



Federal Circuit Court of Australia Act 1999

No. 193, 1999 as amended

Compilation start date: 12 April 2013

Includes amendments up to: Act No. 13, 2013

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

The compiled Act

This is a compilation of the *Federal Circuit Court of Australia Act 1999* as amended and in force on 12 April 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 12 April 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is set out in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act relating to the Federal Circuit Court of Australia, and for other purposes

Part 1—Introduction

1 Short title

This Act may be cited as the *Federal Circuit Court of Australia Act 1999*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Objects

- (1) The main object of this Act is to continue in existence the Federal Magistrates Court created under Chapter III of the Constitution as the Federal Circuit Court of Australia.
- (2) The other objects of this Act are:
 - (a) to enable the Federal Circuit Court of Australia to operate as informally as possible in the exercise of judicial power; and
 - (b) to enable the Federal Circuit Court of Australia to use streamlined procedures; and
 - (c) to encourage the use of a range of appropriate dispute resolution processes.

4 Simplified outline

The following is a simplified outline of this Act:

- The federal court known immediately before the commencement day as the Federal Magistrates Court is continued in existence as the Federal Circuit Court of Australia.
- The Federal Circuit Court of Australia consists of a Chief Judge and other Judges.
- Jurisdiction is conferred on the Federal Circuit Court of Australia by other laws of the Commonwealth.
- Jurisdiction is to be exercised in the General Division or the Fair Work Division of the Federal Circuit Court of Australia.
- The Federal Circuit Court of Australia is to promote the use of dispute resolution processes that are likely to assist people to resolve disputes away from the courts.
- Proceedings in the Federal Circuit Court of Australia may be transferred to the Federal Court or the Family Court.
- Provision is made for the practice and procedure of the Federal Circuit Court of Australia. The Court will be able to use streamlined procedures and operate without undue formality.
- The Chief Judge is to manage the administrative affairs of the Federal Circuit Court of Australia.
- There is to be a Chief Executive Officer, who is to assist the Chief Judge in managing the administrative affairs of the Federal Circuit Court of Australia.
- In addition to the Chief Executive Officer, there are to be Registrars and other officers of the Federal Circuit Court of Australia.

- Officers of the Federal Circuit Court of Australia may hold dual appointments as officers of the Federal Court or the Family Court.
- Arrangements may be made for the Federal Circuit Court of Australia to share facilities with other courts.

5 Definitions

In this Act, unless the contrary intention appears:

Accreditation Rules means regulations made under section 10A of the *Family Law Act 1975*.

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

Australia, when used in a geographical sense, includes the external Territories.

Australian court means a federal court or a court of a State or Territory.

beneficiary, in respect of a payment under clause 9D of Schedule 1, has the meaning given by subclause 9D(4) of that Schedule.

Chief Executive Officer means the Chief Executive Officer of the Federal Circuit Court of Australia.

Child Support (Assessment) Act 1989 includes regulations under that Act.

Child Support (Registration and Collection Act) 1988 includes regulations under that Act.

commencement day means the day on which Schedules 1 and 2 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012* commenced.

Commonwealth superannuation contribution, in respect of a Judge or retired disabled Judge, means a Commonwealth contribution to the Judge's choice of:

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- (a) a complying superannuation fund (within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*); or
- (b) a retirement savings account (within the meaning of section 8 of the *Retirement Savings Accounts Act 1997*).

complaint means a complaint mentioned in paragraph 12(3)(c).

complaint handler means:

- (a) the Chief Judge; or
- (b) a person who is authorised by the Chief Judge under subsection 12(3AB); or
- (c) a person who is a member of a body that is authorised by the Chief Judge under subsection 12(3AB).

Division means the General Division or the Fair Work Division of the Federal Circuit Court of Australia.

eligible child has the meaning given by clause 9F of Schedule 1.

eligible spouse has the meaning given by clause 9E of Schedule 1.

family consultant means a family consultant within the meaning of the *Family Law Act 1975*.

Family Court means the Family Court of Australia.

Family Law Act 1975 includes regulations under that Act.

Family law or child support proceedings means proceedings under:

- (a) the *Family Law Act 1975*; or
- (b) the *Child Support (Assessment) Act 1989*; or
- (c) the *Child Support (Registration and Collection) Act 1988*.

Federal Court means the Federal Court of Australia.

handle a complaint means do one or more of the following acts relating to the complaint:

- (a) consider the complaint;
- (b) investigate the complaint;
- (c) report on an investigation of the complaint;
- (d) deal with a report of an investigation of the complaint;

- (e) dispose of the complaint;
- (f) refer the complaint to a person or body.

Judge:

- (a) means a Judge (including the Chief Judge) who holds office under this Act; and
- (b) when used in the expression *the Federal Circuit Court of Australia or a Judge*, means a Judge sitting in Chambers.

judgment means a judgment, decree or order, whether final or interlocutory, or a sentence, and includes a decree within the meaning of the *Family Law Act 1975*.

living with a person has the meaning given by subclause 9E(8) of Schedule 1.

marital or couple relationship has the meaning given by subclause 9E(5) of Schedule 1.

partner: a person is the **partner** of another person if the 2 persons have a relationship as a couple (whether the persons are the same sex or different sexes).

prior judicial service, in relation to a retired disabled Judge, means service, prior to the Judge's appointment as a Judge, as one of the following:

- (a) a Justice or Judge of a federal court;
- (b) the holder of an office, being an office the holder of which has, by virtue of an Act, the same status as a Justice or Judge of a federal court;
- (c) a Judge of the Federal Circuit Court of Australia;
- (d) a Judge or acting Judge of a court of a State or Territory;
- (e) a magistrate of a State or Territory;
- (f) in the case of a State or Territory office that qualifies the holder of the office for a pension or retiring allowance under a law of the State or Territory relating to pensions or retiring allowances payable to retired Judges—a holder of the office (including an acting holder).

Note: If the Judge was appointed as a Judge more than once, see section 5A.

Section 5A

proceeding means a proceeding in a court, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding, and also includes an appeal.

Registrar means a Registrar of the Federal Circuit Court of Australia.

relevant belief: a person has a **relevant belief** in relation to a complaint about a Judge if:

- (a) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated, justify consideration of the removal of the Judge in accordance with paragraph 72(ii) of the Constitution; or
- (b) the person believes that one or more of the circumstances that gave rise to the complaint may, if substantiated:
 - (i) adversely affect, or have adversely affected, the performance of judicial or official duties by the Judge; or
 - (ii) have the capacity to adversely affect, or have adversely affected, the reputation of the Federal Circuit Court of Australia.

retired disabled Judge means a person certified by the Minister to be a retired disabled Judge under paragraph 9A(2)(a) of Schedule 1.

retires, in relation to a Judge, means ceases, otherwise than by death, to hold any office as a Judge.

Rules of Court means Rules of Court made under this Act.

video link means facilities (for example, closed-circuit television facilities) that enable audio and visual communication between persons in different places.

5A Prior judicial service

For the purposes of the definition of **prior judicial service**, if a retired disabled Judge was appointed as a Judge more than once, the reference to the Judge's appointment as a Judge is taken to be a reference to the Judge's most recent appointment as a Judge.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

7 External Territories

This Act extends to every external Territory.

Part 2—Federal Circuit Court of Australia

8 Federal Circuit Court of Australia

- (1) The federal court known immediately before the commencement day as the Federal Magistrates Court is continued in existence as the Federal Circuit Court of Australia.
- (3) The Federal Circuit Court of Australia is a court of record and is a court of law and equity.
- (4) The Federal Circuit Court of Australia consists of the following:
 - (a) a Chief Judge;
 - (b) such other Judges as from time to time hold office in accordance with this Act.
- (5) The person holding office as the Chief Federal Magistrate under this Act immediately before the commencement day continues to hold that office under the title of Chief Judge of the Federal Circuit Court of Australia.
- (6) A person holding office as a Federal Magistrate (other than Chief Federal Magistrate) under this Act immediately before the commencement day continues to hold that office under the title of Judge of the Federal Circuit Court of Australia.

Note: The Parliament may create federal courts under Chapter III of the Constitution.

9 Personnel provisions relating to Judges

Schedule 1 has effect.

Part 3—Jurisdiction of the Federal Circuit Court of Australia

10 Jurisdiction

- (1) The Federal Circuit Court of Australia has such original jurisdiction as is vested in it by laws made by the Parliament:
 - (a) by express provision; or
 - (b) by the application of section 15C of the *Acts Interpretation Act 1901* to a provision that, whether expressly or by implication, authorises a civil proceeding to be instituted in the Federal Circuit Court of Australia in relation to a matter.
- (2) The original jurisdiction of the Federal Circuit Court of Australia includes any jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts.
- (3) The process of the Federal Circuit Court of Australia runs, and the judgments of the Federal Circuit Court of Australia have effect and may be executed, throughout Australia.

10A General and Fair Work Divisions of the Federal Circuit Court of Australia

- (1) For the purpose of the organisation and conduct of the business of the Federal Circuit Court of Australia, the Federal Circuit Court of Australia comprises 2 Divisions:
 - (a) the General Division; and
 - (b) the Fair Work Division.
- (2) Every proceeding in the Federal Circuit Court of Australia must be instituted, heard and determined in a Division.

Fair Work Division

- (3) The following jurisdiction of the Federal Circuit Court of Australia is to be exercised in the Fair Work Division:
 - (a) jurisdiction that is required by any other Act to be exercised in the Fair Work Division;

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(b) jurisdiction that is incidental to such jurisdiction.

Note: Under section 566 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Federal Circuit Court of Australia in relation to matters arising under that Act.

