

# APPENDIX 7



## Judiciary Act 1903

### Act No. 6 of 1903 as amended

This compilation was prepared on 11 November 2009 taking into account amendments up to Act No. 106 of 2009

The text of any of those amendments not in force on that date is appended in the Notes section

The operation of amendments that have been incorporated may be affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing, Attorney-General's Department, Canberra

Extract:

### **39B Original jurisdiction of Federal Court of Australia**

#### *Scope of original jurisdiction*

- (1) Subject to subsections (1B), (1C) and (1EA), the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer or officers of the Commonwealth.
- (1A) The original jurisdiction of the Federal Court of Australia also includes jurisdiction in any matter:
  - (a) in which the Commonwealth is seeking an injunction or a declaration; or
  - (b) arising under the Constitution, or involving its interpretation; or
  - (c) arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter.

#### *Jurisdiction for certain writs that relate to criminal prosecutions etc.*

- (1B) If a decision to prosecute a person for an offence against a law of the Commonwealth, a State or a Territory has been made by an officer or officers of the Commonwealth and the prosecution is proposed to be commenced in a court of a State or Territory:

- (a) the Federal Court of Australia does not have jurisdiction with respect to any matter in which a person seeks a writ of mandamus or prohibition or an injunction against the officer or officers in relation to that decision; and
  - (b) the Supreme Court of the State or Territory in which the prosecution is proposed to be commenced is invested with, or has conferred on it, jurisdiction with respect to any such matter.
- (1C) Subject to subsection (1D), at any time when:
- (a) a prosecution for an offence against a law of the Commonwealth, a State or a Territory is before a court of a State or Territory; or
  - (b) an appeal arising out of such a prosecution is before a court of a State or Territory;
- the following apply:
- (c) the Federal Court of Australia does not have jurisdiction with respect to any matter in which the person who is or was the defendant in the prosecution seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related criminal justice process decision;
  - (d) the Supreme Court of the State or Territory in which the prosecution or appeal is before a court is invested with, or has conferred on it, jurisdiction with respect to any such matter.
- (1D) Subsection (1C) does not apply where a person has applied for a writ of mandamus or prohibition, or an injunction, against an officer or officers of the Commonwealth in relation to a related criminal justice process decision before the commencement of a prosecution for an offence against a law of the Commonwealth, or of a State or a Territory.
- (1E) Where subsection (1D) applies, the prosecutor may apply to the court for a permanent stay of the proceedings referred to in that subsection, and the court may grant such a stay if the court determines that:
- (a) the matters the subject of the proceedings are more appropriately dealt with in the criminal justice process; and
  - (b) a stay of proceedings will not substantially prejudice the person.

*Jurisdiction for certain writs that relate to civil proceedings*

- (1EA) If:
- (a) a civil proceeding is before the Family Court of Australia, the Federal Magistrates Court or a court of a State or Territory; or
  - (b) an appeal arising out of such a proceeding is before the Family Court of Australia or a court of a State or Territory;
- the following apply:
- (c) the Federal Court of Australia does not have jurisdiction with respect to any matter in which a person who is or was a party to the proceeding seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a related civil proceeding decision;
  - (d) the following court is invested with, or has conferred on it, jurisdiction with respect to any such matter:
    - (i) if the civil proceeding or appeal is before the Family Court of Australia—that court; or
    - (ii) if the civil proceeding is before the Federal Magistrates Court—that court; or
    - (iii) if the civil proceeding or appeal is before a court of a State or Territory—the Supreme Court of the State or Territory.

*Jurisdictional rules to apply despite any other law*

- (1F) Subsections (1B), (1C), (1D), (1E) and (1EA) have effect despite anything in any other law. In particular:
- (a) neither the *Jurisdiction of Courts (Cross-vesting) Act 1987*, nor any other law, has the effect of giving the Federal Court of Australia jurisdiction contrary to subsection (1B), (1C) or (1EA); and
  - (b) neither section 9 of the *Administrative Decisions (Judicial Review) Act 1977*, nor any other law, has the effect of removing from the Supreme Court of a State or Territory the jurisdiction given to that Court by subsection (1B), (1C) or (1EA).

*References to officer or officers of the Commonwealth*

- (2) The reference in subsection (1), (1B), (1C) or (1D) to an officer or officers of the Commonwealth does not include a reference to a Judge or Judges of the Family Court of Australia.

*Definitions*

- (3) In this section:

***civil proceeding*** has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

***related civil proceeding decision***, in relation to a civil proceeding, means:

- (a) a decision of the Attorney-General to give:
  - (i) notice under section 6A of the *National Security Information (Criminal and Civil Proceedings) Act 2004* in relation to the proceeding; or
  - (ii) a certificate under section 38F or 38H of that Act in relation to the proceeding;
 or
- (b) a decision of the Minister appointed by the Attorney-General under section 6A of that Act to give:
  - (i) notice under section 6A of that Act in relation to the proceeding; or
  - (ii) a certificate under section 38F or 38H of that Act in relation to the proceeding.

***related criminal justice process decision***, in relation to an offence, means:

- (a) a decision (other than a decision to prosecute) made in the criminal justice process in relation to the offence, including:
  - (i) a decision in connection with the investigation, committal for trial or prosecution of the defendant; and
  - (ii) a decision in connection with the appointment of investigators or inspectors for the purposes of such an investigation; and
  - (iii) a decision in connection with the issue of a warrant, including a search warrant or a seizure warrant; and
  - (iv) a decision requiring the production of documents, the giving of information or the summoning of persons as witnesses; and
  - (v) a decision in connection with an appeal arising out of the prosecution; or
- (b) a decision of the Attorney-General to give a certificate under section 26 or 28 of the *National Security Information (Criminal and Civil Proceedings) Act 2004* before or during a federal criminal proceeding (within the meaning of that Act) in relation to the offence.

