeding despite the fact that the proceeding involves a claim that exceeds the monetary limits referred to in that subsection).

4—Amendment of section 38—Minor civil actions

(1) Section 38(7)(a)—before "the right" insert:

subject to paragraph (ab),

(2) Section 38(7)—after paragraph (a) insert:

(ab) if, in the case of a review that relates to a minor civil action in respect of a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*, a party was represented by a legal practitioner at the proceeding, then the party may be represented by a legal practitioner at the review by the Court;

5—Amendment of section 41—Reservation of questions of law

(1) Section 41(1)—delete "(except a minor civil action)"

(2) Section 41—after subsection (1) insert:

(1a) Subsection (1) does not apply to a minor civil action unless the action is founded on a minor statutory proceeding in respect of a transferred proceeding within the meaning of Part 3A of the *South Australian Civil and Administrative Tribunal Act 2013*.

Part 3—Amendment of *South Australian Civil and Administrative Tribunal Act 2013*

6—Amendment of section 4—Relevant Acts prevail

Section 4—delete "If" and substitute:

Subject to Part 3A, if

7—Insertion of Part 3A

After Part 3 insert:

Part 3A—Diversity proceedings

38A—Interpretation

(1) In this Part—

federal diversity jurisdiction means jurisdiction of the kind referred to in section 75(iii) or (iv) of the *Constitution of the Commonwealth*;

rules of the Court means the rules of the Court made under the *Magistrates Court Act 1991*;

transferred proceeding—see section 38B.

- 5
- (2) For the purposes of this Part, a reference to the making of an application, or an application made, to the Tribunal will be taken to include the referral of a matter to, or otherwise bringing of a matter before, the Tribunal.

38B—Transfer of applications involving federal diversity jurisdiction to Magistrates Court

- 10
- (1) If a person has standing to make an application to the Tribunal in the exercise of its original jurisdiction under section 33 or its review jurisdiction under section 34, the application may be determined by the Magistrates Court in accordance with this Part instead of the Tribunal.
- 15
- (2) If, following an application made to the Tribunal in the manner and form required under this Act for the kind of application concerned, the Tribunal considers that—
- 20
- (a) it does not have, or there is some doubt as to whether it has, jurisdiction to determine the application because its determination may involve the exercise of federal diversity jurisdiction; and
- (b) the Tribunal would otherwise have had jurisdiction enabling it to determine the application,
- then the Tribunal may order that proceedings on the application be transferred to the Magistrates Court.
- 25
- (3) A proceeding transferred to the Magistrates Court under subsection (2) is a *transferred proceeding*.
- (4) If proceedings are transferred to the Magistrates Court under this Part—
- 30
- (a) the application made to the Tribunal will be taken to be duly made as an application to the Court; and
- (b) the proceedings may be continued and completed as if steps taken in the proceedings prior to the transfer had been taken in the Court.
- (5) The fee payable in respect of the application is the relevant fee (if any) payable to the Tribunal under this Act.
- 35
- (6) A party to the transferred proceeding is not required to pay any fees in relation to the transfer of the proceedings to the Magistrates Court unless the Court determines that additional fees are payable under the *Magistrates Court Act 1991* because of a substantial alteration in the nature of the claims in the proceedings.
- 40
- (7) An order made by the Tribunal under subsection (2) may not be the subject of review or appeal under Part 5 of this Act.

- 5
- (8) The Magistrates Court may remit the transferred proceedings to the Tribunal for determination if the Court is satisfied that the Tribunal has jurisdiction to determine the matter.
- (9) If the Magistrates Court remits the transferred proceedings to the Tribunal, the Court may make such orders that it considers appropriate to facilitate the determination of the proceedings by the Tribunal.
- 10 (10) The Tribunal must determine transferred proceedings that are remitted to it in accordance with any orders made by the Magistrates Court.

38C—Magistrate Court proceedings, jurisdiction, powers and functions etc

- 15 (1) Transferred proceedings are taken to have been commenced in the Magistrates Court on the day on which the application to which the proceedings relate was first made to the Tribunal.
- (2) Subsection (1) applies despite any limitation period under the *Limitation of Actions Act 1936* or any relevant Act that applies to the application concerned provided it was lodged with the Tribunal before the expiry of the period.
- 20 (3) The Magistrates Court has, and may exercise, all of the jurisdiction, powers and functions in relation to the transferred proceedings that the Tribunal would have had if it could exercise federal diversity jurisdiction, including jurisdiction, powers and functions conferred or imposed on the Tribunal by or under this Act or a relevant Act.
- 25 (4) The practices and procedures that apply to the Tribunal under this Act (including the rules) or a relevant Act will apply to the Magistrates Court in respect of the transferred proceedings unless, and to such extent as, the Court determines otherwise.
- 30 (5) The Magistrates Court may make such orders (including in relation to the Tribunal) as it considers appropriate to facilitate its determination of the transferred proceedings.

