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LEGISLATIVE RESEARCH SERVICE
DEPARTMENT OF THE PARLIAMENTARY LIBRARY

JURISDICTION OF COURTS (MISCELLANEOUS AMENDMENTS) BILL 1986

Date introduced: 22 October 1986
House: House of Representatives
Presented by: Hon. Lionel Bowen, M.P.,
Attorney-General

DIGEST OF BILL

Purpose

To effect changes in the exercise of federal jurisdiction under intellectual property, taxation and trade practices legislation.

Background

The concurrent jurisdiction of the Supreme Courts to hear appeals on intellectual property matters gives rise to a number of problems. Plaintiffs and defendants may have different views as to which State is the most convenient for the hearing; two Supreme Courts may give different decisions on the same point of law; and different aspects of the same case may even be dealt with simultaneously in different courts.

In areas such as patents law, the problems are compounded by the availability of two other avenues of review of Patents Office decisions to the Administrative Appeals Tribunal and the Federal Court. This has resulted in the same issue being taken simultaneously to all three forums and while the courts and tribunals are themselves able to avoid some of these difficulties, the time spent in arguing such matters is costly and unproductive.

These are some of the reasons that led the Industrial Property Advisory Committee to recommend in its report, Patents, Innovation and Competition in Australia, submitted to the Government in August 1984, that exclusive jurisdiction in patent law matters be vested in the Federal Court and that this be considered for all substantive matters arising under intellectual property law, including, as well as patents, trade marks, designs and copyright. The Bill will implement the recommendation of the report.

For similar reasons, the Bill will also bring jurisdiction over taxation law matters exclusively within the Federal Court.

Matters dealing with consumer protection under the **Trade Practices Act 1974** are currently within the exclusive jurisdiction of the Federal Court. As consumer complaints often involve relatively small amounts of money and locally based disputes, the Bill will confer concurrent jurisdiction on State and Territory courts to hear and determine such matters.

Outline

The Bill is divided into clauses containing transitional provisions relating to taxation laws and intellectual property laws and a Schedule which contains proposed amendments of the relevant Acts.

For a detailed outline of the amendments, refer to the Explanatory Memorandum.

Advance Australia Logo Protection Act 1984
Copyright Act 1968
Designs Act 1906
Patents Act 1952
Trade Marks Act 1955

Amendments to these Acts will confer exclusive jurisdiction on the Federal Court to hear civil breaches of the Acts.

Bank Accounts Debits Tax Administration Act 1982
Estate Duty Assessment Act 1914
Fringe Benefits Tax Assessment Act 1986
Gift Duty Assessment Act 194
Income Tax Assessment Act 1936
Sales Tax Assessment Act (No.1) 1930

Amendments to these Acts will remove from the Supreme Courts and confer on the Federal Court jurisdiction to hear and determine appeals by taxpayers against decisions under Commonwealth taxation laws. A taxpayer who is dissatisfied with a decision may request the Commissioner to refer it to either the Administrative Appeals Tribunal or the Federal Court and the Commissioner will be required to comply with the request.

Trade Practices Act 1974

Amendments to this Act will confer federal original and appellate jurisdiction on State and Territory courts,

within the limits of their jurisdictions, in civil matters arising under the consumer protection provisions of the Act. Proceedings instituted by the Minister or the Trade Practices Commission will be excepted. The State and Territory Courts will grant only those remedies which they are able to grant under State and Territory law (substituted section 86).

A new section 86A will enable matters to be transferred from the Federal Court to a State or Territory court, from a State or Territory court (other than the Supreme Court) to the Federal Court and from the court of one State or Territory to the court of another. The receiving court must be able to grant the remedy sought and the transfer must be of a matter related to a proceeding pending in that court or otherwise in the interests of justice.

Appeals from judgments of State or Territory courts will lie only with the State or Territory superior courts, except for appeals in matters of unconscionable conduct under section 52A which will go to the Federal Court or, with special leave, to the High Court (proposed section 86B).

For further information, if required, contact the Law and Government Group.

19 February 1987

Bills Digest Service
LEGISLATIVE RESEARCH SERVICE

Reference

1. Industrial Property Advisory Committee, Patents, Innovation and Competition in Australia, August 1984.

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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