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8 Bills related to the Federal Court of Australia Bill, 1976

Conciliation and Arbitration Amendment Bill (No. 3) 1976.

Bankruptcy Amendment Bill 1976

Australian Capital Territory Supreme Court Amendment Bill 1976

Northern Territory Supreme Court Amendment Bill 1976

Federal Court of Australia (Consequential Provisions) Bill 1976

Income Tax Assessment Amendment (Jurisdiction of Courts) Bill 1976

Patents Amendment Bill 1976

Trade Marks Amendment Bill 1976

Date introduced: 3 November 1976

House: House of Representatives.

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

Short Digest of Bills

The purpose of the Bills: To amend the Principal Act of each of the proposed amending Acts respectively and also 11 Acts that confer specific jurisdiction on the Australian Industrial Court pursuant to the Government's policy with respect to the proposed establishment of the Federal Court of Australia.

Summary: 1. Three of the said Bills, the Conciliation and Arbitration Amendment Bill (No. 3), the Bankruptcy Amendment Bill, the Federal Court of Australia (Consequential Provisions) Bill would provide for the transfer to the proposed Federal Court of Australia of the jurisdiction presently exercised by the Australian Industrial Court and the Federal Court of Bankruptcy. Each of these two Courts would continue until a time when there are no judges left on the Court, then be abolished on the making of proclamations to that effect, and any pending proceedings in those courts would be transferred to the Federal Court of Australia.

Each of these three amending Acts would commence on a date not earlier than the commencing day for the purposes of the Federal Court of Australia Act, 1976. From that date (1) all proceedings which may now be instituted in the Australian Industrial Court or in the Federal Court of Bankruptcy would be instituted in the Federal Court of Australia and (2) all proceedings already instituted in either court but the hearing of which had not commenced would be transferred to the Federal Court of Australia. (3) Part heard proceedings in either court would continue in those courts.

The Federal Court of Australia in its Industrial Division when exercising its jurisdiction under the Conciliation and Arbitration Act would be constituted in the same way as the Australian Industrial

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Court is now constituted; i.e. by a single judge or as a Full Court constituted by three or more judges.

The appellate provisions would also remain unaltered, i.e. where at present no appeal lies under the Conciliation and Arbitration Act from a decision of the Australian Industrial Court likewise no appeal would lie from a decision of the Federal Court of Australia. In other cases where an appeal now lies from the Australian Industrial Court to the High Court by leave of the High Court an appeal would lie from the Federal Court of Australia to the High Court.

As well as its jurisdiction under the Conciliation and Arbitration Act the Australian Industrial Court also has jurisdiction under 11 other Acts. (The Court has industrial jurisdiction under the Conciliation and Arbitration Act and the Stevedoring Industry Act, and general jurisdiction under 10 other Acts). The Federal Court of Australia (Consequential Provisions) Bill would transfer this jurisdiction under the 11 Acts to the Federal Court of Australia other than cases part heard on the date of transfer of the jurisdiction.

2. The Patents Amendment Bill and the Trade Marks Amendment Bill:

(1) would vest the original jurisdiction of the High Court (except for the operation of section 75 of the Constitution) with respect to patents and trade mark matters in State Supreme Courts and the Supreme Courts of the Australian Capital Territory and the Northern Territory respectively;¹ (2) confer additional appellate jurisdiction on the Administrative Appeals Tribunal in primarily administrative matters in lieu of the present appellate provisions to the High Court in these matters (3) provide for proceedings to be transferred from one Supreme Court to another on application of a party.

3. The Income Tax Assessment Amendment (Jurisdiction of Courts) Bill: would provide (1) that appeals lie to the full Court of the Federal Court of Australia from decisions of single judges of State Supreme Courts on appeals from a Taxation Board of Review and the Commissioner of Taxation under the Income Tax Assessment Act. (2) such appeals would be exclusive of any right of appeal that otherwise exists to the full court of the State Supreme Courts. (3) appeals would be direct to the High Court under the Income Tax Assessment Act by special leave of the High Court (4) a taxation appeal would be transferred from one Supreme Court to another on application of a party (5) the High Court would be divested of its present original jurisdiction to hear taxation prosecutions under the Income Tax Assessment Act and original jurisdiction in these prosecutions would be confined to State and Territory courts. (6) The amount of penalty in issue that entitles a defendant to elect for trial in a Supreme Court would be increased from \$200 to \$500.

4. Appeals would also lie to the Full Court of the Federal Court of Australia from State courts (other than the full courts of State Supreme Courts) exercising (1) bankruptcy jurisdiction and (2) jurisdiction under the Patents and Trade Marks Acts.

¹ The A.C.T. and N.T. Supreme Courts would have jurisdiction only in respect of proceedings instituted by Territory residents or companies having their principal place of business in the Territory.

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5. The Australian Capital Territory Supreme Court Amendment Bill and the Northern Territory Supreme Court Amendment Bill would (1) establish an office of chief judge in each of these courts respectively, and (2) the latter Bill would enable the appointment of a fourth resident judge of the Northern Territory Supreme Court.

Implications: The proposed amendments will confer additional federal jurisdiction on State Courts and divest the High Court of part of its work-load in both its original and appellate jurisdiction.

The status of the Supreme Courts of the Australian Capital Territory and the Northern Territory will increase. The special provisions under the Conciliation and Arbitration Act with respect to appeals will override the appellate provisions in the proposed Federal Court of Australia Act. The Federal Court of Australia will ordinarily exercise its bankruptcy jurisdiction only in New South Wales, Victoria and the Australian Capital Territory. The other State courts and the Northern Territory Supreme Court will continue to exercise bankruptcy jurisdiction. The convenience of parties will be better served by provisions for transfer of matters from one Supreme Court to another under proposed amendments to Patents, Trade Marks and Income Tax Assessment Acts respectively.

The Federal Court of Australia under its proposed appellate jurisdiction from State courts (other than the full courts of State Supreme Courts) and the restrictive appellate provisions to the High Court will be the authority in the specific matters within its jurisdiction which should result in uniformity of interpretation of the law in these matters. Further legislation may be expected to amend other Commonwealth Acts under which the High Court is vested with original and appellate jurisdiction in order to transfer this jurisdiction to State and Territory Supreme Courts and to provide further for appeals to the Federal Court of Australia. Relevant Commonwealth Acts will be amended to bring them into conformity with the proposals concerning the jurisdiction of courts in the Income Tax Assessment (Jurisdiction of Courts) Bill 1976.

The convenience of Territory residents will benefit from proposals that Australian Capital Territory and Northern Territory Supreme Courts have (1) original jurisdiction under the Patents and Trade Marks Acts and (2) appellate jurisdiction under the Income Tax Assessment Act.²

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² The A.C.T. and N.T. Supreme Courts would have jurisdiction only where the taxpayer concerned is a Territory resident, or if a company, has its principal place of business in a Territory.

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