



Western Australia

## **Federal Courts (State Jurisdiction) Act 1999**

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## Federal Courts (State Jurisdiction) Act 1999

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Western Australia

## **Federal Courts (State Jurisdiction) Act 1999**

**An Act to provide that certain decisions of the Federal Court of Australia or the Family Court of Australia have effect as decisions of the Supreme Court or the Family Court of Western Australia and to make other provision relating to certain matters relating to the jurisdiction of those courts.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Federal Courts (State Jurisdiction) Act 1999*<sup>1</sup>.

### **2. Commencement**

- (1) This Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.

*[(2), (3) deleted]*

*[Section 2 amended: No. 32 of 2001 s. 14.]*

### **3. Interpretation**

In this Act, unless a contrary intention appears —

***applied administrative law*** means a law of the State applying a Commonwealth administrative law as a law of the State;

***Commonwealth administrative law*** means —

- (a) any of the following Acts of the Commonwealth —
- (i) *Administrative Appeals Tribunal Act 1975*;
  - (ii) *Administrative Decisions (Judicial Review) Act 1977*;
  - (iii) *Freedom of Information Act 1982*;
  - (iv) *Ombudsman Act 1976*;
  - (v) *Privacy Act 1988*;

or

- (b) any of the regulations in force under any of those Acts;

***Commonwealth court*** means —

- (a) the Family Court of Australia; or
- (b) the Federal Court;

***Family Court of Australia*** means the Family Court of Australia established by the *Family Law Act 1975* of the Commonwealth;

**Family Court of WA** means the Family Court of Western Australia continued by the *Family Court Act 1997*;

**Federal Court** means the Federal Court of Australia established by the *Federal Court of Australia Act 1976* of the Commonwealth;

**ineffective judgment** has the meaning given by section 4;

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

**liability** includes a duty or obligation;

**proceeding** includes an initiating application;

**relevant State Act** means any of the following Acts —

- (a) *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*;
- (aa) *Australian Crime Commission (Western Australia) Act 2004*;
- (b) *Civil Aviation (Carriers' Liability) Act 1961*;
- (c) *Competition Policy Reform (Western Australia) Act 1996*;
- (d) *Corporations (Western Australia) Act 1990*;
- (e) *Family Court Act 1997*;
- (f) *Gas Pipelines Access (Western Australia) Act 1998*;
- (g) *Jurisdiction of Courts (Cross-Vesting) Act 1987*;
- [*(h) deleted*]
- (i) any other Act that is prescribed by the regulations;

**right** includes an interest or status;

**State family law matter** means a matter in which the Family Court of WA has jurisdiction other than by reason of a law of the Commonwealth or of another State or of a Territory;

**State matter** means —

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- (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 of a Territory;
- (b) a matter that has been removed to the Supreme Court under section 8 of the *Jurisdiction of Courts (Cross-Vesting) Act 1987*;
- (c) a matter in respect of which a relevant State Act purports or purported to confer jurisdiction on a Commonwealth court; or
- (d) a matter arising under or in respect of an applied administrative law,

but not a State family law matter.

*[Section 3 amended: No. 74 of 2004 s. 69.]*

**4. Meaning of “ineffective judgment”**

- (1) A reference in this Act to an **“ineffective judgment”** is a reference to a judgment of a Commonwealth court in a State matter or a State family law matter given or recorded, before the commencement of this section, in the purported exercise of jurisdiction purporting to have been conferred on the Commonwealth court by a relevant State Act.
- (2) If—
  - (a) a Full Court of the Federal Court of Australia in its appellate jurisdiction has purported to affirm, reverse or vary an ineffective judgment; or
  - (b) a Full Court of the Family Court of Australia has purported to affirm, reverse or vary an ineffective judgment,

a reference in this Act to the ineffective judgment is a reference to the ineffective judgment in the form in which, and to the extent to which, it purports or purported to have effect from time to time.



