



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

This document was filed electronically in the High Court of Australia on 23 May 2024 and has been accepted for filing under the *High Court Rules 2004*. Details of filing and important additional information are provided below.

Details of Filing

File Number: S106/2023
File Title: HBSY Pty Ltd ACN 151 894 049 v. Lewis & Anor
Registry: Sydney
Document filed: Notes provided by A-G Cth in response to questions from the C
Filing party: Intervener
Date filed: 23 May 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

HBSY PTY LTD ACN 151 894 049

Plaintiff

and

GEOFFREY LEWIS

First Defendant

and

THE FEDERAL COURT OF AUSTRALIA

AND THE JUDGES THEREOF

Second Defendant

**NOTES PROVIDED BY COMMONWEALTH ATTORNEY-GENERAL
IN RESPONSE TO QUESTIONS OR REQUESTS FROM THE COURT**

This note, which is provided pursuant to leave granted by the Full Court on 9 May 2024, responds to the following five questions or requests for material that were made during the hearing.

Question 1 – Acts conferring appellate jurisdiction on the Federal Court of Australia following the enactment of the *Federal Court of Australia Act 1976* (Cth)

The Chief Justice referred to the Attorney-General’s second reading speech for the *Federal Courts Bill 1976* (Hansard, House of Representatives 21 October 1976, p.2111), where the Attorney-General said: ‘Separate legislation will be introduced to provide for appeals from State courts to the Federal Court of Australia in taxation, industrial property, bankruptcy and trade practices matters’. The Chief Justice asked, ‘Was there a single consequential provisions Act that brought all that together?’ ([2024] HCA Trans 034 at line 528ff).

Question 2 – Jurisdiction clauses in Acts listed in the Schedule to the CV Act

The Chief Justice indicated that the Court would be assisted if the Attorney-General could provide a note that sets out, in relation to each of the Acts listed in the Schedule to the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth), ‘the situation the day before the cross-vesting legislation came into force in relation to jurisdiction and source of jurisdiction in State appeal courts and the Full Court of the Federal Court, and also the position the day after’ and also ‘you can tell us the position now’ ([2024] HCA Trans 034 at lines 1280ff and 1429ff).

Question 3 – Extrinsic materials concerning the repeal of s 38 of the *Bankruptcy Act 1966*

Justice Beech-Jones asked ‘when the 1996 amendments were made, which repealed section 38 [of the *Bankruptcy Act 1966* (Cth)], was there anything in the second reading materials about or revealing any assumption that they may have had about how 7(5) [of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) (‘the CV Act’)] might operate?’ ([2024] HCA Trans 034 at line 1619).

Question 4 – Extrinsic material concerning the *Dental Benefits Act 2008*

The Solicitor-General referred to the *Dental Benefits Act 2008* and said that ‘[t]his is an Act that was not in the Schedule when the Cross-vesting Act was enacted, but was added subsequently, and which has never contained a provision conferring a right of appeal to the Federal Court, but where the explanatory memorandum at the time it was added said, the effect of this will be that you can bring appeals to the Federal Court’ ([2024] HCA Trans 034 at lines 1609ff). Justice Steward asked if the Court could be provided with ‘that extrinsic material’ (lines 1635-1639).

Question 5 – Treatment by the High Court of s 15C of the *Acts Interpretation Act 1903*

Justice Gordon asked the Solicitor-General ‘other than *Gould v Brown* [193 CLR 346], where else has this Court considered s 15C [of the *Acts Interpretation Act 1901* (Cth)]?’ ([2024] HCA Trans 034 at lines 1716-1722).

Question 1 – Acts conferring appellate jurisdiction on the Federal Court of Australia following the enactment of the *Federal Court of Australia Act 1976 (Cth)*

At the hearing of this matter on 9 May 2024, the Chief Justice referred to the Attorney-General’s second reading speech for the *Federal Courts Bill 1976* (Hansard, House of Representatives 21 October 1976, p.2111), where the Attorney-General said: ‘Separate legislation will be introduced to provide for appeals from State courts to the Federal Court of Australia in taxation, industrial property, bankruptcy and trade practices matters’. The Chief Justice asked, ‘Was there a single consequential provisions Act that brought all that together?’ ([2024] HCA Trans 034 at line 528ff).

The answer to the question is that there was no single consequential provisions Act that dealt with all of the matters referred to by the Attorney-General in the above quotation. Rather, provision was made for appeals from State courts to the Federal Court of Australia in taxation, industrial property (taking ‘industrial property’ to mean ‘intellectual property’) and bankruptcy matters in several amending statutes that were enacted between 1976 and 1979. Those statutes are identified in Table 1 below (see the page following).

As to the remaining subject-matter referred to by the Attorney-General, namely ‘trade practices matters’, the *Federal Court of Australia (Consequential Provisions) Act 1976 (Cth)* (No 157 of 1976) did amend (inter alia) the *Trade Practices Act 1974 (Cth)*. However, that amendment was not (on its face) about appeals from State Courts to the Federal Court. The effect of the amendment was that henceforth s 86 of the *Trade Practices Act 1974* conferred on the Federal Court jurisdiction ‘to hear and determine actions, prosecutions and other proceedings under this Part’ (being ‘Part VI—Enforcement and Remedies’). Section 86 expressed this jurisdiction to be ‘exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution’.¹ However, neither s 86 nor any other provision in Part VI expressly dealt with appeals. So far as the Attorney-General’s researches have disclosed, the *Trade Practices Act 1974* was never amended to provide expressly for appeals from State courts to the Federal Court in trade practices matters.

For completeness, it is also noted that the *Federal Court of Australia (Consequential Provisions) Act 1976 (Cth)* (No 157 of 1976) amended a number of other Commonwealth statutes: see s 3 and the Schedule. The effect of those amendments was that the Federal Court could henceforth exercise original or appellate jurisdiction in disparate proceedings under the various statutes referred to in that Schedule (most concerning jurisdiction that had previously been exercised by the Australian Industrial Relations Court.) However, none of the amendments in that Schedule provided for ‘appeals from State courts to the Federal Court of Australia in taxation, industrial property, bankruptcy and trade practices matters’ (to use the language of the Attorney-General quoted by the Chief Justice).

¹ It was subsequently held that s 86 did not exclude the jurisdiction of Supreme Courts in certain kinds of matters arising under the *Trade Practices Act 1974 (Cth)*: *Zalai v Col Crawford (Retail) Pty Ltd* [1980] 2 NSWLR 438 at 441. Subsequently, s 86 was amended by the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (No 23 of 1987) so that it expressly invested federal jurisdiction on the courts of States and Territories with respect to certain matters arising under Part V of the *Trade Practices Act 1974*.

Table 1

Principal Act	Provision conferring appellate jurisdiction on the Federal Court following the enactment of the FCA Act in 1976	Amending Act making provision for appeal from State courts to the Federal Court
<i>Bankruptcy Act 1966</i> (Cth)	Section 38	<i>Bankruptcy Amendment Act 1976</i> (Cth) (No. 161 of 1976); see s 6(1).
<i>Copyright Act 1968</i> (Cth)	Section 131B(2)	<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i> (Cth) (No. 19 of 1979); see s 4.
<i>Designs Act 1906</i> (Cth)	Section 40B(2) ²	<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i> (Cth) (No. 19 of 1979); see s 16.
<i>Income Tax Assessment Act 1936</i> (Cth)	Section 196(5) and s 200(a). [Note: s 198 also allowed a Supreme Court to state a question of law arising in an appeal before the Supreme Court for the opinion of the Full Federal Court.]	<i>Income Tax Assessment Amendment (Jurisdiction of Courts) 1976</i> (No. 165 of 1976); see s 5 and s 8.
<i>Patents Act 1952</i> (Cth)	Section 148	<i>Patents Acts Amendment Act 1976</i> (Cth) (No. 162 of 1976); see s 7.
<i>Trade Marks Act 1955</i> (Cth)	Section 114	<i>Trade Marks Amendment Act 1976</i> (Cth) (No. 163 of 1976); see s 7.

² Section 40I (the relevant provision in force at the commencement of the CV Act) was inserted into the Act in 1981: see s 24 of the *Designs Amendment Act 1981* (Cth) (No. 42 of 1981).

Question 2 – Jurisdiction clauses in Acts listed in the Schedule to the CV Act at various points in time

The Chief Justice indicated that the Court would be assisted if the Attorney-General could provide a note that sets out, in relation to each of the Acts listed in the Schedule to the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) (the CV Act), ‘the situation the day before the cross-vesting legislation came into force in relation to jurisdiction and source of jurisdiction in State appeal courts and the Full Court of the Federal Court, and also the position the day after’ and also ‘you can tell us the position now’ ([2024] HCA Trans 034 at lines 1280ff and 1429ff).

