

Amendments to the *Judiciary Act 1903 (Cth)*

Proposed measure 1: Confer on territory courts the same general federal civil jurisdiction as invested in state courts

It is proposed to amend sections 38, 39 and 39A of the *Judiciary Act 1903 (Cth)* (Judiciary Act) to confer the same general federal civil jurisdiction on territory courts as is invested in state courts.

Federal civil jurisdiction (civil matters within sections 75 and 76 of the Constitution) has not been generally conferred on all territory courts. In contrast, section 39 of the Judiciary Act broadly invests federal civil jurisdiction in state courts, subject to certain exclusions.

Proposed measure 1 would extend the operation of section 38 of the Judiciary Act to territory courts so that it makes the High Court's jurisdiction in matters covered by paragraphs 38(a), (b) and (e) exclusive of territory courts as well as state courts.

The proposed measure would ensure that there is consistency in access to justice for residents of states and territories.

Proposed measure 2: Suits between the Commonwealth and a state

It is proposed to repeal paragraphs 38(c)–(d) of the Judiciary Act to allow state and territory courts to hear and determine suits between the Commonwealth and a state.

State courts do not presently have jurisdiction to hear suits between the Commonwealth and a state, as that jurisdiction is made exclusive to the High Court by paragraphs 38(c)–(d) of the Judiciary Act.

This exclusive jurisdiction has caused complications where proceedings have been commenced in a state court by a state against the Commonwealth.

Repealing paragraphs 38(c)–(d) of the Judiciary Act would avoid jurisdictional uncertainty and prevent costs or delays for future proceedings.

The Supreme Court of the Northern Territory (NT) currently has existing jurisdiction under section 67B of the Judiciary Act to hear and determine matters between the Commonwealth and the NT, and proposed measure 1 would confer jurisdiction on all territory courts, subject to the limits on their jurisdiction, to hear and determine matters between the Commonwealth and a territory. Accordingly, repealing these paragraphs would ensure consistency between courts of the states and territories.

The High Court will retain original jurisdiction in relation to matters in which the Commonwealth is a party under paragraph 75(iii) of the Constitution and, where appropriate, matters between the Commonwealth and a state or territory could still be removed to the High Court under section 40 of the Judiciary Act.

Proposed measure 3: Privy Council provisions

It is proposed to repeal provisions in the Judiciary Act that restrict certain appeals to the Privy Council, as the provisions are superseded by section 11 of the *Australia Act 1986 (Cth)* (Australia Act).

Section 11 of the Australia Act, which commenced on 3 March 1986, effectively barred appeals to the Privy Council from any decision of all Australian courts (other than the High Court). This provision superseded the bar on appeals to the Privy Council provided for in paragraphs 39(2)(a) and 39A(1)(a) of the Judiciary Act, meaning the latter provisions are obsolete.

Proposed measure 4: Exercise of territory jurisdiction by territory tribunals in relation to matters identified in sections 75–76 of the Constitution

It is proposed that any existing territory jurisdiction of territory tribunals in matters falling within sections 75–76 of the Constitution will be preserved, notwithstanding the other proposed amendments to the Judiciary Act.

Accordingly, the amendments to section 39 of the Judiciary Act will not interfere with any existing territory jurisdiction conferred on territory tribunals.

Proposed measure 5: Consequential amendments

It is proposed that section 67B and paragraphs 67C(a) and 67C(c) of the Judiciary Act, which confer federal jurisdiction on the NT Supreme Court, be repealed as the provisions will be superseded by other proposed amendments.

Amendments to the *Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth)*

The consequential amendments made to the *Jurisdiction of Courts (Cross-vesting Act) 1987 (Cth)* (Cross-vesting Act) as part of the legislative reforms which established the Federal Circuit and Family Court of Australia (FCFCOA) in 2021 affected the ability of state and territory Supreme Courts to effectively deal with federal family law and child support matters under the cross-vesting scheme.

The amendments proposed to the Cross-vesting Act would restore the cross-vesting arrangements that existed prior to the reforms that took effect in 2021. They would ensure that:

- state and territory Supreme Courts can exercise broad family law jurisdiction under the Cross-vesting Act
- state and territory Supreme Courts and the Federal Court of Australia (Federal Court) can transfer proceedings directly to the FCFCOA (Division 2) where there are related proceedings in that Court.

Proposed measure 1: Jurisdiction of state and territory Supreme Courts to hear federal family law and child support matters

It is proposed that section 4 of the Cross-vesting Act be amended to enable state and territory Supreme Courts to validly exercise federal jurisdiction in relation to family law and child support matters. This amendment would give full and proper effect to the cross-vesting scheme in the Cross-vesting Act.

Proposed measure 2: Transfer of federal family law and child support matters

It is proposed that sections 5 and 8 of the Cross-vesting Act be amended to enable state and territory Supreme Courts and the Federal Court to transfer a family law or child support matter to the FCFCOA where there are related proceedings pending in the FCFCOA. These amendments would encourage the quick and efficient resolution of proceedings before the courts.

Proposed measure 3: Transfer of ‘special federal matters’

It is proposed that section 6 of the Cross-vesting Act be amended so that one category of ‘special federal matters’ – matters arising under section 60G of the *Family Law Act 1975 (Cth)* (Family Law Act) (applications for leave for adoption proceedings to be commenced) – which are pending in a state or territory Supreme Court, are appropriately transferred to the FCFCOA (Division 2) and not the FCFCOA (Division 1). This amendment would accurately reflect that the FCFCOA (Division 2) is the single point of entry for matters in the FCFCOA. It would also be consistent with section 60G of the Family Law Act, which provides that leave for adoption proceedings to be commenced is granted by the FCFCOA (Division 2).

Amendments to the *Civil Dispute Resolution Act 2011* (CDR Act)

Proposed measure 1: Transfer three types of excluded proceedings from the *Civil Dispute Resolution Regulations 2021* to the *Civil Dispute Resolution Act 2011* (Cth)

It is proposed that section 15 of the *Civil Dispute Resolution Act 2011* (Cth) (CDR Act), which sets out types of proceedings that are excluded from the requirement that parties take genuine steps to resolve a dispute ('excluded proceedings'), be amended to include three types of proceedings:

- proceedings for a sequestration order under section 43 of the *Bankruptcy Act 1966* (Cth), if the act of bankruptcy relied on arose under paragraph 40(1)(g) of that Act
- proceedings for an order under section 459A of the *Corporations Act 2001* (Cth) to wind up a company in insolvency, if the application for the order relies on a failure by the company to comply with a statutory demand within the meaning of that Act
- proceedings for a review of a decision by a registrar of the Federal Court or the FCFCOA (Division 2).

These proceedings are 'excluded' from the genuine steps requirement in the CDR Act because it is not practical for the parties to take those steps or it is inappropriate for the matter to be subject to the requirement to take those steps. These excluded proceedings were previously listed in the *Civil Dispute Resolution Regulations 2021* but are being transferred to the CDR Act to ensure there is an appropriate level of parliamentary oversight of proceedings that are excluded from the operation of the CDR Act.