General Division

- (4) The following jurisdiction of the Federal Circuit Court of Australia is to be exercised in the General Division:
- (a) jurisdiction that is not required by any other Act to be exercised in the Fair Work Division;
 - (b) jurisdiction that is incidental to such jurisdiction (including jurisdiction that is required by any other Act to be exercised in the Fair Work Division).

Jurisdiction that is required to be exercised in both Divisions

- (5) If the Court's jurisdiction is required to be exercised in both Divisions in relation to particular proceedings or proceedings of a particular kind, the Chief Judge may, at any time (whether before or after the proceedings are instituted), give a direction about the allocation to one or other Division of those proceedings or proceedings of that kind.

11 Exercise of jurisdiction by single Judge

- (1) For the purposes of the exercise of the jurisdiction of the Federal Circuit Court of Australia, the Federal Circuit Court of Australia is to be constituted by a single Judge.
- (2) The Federal Circuit Court of Australia constituted by a Judge may sit and exercise the jurisdiction of the Federal Circuit Court of Australia even if the Federal Circuit Court of Australia constituted by another Judge is at the same time sitting and exercising the jurisdiction of the Federal Circuit Court of Australia.

12 Arrangement of business of the Federal Circuit Court of Australia

Responsibility of Chief Judge

- (1) The Chief Judge is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Federal Circuit Court of Australia.
 - (2) In discharging his or her responsibility under subsection (1), the Chief Judge must promote the objects of this Act.
 - (3) In discharging his or her responsibility under subsection (1) (and without limiting the generality of that subsection) the Chief Judge:
 - (a) may, subject to this Act and to such consultation with Judges as is appropriate and practicable, do all or any of the following:
 - (i) make arrangements as to the Judge who is to constitute the Federal Circuit Court of Australia in particular matters or classes of matters;
 - (ii) without limiting the generality of subparagraph (i)— assign particular caseloads, classes of cases or functions to particular Judges;
 - (iii) temporarily restrict a Judge to non-sitting duties; and
 - (b) must ensure that arrangements are in place to provide Judges with appropriate access to (or reimbursement for the cost of):
 - (i) annual health assessments; and
 - (ii) short-term counselling services; and
 - (iii) judicial education; and
 - (c) may deal, as set out in subsection (3AA), with a complaint about the performance by another Judge of his or her judicial or official duties; and
 - (d) may take any measures that the Chief Judge believes are reasonably necessary to maintain public confidence in the Federal Circuit Court of Australia, including, but not limited to, temporarily restricting another Judge to non-sitting duties.
- (3AA) The Chief Judge may, if a complaint is made about another Judge, deal with the complaint by doing either or both of the following in respect of the complaint:

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- (a) deciding whether or not to handle the complaint and then doing one of the following:
 - (i) dismissing the complaint;
 - (ii) handling the complaint if the Chief Judge has a relevant belief in relation to the complaint about the other Judge;
 - (iii) arranging for any other complaint handlers to assist the Chief Judge to handle the complaint if the Chief Judge has a relevant belief in relation to the complaint about the other Judge;
- (b) arranging for any other complaint handlers to decide whether or not to handle the complaint and then to do one of the following:
 - (i) dismiss the complaint;
 - (ii) handle the complaint if each of the complaint handlers has a relevant belief in relation to the complaint about the other Judge.

Note: A complaint handler (other than the Chief Judge) may handle a complaint by referring it to the Chief Judge. The Chief Judge may then do either or both of the things referred to in paragraph (a) or (b) in respect of the complaint.

- (3AB) The Chief Judge may authorise, in writing, a person or a body to do one or more of the following:
- (a) assist the Chief Judge to handle complaints or a specified complaint;
 - (b) decide whether or not to handle complaints or a specified complaint;
 - (c) dismiss complaints or a specified complaint;
 - (d) handle complaints or a specified complaint.

Exercise of powers of General and Fair Work Divisions of the Federal Circuit Court of Australia

- (3A) A Judge who is assigned to a Division of the Federal Circuit Court of Australia must exercise, or participate in exercising, the powers of the Federal Circuit Court of Australia only in that Division, except as set out in subsection (3B).
- (3B) The Chief Judge may arrange for a Judge who is assigned to a particular Division of the Federal Circuit Court of Australia to exercise, or participate in exercising, the powers of the Federal

Circuit Court of Australia in the other Division if the Chief Judge considers that circumstances make it desirable to do so.

- (3C) To avoid doubt, a Judge who is not assigned to either Division of the Federal Circuit Court of Australia may exercise, or participate in exercising, the powers of the Federal Circuit Court of Australia in either Division.
- (3D) Subsection (3A) does not affect the validity of any exercise of powers by the Federal Circuit Court of Australia otherwise than in accordance with that subsection.

Assignment of Judges to locations or registries

- (4) The Chief Judge may, by written instrument, assign a particular Judge to a particular location or registry.
- (5) An instrument under subsection (4) has no effect unless it is approved, in writing, by the Minister.
- (6) Subsection (4) does not prevent a Judge from performing his or her duties at one or more other locations or registries on a temporary basis (whether on circuit or otherwise).

Protection of the Chief Judge in the exercise of functions or powers

- (6A) In exercising the functions or powers mentioned in paragraph (3)(a) or subsection (4), the Chief Judge has the same protection and immunity as if he or she were exercising those functions or powers as, or as a member of, the Federal Circuit Court of Australia.

Note: See also section 118A.

- (6B) Despite section 39B of the *Judiciary Act 1903*, the Federal Court of Australia does not have jurisdiction with respect to a matter relating to the exercise by the Chief Judge of the functions or powers mentioned in subsection (3), (3AA) or (3AB) or (4).

Functions and powers of the Chief Judge

- (7) In addition to the powers and functions conferred on the Chief Judge by this Act, the Chief Judge has such other functions and powers in relation to the Federal Circuit Court of Australia as are specified in the regulations.

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13 Exercise of jurisdiction in open court and in Chambers

- (1) This section does not apply to family law or child support proceedings.

Note: See section 97 of the *Family Law Act 1975*.

Open court

- (2) The jurisdiction of the Federal Circuit Court of Australia must be exercised in open court. However, this rule does not apply where, as authorised by this Act or another law of the Commonwealth, the jurisdiction of the Federal Circuit Court of Australia is exercised by a Judge sitting in Chambers.

Judge sitting in Chambers

- (3) The jurisdiction of the Federal Circuit Court of Australia may be exercised by a Judge sitting in Chambers in:
- (a) a proceeding on an application relating to the conduct of a proceeding; and
 - (b) a proceeding on an application for orders or directions as to any matter which, by this Act or any other law of the Commonwealth, is made subject to the direction of a Judge sitting in Chambers; and
 - (c) a proceeding on any other application authorised by the Rules of Court to be made to a Judge sitting in Chambers.
- (4) The jurisdiction of the Federal Circuit Court of Australia is to be exercised by a Judge sitting in Chambers in a proceeding where:
- (a) under the Rules of Court, the Federal Circuit Court of Australia is authorised to make a decision relating to the proceeding without an oral hearing; and
 - (b) the parties to the proceeding have consented to the Federal Circuit Court of Australia making a decision in relation to the proceeding without an oral hearing.

Proceeding in Chambers may be adjourned into court

- (5) A Judge may order a proceeding in Chambers to be adjourned into court.

Proceeding in open court may be adjourned into Chambers

- (6) The Federal Circuit Court of Australia may order a proceeding in open court to be adjourned into Chambers if, apart from this subsection, the jurisdiction of the Federal Circuit Court of Australia may be exercised by a Judge sitting in Chambers in that proceeding.

Closed court etc.

- (7) The Federal Circuit Court of Australia may order the exclusion of the public or of persons specified by the Federal Circuit Court of Australia from a sitting of the Federal Circuit Court of Australia if the Federal Circuit Court of Australia is satisfied that the presence of the public or of those persons, as the case may be, would be:
- (a) contrary to the interests of justice; or
 - (b) prejudicial to the security of the Commonwealth.

14 Determination of matter completely and finally

In every matter before the Federal Circuit Court of Australia, the Federal Circuit Court of Australia must grant, either:

- (a) absolutely; or
- (b) on such terms and conditions as the Federal Circuit Court of Australia thinks just;

all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him or her in the matter, so that, as far as possible:

- (c) all matters in controversy between the parties may be completely and finally determined; and
- (d) all multiplicity of proceedings concerning any of those matters may be avoided.

15 Making of orders and issue of writs

The Federal Circuit Court of Australia has power, in relation to matters in which it has jurisdiction, to:

- (a) make orders of such kinds, including interlocutory orders, as the Federal Circuit Court of Australia thinks appropriate; and
- (b) issue, or direct the issue of, writs of such kinds as the Federal Circuit Court of Australia thinks appropriate.

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16 Declarations of right

- (1) The Federal Circuit Court of Australia may, in relation to a matter in which it has original jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.
- (2) A proceeding is not open to objection on the ground that a declaratory order only is sought.

17 Contempt of court

- (1) The Federal Circuit Court of Australia has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.
- (2) Subsection (1) has effect subject to any other Act.
- (3) The jurisdiction of the Federal Circuit Court of Australia to punish a contempt of the Federal Circuit Court of Australia committed in the face or hearing of the Federal Circuit Court of Australia may be exercised by the Federal Circuit Court of Australia as constituted at the time of the contempt.

Note: See also section 112AP of the *Family Law Act 1975*, which deals with family law or child support proceedings.

