

Western Australia

**Acts Amendment (Federal Courts and
Tribunals) Act 2001**

As at 21 Dec 2001

No. 32 of 2001

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Acts Amendment (Federal Courts and Tribunals) Act 2001

CONTENTS

Part 1 — Preliminary		
1.	Short title	2
2.	Commencement	2
Part 2 — <i>Competition Policy Reform (Western Australia) Act 1996 amended</i>		
3.	The Act amended	3
4.	Part 5 Division 3 repealed	3
5.	Section 29 amended	3
Part 3 — <i>Corporations (Western Australia) Act 1990 amended</i>		
6.	The Act amended	4
7.	Section 3 amended	4
8.	Section 40 amended	4
9.	Section 41 amended	5
10.	Section 42 amended	5
11.	Section 42A amended	6
12.	Section 42B amended	6
Part 4 — <i>Federal Courts (State Jurisdiction) Act 1999 amended</i>		
13.	The Act amended	7

Contents

14.	Section 2 amended	7
15.	Part 2A inserted	7
	Part 2A — Jurisdiction of courts	
	12A. Jurisdiction not conferred on federal courts	7
	12B. Jurisdiction of State courts	8
16.	Part 4 Division 2 repealed	9
	Part 5 — Gas Pipelines Access (Western Australia) Act 1998 amended	
17.	The Act amended	10
18.	Part 4 Divisions 2 and 3 repealed	10
19.	Section 24 amended	10
20.	Schedule 1 section 2 amended	10
21.	Schedule 1 section 32 amended	11
	Part 6 — Jurisdiction of Courts (Cross-vesting) Act 1987 amended	
22.	The Act amended	12
23.	Section 4 amended	12
24.	Section 5 amended	12
25.	Section 6 amended	15
26.	Section 6A inserted	15
	6A. Special federal matters: Commonwealth authorities or officers acting under the laws of States	15
27.	Section 10 amended	18
28.	Section 11 amended	18
29.	Section 14 amended	18
	Part 7 — National Crime Authority (State Provisions) Act 1985 amended	
30.	The Act amended	19
31.	Section 12 amended	19
32.	Section 15 repealed	19
33.	Section 20 amended	19
34.	Section 21 amended	19

35.	Section 22 repealed	21
	Part 8 — <i>New Tax System Price Exploitation Code (Western Australia) Act 1999</i> amended	
36.	<i>New Tax System Price Exploitation Code (Western Australia) Act 1999</i> amended	22
	Part 9 — Amendments relating to the Administrative Review Tribunal	
37.	<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995</i> amended	23
38.	<i>Biological Control Act 1986</i> amended	24
39.	<i>Competition Policy Reform (Western Australia) Act 1996</i> amended	24
40.	<i>New Tax System Price Exploitation Code (Western Australia) Act 1999</i> amended	25

Western Australia

Acts Amendment (Federal Courts and Tribunals) Act 2001

No. 32 of 2001

**An Act to make amendments to a number of Acts relating to the
jurisdiction of federal courts and the establishment of the
Administrative Review Tribunal of the Commonwealth.**

[Assented to 21 December 2001]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Federal Courts and Tribunals) Act 2001*.

2. Commencement

- (1) This Act, other than Parts 3 and 9, comes into operation on the day on which it receives the Royal Assent.
- (2) Sections 6 to 12 of Part 3 are deemed to have come into operation on 1 July 2000.
- (3) Part 9 comes into operation, or is deemed to have come into operation, at the same time that Parts 4 to 10 of the *Administrative Review Tribunal Act 2001* of the Commonwealth come into operation.

**Part 2 — Competition Policy Reform (Western
Australia) Act 1996 amended**

3. The Act amended

The amendments in this Part are to the *Competition Policy Reform (Western Australia) Act 1996**.

[* *Act No. 52 of 1996.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 73.]

4. Part 5 Division 3 repealed

Part 5 Division 3 is repealed.

5. Section 29 amended

Section 29 is amended in the definition of “Commonwealth administrative laws” by deleting subparagraph (a)(ii).