38D—Modifications of certain functions, powers and procedures etc

35 Despite section 38C, the following provisions apply in relation to transferred proceedings:

- 40 (a) the Magistrates Court is to be constituted as provided by or under the *Magistrates Court Act 1991* instead of as provided by or under this Act or a relevant Act;
- (b) subject to the provisions of a relevant Act and the rules of the Court, a party to the proceedings is entitled to be represented by a legal practitioner or, with leave of the Magistrates Court, by some other person, but only in the circumstances that the Tribunal would have been permitted to allow if the proceedings were before the Tribunal;

- 5
- (c) the law applicable to reviews of, or appeals against, decisions of the Magistrates Court applies to decisions of the Court in the transferred proceedings instead of Part 5 of this Act (however, the Court may make an order staying the operation of the relevant decision (including the decision of a relevant decision-maker) until the proceedings are finally decided, on such conditions as may be specified in the order);
- 10
- (d) the Magistrates Court may award costs in the proceedings only in the circumstances that the Tribunal would have been permitted to award them (and the costs are to be assessed in the same way as they would have been) if the proceedings were before the Tribunal;
- 15
- (e) the Magistrates Court may make orders giving effect to any settlement reached by the parties even if that settlement was reached before the commencement of this Part or before proceedings were transferred to the Court under this Part;
- 20
- (f) the regulations may prescribe other modifications (including to the provisions of this Act or any other Act or regulations under an Act) for the transferred proceedings of the kind concerned.

38E—Compulsory conferences

- 25
- (1) Subject to the provisions of a relevant Act, the Magistrates Court may, if the Court considers it is appropriate, require the parties to transferred proceedings to attend a compulsory conference presided over by a member of the Tribunal or a registrar of the Tribunal under section 50.
- 30
- (2) The Magistrates Court may give such directions to the Tribunal in relation to the procedures and conduct of the conference as the Court considers appropriate.

38F—References to Tribunal in other Acts or regulations

To avoid doubt, but subject to the regulations—

- 35
- (a) a reference to the Tribunal in a provision of an Act or regulations under an Act that confers or imposes a function on the Tribunal is to be read as including a reference to the Magistrates Court if the function is conferred or imposed on the Court because of the operation of this Part; and
- 40
- (b) a reference to proceedings in the Tribunal in a provision of a kind referred to in paragraph (a) is to be read as including a reference to proceedings in the Magistrates Court.

38G—Bailiffs

To avoid doubt, if a provision of a relevant Act provides for the enforcement of an order of the Tribunal by a bailiff appointed under this Act, then that provision is to be read as including a reference to an order of the Magistrates Court made because of the operation of this Part (and in enforcing an order of the Court, the bailiff may, in accordance with provisions of the relevant Act, exercise the powers conferred by that Act).

38H—Relationship of this Part to this Act and other laws

The provisions of this Part prevail to the extent of any inconsistency between those provisions and any other provisions of this Act or any other Act.

38I—Enforcement, variation or revocation of purported orders

(1) The amount specified in a purported monetary order made by the Tribunal may be recovered in the appropriate court (within the meaning of section 89) by the person in favour of whom the order was made as if it were a debt.

(2) A person who contravenes or fails to comply with the terms of a purported order of the Tribunal (other than a purported monetary order) is guilty of an offence.

Maximum penalty: \$50 000 or imprisonment for 2 years.

(3) If a person seeks a variation or revocation of a purported order or purported monetary order—

(a) the person may apply to the Tribunal; and

(b) the Tribunal must order that proceedings on the application be transferred to the Magistrates Court,

and such a matter will be a transferred proceeding for the purposes of this Part.

(4) No act undertaken, or purportedly undertaken, by a person pursuant to, or for the purposes of enforcing, a purported order or a purported monetary order, in good faith, gives rise to any liability against the person or the Crown.

(5) In this section, a reference to a *purported order* or a *purported monetary order* is a reference to an order purportedly made by the Tribunal (whether before or after the commencement of this Part) that is invalid because determination of the application that gave rise to the order involved the exercise of federal diversity jurisdiction and that, on the commencement of this Part, is to be made by the Magistrates Court.