17A Summary judgment

- (1) The Federal Circuit Court of Australia may give judgment for one party against another in relation to the whole or any part of a proceeding if:
 - (a) the first party is prosecuting the proceeding or that part of the proceeding; and
 - (b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.
- (2) The Federal Circuit Court of Australia may give judgment for one party against another in relation to the whole or any part of a proceeding if:
 - (a) the first party is defending the proceeding or that part of the proceeding; and

- (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.
- (3) For the purposes of this section, a defence or a proceeding or part of a proceeding need not be:
 - (a) hopeless; or
 - (b) bound to fail;for it to have no reasonable prospect of success.
- (4) This section does not limit any powers that the Federal Circuit Court of Australia has apart from this section.

18 Jurisdiction in associated matters

To the extent that the Constitution permits, jurisdiction is conferred on the Federal Circuit Court of Australia in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Federal Circuit Court of Australia is invoked.

19 Proceedings not to be instituted in Federal Circuit Court if associated matter before Federal Court or Family Court

- (1) Proceedings must not be instituted in the Federal Circuit Court of Australia in respect of a particular matter if proceedings in respect of an associated matter are pending in the Family Court or the Federal Court.
- (2) Subsection (1) does not apply to:
 - (a) proceedings for a decree of dissolution of marriage; or
 - (b) proceedings instituted in the Federal Circuit Court of Australia under:
 - (i) Division 13A of Part VII of the *Family Law Act 1975*; or
 - (ii) Part XIII or XIII A of that Act.
- (3) If:
 - (a) proceedings are instituted in the Federal Circuit Court of Australia in contravention of subsection (1); and
 - (b) the proceedings are subsequently transferred to the Federal Court or the Family Court;

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the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

20 Appeals

- (1) An appeal must not be brought directly to the High Court from a judgment of the Federal Circuit Court of Australia.
- (2) Subsection (1) has effect despite anything in:
 - (a) section 95 of the *Family Law Act 1975*; and
 - (b) section 104 of the *Child Support (Assessment) Act 1989*; and
 - (c) section 109 of the *Child Support (Registration and Collection) Act 1988*.

Note: For appeals from the Federal Circuit Court of Australia, see:

- (a) section 94 of the *Family Law Act 1975*; and
 - (b) section 102A of the *Child Support (Assessment) Act 1989*; and
 - (c) section 107A of the *Child Support (Registration and Collection) Act 1988*; and
 - (d) section 24 of the *Federal Court of Australia Act 1976*.
- (3) If, apart from this subsection, subsection (1) is to any extent inconsistent with section 73 of the Constitution, this Act has effect as if the words “, except by special leave of the High Court” were added at the end of subsection (1).

Part 4—Dispute resolution for proceedings other than proceedings under the Family Law Act 1975

Division 1—General

20A This Part does not apply to proceedings under the *Family Law Act 1975*

This Part applies to proceedings in the Federal Circuit Court of Australia other than proceedings under the *Family Law Act 1975*.

Note 1: For proceedings under the *Family Law Act 1975*, see in particular Parts II, III, IIIA and IIIB of that Act, which contain provisions dealing with family counselling, family dispute resolution and other processes that apply to the Federal Circuit Court of Australia in relation to proceedings under that Act.

Note 2: This Part (other than Division 2: see section 33) applies to proceedings under the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*.

21 Dispute resolution processes

In this Part:

dispute resolution processes means procedures and services for the resolution of disputes otherwise than by way of the exercise of the judicial power of the Commonwealth, and includes:

- (a) counselling; and
- (b) mediation; and
- (c) arbitration; and
- (d) neutral evaluation; and
- (e) case appraisal; and
- (f) conciliation.

22 Federal Circuit Court of Australia to consider whether to advise people to use dispute resolution processes

The Federal Circuit Court of Australia must consider whether or not to advise the parties to proceedings before it about the dispute

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resolution processes that could be used to resolve any matter in dispute.

23 Federal Circuit Court of Australia to advise people to use dispute resolution processes

- (1) If the Federal Circuit Court of Australia considers that a dispute resolution process may help the parties to a dispute before it to resolve that dispute, the Federal Circuit Court of Australia must advise the parties to use that dispute resolution process.
- (2) If the Federal Circuit Court of Australia does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance in connection with the dispute resolution process.

Note: See also Part III of the *Family Law Act 1975*, which deals with dispute resolution in family law and child support matters.

24 Duty of legal practitioners to consider whether to advise people to use dispute resolution processes

A legal practitioner acting in proceedings in the Federal Circuit Court of Australia, or consulted by a person considering instituting such proceedings, must consider whether or not to advise:

- (a) the parties to the proceedings; or
 - (b) the person considering instituting proceedings;
- about the dispute resolution processes that could be used to resolve any matter in dispute.

25 Duty of officers of the Federal Circuit Court of Australia to advise people about dispute resolution processes

- (1) A designated officer of the Federal Circuit Court of Australia must, as far as practicable, on request by:
 - (a) a party to proceedings in the Federal Circuit Court of Australia; or
 - (b) a person considering instituting proceedings in the Federal Circuit Court of Australia;advise the party or person about the dispute resolution processes that could be used to resolve any matter in dispute.

- (2) For the purposes of this section, a member of the staff of the Federal Circuit Court of Australia is taken to be an officer of the Federal Circuit Court of Australia.
- (3) For the purposes of this section, a *designated officer* of the Federal Circuit Court of Australia is an officer of the Federal Circuit Court of Australia specified in writing by the Chief Executive Officer for the purposes of this subsection.

26 Conciliation

- (1) The Federal Circuit Court of Australia may, by order, refer proceedings in the Federal Circuit Court of Australia, or any part of them or any matter arising out of them, for conciliation in accordance with the Rules of Court.
- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) Referrals under subsection (1) to a conciliator may be made with or without the consent of the parties to the proceedings.

27 Referral of question of law—dispute resolution process (other than arbitration)

- (1) If the Federal Circuit Court of Australia makes an order, or gives a direction, under this Act or any other law of the Commonwealth:
 - (a) referring any or all of the matters in dispute in proceedings before it for a dispute resolution process (other than arbitration); or
 - (b) referring any proceedings before it, or any part of them or any matters arising out of them, for a dispute resolution process (other than arbitration); or
 - (c) requiring either or both of the parties to a proceeding before it to attend a dispute resolution process (other than arbitration);

a party to the dispute resolution process may make an application to the Federal Circuit Court of Australia for determination of a question of law arising out of the proceedings.

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- (2) An application under subsection (1) must be accompanied by a statement that:
 - (a) is signed by the person (the *eligible person*) conducting the dispute resolution process; and
 - (b) states that the eligible person consents to the making of the application; and
 - (c) states that the eligible person is of the opinion that the determination of the question of law by the Federal Circuit Court of Australia is likely to assist the parties in reaching agreement about any or all of the matters in dispute in the proceedings.
- (3) If an application is made under subsection (1), the Federal Circuit Court of Australia may determine the question of law.
- (4) If the Federal Circuit Court of Australia determines a question of law under subsection (3), the determination is binding on the parties to the proceedings concerned.

28 Rules of Court about dispute resolution processes

- (1) The Rules of Court may make provision for or in relation to dispute resolution processes carried out under an order made, or direction given, by the Federal Circuit Court of Australia under this Act or another law of the Commonwealth.
- (2) In particular, Rules of Court made for the purposes of subsection (1) may make provision for or in relation to the procedure to be followed when any dispute resolution process ends.

29 Regulations about dispute resolution processes

- (1) The regulations may make provision for or in relation to dispute resolution processes carried out under an order made, or direction given, by the Federal Circuit Court of Australia under this Act or another law of the Commonwealth.
- (2) In particular, regulations made for the purposes of subsection (1) may make provision for or in relation to:
 - (a) the procedures to be followed by a person conducting a dispute resolution process in carrying out that process; and

- (b) the attendance by persons at:
 - (i) a dispute resolution process; or
 - (ii) a conference conducted for the purpose of carrying out a dispute resolution process; and
- (c) the kinds of persons who are eligible to conduct particular kinds of dispute resolution processes.

30 Rules of Court about costs of dispute resolution processes

The Rules of Court may make provision for or in relation to the costs of dispute resolution processes and the assessment or taxation of those costs, where:

- (a) the dispute resolution process was carried out under an order made, or direction given, by the Federal Circuit Court of Australia under this Act or another law of the Commonwealth; or
- (b) the dispute resolution process was carried out for the purpose of settling a dispute about a matter with respect to which proceedings have been instituted in the Federal Circuit Court of Australia.

31 Rules of Court about dispute resolution processes under the *Family Law Act 1975*

The Rules of Court may make provision for or in relation to the making of applications under the *Family Law Act 1975* for mediation or arbitration and for orders under section 19E of that Act.

32 Consent orders

- (1) If the parties to proceedings in the Federal Circuit Court of Australia have reached agreement about a matter in dispute in the proceedings, the Federal Circuit Court of Australia or a Judge may, on application by the parties, make an order in the terms of the agreement.
- (2) This section has effect subject to the Rules of Court.

Division 2—Proceedings other than family law or child support proceedings

33 Scope of Division

This Division applies to proceedings in the Federal Circuit Court of Australia other than family law or child support proceedings.

Note: See Part III of the *Family Law Act 1975*.

34 Mediation

- (1) The Federal Circuit Court of Australia may, by order, refer proceedings in the Federal Circuit Court of Australia, or any part of them or any matter arising out of them, to a mediator for mediation in accordance with the Rules of Court.
- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) Referrals under subsection (1) to a mediator may be made with or without the consent of the parties to the proceedings.
- (4) Evidence of anything said, or of any admission made, at a conference conducted by a mediator in the course of mediating anything referred under subsection (1) is not admissible:
 - (a) in any court (whether exercising federal jurisdiction or not);
or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (5) A mediator has, in mediating anything referred under subsection (1), the same protection and immunity as a Judge has in performing the functions of a Judge.