**Part 3 — Corporations (Western Australia) Act 1990
amended**

6. The Act amended

The amendments in this Part are to the *Corporations (Western Australia) Act 1990**.

[* Act No. 105 of 1990.

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 93, and Acts No. 26 of 1999 and No. 43 of 2000.]

7. Section 3 amended

- (1) Section 3(1) is amended in the definition of “Commonwealth administrative laws” by deleting paragraph (b).
- (2) Section 3(1) is amended by deleting the definition of “Family Court”.

8. Section 40 amended

Section 40(1) is amended as follows:

- (a) in paragraph (b), by deleting “Territory —” and inserting instead —
“ Territory; and ”;
- (b) by inserting after paragraph (b) —
“
 - (c) the jurisdiction of courts in respect of matters arising under the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth involving or related to decisions made under the Corporations Law of a State or the Capital Territory by Commonwealth authorities and officers of the Commonwealth; and”

- (d) the jurisdiction of courts in civil matters in respect of decisions made by officers of the Commonwealth to prosecute persons for offences against the Corporations Law of a State or the Capital Territory and related criminal justice process decisions,

”.

9. Section 41 amended

- (1) Section 41(1) is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —

“

“Commonwealth authority” means an authority or body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth;

“officer of the Commonwealth” has the same meaning as in section 75(v) of the Constitution of the Commonwealth;

”;

- (b) by deleting the definition of “superior court” and inserting instead —

“

“superior court” means the Supreme Court of a State or Territory or a State Family Court;

”.

- (2) Section 41(2)(a) is amended by deleting subparagraph (viii) and “and” after it.

10. Section 42 amended

- (1) Section 42(1) is amended by deleting “as it applies as a law of Western Australia,”.

s. 11

(2) After section 42(1) the following subsections are inserted —

“

(1a) With respect to matters involving or related to decisions made, or proposed to be made, under the Corporations Law of a State or the Capital Territory by a Commonwealth authority or an officer of the Commonwealth, jurisdiction is conferred on the Supreme Court of Western Australia and of each other State and the Capital Territory in accordance with the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth as if that Act conferred jurisdiction in matters arising under it on those Supreme Courts.

(1b) Subsection (1a) applies to a decision made, or proposed or required to be made —

(a) whether or not in the exercise of a discretion;
and

(b) whether before or after the commencement of section 10(2) of the *Acts Amendment (Federal Courts and Tribunals) Act 2001*.

”.

(3) Section 42(2) is amended by inserting after “subsection (1)” —

“ or (1a) ”.

(4) Section 42(3) is repealed.

11. Section 42A amended

(1) Section 42A(1) is repealed.

(2) Section 42A(2) is amended by deleting “as it applies as a law of Western Australia,”.

12. Section 42B amended

Section 42B(1) is amended by deleting “as it applies as a law of Western Australia,”.

**Part 4 — *Federal Courts (State Jurisdiction) Act 1999*
amended**

13. The Act amended

The amendments in this Part are to the *Federal Courts (State Jurisdiction) Act 1999**.

[* Act No. 32 of 1999.]

14. Section 2 amended

- (1) Section 2(1) is amended by deleting “Subject to subsection (2), this” and inserting instead —

“ This ”.

- (2) Section 2(2) and section 2(3) are repealed.

15. Part 2A inserted

After Part 2 the following Part is inserted —

“

Part 2A — Jurisdiction of courts

12A. Jurisdiction not conferred on federal courts

- (1) Despite anything in any written law, a law of this State is not to be regarded as conferring jurisdiction on a federal court, either directly or indirectly.
- (2) Without limiting the generality of subsection (1), a written law of this State that applies a law of the Commonwealth, does so except to the extent that the applied law confers jurisdiction on a federal court.
- (3) Nothing in subsections (1) and (2) is intended to affect the exercise by a federal court of jurisdiction (such as accrued jurisdiction) that it has in connection with the law of this State or the applied law.

- (4) A reference in a provision of the applied law (as that provision applies as a law of this State) to a provision of that law that is not applied as a law of this State (the “**unapplied provision**”), is taken to be a reference to the unapplied provision as it has effect as a law of the Commonwealth.
- (5) In this section —
“**federal court**” means the Federal Court of Australia, the Family Court of Australia or the Federal Magistrates Court.