Table 2 responds to that request. The second column describes the position immediately prior to the enactment of the CV Act. The third column describes the position upon the commencement of the CV Act (reflecting, principally, amendments made to certain of the Scheduled Acts by the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (Cth)). The last column describes the position as at the date of the hearing of this matter on 9 May 2024.

For ease of reference, the five statutes³ with respect to which the Commonwealth contends that s 24(1)(c) of the *Federal Court of Australia Act 1976* and / or s 15C of the *Acts Interpretation Act 1901* combine with s 7(5) of the CV Act to confer appellate jurisdiction on the Full Court of the Federal Court in appeals from decisions of State or Territory Supreme Courts are indicated by being underlined in the first column of Table 2.

Table 2

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Advance Australia Logo Protection Act 1984</i> (Cth)	<p>13 Jurisdiction of courts</p> <p>(1) The Supreme Court of each State is invested with federal jurisdiction, and to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under section 11 or 16.</p> <p>...</p> <p>(4) An appeal lies to the Federal Court of Australia from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.</p> <p>...</p>	<p>13 Jurisdiction of courts</p> <p>(1) The Supreme Court of each State is invested with federal jurisdiction, and to the extent that the Constitution permits, jurisdiction is conferred on the Supreme Court of each Territory, with respect to all matters arising under section 11 or 16.</p> <p>(1A) The Federal Court of Australia has jurisdiction with respect to all matters arising under section 11 or 16.^[4]</p> <p>...</p> <p>(4) An appeal lies to the Federal Court of Australia from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.</p> <p>...</p>	Same as at 1 July 1988.

³ The Solicitor-General also referred to a sixth Act in this context during the hearing, the *Family Law Act 1975* (Cth), but further research has revealed that provision is now made for appeals arising under that Act by s 26(1)(d)(ii) of the *Federal Circuit and Family Court of Australia Act 2021* (Cth).

⁴ Section 13(1A) was inserted by an amendment contained in the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (Cth). The amendment took effect on 1 September 1987: see the Schedule read with s 2(2) and *Commonwealth Gazette* No S217 of 1987 (24 August 1987).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<u><i>Bankruptcy Act 1966 (Cth)</i></u>	<p>27 Bankruptcy Courts</p> <p>(1) The Courts having jurisdiction in bankruptcy^[5] are:</p> <p>(a) the Federal Court of Australia;</p> <p>(b) the Supreme Court of the State of New South Wales;</p> <p>(c) the Supreme Court of the State of Victoria; [...etc]</p> <p>...</p> <p>(2) The State Courts specified in sub-section (1) are invested with federal jurisdiction in bankruptcy and jurisdiction in bankruptcy is conferred on the Supreme Courts of the Northern Territory of Australia.</p> <p>(3) The jurisdiction with which State Courts are invested by this section is subject to the conditions and restrictions specified in subs-section 39(2) of the <i>Judiciary Act 1903-1965</i> so far as they are applicable and the jurisdiction conferred on the Supreme Court of the Northern Territory is subject to the restrictions specified in section 28 of this Act.</p> <p>38 Appeals to Federal Court of Australia</p> <p>An appeal from a judgment, order or sentence given or pronounced after the commencement of this section by a State Court exercising jurisdiction in bankruptcy or by the Federal Court of Bankruptcy may be brought to the Federal Court of Australia and not otherwise.</p>	Same as at 25 May 1987.	<p>27 Bankruptcy courts</p> <p>(1) The Federal Court and the Federal Circuit and Family Court of Australia (Division 2) have concurrent jurisdiction in bankruptcy, and that jurisdiction is exclusive of the jurisdiction of all courts other than:</p> <p>(a) the jurisdiction of the High Court under section 75 of the Constitution; or</p> <p>(b) the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) under section 35 or 35A of this Act.</p> <p>(2) To avoid doubt, subsection (1) does not:</p> <p>(a) confer jurisdiction in a criminal matter; or</p> <p>(b) exclude the jurisdiction of a court of a State or Territory under the <i>Judiciary Act 1903</i> in a criminal matter relating to this Act.</p> <p>[Note: s 27(2)-(3) and s 38 were repealed in 1996 by the <i>Bankruptcy Legislation Amendment Act 1996 (Cth)</i>: see item 101 of Sch 1. This Act also amended the <i>Bankruptcy Act</i> to give the Federal Court exclusive jurisdiction for matters in bankruptcy: see items 89 and 90 of Sch 1.]</p>

⁵ At all materials times, s 5 of the *Bankruptcy Act* has provided: “‘bankruptcy’, in relation to jurisdiction or proceedings, means any jurisdiction or proceedings under or by virtue of this Act’. The content of the term of ‘jurisdiction in bankruptcy’ as used in s 27 was considered in *Scott v Bagshaw* (2000) 99 FCR 573, [17]-[18] (Drummond, RD Nicholson and Katz JJ).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<u>Commonwealth Electoral Act 1918 (Cth)</u>	<p>383 Injunctions</p> <p>(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to elections, a prescribed court may, [...] grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring that person to do any act or thing.</p> <p>(2) Where:</p> <p>(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and</p> <p>(b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to elections...a prescribed court may [...] grant an injunction requiring the first-mentioned person to do that act or thing.</p> <p>...</p> <p>(8) A prescribed court (being a court of a State) is invested with federal jurisdiction and, to the extent that the Constitution permits, jurisdiction is conferred on a prescribed court (being a court of a Territory), with respect to all matters arising under this section.</p> <p>(9) An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this section.</p> <p>...</p> <p>(11) In this section, “prescribed court” means the Supreme Court of a State or Territory.</p>	Same as at 25 May 1987.	<p>383 Injunctions^[6]</p> <p><i>Restraining injunctions</i></p> <p>(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to elections, the Federal Court of Australia (the <i>Federal Court</i>) may, [...] grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Federal Court it is desirable to do so, requiring that person to do any act or thing.</p> <p><i>Performance injunctions</i></p> <p>(2) Where:</p> <p>(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and</p> <p>(b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to elections; the Federal Court may, [...] grant an injunction requiring the first-mentioned person to do that act or thing.</p> <p>[Note: Subsections 383(8) and (11) were repealed in 1996 by the <i>Electoral and Referendum Amendment Act (No. 1) 2001</i> (Cth) (No 34 of 2001): see items 69 and 73 of Sch 1. Subsection 383(9) was amended by the same Act to provide for appeals to the High Court (see item 70), but was subsequently repealed in its entirety by the <i>Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004</i> (Cth) (No 78 of 2004): see item 30 of Sch 1.]</p>

⁶ Section 383 was relevantly amended by the *Electoral and Referendum Amendment Act (No. 1) 2001* (Cth) (No 34 of 2001) to confer exclusive original jurisdiction on the Federal Court: see items 57–73 of Sch 1.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Copyright Act 1968</i> (Cth)	<p>131A Exercise of jurisdiction The jurisdiction of the Supreme Court of a State or Territory in an action under this Part^[7] shall be exercised by a single Judge of the Court.</p> <p>131B Appeals (1) Subject to sub-section (2), a decision of a court (however constituted) under this Part is final and conclusive. (2) An appeal lies from a decision of a court under this Part— (a) to the Federal Court of Australia; or (b) by special leave of the High Court, to the High Court.</p>	<p>131A Exercise of jurisdiction The jurisdiction of the Supreme Court of a State or Territory in an action under this Part shall be exercised by a single Judge of the Court.</p> <p>131B Appeals^[8] (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) under this Part is final and conclusive. (2) An appeal lies from a decision of a court of a State or Territory under this Part: (a) to the Federal Court of Australia; or (b) by special leave of the High Court, to the High Court.</p> <p>131C Jurisdiction of Federal Court of Australia Jurisdiction is conferred on the Federal Court of Australia with respect to actions under this Part.</p>	<p>131A Exercise of jurisdiction (1) The jurisdiction of the Supreme Court of a State or Territory in an action under this Part shall be exercised by a single Judge of the Court. (2) Despite subsection 39(2) of the <i>Judiciary Act 1903</i>, the Supreme Court of a State or Territory does not have jurisdiction in relation to applications under section 115A of this Act (injunctions relating to online locations outside Australia).^[9]</p> <p>131B Appeals (1) Subject to subsection (2), a decision of a court of a State or Territory (however constituted) under this Part is final and conclusive. (2) An appeal lies from a decision of a court of a State or Territory under this Part: (a) to the Federal Court of Australia; or (b) by special leave of the High Court, to the High Court.</p> <p>131C Jurisdiction of Federal Court of Australia Jurisdiction is conferred on the Federal Court of Australia with respect to actions under this Part.</p> <p>131D Jurisdiction of the Federal Circuit and Family Court of Australia Jurisdiction is conferred on the Federal Circuit and Family Court of Australia (Division 2) with respect to civil actions under this Part (other than section 115A).</p>

⁷ That is, Part V, entitled ‘Remedies for Infringements of Copyright’.