**5. Crown is bound**

This Act binds the Crown in right of Western Australia and, in so far as the legislative power of the Parliament of Western Australia permits, the Crown in all its other capacities.

## **Part 2 — Rights and liabilities**

### **6. Rights and liabilities declared in certain cases**

The rights and liabilities of all persons are, by force of this Act, declared to be, and always to have been, the same as if —

- (a) each ineffective judgment in a State matter —
  - (i) of the Federal Court of Australia, otherwise than as a Full Court of the Federal Court of Australia;  
or
  - (ii) of the Family Court of Australia, otherwise than as a Full Court of the Family Court of Australia,  
had been a valid judgment of the Supreme Court constituted by a single judge of the Supreme Court;
- (b) each ineffective judgment in a State family law matter —
  - (i) of the Federal Court of Australia, otherwise than as a Full Court of the Federal Court of Australia;  
or
  - (ii) of the Family Court of Australia, otherwise than as a Full Court of the Family Court of Australia,  
had been a valid judgment of the Family Court of WA constituted by a single judge of the Family Court of WA; and
- (c) each ineffective judgment in a State matter or a State family law matter —
  - (i) of a Full Court of the Federal Court of Australia;  
or
  - (ii) of a Full Court of the Family Court of Australia,  
had been a valid judgment of the Court of Appeal.

*[Section 6 amended: No. 45 of 2004 s. 37.]*

**7. Effect of declared rights and liabilities**

- (1) A right or liability conferred, imposed or affected by section 6 —
- (a) is exercisable or enforceable; and
  - (b) is to be regarded as always having been exercisable or enforceable,

as if it were a right or liability conferred, imposed or affected by a judgment of the Supreme Court or the Family Court of WA, as the case requires.

- (2) Without limiting subsection (1) or section 6, the rights and liabilities conferred, imposed or affected by section 6 include the right of a person who was a party to the proceeding or purported proceeding in which the ineffective judgment was given or recorded to appeal against that judgment.
- (3) For the purposes of subsection (2) —
- (a) each ineffective judgment referred to in section 6(a) is deemed to be a judgment of a single judge of the Supreme Court; and
  - (b) each ineffective judgment referred to in section 6(b) is deemed to be a judgment of a single judge of the Family Court of WA.

**8. Effect of things done or omitted to be done under or in relation to rights and liabilities**

- (1) In this section —
- enforcement law*** means a provision of a law (other than a law relating to contempt of court) that sets out a consequence for a person if the person —
- (a) contravenes; or
  - (b) acts in a specified way while there is in force, a judgment, or a particular kind of judgment, given by a court.

- (2) Any act or thing done or omitted to be done before or after the commencement of this section under or in relation to a right or liability conferred, imposed or affected by section 6 —
- (a) has the same effect, and gives rise to the same consequences, for the purposes of any written or other law; and
  - (b) is to be regarded as always having had the same effect, and given rise to the same consequences, for the purposes of any written or other law,
- as if it were done, or omitted to be done, to give effect to, or under the authority of, or in reliance on, a judgment of the Supreme Court or the Family Court of WA, as the case requires.
- (3) For the purposes of an enforcement law, any act or thing done or omitted to be done before or after the commencement of this section gives rise to the same consequences, and is to be regarded as always having given rise to the same consequences, as if —
- (a) each ineffective judgment in a State matter were a valid judgment of the Supreme Court given in or in relation to the proceeding in or in relation to which the ineffective judgment was given or recorded; and
  - (b) each ineffective judgment in a State family law matter to which section 6(b) refers were a valid judgment of the Family Court of WA given in or in relation to the proceeding in or in relation to which the ineffective judgment was given or recorded; and
  - (c) each ineffective judgment in a State family law matter to which section 6(c) refers were a judgment of the Supreme Court given in or in relation to the proceeding in or in relation to which the ineffective judgment was given or recorded.

