

2001

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

JURISDICTION OF COURTS LEGISLATION AMENDMENT BILL 2001

EXPLANATORY MEMORANDUM

Circulated by authority of
Bill Stefaniak MLA
Attorney-General

JURISDICTION OF COURTS LEGISLATION AMENDMENT BILL 2001

BACKGROUND

In response to the High Court decision in Re Wakim, ([1999] HCA 27) which made it clear that the system of cross-vesting of jurisdiction supporting a number of national legislative schemes is constitutionally invalid, the Commonwealth Parliament passed the *Jurisdiction of Courts Legislation Amendment Act 2000* (Commonwealth JOCLA Act). This Act amends a number of Commonwealth Acts that are part of national co-operative legislative schemes. Those amendments affect the operation of corresponding legislation in the States and Territories, including several ACT Acts. This Bill makes the consequential amendments that are needed in ACT legislation.

The ACT is in a different position to that of the States, as there is no constitutional difficulty with Territory jurisdiction being vested in federal courts. As a result, amendments needed to ACT legislation are less extensive than those necessary for the States. This Bill contains those changes that are necessary so that ACT national scheme legislation remains consistent with corresponding Commonwealth Acts amended by the Commonwealth JOCLA Act.

The amendments made by the Commonwealth allow the continued operation of national regulatory schemes. The effect of the Commonwealth amendments is to confer federal jurisdiction on federal courts to review the decisions of Commonwealth officers and bodies made in the performance of functions conferred on them by specified State and Territory laws. Until the decision in Re Wakim federal courts exercised State jurisdiction to review such decisions. Changes to the way in which administrative review is achieved are necessary because in Re Wakim the High Court said that the conferral of State jurisdiction on the Federal Court is invalid.

Although the Re Wakim decision has no effect on the conferral by Territories of jurisdiction on federal courts, the Commonwealth JOCLA Act replaces ACT provisions (allowing for review of decisions of Commonwealth officers through federal courts) with Commonwealth provisions which do the same thing. This is designed to achieve uniformity of administrative review provisions for everyone across Australia.

SUMMARY

This Bill amends 4 Acts which relate to national regulatory legislative schemes. Those Acts are the *Gas Pipelines Access Act 1998*, the *Jurisdiction of Courts (Cross-Vesting) Act 1993*, the *National Crime Authority (Territory Provisions) Act 1991*, and the *Competition Policy Reform Act 1996*.

A new provision is included in the Gas Pipelines Access Act 1998 to determine which Supreme Court will have jurisdiction in a cross-boundary case where 2 or more jurisdictions are involved. Previously the Federal Court would have dealt with all those matters.

The Bill inserts a new provision in the Jurisdiction of Courts (Cross-Vesting) Act 1993 to correspond with a new provision in the Commonwealth JOCLA Act. It allows for some matters to be dealt with by a Supreme Court of a State or Territory if they concern both an administrative decision by a Commonwealth officer and an issue under State or Territory jurisdiction. Previously this was covered by the cross-vesting of jurisdiction between States, Territories and the Commonwealth, but that was found to be invalid.

An additional provision about the interpretation of references to the Commonwealth Administrative Appeals Tribunal Act 1975 is included in the Competition Policy Reform Act 1996 to avoid confusion arising from the changes made by the Commonwealth JOCLA Act.

The Bill includes amendments to both the National Crime Authority (Territory Provisions) Act 1991 and the Competition Policy Reform Act 1996. Those changes are necessary because of Commonwealth provisions to bring the Territories into line with the States in respect of administrative review provisions.

Other amendments in the Bill make technical changes to make the provisions of the 4 Acts consistent with the corresponding Commonwealth legislation.

The Bill also contains amendments that alter the style of the 4 Acts. Those amendments are part of a process by the Parliamentary Counsel's Office to modernise the layout and language of all ACT statutes. The opportunity has been taken to make these Acts consistent with current legislative drafting practices. Altering the style of the Acts will put them into plainer language with more commonly used words and shorter sentences for ease of reading. A dictionary for the special meanings of words in the Act is included in place of interpretation provisions in order to make the Acts easier to use.