⁸ Section 131B was amended, and s 131C was inserted into the Act, by amendments contained in *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (Cth). The amendments took effect on 1 September 1987: see the Schedule read with s 2(2) and *Commonwealth Gazette* No S217 of 1987 (24 August 1987).

⁹ Section 131A(2) was inserted into the Act by the *Copyright Amendment (Online Infringement) Act 2015* (Cth): see clause 4 of Sch 1.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<u>Dental Benefits Act 2008</u>	Not enacted until 2008.	Not enacted until 2008.	The Act does not contain any provision expressly conferring jurisdiction on the Federal Court or the Supreme Court of a State.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Designs Act 1906</i> (Cth)	<p>40G Jurisdiction of prescribed courts^[10]</p> <p>(1) Subject to sub-section (2), every prescribed court has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in a prescribed court. [...]</p> <p>[Note: s 40G(2) defines the jurisdiction conferred by sub-section (1) on the Supreme Court of a Territory.]</p> <p>...</p> <p>40I Appeals</p> <p>(1) Subject to sub section (2), an appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this Act or a judgment or order of any other court in an action or proceeding referred to in section 31.</p> <p>(2) Where the judgment or order of a prescribed court appealed from was pronounced or made in the exercise of its jurisdiction to hear and determine appeals from decisions of the Registrar, an appeal to the Federal Court' of Australia does not lie without leave of that Court.</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub section (1).</p> <p>(4) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in sub - section (1).</p>	<p>40G Jurisdiction of prescribed courts^[11]</p> <p>(1) The Federal Court has jurisdiction with respect to matters arising under this Act.</p> <p>(1A) The jurisdiction of the Federal Court to hear and determine appeals from decisions of the Registrar is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(1B) Subject to subsection (2), each prescribed court (other than the Federal Court) has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under a provision of this Act, be instituted in a prescribed court. [...]</p> <p>40I Appeals</p> <p>(1) An appeal lies to the Federal Court from a judgment or order of:</p> <p>(a) another prescribed court exercising jurisdiction under this Act; or</p> <p>(b) any other court in an action or proceeding referred to in section 31.</p> <p>...</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (1).</p> <p>(4) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in subsection (1).</p>	<p>The Act was repealed on 17 June 2004: see s 150 and item 2 of the table in s 2(1) of the <i>Designs Act 2003</i> (Cth).</p> <p>[Note: The extracted provisions were not amended between 1 July 1988 and 16 June 2004.]</p> <p>See the next entry in this table for the conferral of jurisdiction and rights of appeal under the <i>Designs Act 2003</i> (Cth).</p>

¹⁰ Section 4 relevantly provided that “‘prescribed court’ means the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory of Australia or the Supreme Court of Norfolk Island’.

¹¹ Sections 40G and 40I were amended by the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (Cth). This Act also amended the definition of ‘prescribed court’ in s 4 to add in ‘the Federal Court of Australia’. All these amendments took effect on 1 September 1987: see the Schedule read with s 2(2) and *Commonwealth Gazette* No S217 of 1987 (24 August 1987).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Designs Act 2003</i> (Cth)	Not enacted until 2003.	Not enacted until 2003.	<p>83 Jurisdiction of Federal Court</p> <p>(1) The Federal Court has jurisdiction with respect to matters arising under this Act.</p> <p>(2) The jurisdiction of the Federal Court to hear and determine appeals from decisions of the Registrar is exclusive of the jurisdiction of any other court other than the jurisdiction of:</p> <p>(a) the Federal Circuit and Family Court of Australia (Division 2) under subsection 83A(2); and</p> <p>(b) the High Court under section 75 of the Constitution. ...</p> <p>84 Jurisdiction of other prescribed courts^[12]</p> <p>(1) Each prescribed court other than the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) has jurisdiction in respect of matters arising under this Act in relation to which proceedings may be brought in a prescribed court</p> <p>87 Appeals</p> <p>(1) An appeal lies to the Federal Court from a judgment or order of:</p> <p>(a) another prescribed court exercising jurisdiction under this Act; or</p> <p>(b) any other court in a proceeding referred to in section 73 or 77.</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in subsection (1).</p> <p>(4) No appeal lies from a judgment or order referred to in subsection (1), except as provided by this section.</p>

¹² ‘Prescribed court’ is defined as including the Federal Court and the Supreme Court of a State: see s 5.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Family Law Act 1975</i> (Cth)	<p>39 Jurisdiction in matrimonial causes^[13]</p> <p>(1) Subject to this Part, a matrimonial cause may be instituted under this Act</p> <p>(a) in the Family Court; or</p> <p>(b) in the Supreme Court of a State or a Territory.</p> <p>[...]</p> <p>(5) Subject to this Part, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which—</p> <p>(a) matrimonial causes are instituted under this Act;</p> <p>(b) matrimonial causes are continued in accordance with section 9;</p> <p>(c) proceedings are instituted under this Act with respect to the enforcement of an order that is registered in the court concerned as provided by regulations made for the purposes of section 67;</p> <p>(d) proceedings are instituted under regulations made for the purposes, of section 106, 109, 110, 111, 111A or 111B or of paragraph 125 (1) (f) or (g) or under Rules of Court made for the purposes of paragraph 123 (1) (r); or</p> <p>(e) proceedings are instituted under section 117A.</p> <p>94 Appeals to Family Court</p> <p>(1) An appeal lies to a Full Court of the Family Court from—</p> <p>[...]</p> <p>(b) a decree of</p> <p>[...]</p> <p>(ii) a Supreme Court of a State or Territory constituted by a single Judge, exercising original or appellate jurisdiction under this Act or in proceedings continued in accordance with any of the provisions of section 9. [...]</p>	<p>39 Jurisdiction in matrimonial causes</p> <p>(1) Subject to this Part, a matrimonial cause may be instituted under this Act</p> <p>(a) in the Family Court; or</p> <p>(b) in the Supreme Court of a State or a Territory.</p> <p>[...]</p> <p>(5) Subject to this Part, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which</p> <p>(a) matrimonial causes are instituted under this Act;</p> <p>(b) matrimonial causes are continued in accordance with section 9;</p> <p>(d) proceedings are instituted under regulations made for the purposes, of section 106, 109, 110, 111, 111A or 111B or of paragraph 125 (1) (f) or (g) or under Rules of Court made for the purposes of paragraph 123 (1) (r); or</p> <p>(e) proceedings are instituted under section 117A.^[14]</p> <p>94 Appeals to Family Court</p> <p>(1) An appeal lies to a Full Court of the Family Court from— [...]</p> <p>(b) a decree of [...]</p> <p>(ii) a Supreme Court of a State or Territory constituted by a single Judge, exercising original or appellate jurisdiction under this Act or in proceedings continued in accordance with any of the provisions of section 9. [...]</p>	<p>39 Jurisdiction in matrimonial causes</p> <p>(1) Subject to this Part, a matrimonial cause may be instituted under this Act:</p> <p>(a) in the Family Court; or</p> <p>(b) in the Supreme Court of a State or a Territory [...]</p> <p>(5) Subject to this Part, the Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Family Court and on the Supreme Court of each Territory, with respect to matters arising under this Act in respect of which:</p> <p>(a) matrimonial causes are instituted under this Act;</p> <p>(b) matrimonial causes are continued in accordance with section 9;</p> <p>(d) proceedings are instituted under:</p> <p>(i) regulations made for the purposes of section 109, 110, 111, 111A or 111B; or</p> <p>(ii) regulations made for the purposes of paragraph 125 (1) (f) or (g);</p> <p>(iii) provisions of the applicable rules of Court dealing with the attachment of money...</p> <p>(da) proceedings are instituted under Division 4 of Part XIII AA or under regulations made for the purposes of section 111CZ; or</p> <p>(e) proceedings are instituted under section 117A.</p> <p>[Note: Section 94 was repealed in 2021 by the <i>Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021</i> (Cth) (No 13 of 2021): see Item 109 of Sch 1. Appeals from judgments of Supreme Courts exercising original jurisdiction under the <i>Family Law Act 1975</i> (Cth) are now provided for by the <i>Federal Circuit and Family Court of Australia Act 2021</i> (Cth), s 26(1)(d)(ii).]</p>

¹³ Proclamations made under ss 40(3) and 41(2) of the *Family Law Act 1975* (Cth) mean that, in practice, since long before 26 May 1987 no Supreme Court save the Supreme Court of the Northern Territory (the latter being the only Supreme Court not covered by such proclamations) has been able to exercise original jurisdiction under s 39(5) (see the discussion in *Testart v Testart* (No 2) [2023] FCA 209 at [32]). That also significantly restricted the operation of the provision for appeal in s 94(1)(b)(ii) of the Act.