35 Arbitration

- (1) The Federal Circuit Court of Australia may, by order, refer proceedings in the Federal Circuit Court of Australia, or any part of them or any matter arising out of them, to an arbitrator for arbitration in accordance with the Rules of Court.

- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) Referrals under subsection (1) to an arbitrator may be made only with the consent of the parties.
- (4) The Rules of Court may make provision for the registration of awards made in an arbitration carried out under an order made under subsection (1).
- (5) An arbitrator has, in arbitrating anything referred under subsection (1), the same protection and immunity as a Judge has in performing the functions of a Judge.

36 Power of arbitrator to refer question of law to the Federal Circuit Court of Australia

- (1) If:
 - (a) any proceedings in the Federal Circuit Court of Australia, or any part of them or any matter arising out of them, has been referred under subsection 35(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has not made an award in respect of the arbitration; and
 - (c) a party to the arbitration has requested the arbitrator to apply to the Federal Circuit Court of Australia for leave to refer to the Federal Circuit Court of Australia a question of law arising in the arbitration;the arbitrator may apply to the Federal Circuit Court of Australia or a Judge for leave to refer the question to the Federal Circuit Court of Australia.
- (2) The Federal Circuit Court of Australia or a Judge must not grant leave unless satisfied that the determination of the question of law by the Federal Circuit Court of Australia might result in substantial savings in costs to the parties to the arbitration.
- (3) If:
 - (a) the Federal Circuit Court of Australia or a Judge grants leave; and
 - (b) the arbitrator refers the question of law to the Federal Circuit Court of Australia;

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the Federal Circuit Court of Australia must determine the question of law.

37 Review of arbitration award on a question of law etc.

- (1) If:
 - (a) any proceedings in the Federal Circuit Court of Australia, or any part of them or any matter arising out of them, has been referred under subsection 35(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has made an award in respect of the arbitration; and
 - (c) the award has been registered with the Federal Circuit Court of Australia under the Rules of Court;the following provisions have effect.
- (2) A party to the award may apply to the Federal Circuit Court of Australia for a review, on a question of law, of the award.
- (3) On a review of an award on a question of law, the Federal Circuit Court of Australia may:
 - (a) determine the question of law; and
 - (b) make such orders as it thinks appropriate, including:
 - (i) an order affirming the award; or
 - (ii) an order varying the award; or
 - (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Federal Circuit Court of Australia; or
 - (iv) an order setting aside the award and determining the matter to which the award related.
- (4) A party to the award may apply to the Federal Circuit Court of Australia or a Judge for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.
- (5) The person who made the application is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made under subsection (4).

38 Arbitration awards

- (1) The Federal Circuit Court of Australia may, on application by a party to an award made in an arbitration (whether carried out under an order made under section 35 or otherwise) in relation to a matter in which the Federal Circuit Court of Australia has original jurisdiction, make an order in the terms of the award.
- (2) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 35(1) unless the award has been registered with the Federal Circuit Court of Australia under the Rules of Court.
- (3) An order so made is enforceable in the same manner as if it had been made in an action in the Federal Circuit Court of Australia. This subsection has effect subject to subsection (4).
- (4) A writ of attachment must not be issued to enforce payment of money under an order made in accordance with this section.

Part 5—Transfer of proceedings to the Federal Court or the Family Court

39 Discretionary transfer of proceedings to the Federal Court or the Family Court

- (1) If a proceeding is pending in the Federal Circuit Court of Australia, the Federal Circuit Court of Australia may, by order, transfer the proceeding from the Federal Circuit Court of Australia to the Federal Court or the Family Court.
- (2) The Federal Circuit Court of Australia may transfer a proceeding under this section:
 - (a) on the application of a party to the proceeding; or
 - (b) on its own initiative.
- (3) In deciding whether to transfer a proceeding to the Federal Court under subsection (1), the Federal Circuit Court of Australia must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 40(2); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Court; and
 - (c) whether the resources of the Federal Circuit Court of Australia are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) In deciding whether to transfer a proceeding to the Family Court under subsection (1), the Federal Circuit Court of Australia must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 40(4); and
 - (b) whether proceedings in respect of an associated matter are pending in the Family Court; and
 - (c) whether the resources of the Federal Circuit Court of Australia are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.

- (5) If an order is made under subsection (1), the Federal Circuit Court of Australia may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Court or the Family Court, as the case requires.
- (6) An appeal does not lie from a decision of the Federal Circuit Court of Australia in relation to the transfer of a proceeding under subsection (1).
- (7) A reference in subsection (1) to a proceeding pending in the Federal Circuit Court of Australia includes a reference to a proceeding that was instituted in contravention of subsection 19(1).
- (8) This section does not apply to proceedings of a kind specified in the regulations.

40 Rules of Court about discretionary transfer of proceedings

- (1) The Rules of Court may make provision in relation to transfers of proceedings to the Federal Court under subsection 39(1).
- (2) In particular, the Rules of Court may set out factors that are to be taken into account by the Federal Circuit Court of Australia in deciding whether to transfer a proceeding to the Federal Court under subsection 39(1).
- (3) The Rules of Court may make provision in relation to transfers of proceedings to the Family Court under subsection 39(1).
- (4) In particular, the Rules of Court may set out factors that are to be taken into account by the Federal Circuit Court of Australia in deciding whether to transfer a proceeding to the Family Court under subsection 39(1).
- (5) In making Rules of Court for the purposes of this section, the Judges, or a majority of them, must have regard to:
 - (a) whether particular matters could be more appropriately dealt with in the Federal Court or the Family Court; and
 - (b) whether the resources of the Federal Circuit Court of Australia are sufficient to deal with particular matters; and
 - (c) the interests of the administration of justice; and
 - (d) anything else that the Judges, or a majority of them, considers relevant.

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- (6) Before Rules of Court are made for the purposes of subsection (1) or (2), the Federal Circuit Court of Australia must consult the Federal Court.
- (7) Before Rules of Court are made for the purposes of subsection (3) or (4), the Federal Circuit Court of Australia must consult the Family Court.

41 Mandatory transfer of proceedings to the Federal Court or the Family Court

- (1) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Federal Circuit Court of Australia, the Federal Circuit Court of Australia must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Court.
- (2) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Federal Circuit Court of Australia, the Federal Circuit Court of Australia must, before going on to hear and determine the proceeding, transfer the proceeding to the Family Court.
- (3) If a proceeding is transferred under subsection (1), the Federal Circuit Court of Australia may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Court.
- (4) If a proceeding is transferred under subsection (2), the Federal Circuit Court of Australia may make such orders as it considers necessary pending the disposal of the proceeding by the Family Court.
- (5) An appeal does not lie from a decision of the Federal Circuit Court of Australia in relation to the transfer of a proceeding under subsection (1) or (2).
- (6) A reference in subsections (1) and (2) to a proceeding pending in the Federal Circuit Court of Australia includes a reference to a proceeding that was instituted in contravention of subsection 19(1).
- (7) The Minister must cause a copy of regulations (*transfer regulations*) made for the purposes of subsection (1) or (2) to be tabled in each House of the Parliament.

- (8) Either House may, following a motion upon notice, pass a resolution disallowing the transfer regulations. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the transfer regulations was tabled in the House.
- (9) If neither House passes such a resolution, the transfer regulations take effect on the day immediately after the last day upon which such a resolution could have been passed.
- (10) Subsections (7), (8) and (9) have effect despite anything in:
 - (a) the *Acts Interpretation Act 1901*; or
 - (b) the *Legislative Instruments Act 2003*.

Part 6—Practice and procedure

Division 1—General

42 Federal Circuit Court of Australia to operate informally

In proceedings before it, the Federal Circuit Court of Australia must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted.

43 Practice and procedure

- (1) The practice and procedure of the Federal Circuit Court of Australia is to be in accordance with Rules of Court made under this Act. However, this subsection is subject to any provision made by or under this or any other Act with respect to practice and procedure.

Note: Rules of Court are made under section 81.

- (2) In so far as the provisions applicable in accordance with subsection (1) are insufficient:
 - (a) the Rules of Court made under the *Family Law Act 1975* apply, with necessary modifications, so far as they are capable of application and subject to any directions of the Federal Circuit Court of Australia or a Judge, to the practice and procedure of the Federal Circuit Court of Australia in relation to the jurisdiction of the Federal Circuit Court of Australia under:
 - (i) the *Family Law Act 1975*; or
 - (ii) the *Child Support (Assessment) Act 1989*; or
 - (iii) the *Child Support (Registration and Collection) Act 1988*; and
 - (b) the Rules of Court made under the *Federal Court of Australia Act 1976* apply, with necessary modifications, so far as they are capable of application and subject to any directions of the Federal Circuit Court of Australia or a Judge, to the practice and procedure of the Federal Circuit Court of Australia in relation to the jurisdiction of the Federal Circuit Court of Australia under laws of the Commonwealth other than:

- (i) the *Family Law Act 1975*; or
- (ii) the *Child Support (Assessment) Act 1989*; or
- (iii) the *Child Support (Registration and Collection) Act 1988*.

(3) In this section:

practice and procedure includes all matters in relation to which Rules of Court may be made under this Act.

44 Representation

A party to a proceeding before the Federal Circuit Court of Australia is not entitled to be represented by another person unless:

- (a) under the *Judiciary Act 1903*, the other person is entitled to practise as a barrister or solicitor, or both, in a federal court; or
- (b) under the regulations, the other person is taken to be an authorised representative; or
- (c) another law of the Commonwealth authorises the other person to represent the party.