REVENUE/COST IMPLICATIONS

There are no cost implications.

SUMMARY OF CLAUSES

Formal Clauses

Clauses 1 and 2 are formal clauses. They set out the name of the Bill and provide for its commencement.

Clause 3 says that the Bill amends the Acts mentioned in Schedule 1 to the Bill. The changes to the Acts are set out in that Schedule.

SCHEDULE 1

The Schedule sets out the Acts being amended. Each of the 4 Parts in the Schedule deals with 1 Act. It sets out the amendments to that Act.

Part 1

This Part contains the amendments to the *Competition Policy Reform Act 1996*.

Drafting style

Amendments 1.1, 1.2, 1.3 and 1.4 make changes to the style of the Act.

Administrative law

Amendment 1.5 replaces paragraphs (a) (i) to (v) of section 29 of the *Competition Policy Reform Act 1996* with new paragraphs (i) to (iv). Those paragraphs define "Commonwealth administrative laws" for the purpose of Division 5 of the *Competition Policy Reform Act 1996*. The effect of the amendment is to remove the *Commonwealth Administrative Decisions (Judicial Review) Act 1977* from the definition and to exclude Part IVA of the *Commonwealth Administrative Appeals Tribunal Act 1975* from that definition. Since the amendments to those Commonwealth Acts it is no longer possible to have judicial review by the Federal Court of decisions under ACT law by directly applying those Commonwealth legislative provisions as laws of the Territory.

The amendments made by the Commonwealth were to allow the continued operation of national regulatory schemes. The effect of the Commonwealth amendments is to confer federal jurisdiction on federal courts to review the decisions of Commonwealth officers and bodies made in the performance of functions conferred on them by specified State and Territory laws. Until the decision in Re Wakim federal courts exercised State jurisdiction to review such decisions. Changes to the way in which administrative review is achieved are necessary because in Re Wakim the High Court said that the conferral of State jurisdiction on the Federal Court is invalid.

The Re Wakim decision has no effect on the conferral by Territories of jurisdiction on federal courts. However, in order to achieve uniformity of administrative review provisions for everyone across Australia, the Commonwealth JOCLA Act replaces ACT provisions (allowing for review of decisions of Commonwealth officers through federal courts) with Commonwealth provisions that do the same thing.

Under the Commonwealth Act the same provisions will apply to review of decisions of Commonwealth officers acting under State laws. There are also provisions to allow State and Territory Supreme Courts to exercise federal review jurisdiction in limited circumstances.

Amendment 1.6 inserts a new section 33A into the *Competition Policy Reform Act 1996*. New section 33A is an interpretation provision. It confines the meaning of references in sections 30 and 31 of that Act to the Commonwealth *Administrative Appeals Tribunal Act 1975* to something which fits within the new administrative decision review structure. It specifies that references to Part IVA of the Commonwealth *Administrative Appeals Tribunal Act*, which deals with appeals to the Federal Court, are references to those provisions as they have effect as Commonwealth law. That avoids any inference that they could be purported (invalidly) to operate as Territory law.

Amendment 1.7 omits sections 42 to 45 of the *Competition Policy Reform Act 1996* as they are transitional provisions that are no longer needed.

Amendment 1.8 inserts a dictionary to contain the interpretation provisions in the *Competition Policy Reform Act 1996*. This is part of the stylistic changes being made to the Act.

Part 2

This Part contains changes to the *Gas Pipelines Access Act 1998*.

Amendments 1.9, 1.10 and 1.11 make changes to the style of the Act.

Amendment 1.12 omits sections 17 and 18 of the *Gas Pipelines Access Act*. Those sections applied the Commonwealth *Administrative Decisions (Judicial Review) Act 1977* as a law of the ACT. It also applies that Act as a law of the ACT to decisions relating to gas pipelines access legislation in other jurisdictions. In this way all decisions made as part of the national gas pipelines access scheme were reviewable under the Commonwealth Act. With the changes to the Commonwealth *Administrative Decisions (Judicial Review) Act* made by the Commonwealth JOCLA Act, these provisions are no longer necessary as the Commonwealth Act itself now provides for review of decisions of Commonwealth agencies and officers under gas pipeline access scheme laws.

