

WESTERN AUSTRALIA

**JURISDICTION OF COURTS
(CROSS-VESTING) AMENDMENT
ACT 1994**

No. 3 of 1994

AN ACT to *amend the Jurisdiction of Courts (Cross-vesting) Act 1987* and for related purposes.

[Assented to 11 April 1994.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Jurisdiction of Courts (Cross-vesting) Amendment Act 1994*.

Commencement

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

Principal Act

3. In this Act the *Jurisdiction of Courts (Cross-vesting) Act 1987** is referred to as the principal Act.

[* Act No. 68 of 1987.]

**PART 2 — AMENDMENTS RELATING TO SPECIAL
FEDERAL MATTERS**

Section 3 amended

4. Section 3 (1) of the principal Act is amended, after the definition of “Territory” —

- (a) by deleting the fullstop and substituting a semicolon; and
- (b) by inserting the following definition —

“

“the Commonwealth Act” means the
*Jurisdiction of Courts (Cross-vesting)
Act 1987* of the Commonwealth.

”.

Section 6 repealed and a section substituted

5. Section 6 of the principal Act is repealed and the following section is substituted —

“

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

(2) Where a proceeding is to be transferred under subsection (1) —

- (a) if the special federal matter 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 Commonwealth Act, the proceeding shall be transferred to the Federal Court; or
- (b) if the special federal matter is a matter mentioned in paragraph (ba) of the definition of “special federal matter” in section 3 (1) of the Commonwealth Act, the proceeding shall be transferred to whichever of —
 - (i) the Family Court;
 - (ii) the State Family Court; or
 - (iii) the Supreme Court of the Northern Territory,

appears to the Supreme Court to be 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 has to 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 Attorney-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 shall —
- (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 the Supreme Court —

- (a) through inadvertence, determines a proceeding of the kind mentioned in subsection (1) without making an order under subsection (3); or
- (b) determines a proceeding of the kind mentioned in subsection (1) having, through inadvertence, made an order under subsection (3) without a notice mentioned in subsection (4) being given,

nothing in this section invalidates the decision of that 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 section 5 of the *Jurisdiction of Courts (Cross-vesting) Amendment Act 1994*, in relation to the special federal matter.

”

Miscellaneous amendments**6. The principal Act is amended in —**

- (a) the definition of “special federal matter” in section 3 (1); and
- (b) section 7 (3),

by deleting “*Jurisdiction of Courts (Cross-vesting) Act 1987 of the Commonwealth*” and substituting the following —

“ Commonwealth Act ”.

Application

7. Despite the amendments of the principal Act made by this Part, the principal Act as in force immediately before the commencement of section 5 of this Act continues to apply in relation to a proceeding pending in a court to which section 6 of the principal Act applied before that commencement.

**PART 3 — AMENDMENTS TO ENABLE THE AUSTRALIAN
CAPITAL TERRITORY TO PARTICIPATE IN THE
CROSS-VESTING SYSTEM**

Section 3 amended

8. Section 3 (1) of the principal Act is amended —

(a) in the definition of “State” by inserting after
“Northern Territory” the following —

“ and the Australian Capital Territory ”; and

(b) in the definition of “Territory” by inserting after
“Northern Territory” the following —

“ or the Australian Capital Territory ”.