**9. Section 6 regarded as having ceased to have effect in certain cases**

- (1) If—
  - (a) before the commencement of this section, a Commonwealth court gave or recorded an ineffective judgment (“**the new judgment**”) on the basis that an earlier ineffective judgment (“**the earlier judgment**”) was or might be of no effect; and
  - (b) the new judgment replaced the earlier judgment,section 6 has no effect in respect of the earlier judgment.
- (2) For the purposes of subsection (1)(b), the new judgment replaced the earlier judgment if the new judgment—
  - (a) purportedly conferred or imposed rights or liabilities similar to or different from those purportedly conferred or imposed by the earlier judgment; or
  - (b) purportedly affected rights or liabilities in a way similar to or different from the way in which they were purportedly affected by the earlier judgment.

**10. Powers of WA courts in relation to declared rights and liabilities**

- (1) The Supreme Court may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by section 6(a) or 6(c) as if it were a right or liability conferred, imposed or affected by the Supreme Court in or in relation to proceedings of the kind in or in relation to which the ineffective judgment was given or recorded.
- (2) The Family Court of WA may vary, revoke, set aside, revive or suspend a right or liability conferred, imposed or affected by section 6(b) as if it were a right or liability conferred, imposed or affected by the Family Court of WA in or in relation to proceedings of the kind in or in relation to which the ineffective judgment was given or recorded.

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- (3) In addition to its powers under subsection (1) the Supreme Court, and in addition to its powers under subsection (2) the Family Court of WA, also has power to give a judgment achieving any other result that could have been achieved if —
- (a) the ineffective judgment had been a valid judgment of that court given in or in relation to proceedings of the kind in or in relation to which the ineffective judgment was given or recorded; and
  - (b) that court had been considering whether —
    - (i) to vary, revoke, set aside, revive or suspend that judgment;
    - (ii) to extend the time for the doing of any thing; or
    - (iii) to grant a stay of proceedings.

**11. Certain proceedings may be treated as proceedings in a WA court**

- (1) In this section —

***limitation law*** means —

- (a) the *Limitation Act 2005*;
- (b) any other law that provides for the limitation or exclusion of any liability or the barring of a right of action in respect of a claim by reference to the time when a proceeding on, or the arbitration of, the claim is commenced;

***relevant order*** means —

- (a) an order of a Commonwealth court, whether made before or after the commencement of this section, dismissing, striking out or staying a proceeding relating to a State matter or a State family law matter for want of jurisdiction;
- (b) a declaration by a Commonwealth court, whether made before or after the commencement of this section, that it has no jurisdiction to hear and determine a proceeding relating to a State matter or a State family law matter; or

- (c) any other decision or determination by a Commonwealth court, whether made before or after the commencement of this section, that it has no jurisdiction to hear and determine a proceeding relating to a State matter or a State family law matter.
- (2) A person who was a party to a proceeding relating to a State matter in which a relevant order is made may apply to the Supreme Court for an order that the proceeding be treated as a proceeding in the Supreme Court and the Supreme Court may make such an order.
- (3) A person who was a party to a proceeding relating to a State family law matter in which a relevant order is made may apply —
  - (a) if the Commonwealth court that made the relevant order was not constituted as a Full Court — to the Family Court of WA for an order that the proceeding be treated as a proceeding in the Family Court of WA and the Family Court of WA may make such an order; or
  - (b) if the Commonwealth court that made the relevant order was constituted as a Full Court — to the Supreme Court for an order that the proceeding be treated as a proceeding in the Supreme Court and the Supreme Court may make such an order.
- (4) If a court makes an order under subsection (2) or (3), the proceeding, despite the relevant order —
  - (a) becomes, and must be recorded by that court as, a proceeding in that court; and
  - (b) for the purposes of any limitation law and for all other purposes, is deemed to have been brought in that court on the day on which the proceeding was first recorded as a proceeding in the Commonwealth court.
- (5) The Supreme Court or the Family Court of WA may make such ancillary orders in relation to an order made under subsection (2) or (3) as it considers necessary for the purposes

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of the proceeding being treated as, becoming and being recorded as, a proceeding in that court.