¹⁴ Subsection 5(c) was repealed by s 16(b) of the *Family Law Amendment Act 1987* (Cth) which commenced on 1 April 1988: see s 2 and *Commonwealth Gazette* No S83 of 1988 (30 March 1988).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<u><i>Health Insurance Act 1973 (Cth)</i></u>	<p>107 Interpretation In this part [...] “prescribed Court” means—</p> <p>(a) a court of a State or of a Territory, being a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge;</p> <p>(b) a court that has limited civil jurisdiction in personal actions and can be constituted only by a Judge or a Magistrate, being a court of a State or of a Territory in which there is no court of a kind referred to in paragraph (a); or</p> <p>(c) any other court that has limited civil jurisdiction in personal actions, being a court of a State or of a Territory in which there is no court of a kind referred to in paragraph (a) or (b).</p> <p>107A References and applications to Tribunal or Court (1) Subject to this Part, where the Minister makes a determination, the person to whom the determination relates may— [...]</p> <p>(c) if the determination is a determination made under section 106FK in accordance with a recommendation referred to in sub-section 106FJ(4), apply to a prescribed Court in accordance with Division 4 for a judicial review of the determination.</p> <p>(2) Subject to sub-section (4), a prescribed Court has jurisdiction to hear and determine an application made to that Court in accordance with Division 4. [...]</p> <p>124 Appeals from Tribunals and prescribed Courts Subject to the Constitution...a judgment or order of a prescribed Court under Division 4 is final except so far as an appeal may be brought to the Federal Court of Australia by virtue of section 124A or any further appeal or appeals may be brought in accordance with the <i>Federal Court of Australia Act 1976</i>.</p> <p>124A Appeal to Federal Court of Australia A party to a proceeding [...] before a prescribed Court under Division 4 may appeal, on a question of law only, to the Federal Court of Australia from any [...] judgment or order of the prescribed Court [...] in that proceeding.</p>	Same as at 25 May 1987.	<p>[Note: Sections 124 and 124A were repealed by the <i>Health Insurance Amendment (Professional Services) Review Act 1999 (Cth)</i>: see item 63 of Sch 1.</p> <p>Section 107A was repealed by the <i>Health Legislation (Professional Services Review) Amendment Act 1994 (Cth)</i>: see the Schedule.]</p> <p>The Act currently does not contain any provision expressly conferring jurisdiction (original or appellate) on the Federal Court or the Supreme Court of a State. Nor does it exclude the conferral of original jurisdiction on the courts of a State by s 39(2) of the <i>Judiciary Act 1903 (Cth)</i>.</p>

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Liquid Fuel Emergency Act 1984 (Cth)</i>	<p>48 Jurisdiction of Courts</p> <p>(1) Jurisdiction is conferred on the Court^[15] with respect to matters arising under section 34^[16] or 37^[17] and that jurisdiction is exclusive of the jurisdiction of all other courts other than the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(2) Subject to sub-section (1), the Supreme Court of each State is invested with federal jurisdiction and jurisdiction is conferred on the Federal Court of Australia and, to the extent that the Constitution permits, on the Supreme Court of each Territory, with respect to all matters arising under this Act.</p> <p>(3) The inferior courts of each State are invested with federal jurisdiction, and jurisdiction is conferred on the inferior courts of each Territory, within the limits, other than limits as to subject-matter, of their several jurisdictions, with respect to matters arising under section 45 or 46.</p> <p>(4) An appeal lies to the Court from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.</p> <p>(5) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (4).</p> <p>(6) Except as provided in sub-section (4) or (5), no appeal lies from a judgment or order referred to in sub-section (4). [...]</p>	Same as at 25 May 1987.	Same as at 25 May 1987.

¹⁵ ‘Court’ is defined in s 3(1) to mean ‘the Federal Court of Australia’.

¹⁶ Section 34 provides for ‘the Court’, if satisfied that a person has contravened a ‘relevant provision’ (defined in s 3) of the Act, to order that person pay a pecuniary penalty to the Commonwealth.

¹⁷ Section 37 provides for applications to be made to ‘the Court’ for an injunction where a person is engaging in or proposing to engage in conduct constituting a contravention of a ‘relevant provision’ of the Act.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Patents Act 1952</i> (Cth)	<p>146 Jurisdiction of prescribed courts</p> <p>(1) [...] every prescribed court¹⁸ has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in a prescribed court. [...]</p> <p>[Note: s 146(1) was subject to an exception in sub-s 146(1)(2) that is not presently relevant.]</p> <p>148 Appeals</p> <p>(1) Subject to sub-section (2), an appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this Act [...].</p> <p>(2) Where the judgment or order of a prescribed court appealed from was pronounced or made in the exercise of its jurisdiction to hear and determine appeals from decisions or directions of the Commissioner, an appeal to the Federal Court of Australia does not lie without leave of that Court.</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1).</p> <p>(4) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in sub-section (1).</p>	<p>146 Jurisdiction of prescribed courts¹⁹</p> <p>(1) The Federal Court has jurisdiction with respect to matters arising under this Act [...]</p> <p>(1B) [...] each prescribed court (other than the Federal Court) has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under a provision of this Act, be instituted in a prescribed court.</p> <p>[Note: s 146(1B) was subject to an exception in s 146(2) that is not presently relevant.]</p> <p>148 Appeals</p> <p>(1) An appeal lies to the Federal Court from a judgment or order of:</p> <p>(a) another prescribed court exercising jurisdiction under this Act; or</p> <p>(b) any other court in an action or proceeding referred to in section 113 or 121.</p> <p>[Note: section 113 provided for actions in infringement of patents. Section 121 allowed a person to obtain an injunction, declaration and compensation against a person making groundless threats of legal proceedings.]</p> <p>...</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1).</p> <p>(4) Except as provided in the foregoing provisions of this section, no appeal lies from a judgment or order referred to in sub-section (1).</p>	<p>The Act was repealed on commencement of the <i>Patents Act 1990</i> (Cth) on 30 April 1991: see s 230.</p> <p>For the provisions for appeal under the 1990 Act see the next item in this table.</p>

¹⁸ The phrase ‘prescribed court’ was defined in s 6 of the *Patents Act 1952* (Cth) to mean ‘the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory of Australia or the Supreme Court of Norfolk Island’.

¹⁹ Sections 146 and 148 were amended by the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* (Cth). The amendments took effect on 1 September 1987: see the Schedule read with s 2(2) and *Commonwealth Gazette* No S217 of 1987 (24 August 1987).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Patents Act 1990</i> (Cth)	Not enacted until 1990.	Not enacted until 1990.	<p data-bbox="1552 261 2190 288">154 Jurisdiction of Federal Court</p> <p data-bbox="1552 293 2190 352">(1) The Federal Court has jurisdiction with respect to matters arising under this Act.</p> <p data-bbox="1552 357 2190 512">(2) The jurisdiction of the Federal Court to hear and determine appeals against decisions or directions of the Commissioner is exclusive of the jurisdiction of any other court except the jurisdiction of the High Court under section 75 of the Constitution. [...]</p> <p data-bbox="1552 544 2190 571">155 Jurisdiction of other prescribed courts²⁰</p> <p data-bbox="1552 576 2190 699">(1) Each prescribed court (other than the Federal Court) has jurisdiction with respect to matters arising under this Act in respect of which proceedings may, under this Act, be started in a prescribed court.</p> <p data-bbox="1552 730 2190 758">158 Appeals</p> <p data-bbox="1552 762 2190 821">(1) An appeal lies to the Federal Court against a judgment or order of:</p> <p data-bbox="1552 826 2190 885">(a) another prescribed court exercising jurisdiction under this Act; or</p> <p data-bbox="1552 890 2190 949">(b) any other court in proceedings under subsection 120(1) or section 128.^[21]</p> <p data-bbox="1552 954 2190 981">[...]</p> <p data-bbox="1552 986 2190 1077">(3) With the special leave of the High Court, an appeal lies to the High Court against a judgment or order referred to in subsection (1).</p> <p data-bbox="1552 1082 2190 1174">(4) Except as otherwise provided by this section, an appeal does not lie against a judgment or order referred to in subsection (1).</p>

²⁰ ‘Prescribed court’ is defined in the Dictionary (Sch 1) to mean ‘the Federal Court, the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory, or the Supreme Court of Norfolk Island.