45 Interrogatories and discovery

- (1) Interrogatories and discovery are not allowed in relation to proceedings in the Federal Circuit Court of Australia unless the Federal Circuit Court of Australia or a Judge declares that it is appropriate, in the interests of the administration of justice, to allow the interrogatories or discovery.
- (2) In deciding whether to make a declaration under subsection (1), the Federal Circuit Court of Australia or a Judge must have regard to:
 - (a) whether allowing the interrogatories or discovery would be likely to contribute to the fair and expeditious conduct of the proceedings; and
 - (b) such other matters (if any) as the Federal Circuit Court of Australia or the Judge considers relevant.

Division 2—Documents filed with the Federal Circuit Court of Australia

46 Filing of documents in the Federal Circuit Court of Australia

- (1) If a document is required or permitted to be filed in the Federal Circuit Court of Australia:
 - (a) the document is to be filed:
 - (i) at a registry of the Federal Circuit Court of Australia; or
 - (ii) in accordance with an arrangement under section 90 or 91; and
 - (b) the document is to be filed in accordance with the Rules of Court.
- (2) The Rules of Court may provide that the requirements of subsection (1) are taken to have been met in relation to a document:
 - (a) if the document, or its contents, is or are given to the Federal Circuit Court of Australia, in accordance with specified software requirements, by way of a specified kind of electronic transmission; or
 - (b) in such other circumstances (if any) as are ascertained in accordance with the Rules of Court.

47 Seal of the Federal Circuit Court of Australia

- (1) The Federal Circuit Court of Australia is to have a seal, and the design of the seal is to be determined by the Minister.
- (2) The seal of the Federal Circuit Court of Australia must be kept in such custody as the Chief Judge directs.
- (3) The seal of the Federal Circuit Court of Australia must be affixed to documents as provided by this or any other Act or by the Rules of Court.

48 Federal Circuit Court of Australia stamps

- (1) There are to be one or more Federal Circuit Court of Australia stamps. For this purpose, a *Federal Circuit Court of Australia stamp* is a stamp the design of which is, as nearly as practicable,

the same as the design of the seal of the Federal Circuit Court of Australia.

- (2) A document or a copy of a document marked with a Federal Circuit Court of Australia stamp is as valid and effectual as if it had been sealed with a seal of the Federal Circuit Court of Australia.
- (3) A Federal Circuit Court of Australia stamp must be affixed to documents as provided by this or any other Act or by the Rules of Court.

49 Writs etc.

- (1) All writs, commissions and process issued from the Federal Circuit Court of Australia must be:
 - (a) under the seal of the Federal Circuit Court of Australia; and
 - (b) signed by a Judge, a Registrar or an officer acting with the authority of the Chief Executive Officer.
- (2) Subsection (1) does not apply to writs, commissions and process signed and issued in accordance with an arrangement under section 90.

Note: See paragraph 90(1)(b).

- (3) To avoid doubt, subsection (1) does not apply to an order of the Federal Circuit Court of Australia.

Note: For orders, see section 74.

50 Proceedings may be instituted by application

- (1) Proceedings may be instituted in the Federal Circuit Court of Australia by way of application without the need for pleadings.
- (2) Subsection (1) has effect subject to the Rules of Court.

51 Limits on length of documents

- (1) The Federal Circuit Court of Australia or a Judge may give directions about limiting the length of documents required or permitted to be filed in the Federal Circuit Court of Australia.
- (2) Subsection (1) has effect subject to the Rules of Court.

Division 3—Conduct of proceedings

52 Venue

- (1) The Federal Circuit Court of Australia may sit at any place in Australia.
- (2) The Federal Circuit Court of Australia or a Judge may, at any stage of a proceeding in the Federal Circuit Court of Australia, order that:
 - (a) the proceeding; or
 - (b) a part of the proceeding;be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Federal Circuit Court of Australia or Judge imposes.

53 Determination of proceedings without a jury

A civil proceeding between parties in the Federal Circuit Court of Australia is to be determined without a jury.

54 Decisions without oral hearing

The Rules of Court may authorise the Federal Circuit Court of Australia or a Judge to make decisions in proceedings without an oral hearing if the parties to the proceedings have consented to the making of such decisions without an oral hearing.

55 Limits on the length of oral argument

- (1) The Federal Circuit Court of Australia or a Judge may give directions about limiting the time for oral argument in proceedings before the Federal Circuit Court of Australia.
- (2) Subsection (1) has effect subject to the Rules of Court.

56 Written submissions

- (1) The Federal Circuit Court of Australia or a Judge may give directions about the use of written submissions in proceedings before the Federal Circuit Court of Australia.

- (2) The Federal Circuit Court of Australia or a Judge may give directions limiting the length of written submissions in proceedings before the Federal Circuit Court of Australia.
- (3) Subsections (1) and (2) have effect subject to the Rules of Court.

57 Formal defects not to invalidate

- (1) Proceedings in the Federal Circuit Court of Australia are not invalidated by a formal defect or an irregularity, unless the Federal Circuit Court of Australia is of opinion that:
 - (a) substantial injustice has been caused by the defect or irregularity; and
 - (b) the injustice cannot be remedied by an order of the Federal Circuit Court of Australia.
- (2) The Federal Circuit Court of Australia or a Judge may, on such conditions (if any) as the Federal Circuit Court of Australia or Judge thinks fit, make an order declaring that the proceeding is not invalid:
 - (a) by reason of a defect that it or he or she considers to be formal; or
 - (b) by reason of an irregularity.

Division 4—Evidence

58 Oaths and affirmations

- (1) A Judge may require and administer all necessary oaths and affirmations for the purposes of the Federal Circuit Court of Australia.
- (2) A Judge may cause to be administered all necessary oaths and affirmations for the purposes of the Federal Circuit Court of Australia. For this purpose, the Federal Circuit Court of Australia may, either orally or in writing, authorise any person (whether in or outside Australia) to administer oaths and affirmations.
- (3) The Chief Executive Officer may, by written instrument, authorise:
 - (a) a Registrar; or
 - (b) a member of the staff of the Federal Circuit Court of Australia;to administer oaths and affirmations for the purposes of the Federal Circuit Court of Australia.

Note: See also paragraph 90(1)(d).

59 Swearing of affidavits etc.

- (1) An affidavit to be used in a proceeding in the Federal Circuit Court of Australia may be sworn or affirmed within Australia before:
 - (a) a Judge; or
 - (b) a Registrar; or
 - (c) a justice of the peace; or
 - (d) a commissioner for affidavits; or
 - (e) a commissioner for declarations; or
 - (f) a person who is authorised to administer oaths or affirmations for the purposes of:
 - (i) the Federal Circuit Court of Australia; or
 - (ii) the High Court; or
 - (iii) the Federal Court; or
 - (iv) the Family Court; or
 - (v) the Supreme Court of a State or Territory; or

- (g) a person before whom affidavits can be sworn or affirmed under the *Evidence Act 1995*.
- (2) An affidavit to be used in a proceeding in the Federal Circuit Court of Australia may be sworn or affirmed at a place outside Australia before:
- (a) a commissioner of the High Court who is authorised to administer oaths or affirmations in that place for the purposes of the High Court; or
 - (b) a commissioner of the Supreme Court of a State or Territory for taking affidavits who is empowered and authorised to act in that place; or
 - (c) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising his or her function in that place; or
 - (d) an employee of the Commonwealth who is:
 - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place; or
 - (e) an employee of the Australian Trade Commission who is:
 - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place; or
 - (f) a notary public who is exercising his or her function in that place; or
 - (g) a person who is:
 - (i) qualified to administer an oath or affirmation in that place; and
 - (ii) certified by the person mentioned in any of paragraphs (b), (c), (d), (e) and (f), or by the superior court of that place, to be so qualified.
- (3) An affidavit sworn or affirmed outside Australia otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Federal Circuit Court of Australia in circumstances provided by the Rules of Court.

Note: See also paragraph 90(1)(d).

60 Orders and commissions for examination of witnesses

The Federal Circuit Court of Australia or a Judge may, for the purposes of any proceeding before it or him or her:

- (a) order the examination of a person upon oath or affirmation before the Federal Circuit Court of Australia, a Judge, an officer of the Federal Circuit Court of Australia or other person, at any place within Australia; or
- (b) order that a commission issue to a person, either within or beyond Australia, authorising him or her to take the testimony on oath or affirmation of a person;

and the Federal Circuit Court of Australia or a Judge may:

- (c) by the same or a subsequent order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) empower any party to the proceeding to give in evidence in the proceeding the testimony so taken on such terms (if any) as the Federal Circuit Court of Australia or Judge directs.

62 Time limits on giving of testimony

- (1) The Federal Circuit Court of Australia or a Judge may give directions about limiting the time for the giving of testimony in proceedings before the Federal Circuit Court of Australia.
- (2) Subsection (1) has effect subject to the Rules of Court.

63 Federal Circuit Court of Australia may question witnesses

- (1) The Federal Circuit Court of Australia may:
 - (a) put a question to a person giving testimony in a proceeding if, in the opinion of the Federal Circuit Court of Australia, the question is likely to assist in:
 - (i) the resolution of a matter in dispute in the proceeding; or
 - (ii) the expeditious and efficient conduct of the proceeding; and
 - (b) require the person to answer the question.
- (2) Subsection (1) has effect subject to the Rules of Court.

- (3) This section has effect in addition to, and not instead of, any other powers that the Federal Circuit Court of Australia may have to ask questions.

64 Evidence may be given orally or by affidavit

- (1) Testimony in a proceeding in the Federal Circuit Court of Australia is to be given orally or by affidavit.
- (2) However, the Federal Circuit Court of Australia or a Judge may:
- (a) direct that particular testimony is to be given orally; or
 - (b) direct that particular testimony is to be given by affidavit.
- (3) Subsections (1) and (2) have effect subject to:
- (a) any other provision of this Act; and
 - (b) the Rules of Court; and
 - (c) any other law of the Commonwealth.