12B. Jurisdiction of State courts

- (1) An applied law that would exclude the jurisdiction of any or all State courts is to be regarded as being modified so as not to have that effect.
- (2) Despite anything in any Act, the regulations may make provision for or with respect to enabling jurisdiction that would be conferred under an applied law (but for that provision not being applied to some extent) to be exercised by courts of this jurisdiction and, for that purpose, may —
 - (a) provide that an applied law does not have effect, or has effect with the modifications specified in the regulations;
 - (b) confer jurisdiction on courts of this jurisdiction; and
 - (c) provide for associated, procedural and consequential matters.
- (3) To the extent that, because of this Part, the laws of the Commonwealth do not apply to an offence against an applied law, the offence is to be regarded as a crime under the laws of this jurisdiction, but it may be dealt

with summarily if the prosecutor and the defendant
both agree.

”.

16. Part 4 Division 2 repealed

Part 4 Division 2 is repealed.

**Part 5 — Gas Pipelines Access (Western Australia)
Act 1998 amended**

17. The Act amended

The amendments in this Part are to the *Gas Pipelines Access (Western Australia) Act 1998**.

[* Reprinted as at 11 August 2000.]

18. Part 4 Divisions 2 and 3 repealed

Part 4 Divisions 2 and 3 are repealed.

19. Section 24 amended

- (1) Section 24(c) and section 24(f) are amended by deleting “by the Federal Court, or by the Supreme Court,” and inserting instead —

“ by the Supreme Court ”.

- (2) After section 24(1) the following subsection is inserted —

“

- (1a) Despite subsection (1), the Supreme Court does not have jurisdiction to make a declaration or order about the validity, or affecting the operation, of a decision of a relevant Minister, relevant Regulator or arbitrator in relation to a cross-boundary distribution pipeline unless this State has been determined to be the scheme participant most closely connected to the pipeline.

”.

20. Schedule 1 section 2 amended

Schedule 1 section 2 is amended by deleting the definition of “Federal Court”.

21. Schedule 1 section 32 amended

Schedule 1 section 32(4) is amended as follows:

- (a) in paragraph (b) by deleting “as applying as a law of this scheme participant.” and inserting instead —
“ of the Commonwealth; or ”;
- (b) by inserting after paragraph (b) —
“
- (c) to bring proceedings for judicial review of a decision under this Law of the local appeals body, local Minister, local Regulator or an arbitrator appointed under Part 4.

”.

**Part 6 — *Jurisdiction of Courts (Cross-vesting)*
Act 1987 amended**

22. The Act amended

The amendments in this Part are to the *Jurisdiction of Courts (Cross-vesting) Act 1987**.

[* Act No. 68 of 1997.]

23. Section 4 amended

- (1) Section 4(1) and section 4(2) are repealed.
- (2) Section 4(5) is repealed and the following subsection is inserted instead —

“

- (5) Subsection (3) or (4) does not —
 - (a) invest a Supreme Court with; or
 - (b) confer on any such court,
jurisdiction with respect to criminal matters.

”.

24. Section 5 amended

- (1) Section 5(1)(b) is deleted and the following paragraph is inserted instead —

“

- (b) it appears to the Supreme Court that, having regard to —
 - (i) whether, in the opinion of the Supreme Court, apart from 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;

- (ii) 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

- (iii) 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,

”.

- (2) Section 5(5)(b) is amended by deleting subparagraph (ii) and “or” after it and inserting instead —

“

- (ii) having regard to —

- (A) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it would have been incapable of being instituted in that court, apart from any law of the Commonwealth or another

State relating to cross-vesting of jurisdiction;

- (B) whether, in the opinion of the first court, the relevant proceeding or a substantial part of it would have been capable of being instituted in the Supreme Court, apart from any law of the Commonwealth or another State relating to cross-vesting of jurisdiction;
- (C) 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 any law of the Commonwealth or another State relating to cross-vesting of jurisdiction; and
- (D) the interests of justice, it is more appropriate that the relevant proceeding be determined by the Supreme Court; or

”.