Amendments 1.13, 1.14, 1.15, 1.16, 1.17 and 1.18 make changes to section 20 of the *Gas Pipelines Access Act*. The changes remove the reference to actions by the Federal Court under gas pipelines access legislation. The cross vesting of jurisdiction to the Federal Court by scheme participants has been found to be invalid.

A new subsection 20(2) is inserted to clarify when the Supreme Court has jurisdiction to make an order about a cross border dispute. Previously, with cross-vesting of jurisdiction provisions in place, the Federal Court would have generally had jurisdiction in relation to cross border disputes. The amendments mean that the Supreme Courts of the participant jurisdictions now have jurisdiction. As a cross border dispute could generate questions about which of the Supreme Courts should decide the issue, the provisions of new subsection 20(2) provide that the

Supreme Court of the scheme participant most closely connected to the pipeline is the one to exercise jurisdiction.

Amendment 1.19 inserts a new dictionary in place of the interpretation provisions in the *Gas Pipelines Access Act*. This is part of the modernising of the style of the Act.

Part 3

This Part contains changes to the *Jurisdiction of Courts (Cross-vesting) Act 1993*.

Amendments 1.20, 1.21, 1.22, 1.23, 1.24 and 1.25 make changes to the style of the Act.

Amendment 1.26 inserts a new section 6A. The new section provides that a court proceeding that has elements of both Commonwealth law and ACT law may be transferred from the Federal Court or the Family Court to the Supreme Court if it appears that it would be best for the related proceedings to be heard in one court.

Amendment 1.27 inserts a new dictionary in place of the interpretation provisions in the *Jurisdiction of Courts (Cross-vesting) Act*. This is part of the modernising of the style of the Act.

Part 4

This Part contains amendments to the *National Crime Authority (Territory Provisions) Act 1991*.

Amendments 1.28, 1.29, 1.30, 1.31, 1.32, 1.33, 1.34, 1.35, 1.36, 1.37, 1.38, 1.39, 1.40, 1.41, 1.42, 1.43, 1.44, 1.45, 1.46, 1.47, 1.48, 1.49, and 1.50 make changes to the style of the Act.

Amendment 1.51 makes changes to section 20 of the Act. The changes fit with changes made to the corresponding Commonwealth legislation and are designed to retain a national structure for the National Crime Authority.

Section 20 deals with situations where persons have been required to answer a question or produce a document and are claiming to be entitled to refuse to do so. The amendments pick up references to modified provisions in the Commonwealth *National Crime Authority Act 1984* that allow for applications to the Federal Court about claims to be entitled to refuse to answer as directed. Although the ACT can validly vest jurisdiction under ACT laws in Federal courts, the Commonwealth in the Commonwealth JOCLA Act invalidated those cross-vesting provisions in relation to the *National Crime Authority (Territory Provisions) Act*. That is to ensure that people are not treated differently depending on where in Australia they live.

Section 20 provides a review system to allow people who believe that they are entitled to refuse to answer a question or produce a document to have that claim fully considered. Previously the Federal Court dealt with those matters through cross-vesting of jurisdiction but the amendments now rely on Commonwealth legislation directly giving the Federal Court jurisdiction to deal with them.

Amendment 1.52 omits section 21 of the *National Crime Authority (Territory Provisions) Act*. It also dealt with claims to be entitled not to answer a question or produce a document and is no longer necessary since the changes to the Commonwealth *National Crime Authority Act*.

Amendments 1.53, 1.54, 1.55, 1.56, 1.57, 1.58, 1.59 and 1.60 make changes to the style of the Act.

Amendment 1.61 inserts a new dictionary in place of the interpretation provisions in the *National Crime Authority (Territory Provisions) Act*. This is part of the modernising of the style of the Act.