²¹ Section 120 gives the patentee or exclusive licensee the right to commence ‘infringement proceedings’. Section 128 concerns applications for relief from unjustified threats.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Petroleum Retail Marketing Franchise Act 1980</i> (Cth)	<p>26 Jurisdiction of courts</p> <p>(1) The Supreme Court of each State is invested with federal jurisdiction, and jurisdiction is conferred on the Federal Court of Australia and, to the extent that the Constitution permits, on the Supreme Court of each Territory, with respect to all matters arising under this Act. [...]</p> <p>(4) An appeal lies to the Federal Court of Australia from a judgment or order of a court of a State or Territory exercising jurisdiction under this Act.</p> <p>(5) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (4).</p> <p>(6) Except as provided in sub-section (4) or (5), no appeal lies from a judgment or order referred to in sub-section (4). [...]</p>	Same as at 25 May 1987.	The Act was repealed on 1 March 2007: see item 1 of Sch 1 to the <i>Petroleum Retail Legislation Repeal Act 2006</i> (Cth).

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<u>Referendum (Machinery Provisions) Act 1984 (Cth)</u>	<p>139 Injunctions</p> <p>(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to referendums, a prescribed court may, [...] grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the court it is desirable to do so, requiring that person to do any act or thing.</p> <p>[...]</p> <p>(8) A prescribed court (being a court of a State) is invested with federal jurisdiction and, to the extent that the Constitution permits, jurisdiction is conferred on a prescribed court (being a court of a Territory), with respect to all matters arising under this section.</p> <p>(9) An appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this section.</p> <p>[...]</p> <p>(11) In this section, ‘prescribed court’ means the Supreme Court of a State or Territory.</p>	<p>Same as at 25 May 1987.</p>	<p>139 Injunctions^[22]</p> <p><i>Restraining injunctions</i></p> <p>(1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of, or an offence against, this Act or any other law of the Commonwealth in its application to referendums, the Federal Court of Australia (the Federal Court) may, [...] grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Federal Court it is desirable to do so, requiring that person to do any act or thing.</p> <p><i>Performance injunctions</i></p> <p>(2) Where:</p> <p>(a) a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and</p> <p>(b) the refusal or failure was, is, or would be, a failure to comply with, or an offence against, this Act or any other law of the Commonwealth in its application to referendums;</p> <p>the Federal Court may, [...] grant an injunction requiring the first-mentioned person to do that act or thing.</p>

²² Section 139 was amended to confer exclusive original jurisdiction on the Federal Court under subsections (1) and (2) and to repeal subsections (8), (9) and (11) by the *Electoral and Referendum Amendment Act (No. 1) 2001* (Cth): see items 18 – 34 of Sch 2.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Shipping Registration Act 1981</i> (Cth)	<p>81 Jurisdiction of Territory Supreme Courts Jurisdiction is conferred, to the extent that the Constitution permits, on the Supreme Court of each Territory to hear and determine applications made to that Court under sections 47B, 47C, 59, 66 and 70.</p> <p>82 Appeals (1) An appeal lies to the Federal Court of Australia from a judgment or order of the Supreme Court of a State or Territory exercising jurisdiction under section 47B, 47C, 59, 66 or 70. (2) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1). (3) Except as provided in sub-sections (1) and (2), no appeal lies from a judgment or order referred to in sub-section (1).</p>	Same as at 25 May 1987.	Same as at 25 May 1987. ²³

²³ Minor amendments were made to ss 81 and 82(1) by the *Personal Property Securities (Consequential Amendments) Act 2009* (Cth): see items 31 and 32 of Sch 3.

Act	Provisions conferring original and appellate jurisdiction as at 25 May 1987 (immediately prior to the day the CV Act received Royal Assent)	Provisions conferring original and appellate jurisdiction as at 1 July 1988 (being the day the CV Act commenced)	Provisions conferring original and appellate jurisdiction as at 9 May 2024
<i>Trade Marks Act 1955</i> (Cth)	<p>112 Jurisdiction of prescribed courts^[24]</p> <p>(1) Subject to sub-section (2), every prescribed court has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under this Act, be instituted in a prescribed court. [...]</p> <p>[Note: s 112(2) defines the jurisdiction conferred by sub-section (1) on the Supreme Court of a Territory.]</p> <p>114 Appeals from prescribed courts</p> <p>(1) Subject to sub-section (2), an appeal lies to the Federal Court of Australia from a judgment or order of a prescribed court exercising jurisdiction under this Act or a judgment or order of any other court in an action or proceeding referred to in section 67 or 124.</p> <p>(2) Where the judgment or order of a prescribed court appealed from was pronounced or made in the exercise of its jurisdiction to hear and determine appeals from decisions or directions of the Registrar, an appeal to the Federal Court of Australia does not lie without leave of that Court.</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1).</p>	<p>112 Jurisdiction of prescribed courts²⁵</p> <p>(1) The Federal Court has jurisdiction with respect to matters arising under this Act.</p> <p>(1A) The jurisdiction of the Federal Court to hear and determine appeals from decisions, directions or orders of the Registrar is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.</p> <p>(1B) Subject to sub-section (2), each prescribed court (other than the Federal Court) has jurisdiction with respect to matters arising under this Act in respect of which actions or proceedings may, under a provision of this Act, be instituted in a prescribed court.</p> <p>(1C) A prosecution for an offence against this Act shall not be instituted in the Federal Court.</p> <p>114 Appeals from prescribed courts</p> <p>(1) An appeal lies to the Federal Court from a judgment or order of:</p> <p>(a) another prescribed court exercising jurisdiction under this Act: or</p> <p>(b) any other court in an action or proceeding referred to in section 67 or 124.</p> <p>(2) Except with the leave of the Federal Court, an appeal does not lie to the Full Court of the Federal Court from a judgment or order of a single judge of the Federal Court in the exercise of its jurisdiction to hear and determine appeals from decisions, directions or orders of the Registrar</p> <p>(3) An appeal lies to the High Court, with special leave of the High Court, from a judgment or order referred to in sub-section (1).</p>	<p>The Act was repealed on 1 January 1996.</p> <p>[Note: As at 9 May 2024 in the successor statute, the <i>Trade Marks Act 1995</i> (Cth), ss 190–192 confer original jurisdiction on the Federal Court and Supreme Courts in similar (though not identical) terms as s 112 of the <i>Trade Marks Act 1955</i> (Cth), as s 112 was on 1 July 1988 (see column immediately adjacent). Likewise, s 195 confers a right of appeal solely to the Full Court of the Federal Court (or, with special leave, to the High Court) in relevantly similar terms as that previously provided for in s 114 of the <i>Trade Marks Act 1995</i> (Cth) (see column immediately adjacent).]</p>

Question 3 – Extrinsic materials concerning the repeal of s 38 of the *Bankruptcy Act 1966*

At the hearing, Justice Beech-Jones asked ‘when the 1996 amendments were made, which repealed section 38 [of the *Bankruptcy Act 1966* (Cth)], was there anything in the second reading materials about or revealing any assumption that they may have had about how 7(5) [of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) (‘the CV Act’)] might operate? ([2024] HCA Trans 034 at line 1619)

The answer to the question is: so far as the Attorney-General’s researches have disclosed, the extrinsic materials pertaining to the repeal of s 38 of the *Bankruptcy Act* do not make any specific reference to s 7(5) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth). However, those extrinsic materials do contain references in more general terms to the continuing operation of the CV Act, and are consistent with an expectation that the Federal Court would continue to hear appeals from courts (including state courts) exercising jurisdiction in bankruptcy.

