

PARLIAMENT OF AUSTRALIA

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Federal Court of Australia Bill, 1976.

Date introduced: 21 October 1976

House : House of Representatives.
Presented by: Mr. Ellicott (The Honourable Robert James Ellicott, Q.C.)

Short Digest of Bill

The purpose of the Bill: To establish a new federal Court, to be known as the Federal Court of Australia.

Summary:

The Bill would create the Federal Court of Australia (cl. 5 (1)) (hereinafter referred to as the Court) to be a superior court of record and a court of law and equity (cl. 5 (2)) and to consist of a Chief Judge and other judges as are appointed (cl. 5 (3)). The Court will sit in two Divisions, the Industrial Division and the General Division. All the jurisdiction of the Court will be exercised in the General Division except that which is required by any Act to be exercised in the Industrial Division. The Court may be constituted in either Division by a single Judge or as a Full Court. (cl. 13 and 14). The powers of the Court will extend throughout Australia and the Territories (including every external Territory). (cl. 18 and 3). The Court will be an itinerant Court, go on circuit and sit as required in each State and Territory. (ss. 12 and 34).

The Court is intended to have (1) original and (2) appellate and related jurisdiction. It is not intended that indictable offences will be prosecuted in the Court.

The original jurisdiction of the Court is not specified but the Court will have the present original jurisdiction of the Australian Industrial Court and the Federal Court of Bankruptcy. The original jurisdiction will be exercised by a Full Court in the Industrial Division and by a single Judge in the General Division. It is intended that the Court may make binding declarations of right in any matter in which it has original jurisdiction. (Part III - Division 1).

In the appellate jurisdiction the Court has jurisdiction to hear appeals (a) from a single Judge of the Court; (b) from judgments of the Supreme Court of a Territory; and (c) in such cases as are

provided by any other Act, from judgments of a State court, other than a Full Court of the Supreme Court of a State, exercising federal jurisdiction. Under the Constitution the Court will also have jurisdiction in matters associated with matters of federal jurisdiction before the Court. These associated matters if they arose in isolation might not be matters of federal jurisdiction but require to be disposed of at the same time as a matter before the Court so that the rights of the parties may be finally determined.

It is intended that an appeal shall not lie after the commencing day from a judgment of the Supreme Court of a Territory except by leave or special leave of the High Court or the Supreme Court before the commencing day. State and Territory courts from which an appeal lies to the Court may state a case or reserve a question of law to the Court alone. (cl.26). The appellate jurisdiction of the Court will be exercised by a Full Court except where otherwise expressly provided in any Act. (Part III, Division 2).

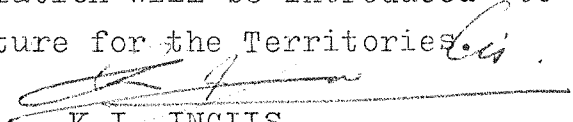
It is intended that an appeal shall lie from the Full Court of the new Court to the High Court only by special leave of the High Court. (Part IV).

Implications: The High Court will be relieved of some of its workload in federal and Territory law matters and have more time to concentrate on constitutional matters and its role as the final appellate court in Australia.

The Bill does not affect the functions of the Family Court of Australia nor the original jurisdiction exercised by State courts. The provisions which enable judges of the Territory Supreme Courts to sit in the Court on appeals from their own courts will benefit the appellate work of the Court in Territory matters. The provisions concerning the Industrial Division of the Court mean that the special character of the industrial jurisdiction under the Conciliation and Arbitration Act will be preserved.

The Court is to have jurisdiction only with respect to those matters specified by Parliament. The effect of the restrictive appellate provisions from the Court to the High Court is that the Court will be the authority in the specific matters within its jurisdiction. The result should be uniformity of interpretation of the law in these matters.

Complementary legislation will be introduced to establish a comprehensive appellate structure for the Territories.


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