- (3) Section 5(6) is repealed.

- (4) After section 5(9) the following subsection is inserted —

“

- (10) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.

”.

25. Section 6 amended

- (1) After section 6(1) the following subsection is inserted —

“

- (1a) However, the court is only required to transfer so much of the proceeding as is, in the opinion of the court, within the jurisdiction (including the accrued jurisdiction) of the Federal Court, or the court mentioned in subsection (2)(b), as the case may be.

”.

- (2) Section 6(2) is amended by inserting before “is to be transferred” —

“ or part of a proceeding ”.

26. Section 6A inserted

After section 6 the following section is inserted —

“

6A. Special federal matters: Commonwealth authorities or officers acting under the laws of States

- (1) This section applies to a proceeding (in this section referred to as the “**federal matter proceeding**”) if —
- (a) a matter for determination in the proceeding is covered by paragraph (c) 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;

- (b) the matter for determination in the proceeding involves or relates to the exercise, or purported or proposed exercise, of functions or powers conferred on a Commonwealth authority, or officer of the Commonwealth, by an enactment (in this subsection referred to as “**the State enactment**”) referred to in paragraph (ca) or (cb) of the definition of “enactment” in section 3(1) of the *Administrative Decisions (Judicial Review) Act 1977* of the Commonwealth; and
 - (c) the matter for determination in the proceeding arises out of, or relates to, another proceeding (in this section referred to as the “**State matter proceeding**”) pending in any court of this State —
 - (i) that arises, or a substantial part of which arises, under the State enactment or a corresponding enactment of another State; and
 - (ii) none of the matters for determination which are covered by paragraph (c) 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, regardless of which proceeding was commenced first.
- (2) If —
- (a) the federal matter proceeding is pending in the Federal Court or the Family Court; and
 - (b) having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction, the

Federal Court or the Family Court considers it appropriate to transfer the proceeding to the Supreme Court,

the Federal Court or the Family Court may transfer the proceeding to the Supreme Court, and section 5(5) does not apply to the federal matter proceeding.

- (3) If —
- (a) the federal matter proceeding is pending in the Supreme Court; and
 - (b) the State matter proceeding is pending in any court of this State,

neither section 5(1) nor section 6 applies to require the Supreme Court to transfer the federal matter proceeding to the Federal Court or the Family Court, but the Supreme Court may do so if it considers that to be appropriate, having regard to the interests of justice, including the desirability of related proceedings being heard in the same jurisdiction.

- (4) Nothing in this section confers on a court jurisdiction that the court would not otherwise have.
- (5) The fact that references in this section to the interests of justice include the desirability of related proceedings being heard in the same jurisdiction does not of itself mean that references to the interests of justice elsewhere in this Act do not include that matter.
- (6) In this section —
- “Commonwealth authority”** means an authority or other body (whether incorporated or not) that is established or continued in existence by or under an Act of the Commonwealth;

s. 27

“officer of the Commonwealth” has the same meaning as in section 75(v) of the Constitution of the Commonwealth.

”.

27. Section 10 amended

Section 10(a) is amended by deleting “the Federal Court, the Family Court,”.

28. Section 11 amended

Section 11(2) is repealed.

29. Section 14 amended

Section 14(1) is repealed.

**Part 7 — National Crime Authority (State Provisions)
Act 1985 amended**

30. The Act amended

The amendments in this Part are to the *National Crime Authority (State Provisions) Act 1985**.

[* Act No. 4 of 1985.]

31. Section 12 amended

Section 12(11) is repealed and the following subsection is inserted instead —

“

- (11) A reference in this section to a Judge of a prescribed court shall be construed as a reference to a Judge of a court of the State.

”.

32. Section 15 repealed

Section 15 is repealed.

33. Section 20 amended

- (1) Section 20(1) is amended as follows:

- (a) by deleting “of the Federal Court or”;
- (b) in paragraph (a) by deleting “section 15” and inserting instead —

“ section 24 of the Commonwealth Act ”.

- (2) Section 20(3) and section 20(4) are amended by deleting “of the Federal Court or”.

