



ASIC

Australian Securities &
Investments Commission

EFFECT ON CORPORATIONS LAW OF HIGH COURT'S CROSS-VESTING DECISIONS

Australian Securities and Investments Commission (ASIC) Chairman Alan Cameron today said today's High Court decisions on cross vesting does not pose any risk to the national scheme under which Australian corporations laws operate.

The High Court handed down its decisions in the matters of *Re Wakim; ex parte McNally*, *Re Wakim; ex parte Darvall*, *Re Brown; ex parte Amman* and *Spinks v Prentice*.

The decisions concern the constitutionality of the general cross-vesting scheme enacted by the Commonwealth and States, and the cross-vesting scheme in the Corporations Law.

The High Court considered whether the States could transfer the jurisdiction of their State courts to the Federal Court. Six judges found that this was unconstitutional, on the basis that Chapter III of the Constitution outlines the full extent of the jurisdiction federal courts can exercise. Justice Kirby dissented.

Mr Cameron said that while the full effect of the High Court's decisions will take time to analyse, it is clear that the Federal Court can no longer determine matters arising under the Corporations Laws of the States.

"All new Corporations Law matters arising in the States (but not the ACT) will now be started in State courts," Mr Cameron said.

"The decisions do not pose any risk to the national scheme under which Australian corporations laws operate. They also do not affect ASIC's powers in relation to consumer protection, or insurance and superannuation.

"ASIC has been aware for some time of the potential for such a decision, and has been working with the Commonwealth Attorney-General's Department and the Treasury to plan for its possible effects.

"ASIC expects that the Federal Court matters to which ASIC is a party can be transferred to appropriate State Supreme Courts and to continue with minimal disruption. A proposal to adopt past decisions of the Federal Court by the States will preserve the considerable body of important and valuable case law which has been built up over the past nine years."

The Attorney-General has indicated that one of the anticipated consequences of today's High Court decisions is the enactment of draft State legislation to ensure that any affected decisions of the Federal Court will continue to have effect and can be enforced as decisions of the State Supreme Courts.

The State legislation will also enable matters currently before the Federal Court to be transferred to State Supreme Courts.

Mr Cameron went on to say that that Federal Court orders obtained by ASIC remain in full force and people subject to such orders should continue to comply with those orders.

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