Cross-examination of person who makes an affidavit

- (4) If:
- (a) a person makes an affidavit; and
 - (b) a party to a proceeding in the Federal Circuit Court of Australia adduces, or proposes to adduce, evidence by the affidavit;
- a party to the proceeding may request the person to appear as a witness to be cross-examined with respect to the matters in the affidavit.
- (5) Subsection (4) has effect subject to the Rules of Court.
- (6) If:
- (a) a request under subsection (4) is given to a person who has made an affidavit; and
 - (b) the person does not appear as a witness to be cross-examined with respect to the matters in the affidavit;
- the Federal Circuit Court of Australia is to give the matters in the affidavit such weight as the Federal Circuit Court of Australia thinks fit in the circumstances.

65 Offences by witness

- (1) A person is guilty of an offence if:
- (a) the person has been duly served with a subpoena or summons to appear as a witness before the Federal Circuit Court of Australia; and
 - (b) the person:
 - (i) fails to attend as required by the subpoena or summons; or
 - (ii) fails to appear and report himself or herself from day to day unless excused, or released from further attendance, by the Federal Circuit Court of Australia.

Penalty: Imprisonment for 6 months.

- (2) A person is guilty of an offence if the person, while appearing as a witness before the Federal Circuit Court of Australia:
- (a) refuses or fails to be sworn or to make an affirmation; or
 - (b) refuses or fails to answer a question that he or she is required by the Federal Circuit Court of Australia to answer; or
 - (c) refuses or fails to produce a document that he or she is required by the Federal Circuit Court of Australia or by a subpoena or summons issued from the Federal Circuit Court of Australia to produce.

Penalty: Imprisonment for 6 months.

- (3) This section does not limit the power of the Federal Circuit Court of Australia to punish persons for contempt of the Federal Circuit Court of Australia, but a person must not be punished under this section and for contempt of the Federal Circuit Court of Australia in respect of the same act or omission.

Note: See also Division 13A of Part VII, and Parts XIII and XIII A, of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (4) Chapter 2 of the *Criminal Code* applies to all offences against this section.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 5—Use of video links or audio links

66 Testimony by video link or audio link

- (1) The Federal Circuit Court of Australia or a Judge may, for the purposes of any proceeding, direct or allow testimony to be given by video link or audio link.

Note: See also section 69.

- (2) The testimony must be given on oath or affirmation unless:
- (a) the person giving the testimony is in a foreign country; and
 - (b) either:
 - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceeding; or
 - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceeding; and
 - (c) the Federal Circuit Court of Australia or a Judge is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the Federal Circuit Court of Australia or the Judge is to give the testimony such weight as the Federal Circuit Court of Australia or the Judge thinks fit in the circumstances.
- (4) The power conferred on the Federal Circuit Court of Australia or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Circuit Court of Australia's own initiative or on the Judge's own initiative, as the case may be.
- (5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

67 Appearance of persons by video link or audio link

- (1) The Federal Circuit Court of Australia or a Judge may, for the purposes of any proceeding, direct or allow a person to appear before the Federal Circuit Court of Australia or the Judge by way of video link or audio link.

Note: See also section 69.

- (2) The power conferred on the Federal Circuit Court of Australia or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Circuit Court of Australia's own initiative or on the Judge's own initiative, as the case may be.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

68 Making of submissions by video link or audio link

- (1) The Federal Circuit Court of Australia or a Judge may, for the purposes of any proceeding, direct or allow a person to make a submission to the Federal Circuit Court of Australia or the Judge by way of video link or audio link.

Note: See also section 69.

- (2) The power conferred on the Federal Circuit Court of Australia or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Circuit Court of Australia's own initiative or on the Judge's own initiative, as the case may be.
- (3) This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

69 Conditions for use of video links and audio links

Video link

- (1) The Federal Circuit Court of Australia or a Judge must not exercise the power conferred by subsection 66(1), 67(1) or 68(1) in relation to a video link unless the Federal Circuit Court of Australia or the Judge is satisfied that the following conditions are met in relation to the video link:
 - (a) the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom or place to see and hear the person (the *remote person*) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;as the case may be, by way of the video link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting;
 - (c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the video link;
 - (d) such other conditions (if any) as are imposed by the Federal Circuit Court of Australia or the Judge.
- (2) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (1)(c) include conditions relating to:
 - (a) the form of the video link; and
 - (b) the equipment, or class of equipment, used to establish the link; and
 - (c) the layout of cameras; and
 - (d) the standard of transmission; and
 - (e) the speed of transmission; and
 - (f) the quality of communication.

Audio link

- (3) The Federal Circuit Court of Australia or a Judge must not exercise the power conferred by subsection 66(1), 67(1) or 68(1) in relation to an audio link unless the Federal Circuit Court of Australia or the Judge is satisfied that the following conditions are met in relation to the audio link:
- (a) the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the **remote person**) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;as the case may be, by way of the audio link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting;
 - (c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the audio link;
 - (d) such other conditions (if any) as are imposed by the Federal Circuit Court of Australia or the Judge.
- (4) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (3)(c) include conditions relating to:
- (a) the form of the audio link; and
 - (b) the equipment, or class of equipment, used to establish the audio link; and
 - (c) the standard of transmission; and
 - (d) the speed of transmission; and
 - (e) the quality of communication.

Eligible persons

- (5) For the purposes of the application of this section to a particular proceeding, **eligible persons** are such persons as the Federal Circuit Court of Australia or a Judge considers should be treated as eligible persons for the purposes of that proceeding.

70 Putting documents to a person by video link or audio link

If, in the course of an examination or appearance of a person by video link or audio link in accordance with this Division, it is necessary to put a document to the person, the Federal Circuit Court of Australia or a Judge may direct or allow the document to be put to the person:

- (a) if the document is physically present in the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting:
 - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
 - (ii) by causing the transmitted copy to be put to the person; or
- (b) if the document is physically present in the place where the person is located:
 - (i) by causing the document to be put to the person; and
 - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting.

71 Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give testimony by video link or audio link in accordance with this Division may be administered:

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Federal Circuit Court of Australia or the Judge is sitting; or
- (b) if the Federal Circuit Court of Australia or the Judge allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

72 Expenses

- (1) The Federal Circuit Court of Australia or a Judge may make such orders as the Federal Circuit Court of Australia or the Judge thinks just for the payment of expenses incurred in connection with:
 - (a) the giving of testimony by video link or audio link in accordance with this Division; or
 - (b) the appearance of a person by video link or audio link in accordance with this Division; or
 - (c) the making of submissions by video link or audio link in accordance with this Division.
- (2) Subsection (1) has effect subject to the regulations.

73 New Zealand proceedings

This Division does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994*.

Division 6—Orders and judgments

74 Orders

- (1) An order of the Federal Circuit Court of Australia must:
 - (a) be in writing; or
 - (b) be reduced to writing as soon as practicable.
- (2) An order of the Federal Circuit Court of Australia may be authenticated in a manner specified in the Rules of Court.

75 Reserved judgments etc.

- (1) If:
 - (a) the Federal Circuit Court of Australia reserves judgment in a proceeding; and
 - (b) the Judge who heard the proceeding subsequently prepares orders and reasons, but is not available to publish those orders and reasons;those orders and reasons may be made public by another Judge on behalf of the Judge who heard the proceeding.
- (2) If:
 - (a) the Federal Circuit Court of Australia reserves reasons for its decision in a proceeding; and
 - (b) the Judge who heard the proceeding has prepared reasons, but is not available to publish those reasons;those reasons may be made public by another Judge on behalf of the Judge who heard the proceeding.

76 Interest up to judgment

- (1) This section does not apply to family law or child support proceedings.

Note: See section 117B of the *Family Law Act 1975* in relation to family law or child support proceedings.

Application for interest order

- (2) A party to proceedings that are:

Section 76

- (a) in the Federal Circuit Court of Australia; and
- (b) for the recovery of any money (including any debt or damages or the value of any goods) in respect of a particular cause of action;

may apply to the Federal Circuit Court of Australia or a Judge for an order under subsection (3).

Interest order

- (3) If:
- (a) an application is made under subsection (2); and
 - (b) the Federal Circuit Court of Australia or the Judge is not satisfied that good cause has been shown for not making an order under this subsection;
- the Federal Circuit Court of Australia or the Judge must either:
- (c) order that there be included in the sum for which judgment is given interest at such rate as the Federal Circuit Court of Australia or the Judge thinks fit on the whole or any part of the money for the whole or any part of the period between:
 - (i) the date when the cause of action arose; and
 - (ii) the date as of which judgment is entered; or
 - (d) without proceeding to calculate interest in accordance with paragraph (c), order that there be included in the sum for which judgment is given a lump sum in lieu of any such interest.

Exceptions

- (4) Subsection (3) does not:
- (a) authorise the giving of interest upon interest or of a sum in lieu of such interest; or
 - (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of an agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange; or
 - (d) limit the operation of any enactment or rule of law which, apart from this section, provides for the award of interest; or

- (e) authorise the giving of interest, or a sum in lieu of interest, otherwise than by consent, upon any sum for which judgment is given by consent.
- (5) If:
- (a) the sum for which judgment is given (the *relevant sum*) includes; or
 - (b) the Federal Circuit Court of Australia in its absolute discretion, or a Judge in that Judge's absolute discretion, determines that the relevant sum includes;
- any amount for:
- (c) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest or claiming a sum in lieu of interest; or
 - (d) compensation for loss or damage to be incurred or suffered after the date on which judgment is given; or
 - (e) exemplary or punitive damages;
- interest, or a sum in lieu of interest, must not be given under subsection (3) in respect of:
- (f) any such amount; or
 - (g) so much of the relevant sum as, in the opinion of the Federal Circuit Court of Australia or the Judge, represents any such amount.
- (6) Subsection (5) does not preclude:
- (a) interest; or
 - (b) a sum in lieu of interest;
- being given, under this section, upon compensation in respect of a liability of the kind referred to in paragraph (5)(c), where that liability has been met by the applicant, as from the date upon which that liability was so met.