Section 38 was repealed by item 101 of the *Bankruptcy Legislation Amendment Bill 1996* (Cth) (extract provided with this note). Paragraph 3(i) of the Revised Explanatory Memorandum to the Bill (at p. 2) (extract provided with this note) explained that the amendments to the *Bankruptcy Act 1966* fell into ‘15 main categories’ of amendments, the ninth of which was as follows (bold added):

conferring jurisdiction in bankruptcy on the Federal Court of Australia to the exclusion of courts other than the High Court under the Constitution, **subject to the cross vesting of jurisdiction scheme provided for in the *Jurisdiction of Courts (Cross Vesting) Act 1987* and complementary State and Territory legislation.**

Paragraph 29.1 of the Revised Explanatory Memorandum (at p. 51) concerned the proposed amendment to s 27 of the *Bankruptcy Act* to remove the conferral of jurisdiction in bankruptcy on State Supreme Courts. The paragraph relevantly said:

In order to preserve the existing arrangements whereby there is national uniformity with respect to creditor’s petitions, it is necessary to give the Federal Court jurisdiction in bankruptcy that is exclusive to that of other courts except the High Court under section 75 of the Constitution. The Supreme Courts will be able to deal with bankruptcy matters under the *Jurisdiction of Courts (Cross Vesting) Act 1987*, but in general, as at present, bankruptcy proceedings will only be capable of being initiated in the Federal Court. This change will not have any significant impact in practice, as very few bankruptcy cases are initiated in State or Territory courts, with only one known matter in 1994.

Paragraph 39.1 of the Revised Explanatory Memorandum (at pp. 55–56) read as follows (bold added):

Section 38 provides that appeals from judgments, orders and sentences given by a State Court, the Supreme Court of the Northern Territory and the Federal Courts of Bankruptcy after 1 February 1977 may only be instituted in the Federal Court of Australia. Item 101 proposes the repeal of 38

consequential to the abolition of the jurisdiction of those Courts, **other than, in appropriate cases, for the purposes of the *Jurisdiction of Courts (Cross Vesting) Act 1987***.

A table at the end of the Revised Explanatory Memorandum summarised (at p.189) the amendment to s 38 as follows:

38 Appeals to the Federal Courts of Australia—references to State Courts removed to reflect Federal Court exclusive jurisdiction

These descriptions reflect an understanding that the repeal of s 38 was consequential upon the removal of original jurisdiction in bankruptcy from State and Territory Courts and Federal Courts of Bankruptcy.

Nothing appears in any of the extrinsic material to suggest an intention to alter the exclusive appellate jurisdiction of the Federal Court in appeals in all matters involving the exercise of jurisdiction in bankruptcy.

Question 4 – Explanatory Memorandum for the *Dental Benefits Act 2008*

At the hearing of this matter on 9 May 2024, the Solicitor-General referred to the *Dental Benefits Act 2008* and said that ‘[t]his is an Act that was not in the Schedule when the Cross-vesting Act was enacted, but was added subsequently, and which has never contained a provision conferring a right of appeal to the Federal Court, but where the explanatory memorandum at the time it was added said, the effect of this will be that you can bring appeals to the Federal Court’ ([2024] HCA Trans 034 at lines 1609ff).

Justice Steward asked if the Court could be provided with ‘that extrinsic material’ (lines 1635-1639).

A copy of an extract from the Explanatory Memorandum for the *Dental Benefits Bill 2008* and the *Dental Benefits (Consequential Amendments) Bill 2008* accompanies this note. The passage referred to by the Solicitor-General that deals with the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth) appears at page 30 of the Explanatory Memorandum.

Question 5 – treatment by the High Court of s 15C of the *Acts Interpretation Act 1903*

At the hearing in this matter on 9 May 2024, Justice Gordon asked the Solicitor-General ‘other than *Gould v Brown* [193 CLR 346], where else has this Court considered section 15C?’ ([2024] HCA Trans 034 at lines 1716-1722).

Table 3, below, lists those High Courts cases in which it has been held (by one or more Justices) that a Commonwealth statute has engaged s 15C.

Table 3: High Court cases considering s 15C of the *Acts Interpretation Act 1901*

Case	Relevant pinpoint(s)	Legislative provision engaging s 15C
<i>Port of Newcastle Operations Pty Limited v Glencore Coal Assets Australia Pty Ltd</i> (2021) 274 CLR 565	[37], [54] (Kiefel CJ, Gageler, Gordon, Steward and Gleeson JJ)	Section 44ZZD of the <i>Competition and Consumer Act 2010</i> (Cth).
<i>Minister for Home Affairs v Benbrika</i> (2021) 272 CLR 68	[57], [58] (Gageler J)	Divisions 104 and 105A of Pt 5.3 of the <i>Commonwealth Criminal Code</i> .
<i>PT Bayan Resources TBK v BCBC Singapore Pte Ltd</i> (2015) 258 CLR 1	[25] (French CJ, Kiefel, Bell, Gageler and Gordon JJ)	<p>Section 6(1) of the <i>Foreign Judgments Act 1991</i> (Cth):</p> <p>A judgment creditor under a judgment to which this Part applies may apply to the appropriate court at any time within 6 years after:</p> <ul style="list-style-type: none"> (a) the date of the judgment; or (b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment in those proceedings; to have the judgment registered in the court. <p>[Note: ‘Appropriate court’ is defined in s 6(2) relevantly, in this case, to include the Supreme Court of a State]</p>
<i>Thomas v Mowbray</i> (2007) 233 CLR 307	[54], [55] (Gummow and and Crennan JJ)	<p>Section 104.4 of the <i>Commonwealth Criminal Code</i>:</p> <p>(1) The issuing court may make an order under this section in relation to the person, but only if:</p> <ul style="list-style-type: none"> (a) the senior AFP member has requested it in accordance with section 104.3; and (b) the court has received and considered such further information (if any) as the court requires; and (c) the court is satisfied on the balance of probabilities: <ul style="list-style-type: none"> (i) that making the order would substantially assist in preventing a terrorist act; or (ii) that the person has provided training to, or received training from, a listed terrorist organisation; and (d) the court is satisfied on the balance of probabilities that each of the obligations, prohibitions and restrictions to be imposed on the person by the order is reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the public from a terrorist act.

Case	Relevant pinpoint(s)	Legislative provision engaging s 15C
	
<i>R v Gee</i> (2003) 212 CLR 230	[66] (McHugh and Gummow JJ)	<p>Section 72(1) of the <i>Judiciary Act 1903</i> (Cth):</p> <p>(1) When any person is indicted for an indictable offence against the laws of the Commonwealth, the Court before which he or she is tried shall on the application by or on behalf of the accused person made before verdict, and may in its discretion either before or after judgment without such application, reserve any question of law which arises on the trial for the consideration of a Full Court of the High Court or if the trial was had in a Court of a State of a Full Court of the Supreme Court of the State.</p>
<i>Harrington v Lowe</i> (1996) 190 CLR 311	319 (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)	<p>Section 79A(1) of the <i>Family Law Act 1975</i> (Cth):</p> <p>Where, on application by a person affected by an order made by a court under section 79 in proceedings with respect to the property of the parties to a marriage or either of them, the court is satisfied that –</p> <p>(a) there has been a miscarriage of justice by reason of fraud, duress, suppression of evidence, the giving of false evidence or any other circumstance;</p> <p>[...]</p> <p>the court may, in its discretion, vary the order or set the order aside and, if it considers appropriate, make another order under section 79 in substitution for the order so set aside.</p> <p>[Note: the term ‘court’ was relevantly defined in s 4(1) as meaning the court exercising jurisdiction by virtue of the Act. Section 31(1), in turn, conferred jurisdiction on the Family Court with respect to matters arising under the Act]</p>

Case	Relevant pinpoint(s)	Legislative provision engaging s 15C
<p><i>Re McJannet; ex parte Minister for Employment, Training and Industrial Relations (Qld)</i> (1995) 184 CLR 620</p>	<p>649, 655 (Toohey, McHugh and Gummow JJ)</p>	<p>Section 253X of the <i>Industrial Relations Act 1988</i> (Cth) (IR Act):</p> <p>(1) The amalgamated organisation must take such steps as are necessary to ensure that the amalgamation, and the operation of this Subdivision in relation to the amalgamation, are fully effective.</p> <p>(2) The Court may, on the application of an interested person, make such orders as it considers appropriate to ensure that subsection (1) is given effect to.</p> <p>Section 253ZC of the IR Act:</p> <p>(1) Where any difficulty arises in relation to the application of this Subdivision to a particular matter, the Court may, on the application of an interested person, make such order as it considers proper to resolve the difficulty.</p> <p>(2) An order made under subsection (1) has effect despite anything contained in this Act or in any other Commonwealth law or any State or Territory law.</p> <p>[Note: ‘Court’ was defined in s 4(1) as the ‘Federal Court of Australia’]</p>