34. Section 21 amended

- (1) Section 21(2) to section 21(5) are repealed.

s. 34

- (2) Section 21(6)(b) is amended by deleting “subsection (2)” and inserting instead —

“

section 32(2) of the Commonwealth Act (as it has effect because of section 32B of that Act)

”.

- (3) Section 21(7) to section 21(11) are repealed.

- (4) Section 21(12) is amended as follows:

- (a) in paragraph (a) by deleting “subsection (9)” and inserting instead —

“

section 32(8A) of the Commonwealth Act (as it has effect because of section 32B of that Act)

”;

- (b) in paragraph (b) by deleting “subsection (8)” and inserting instead —

“

section 32(8) of the Commonwealth Act (as it has effect because of section 32B of that Act)

”.

- (5) Section 21(13) and section 21(14) are repealed.

- (6) Section 21(15) is amended by deleting the definition of “relevant day” and inserting instead —

“

“relevant day”, in relation to a decision of the Authority under subsection (1), means the day on which the Authority gives to the person to whom the decision relates a prescribed notice relating to the decision.

”.

(7) Section 21(16) and section 21(17) are repealed.

[Note: The heading to section 21 will be altered to read "**Refusing to produce documents or answer questions**".]

35. Section 22 repealed

Section 22 is repealed.

**Part 8 — *New Tax System Price Exploitation Code*
(*Western Australia*) Act 1999 amended**

**36. *New Tax System Price Exploitation Code (Western Australia)*
Act 1999 amended**

Section 26 of the *New Tax System Price Exploitation Code (Western Australia) Act 1999** is amended in the definition of “Commonwealth administrative laws” by deleting paragraph (a)(ii).

[* *Act No. 51 of 1999.*]

Part 9 — Amendments relating to the Administrative Review Tribunal

37. *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* amended

- (1) Section 3 of the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995** is amended in the definition of “Commonwealth administrative laws” by deleting subparagraph (a)(i) and inserting instead —

“

- (i) the *Administrative Review Tribunal Act 2001* of the Commonwealth and Parts 1, 3 and 5 to 8 of Schedule 2 of the *Administrative Review Tribunal (Consequential and Transitional Provisions) Act 2001* of the Commonwealth (to the extent to which those Parts are relevant);

”.

[* *Act No. 3 of 1995.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 9.]

- (2) Section 16(2) is amended by deleting “the obligations of the NRA under section 28 of the *Administrative Appeals Tribunal Act 1975*” and inserting instead —

“

the obligation of the NRA to provide statements of reasons under the *Administrative Review Tribunal Act 2001*

”.

- (3) Section 18A is repealed.

38. *Biological Control Act 1986* amended

Section 54(2) of the *Biological Control Act 1986** is amended by deleting “*Administrative Appeals Tribunal Act 1975*” and inserting instead —

“ *Administrative Review Tribunal Act 2001* ”.

[* *Act No. 106 of 1986.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 39.]

39. *Competition Policy Reform (Western Australia) Act 1996* amended

Section 29 of the *Competition Policy Reform (Western Australia) Act 1996** is amended in the definition of “Commonwealth administrative laws” by deleting subparagraph (a)(i) and inserting instead —

“

- (i) the *Administrative Review Tribunal Act 2001* of the Commonwealth and Parts 1, 3 and 5 to 8 of Schedule 2 of the *Administrative Review Tribunal (Consequential and Transitional Provisions) Act 2001* of the Commonwealth (to the extent to which those Parts are relevant);

”.

[* *Act No. 52 of 1996.*

For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 73.]

40. *New Tax System Price Exploitation Code (Western Australia) Act 1999* amended

Section 26 of the *New Tax System Price Exploitation Code (Western Australia) Act 1999** is amended in the definition of “Commonwealth administrative laws” by deleting subparagraph (a)(i) and inserting instead —

“

- (i) the *Administrative Review Tribunal Act 2001* of the Commonwealth and Parts 1, 3 and 5 to 8 of Schedule 2 of the *Administrative Review Tribunal (Consequential and Transitional Provisions) Act 2001* of the Commonwealth (to the extent to which those Parts are relevant);

”.

[* *Act No. 51 of 1999.*]