77 Interest on judgment

- (1) This section does not apply to family law or child support proceedings.

Note: See section 117B of the *Family Law Act 1975* in relation to family law or child support proceedings.

Section 78

- (2) A judgment debt under a judgment of the Federal Circuit Court of Australia carries interest from the date as of which the judgment is entered.
- (3) Interest is payable:
 - (a) at such rate as is fixed by the Rules of Court; or
 - (b) if the Federal Circuit Court of Australia, in a particular case, thinks that justice so requires—at such lower rate as the Federal Circuit Court of Australia determines.

78 Enforcement of judgment

- (1) This section does not apply to family law or child support proceedings.

Note: See Division 13A of Part VII, and Parts XIII and XIII A, of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) A person in whose favour a judgment of the Federal Circuit Court of Australia is given is entitled to the same remedies for enforcement of the judgment in a State or Territory, by execution or otherwise, as are allowed in like cases by the laws of that State or Territory to persons in whose favour a judgment of the Supreme Court of that State or Territory is given.
- (3) Subsection (2) has effect subject to the Rules of Court.
- (4) This section does not affect the operation of any provision made by or under any other Act, or by the Rules of Court, for the execution and enforcement of judgments of the Federal Circuit Court of Australia.

Division 7—Costs

79 Costs

- (1) This section does not apply to family law or child support proceedings or proceedings in relation to a matter arising under the *Fair Work Act 2009*.

Note: See section 117 of the *Family Law Act 1975* in relation to family law or child support proceedings. See section 570 of the *Fair Work Act 2009* for proceedings in relation to matters arising under that Act.

- (2) The Federal Circuit Court of Australia or a Judge has jurisdiction to award costs in all proceedings before the Federal Circuit Court of Australia (including proceedings dismissed for want of jurisdiction) other than proceedings in respect of which any other Act provides that costs must not be awarded.
- (3) Except as provided by the Rules of Court or any other Act, the award of costs is in the discretion of the Federal Circuit Court of Australia or Judge.

80 Security for costs

- (1) This section does not apply to family law or child support proceedings.

Note: See section 117 of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) The Federal Circuit Court of Australia or a Judge may order an applicant in a proceeding in the Federal Circuit Court of Australia to give security for the payment of costs that may be awarded against him or her.
- (3) The security is to be of such amount, and given at such time and in such manner and form, as the Federal Circuit Court of Australia or Judge directs.
- (4) The Federal Circuit Court of Australia or a Judge may:
- (a) reduce or increase the amount of security ordered to be given; and
 - (b) vary the time at which, or manner or form in which, the security is to be given.

Part 6 Practice and procedure

Division 7 Costs

Section 80

- (5) If security, or further security, is not given in accordance with an order under this section, the Federal Circuit Court of Australia or a Judge may order that the proceeding be:
 - (a) dismissed; or
 - (b) stayed until security or further security is given in accordance with the first-mentioned order.

- (6) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for or in relation to the giving of security.

Division 8—Rules of Court

81 Rules of Court

- (1) The Judges, or a majority of them, may make Rules of Court:
 - (a) making provision for or in relation to the practice and procedure to be followed in the Federal Circuit Court of Australia (including the practice and procedure to be followed in registries of the Federal Circuit Court of Australia); or
 - (b) making provision for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Federal Circuit Court of Australia; or
 - (c) prescribing matters required or permitted by:
 - (i) any other provision of this Act; or
 - (ii) any other law of the Commonwealth;to be prescribed by the Rules of Court.
- (2) Rules of Court have effect subject to any provision made by another Act, or by rules or regulations under another Act, with respect to the practice and procedure in particular matters.
- (3) The *Legislative Instruments Act 2003* (other than sections 5, 6, 7, 10, 11 and 16 of that Act) applies in relation to rules of court made by the Court under this Act or another Act:
 - (a) as if a reference to a legislative instrument were a reference to a rule of court; and
 - (b) as if a reference to a rule-maker were a reference to the Chief Judge acting on behalf of the Judges; and
 - (c) subject to such further modifications or adaptations as are provided for in regulations made under section 120 of this Act.
- (4) Despite the fact that section 16 of the *Legislative Instruments Act 2003* does not apply to rules of court made by the Court under this Act or another Act, the Office of Parliamentary Counsel (established by subsection 2(1) of the *Parliamentary Counsel Act 1970*) may provide assistance in the drafting of any of those Rules if the Chief Judge so desires.

82 Documents

- (1) The Rules of Court may make provision for or in relation to:
 - (a) pleading; and
 - (b) appearance under protest; and
 - (c) interrogatories; and
 - (d) discovery, production and inspection of documents; and
 - (e) the making of applications for dissolution of marriage jointly by both parties to the marriage; and
 - (f) the forms to be used for the purposes of proceedings in the Federal Circuit Court of Australia.
- (2) The Rules of Court may make provision for:
 - (a) the amendment of a document in a proceeding; or
 - (b) leave to amend a document in a proceeding;even if the effect of the amendment would be to allow a person to seek a remedy in respect of a legal or equitable claim that would have been barred because of the expiry of a period of limitation if the remedy had originally been sought at the time of the amendment.

83 Service

The Rules of Court may make provision for or in relation to:

- (a) the service and execution of the process of the Federal Circuit Court of Australia, including:
 - (i) the manner in which and the extent to which the process of the Federal Circuit Court of Australia, or notice of any such process, may be served out of the jurisdiction of the Federal Circuit Court of Australia; and
 - (ii) dispensing with service; and
- (b) the issue by the Federal Circuit Court of Australia of letters of request for the service in another country of any process of the Federal Circuit Court of Australia; and
- (c) the service by officers of the Federal Circuit Court of Australia, in Australia, of the process of a court of another country or of a part of another country, in accordance with:
 - (i) a request of that court or of an authority of that country or of that part of that country; or

- (ii) an arrangement in force between Australia and the government of that other country or of that part of that other country.

84 Evidence

The Rules of Court may make provision for or in relation to:

- (a) subpoenas; and
- (b) summonses; and
- (c) the attendance of witnesses; and
- (d) the administration of oaths and affirmations; and
- (e) the means by which particular facts may be proved and the mode in which evidence of particular facts may be given; and
- (f) the reception from New Zealand of copies of documents reproduced by facsimile telegraphy; and
- (g) the reception from New Zealand of evidence or submissions by video link or audio link; and
- (h) issuing subpoenas for service in New Zealand and the service of such subpoenas; and
- (i) the form to accompany a subpoena for service in New Zealand.

85 Orders and judgments

The Rules of Court may make provision for or in relation to:

- (a) the enforcement and execution of judgments of the Federal Circuit Court of Australia; and
- (b) the stay of proceedings in, or under judgments of, the Federal Circuit Court of Australia or another court; and
- (c) the stay of proceedings in, or under decisions of, tribunals; and
- (d) the procedure of the Federal Circuit Court of Australia exercising its powers (whether under section 112AP of the *Family Law Act 1975* or otherwise) to deal with a person for contempt of the Federal Circuit Court of Australia; and
- (e) the form in which the Federal Circuit Court of Australia or a Judge is to give reasons for decisions.

86 Costs

The Rules of Court may make provision for or in relation to:

- (a) the giving of security; and
- (b) the costs of proceedings in the Federal Circuit Court of Australia; and
- (c) the fees to be charged by practitioners practising in the Federal Circuit Court of Australia for the work done by them in relation to proceedings in the Federal Circuit Court of Australia and the taxation of their bills of costs, either as between party and party or as between solicitor and client; and
- (d) the kinds of proceedings or circumstances in which each party is required to bear his or her own costs.

87 General

(1) The Rules of Court may make provision for or in relation to:

- (a) trial management; and
- (b) the custody of convicted persons; and
- (c) the prevention or termination of vexatious proceedings; and
- (d) the summary disposal of proceedings; and
- (e) authorising the Federal Circuit Court of Australia to refer to an officer of the court, for:
 - (i) investigation; and
 - (ii) report; and
 - (iii) recommendation;claims or applications for, or relating to, any matters before the Federal Circuit Court of Australia; and
- (f) authorising an officer making an investigation mentioned in paragraph (e) to:
 - (i) take evidence on oath or affirmation; and
 - (ii) receive in evidence a report from a family consultant under section 55A or 62G of the *Family Law Act 1975*; and
 - (iii) receive in evidence a report from a person who has had dealings with a party to a matter under investigation under section 65F, 65L, 65LA, 70NEB or 70NEG of the *Family Law Act 1975*; and

- (fa) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (e) for the purposes of giving evidence or producing books or documents; and
 - (g) the procedure of the Federal Circuit Court of Australia on receiving a report of an officer who has made an investigation referred to in paragraph (e); and
 - (h) the appointment, by the Minister, of a guardian *ad litem* for a party in proceedings; and
 - (i) both:
 - (i) the forfeiture of recognisances; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such recognisances or from any person who has become a surety; and
 - (j) the attachment of money payable by:
 - (i) the Commonwealth, a State, a Territory or the Administration of a Territory; or
 - (ii) an authority of the Commonwealth, of a State or of a Territory;
(other than money as to which it is provided by any law of the Commonwealth, of a State or of a Territory that the money is not liable to attachment); and
 - (k) the death of parties; and
 - (l) the duties of officers of the Federal Circuit Court of Australia.
- (2) The Rules of Court may make provision for or in relation to:
- (a) attendance at family counselling by parties to proceedings under the *Family Law Act 1975*; and
 - (b) attendance at family dispute resolution by parties to proceedings under the *Family Law Act 1975*; and
 - (c) the giving of advice and assistance by family consultants to people involved in proceedings under the *Family Law Act 1975*; and
 - (d) the participation by parties to proceedings under the *Family Law Act 1975* in courses, programs and other services that the parties are ordered by the court to participate in; and
 - (e) the use, for the purposes of proceedings under the *Family Law Act 1975*, by the Federal Circuit Court of Australia and officers of the Court in family law and child support
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proceedings, of reports about the future conduct of the proceedings that have been prepared by persons who dealt with the parties in accordance with Rules of Court made under paragraphs (a), (b), (c) or (d).