[Note: The Attorney-General has not included *Gould v Brown* (1998) 193 CLR 346 in this table because s 15C of the *Acts Interpretation Act 1901* (Cth) was held not to be engaged on the facts of that case: see 382, 415, 439]

1996

The Parliament of the
Commonwealth of Australia

THE HOUSE OF REPRESENTATIVES

(As read a third time)

**Bankruptcy Legislation Amendment Bill
1996**

No. , 1996

**A Bill for an Act to amend the *Administrative
Decisions (Judicial Review) Act 1977* and the
Bankruptcy Act 1966, and for related purposes**

9607140—950/16.9.1996—(71/96) Cat. No. 96 5159 4 ISBN 0644 478616

Schedule 1 Amendment of various Acts

1 96 Section 31A

2 Repeal the section.

3 97 Subsection 33(2)

4 Repeal the subsection.

5 98 Section 35

6 Repeal the section.

7 99 Subparagraph 35A(3)(f)(iv)

8 Omit "in Bankruptcy, a Deputy Registrar in Bankruptcy or a Registrar
9 of the Federal Court".

10 100 Subsection 36(2)

11 Omit "the hand of the Registrar and".

12 101 Section 38

13 Repeal the section.

14 102 Paragraph 40(1)(da)

15 Omit "Registrar", substitute "Official Receiver".

16 103 Subparagraph 40(1)(g)(i)

17 Omit "fixed by the Registrar by whom the notice was issued",
18 substitute "specified in the notice".

19 104 After paragraph 40(1)(h)

20 Insert:

- 21 (ha) if the debtor gives the Official Trustee a debt agreement
22 proposal;
- 23 (hb) if a debt agreement proposal given by the debtor to the
24 Official Trustee is accepted by the debtor's creditors;
- 25 (hc) if the debtor breaches a debt agreement;
- 26 (hd) if a debt agreement to which the debtor was a party (as a
27 debtor) is terminated under section 185P or 185Q;
-

1996

S106/2023

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

BANKRUPTCY LEGISLATION AMENDMENT BILL 1996

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Daryl Williams AM QC MP
Attorney-General and Minister for Justice)

THIS MEMORANDUM TAKES ACCOUNT OF AMENDMENTS MADE BY THE
HOUSE OF REPRESENTATIVES TO THE BILL AS INTRODUCED

78875 Cat.No.96 5115 2 ISBN 0644 477210



9 780644 477215

1 This explanatory memorandum is divided into 5 main sections, an introduction and summary of the main provisions of the Bankruptcy Legislation Amendment Bill 1996 (the Bill) (Section 1), a discussion of the main policy objectives underlying each of the provisions (Section 2), and a detailed discussion of each provision, item by item (Section 3). At the end, there is a table which sets out the existing provisions of the *Bankruptcy Act 1966* and indicates how each provision will be affected by the Bill (if at all), what new provisions are proposed to be included, and what existing provisions are proposed to be repealed (Section 4). Section 5 sets out the legislative history of the *Bankruptcy Act 1966*.

Section 1

INTRODUCTION AND SUMMARY OF MAIN PROVISIONS

2 The Bankruptcy Legislation Amendment Bill 1996 (the Bill) will make a number of significant and important changes to bankruptcy law, to further the Government's commitment to modernising personal insolvency law. The Bill comprises 3 Parts, the first dealing with preliminary matters, the second making a small amendment to the *Administrative Decisions (Judicial Review) Act 1977* and also comprises the vast majority of the Bill's provisions, proposing amendments to the *Bankruptcy Act 1966* (the Act), and the third part making the language of the Act gender neutral.

- 3 The amendments to the Act fall into 15 main categories, as follows:
- (a) the establishment of a 'One Stop Service' for bankrupts and insolvent debtors within the Insolvency and Trustee Service, Australia (ITSA), the Division of the Attorney-General's Department which deals with bankruptcy and personal insolvency matters, and to rationalise bankruptcy administration by abolishing the offices of Registrar and Deputy Registrar in Bankruptcy;
 - (b) revision of the antecedent transaction avoidance provisions under which trustees can recover property from third parties who are given property by debtors facing bankruptcy or insolvency;
 - (c) revision of Part X of the Act which creates alternative regimes to bankruptcy, by streamlining the process of establishing such administrations, and by making meeting procedures align with those in bankruptcy;

- (d) creation of a new form of insolvency administration to be known as debt agreements, for low income debtors for whom administrations under Part X of the Act are not a feasible option;
- (e) modernising the statement of the duties of bankruptcy trustees;
- (f) establishing new administrative arrangements for the registration of trustees under the Act;
- (g) correcting anomalies and making improvements to the compulsory income contribution regime provided for in the Act in light of experience with the operation of the scheme since it first came into effect on 1 July 1992;
- (h) providing for forms used for administrative purposes under the Act to be approved administratively, rather than incorporated in statutory forms prescribed by subordinate legislation;
- (i) conferring jurisdiction in bankruptcy on the Federal Court of Australia to the exclusion of courts other than the High Court under the Constitution, subject to the cross vesting of jurisdiction scheme provided for in the *Jurisdiction of Courts (Cross Vesting) Act 1987* and complementary State and Territory legislation;
- (j) changing the power to make subordinate legislation so that the Governor-General will be empowered to make regulations relating to matters other than court practice and procedure, leaving those matters to be dealt with by the courts in their own rules;
- (k) providing for the creation, by regulations, of a new register of bankruptcies and personal insolvencies to be known as the National Personal Insolvency Index, in order to place the present bankruptcy record keeping system on a sound statutory basis;
- (l) making powers of trustees discretionary, but subject to review by the Court;
- (m) improving investigative powers of trustees;
- (n) repeal of spent transitional provisions relating to the changeover from the *Bankruptcy Act 1924* to the Act, and conversion to decimal currency in 1966;
- (o) amendments consequential to those made under the heads outlined in paragraphs (a) to (n) above, and transitional provisions to facilitate implementation of the One Stop Service initiative.

27.2 Amendments to remove references to the continued application of the *Bankruptcy Act 1924*, consequential to the proposed repeal of Part XV of the Act are also proposed.

Repeal of Division I of Part III

28.1 Division I of Part III of the Act deals with matters relating to the Federal Court of Bankruptcy. The *Bankruptcy Amendment Act 1976* provided for the abolition of the Federal Court of Bankruptcy upon that Court ceasing to have any judges. The last serving judge appointed to the Court retired on 28 June 1995. Accordingly, the Court was abolished on 30 September 1995. It is not intended to reactivate the Federal Court of Bankruptcy, its jurisdiction now being exercised by the Federal Court. Accordingly, item 88 proposes the repeal of the Division.

Bankruptcy Courts

29.1 Section 27 of the Act invests the Federal Court, the Supreme Courts of each of the States and the Supreme Court of the Northern Territory with jurisdiction in bankruptcy. The Registrars in Bankruptcy are appointed from the ranks of the registry staff of the Federal Court of Australia, with the District Registrar being the Registrar in Bankruptcy and the Deputy District Registrars the Deputy Registrars in Bankruptcy. The Registrars and Deputy Registrars in Bankruptcy issue processes associated with proceedings under the Act. In order to preserve the existing arrangements whereby there is national uniformity with respect to creditor's petitions, it is necessary to give the Federal Court jurisdiction in bankruptcy exclusive to that of other courts except the High Court under section 75 of the Constitution. The Supreme Courts will be able to deal with bankruptcy matters under the *Jurisdiction of Courts (Cross Vesting) Act 1987*, but in general, as at present, bankruptcy proceedings will only be capable of being initiated in the Federal Court. This change will not have any significant impact in practice, as very few bankruptcy cases are initiated in State or Territory courts, with only one known matter in 1994. Nor will this change affect the operation of provisions of the Act such as sections 139ZG, 139ZL, 139ZQ and 161B, which create debts in respect of contributions liabilities, void transfers of property and trustee remuneration, and enable trustees to enforce those debts in State and Territory courts of competent jurisdiction.

