[Oxford Companion to the High Court of Australia :](http://www.answers.com/library/Oxford%2BArticles-cid-27376813)

Cross-Vesting

The Australian cross-vesting scheme had its genesis in an initiative of the Commonwealth and state Attorneys-General to address the need for jurisdictional reforms of the courts of Australia, identified at the 1985 Constitutional Convention in Brisbane. The Attorneys-General mandated the Special Committee of Solicitors-General to devise means to eliminate the ‘arid jurisdictional disputes’ that had become apparent with the establishment of the Family Court and the Federal Court.

Unsatisfactory High Court decisions had highlighted the incapacity of the Family Court to resolve all issues in family court disputes involving ex-nuptial children and property matters, and the *Trade Practices Act* 1974 (Cth) was often found to require separate proceedings in related matters in both state and federal courts.

The Solicitors-General recommended and drafted a cooperative solution, enacted by each of the parliaments of the Commonwealth and states and the territories, in the scheme constituted by the *Jurisdiction of Courts (Cross-Vesting) Acts* 1987.

The scheme was directed to achieve two aims.

The **first** was to ensure that jurisdictional disputes would be eliminated from all Australian courts and that entire disputes could be resolved in one court, to avoid a multiplicity of proceedings in matters over which more than one court had jurisdiction. This was achieved by each state and territory vesting the entire jurisdiction of its own Supreme Court in the Supreme Court in each of the other states and territories, and in the Federal Court and the Family Court. A complementary Commonwealth law vested most of the federal jurisdiction of one federal court in the other federal court, and the jurisdiction of both of them in each of the Supreme Courts of the states and territories.

The **second** aim was to ensure that matters would be heard and entirely disposed of in the most appropriate court. This was achieved by enabling any court, upon the application of a party or on its own motion, to transfer a matter commenced in it to a more appropriate court for hearing and determination. Procedural delays were prevented by eliminating appeals from orders of transfer, and by providing for any steps taken in the transferor court to remain effective on the continuance of the hearing in the transferee court. Appropriate provision was made on choice of law issues.

The scheme came to be accepted as a striking example of the effective workings of cooperative federalism, whereby each part of the federation had joined to eliminate the unsatisfactory consequences of the establishment of the federal courts.

The judges of Australia gradually overcame their initial anxieties and cooperatively supervised the effective operation of the scheme. For 12 years, jurisdictional disputes were eliminated from litigation throughout the ten superior courts in nine legal jurisdictions (the two federal courts and the Supreme Courts of each state and territory).

When they created the scheme, the Solicitors-General appreciated that there was a residual constitutional risk that, even with the specific statutory consent and authority of the Commonwealth law, the High Court might not recognise the constitutional capacity of state courts to vest state jurisdictional power directly in federal courts.