*[Section 11 amended: No. 20 of 2005 s. 23.]*

**12. Proceedings for contempt**

If, before or after the commencement of this section, a person —

- (a) has interfered with a right conferred or affected by section 6; or
- (b) has failed to satisfy or comply with a liability imposed or affected by section 6,

the interference or failure is, and is deemed always to have been, a matter that can be dealt with in the same manner as if the interference or failure had been in relation to a right conferred or affected, or a liability imposed or affected, by —

- (c) in the case of an ineffective judgment referred to in section 6(a) or 6(c) — an order of the Supreme Court; or
- (d) in the case of an ineffective judgment referred to in section 6(b) — an order of the Family Court of WA.



## Part 2A — Jurisdiction of courts

[Heading inserted: No. 32 of 2001 s. 15.]

### 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.

[Section 12A inserted: No. 32 of 2001 s. 15.]

### 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

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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 accused both agree.

*[Section 12B inserted: No. 32 of 2001 s. 15; amended: No. 84 of 2004 s. 82.]*

### Part 3 — General

**13. Evidentiary matters**

A Commonwealth court record, or a copy of a Commonwealth court record, of an ineffective judgment may be adduced in evidence to show the existence, nature and extent of each right or liability conferred, imposed or affected by section 6.

**14. Act not to apply to certain judgments**

Nothing in this Act applies to —

- (a) a judgment given or recorded by the Federal Court of Australia that has been declared to be invalid, or has been quashed or overruled, by a Full Court of the Federal Court of Australia before the commencement of this section (otherwise than on the ground that the court had no jurisdiction); or
- (b) a judgment given or recorded by the Family Court of Australia that has been declared to be invalid, or has been quashed or overruled, by a Full Court of the Family Court of Australia before the commencement of this section (otherwise than on the ground that the court had no jurisdiction).

**15. Regulations**

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act.

*[Part 4 omitted under the Reprints Act 1984 s. 7(4)(e)<sup>2</sup>.]*

### Notes

- <sup>1</sup> This is a compilation of the *Federal Courts (State Jurisdiction) Act 1999* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Federal Courts (State Jurisdiction) Act 1999</i> <sup>2</sup>	32 of 1999	13 Jul 1999	Act other than Pt. 4 Div. 2: 13 Jul 1999 (see s. 2(1))
<i>Acts Amendment (Federal Courts and Tribunals) Act 2001 Pt. 4</i>	32 of 2001	21 Dec 2001	21 Dec 2001 (see s. 2(1))
<i>Acts Amendment (Court of Appeal) Act 2004 s. 37</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Australian Crime Commission (Western Australia) Act 2004 s. 69</i>	74 of 2004	8 Dec 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<b>Reprint 1: The <i>Federal Courts (State Jurisdiction) Act 1999</i> as at 4 Nov 2005</b> (includes amendments listed above)			
<i>Limitation Legislation Amendment and Repeal Act 2005 Pt. 10</i>	20 of 2005	15 Nov 2005	15 Nov 2005 (see s. 2)

- <sup>2</sup> Pt. 4 Div. 2 of this Act had not come into operation when it was repealed by the *Acts Amendment (Federal Courts and Tribunals) Act 2001* s. 16.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
applied administrative law .....	3
Commonwealth administrative law .....	3
Commonwealth court.....	3
enforcement law.....	8(1)
Family Court of Australia .....	3
Family Court of WA .....	3
Federal Court .....	3
federal court .....	12A(5)
ineffective judgment .....	3
judgment .....	3
liability .....	3
limitation law .....	11(1)
proceeding.....	3
relevant order.....	11(1)
relevant State Act.....	3
right.....	3
State family law matter .....	3
State matter .....	3
unapplied provision.....	12A(4)