29.2 Item 89 proposes the repeal of subsection 27(1) and its replacement by a new subsection which provides that the Federal Court has jurisdiction in bankruptcy exclusive of all other courts apart from the High Court. The Federal Court of

Transfer of proceedings

36.1 Section 35 of the Act enables persons interested to apply to the Court for an order that proceedings before the Court be transferred to another court having jurisdiction under the Act. Subsection 35(2) specifies that where proceedings are transferred, the Registrar for the District in which the transferring court is located must arrange for the documents relating to the proceedings to be transferred to another Registrar, where this is an appropriate course of action. Item 98 proposes the repeal of section 35 as unnecessary, given that the Federal Court will have more or less exclusive jurisdiction in bankruptcy, subject to the *Jurisdiction of Courts (Cross-Vesting) Act 1987*. To the extent that any questions of transfer of court files or other documents need to be addressed, they can be dealt with pursuant to the cross vesting legislation or in rules of court under the *Federal Court of Australia Act 1976*.

Transfer of proceedings to Family Court

37.1 Section 35A enables the Federal Court to transfer proceedings under the Act to the Family Court. Subparagraph 35A(3)(f)(iv) provides that the Act should be read as if a reference to a Registrar in Bankruptcy, Deputy Registrar in Bankruptcy or the Registrar of the Federal Court were also a reference to a Registrar of the Family Court. Item 99 will repeal the references to Deputy Registrars in Bankruptcy and the Registrar of the Federal Court in the paragraph. The effect of the amendment is that a reference to a Registrar, which term will refer to the Registrar, Deputy Registrars, District Registrars and Deputy District Registrars of the Federal Court, is to be taken to refer also to a registrar of the Family Court, in cases transferred to that court pursuant to section 35A.

Enforcement of orders etc

38.1 Subsection 36(2) of the Act provides that a warrant for the arrest of a person may be issued under the hand of the Registrar under the seal of the Court. Item 100 proposes the omission of the reference to the Registrar. Warrants will comply with the section if they issue under the seal of the Court.

Appeals to Federal Court of Australia

39.1 Section 38 provides that appeals from judgments, orders and sentences given by a State Court, the Supreme Court of the Northern Territory and the Federal Court of Bankruptcy after 1 February 1977 may only be instituted in the Federal Court of

Australia. Item 101 proposes the repeal of section 38 consequential to the abolition of the jurisdiction of those Courts, other than, in appropriate cases, for the purposes of the *Jurisdiction of Courts (Cross Vesting) Act 1987*. S106/2023

39.2 Where proceedings have been started in a State Court or the Supreme Court of the Northern Territory before the commencement of the Bill, section 38 will continue to apply so that appeals from decisions will have to be brought in the Federal Court of Australia.

Acts of bankruptcy

40.1 Section 40 of the Act specifies a number of acts of bankruptcy. Paragraph 40(1)(da) makes it an act of bankruptcy for a debtor to present to the Registrar a declaration of intention to present a debtor's petition under section 54A of the Act. The function of accepting declarations of intention to present a debtor's petition is to be transferred to the Official Receiver, and item 102 proposes to amend paragraph 40(1)(da) accordingly.

40.2 Paragraph 40(1)(g) of the Act makes it an act of bankruptcy for a debtor to fail to comply with the terms of a bankruptcy notice within the time fixed by the Registrar who issued the notice. The function of the Registrar is to be transferred to the Official Receiver, and the form of bankruptcy notice is proposed to be dealt with in regulations. Item 103 proposes amendment to this paragraph to substitute a reference to compliance by the debtor within the time specified in the notice, instead of to time fixed by the Registrar.

40.3 Item 104 proposes the insertion of new paragraphs defining acts of bankruptcy arising out of debt agreements. Those proposed acts of bankruptcy are:

- where a debtor gives the Official Trustee a debt agreement proposal (proposed paragraph 40(1)(ha));
- the acceptance by a debtor's creditors of a debt agreement proposal given by the debtor to the Official Trustee (proposed paragraph 40(1)(hb));
- breach of a debt agreement by a debtor (proposed paragraph 40(1)(hc)); and
- termination of a debt agreement under proposed section 185P, dealing with termination at the instance of the debtor, and section 185Q dealing with termination by order of the Court (proposed paragraph 40(1)(hd)).

- 35A ***Transfer of proceedings to Family Court* - reference to Registrar removed
 36 *Enforcement of orders etc* - reference to Registrar removed
 37 Power of Court to rescind orders etc.
 38 *Appeals to Federal Court of Australia* - references to State courts removed to reflect Federal Court exclusive jurisdiction

PART IV - PROCEEDINGS IN CONNEXION WITH BANKRUPTCY

Division 1 - Acts of Bankruptcy

- 40 ***Acts of bankruptcy* - new acts of bankruptcy, eg proposing debt agreement and remove reference to married women
 41 *Bankruptcy notices* - new arrangements for issuing bankruptcy notices
 42 Payment etc. of debt to Commonwealth or State after service of bankruptcy notice

Division 2 - Creditors' Petitions

- 43 Jurisdiction to make sequestration orders
 44 *Conditions on which creditor may petition* - monetary limit for debt rises from \$1,500 to \$2,000
 45 Creditor's petition against partnership
 46 Petition against 2 or more joint debtors
 47 *Requirements as to creditor's petition* - form of creditors petition if any prescribed in rules of court
 49 Change of petitioners
 50 ***Taking control of debtor's property before sequestration* - interim receiver can be appointed after non-compliance with bankruptcy notice
 51 Costs of prosecuting creditor's petition
 52 *Proceedings and order on creditor's petition* - creditor to give copy of sequestration order to Official Receiver
 53 Consolidation of proceedings
 54 *Bankrupt's statement of affairs* - references to Registrar removed, contempt of court converted to statutory offence

Division 2A - Declaration of Intention to present Debtor's Petition

- 54A *Presentation of declaration* - Official Receiver to take approved form of declaration
 54B When debtor disqualified from presenting declaration
 54C *Acceptance or rejection of declaration* - 'Registrar' replaced by 'Official Receiver', 'prescribed' replaced by 'approved'
 54D *Registrar to supply information to debtor* - now Official Receiver to give information to debtor
 54E *Enforcement suspended during stay period* - declaration to be signed
 54F *Duties of sheriff* - declaration to be signed

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DENTAL BENEFITS BILL 2008

DENTAL BENEFITS (CONSEQUENTIAL AMENDMENTS) BILL 2008

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Health and Ageing,
the Hon Nicola Roxon MP)

The operation of this amendment to allow for data-matching is not only necessary to the administration and implementation of the Teen Dental Plan, but may also be used for future dental services that may be introduced under the Dental Benefits Schedule, which rely on Family Tax Benefit Part A eligibility.

Health Insurance Act 1973

Item 4 – Subsection 130(1)

Item 4 would insert a reference to the proposed *Dental Benefits Act 2008* into subsection 130(1) of the *Health Insurance Act 1973*.

The purpose of this amendment is to ensure that it is clear that it would not be an offence under subsection 130(1) of the *Health Insurance Act 1973* for a person performing functions under the proposed *Dental Benefits Act 2008* to make a record of, divulge or communicate information relating to the affairs of another person, which was acquired by him or her in the performance of his or her duties, or in the exercise of his or her powers or functions under the *Health Insurance Act 1973*.

Jurisdiction of Courts (Cross-vesting) Act 1987

Item 5 – Schedule

Item 5 would insert a reference to the proposed *Dental Benefits Act 2008* into the Schedule of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cross-vesting Act). The Schedule relates to section 7 of the Cross-vesting Act, which relates to the institution and hearing of appeals in Federal and State Supreme courts.

The effect of the amendment would be to allow subsection 7(5) of the Cross-vesting Act to apply, which would require a matter arising under the proposed *Dental Benefits Act 2008* to be heard on appeal by the Full Federal Court, or, with special leave, by the High Court, rather than by the Full Court of a State or Territory Supreme Court.

As the *Health Insurance Act 1973* (relating to the payment of Medicare benefits) also appears in the Schedule of the Cross-vesting Act, the insertion will align the proposed *Dental Benefits Act 2008* with the *Health Insurance Act 1973*.

Medicare Australia Act 1973

Items 6 to 17 would amend the *Medicare Australia Act 1973* (MA Act) to ensure that the investigative powers of Medicare Australia may be exercised in relation to offences contained in the proposed *Dental Benefits Act 2008*.

Item 6 – section 3

Section 3 of the MA Act sets out definitions for terms that appear in the MA Act. Item 6 would insert the term ‘dental benefit’ into section 3 to ensure that where the phrase ‘dental benefit’ appears in the MA Act, the same meaning as ‘dental benefit’ in the proposed *Dental Benefits Act 2008* will apply.

Under the proposed *Dental Benefits Act 2008*, a ‘dental benefit’ means a dental benefit payable under Part 3 of the *Dental Benefits Act 2008*.