88 Incidental matters

The Rules of Court may prescribe matters incidental to the matters that, under:

- (a) any other provision of this Act; or
 - (b) any other law of the Commonwealth;
- are required or permitted to be prescribed by the Rules of Court.

Part 6A—Suppression and non-publication orders

Division 1—Preliminary

88A Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

88B Powers of Federal Circuit Court of Australia not affected

This Part does not limit or otherwise affect any powers that the Federal Circuit Court of Australia has apart from this Part to regulate its proceedings or to deal with a contempt of the Federal Circuit Court of Australia.

88C Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

88D This Part does not apply to proceedings under the *Family Law Act 1975*

This Part applies to proceedings in the Federal Circuit Court of Australia other than proceedings under the *Family Law Act 1975*.

Note: Part XIA of the *Family Law Act 1975* deals with suppression and non-publication orders in proceedings under that Act.

Division 2—Suppression and non-publication orders

88E Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the Federal Circuit Court of Australia must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

88F Power to make orders

- (1) The Federal Circuit Court of Australia may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in a proceeding before the Federal Circuit Court of Australia or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Federal Circuit Court of Australia; or
 - (b) information that relates to a proceeding before the Federal Circuit Court of Australia and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the Federal Circuit Court of Australia.
- (2) The Federal Circuit Court of Australia may make such orders as it thinks appropriate to give effect to an order under subsection (1).

88G Grounds for making an order

- (1) The Federal Circuit Court of Australia may make a suppression order or non-publication order on one or more of the following grounds:
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;

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- (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

88H Procedure for making an order

- (1) The Federal Circuit Court of Australia may make a suppression order or non-publication order on its own initiative or on the application of:
- (a) a party to the proceeding concerned; or
 - (b) any other person considered by the Federal Circuit Court of Australia to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the Federal Circuit Court of Australia on an application for a suppression order or non-publication order:
- (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the Federal Circuit Court of Australia's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during a proceeding or after a proceeding has concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the Federal Circuit Court of Australia thinks fit and specifies in the order.

- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

88J Interim orders

- (1) If an application is made to the Federal Circuit Court of Australia for a suppression order or non-publication order, the Federal Circuit Court of Australia may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the Federal Circuit Court of Australia, until the application is determined.
- (2) If an order is made as an interim order, the Federal Circuit Court of Australia must determine the application as a matter of urgency.

88K Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the Federal Circuit Court of Australia and specified in the order.
- (2) In deciding the period for which an order is to operate, the Federal Circuit Court of Australia is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

88L Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
- (b) in compliance with any procedure adopted by the Federal Circuit Court of Australia for informing a news publisher of

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the existence and content of a suppression order or non-publication order made by the Federal Circuit Court of Australia.

88M Contravention of order

- (1) A person commits an offence if:
 - (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by the Federal Circuit Court of Australia under section 88F.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Part 7—Management of the Federal Circuit Court of Australia

Division 1—Administration of the Federal Circuit Court of Australia

89 Management of administrative affairs of the Federal Circuit Court of Australia

- (1) The Chief Judge is responsible for managing the administrative affairs of the Federal Circuit Court of Australia.
- (3) For this purpose, the Chief Judge has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:
 - (a) entering into contracts; and
 - (b) acquiring or disposing of real and personal property.
- (3A) The Chief Judge's powers under subsection (3) are in addition to any powers given to the Chief Judge by this Act or any other Act.
- (4) Despite subsection (3), the Chief Judge must not enter into a contract under which the Commonwealth is to pay or receive an amount exceeding:
 - (a) \$1 million; or
 - (b) if a higher amount is prescribed—that higher amount; except with the approval of the Minister.

90 Arrangements with other courts

- (1) The Chief Judge may arrange with the chief judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Federal Circuit Court of Australia any or all of the following functions:
 - (a) the receipt of documents to be lodged with or filed in the Federal Circuit Court of Australia;
 - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Federal Circuit Court of Australia;

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- (c) the authentication of orders of the Federal Circuit Court of Australia;
 - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Federal Circuit Court of Australia;
 - (e) such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement;
 - (f) such other non-judicial functions as the Federal Circuit Court of Australia considers appropriate.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Federal Circuit Court of Australia, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit Court of Australia in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Federal Circuit Court of Australia.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

91 Arrangements with agencies or organisations

- (1) The Chief Judge may arrange with the chief executive officer (however described) of:
- (a) an agency of the Commonwealth, a State or a Territory; or
 - (b) another organisation;
- for an employee or employees of the agency or organisation to:
- (c) receive, on behalf of the Federal Circuit Court of Australia, documents to be lodged with or filed in the Federal Circuit Court of Australia; or
 - (d) perform, on behalf of the Federal Circuit Court of Australia, other non-judicial functions of the Federal Circuit Court of Australia.

- (2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Federal Circuit Court of Australia, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit Court of Australia in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Federal Circuit Court of Australia.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

92 Arrangements for sharing courtrooms and other facilities

The Chief Judge may make arrangements with the chief judicial officer (however described) of another Australian court for:

- (a) the Federal Circuit Court of Australia to sit in rooms of the other court; and
- (b) the Federal Circuit Court of Australia to share registry facilities and other facilities with the other court.

93 Advisory committees

- (1) The Federal Circuit Court of Australia may appoint committees consisting of Judges, or of Judges and other persons, for the purpose of advising the Federal Circuit Court of Australia in relation to:
 - (a) the exercise of the powers of the Federal Circuit Court of Australia under this Act; or
 - (b) the making of the Rules of Court.
- (2) The Chief Judge may appoint committees consisting of Judges, or of Judges and other persons, for the purpose of advising the Chief Judge in relation to the management of the administrative affairs of the Federal Circuit Court of Australia.

Division 1A—Administration of Federal Circuit Court of Australia's family services

93A Chief Executive Officer has functions of family consultants

- (1) The Chief Executive Officer has all of the functions conferred on family consultants by section 11A of the *Family Law Act 1975*, and any associated powers and duties.
- (2) Without limiting subsection (1), sections 11C (admissibility of communications with family consultants) and 11D (immunity of family consultants) of that Act apply to the Chief Executive Officer while the Chief Executive Officer is performing the functions of a family consultant.
- (3) The Chief Executive Officer is responsible for administering the functions of family consultants appointed by the Chief Executive Officer.

93B Chief Executive Officer may delegate powers and functions that relate to family consultants

- (1) The Chief Executive Officer may, in writing, delegate to a family consultant any of the Chief Executive Officer's powers, functions and duties in relation to the functions of family consultants mentioned in section 11A of the *Family Law Act 1975*.
- (2) A delegate is, in the exercise of a delegated power, function or duty, subject to the directions of the Chief Executive Officer.

93C Chief Executive Officer may give directions that relate to family services functions

The Chief Executive Officer may give directions that relate to:

- (a) a Court officer's functions as a family consultant; or
- (b) a Court officer's or staff member's functions as a family counsellor or family dispute resolution practitioner.

93D Chief Executive Officer may authorise officer or staff member to act as family counsellor or family dispute resolution practitioner

- (1) The Chief Executive Officer may authorise an officer or staff member of the Federal Circuit Court of Australia to provide family counselling under the *Family Law Act 1975*.
- (2) The Chief Executive Officer may authorise an officer or staff member of the Federal Circuit Court of Australia to provide family dispute resolution under the *Family Law Act 1975*.
- (3) If an officer who is a family consultant also becomes a family counsellor, or family dispute resolution practitioner, because of an authorisation under this section:
 - (a) section 11C of the *Family Law Act 1975* (admissibility of communications with family consultants) does not apply to the officer at any time while the officer is acting as a family counsellor or family dispute resolution practitioner; and
 - (b) the officer must not perform the functions of a family consultant in relation to particular proceedings, if the officer has conducted family counselling or family dispute resolution with a party to those proceedings.

Division 2—Chief Executive Officer

94 Chief Executive Officer

There is to be a Chief Executive Officer of the Federal Circuit Court of Australia.

95 Personnel provisions relating to the Chief Executive Officer

Schedule 2 has effect.

96 Functions of the Chief Executive Officer

- (1) In managing the administrative affairs of the Federal Circuit Court of Australia, the Chief Judge is assisted by the Chief Executive Officer.
- (2) The Chief Executive Officer has the power to do all things necessary or convenient to be done for the purpose of assisting the Chief Judge under subsection (1).
- (3) In particular, the Chief Executive Officer may act on behalf of the Chief Judge in relation to the administrative affairs of the Federal Circuit Court of Australia.
- (4) The Chief Judge may give the Chief Executive Officer directions relating to the exercise of the Chief Executive Officer's powers under this Act.

97 Staff powers

- (1) For the purposes of the *Public Service Act 1999*:
 - (a) the Chief Executive Officer and the APS employees assisting the Chief Executive Officer together constitute a Statutory Agency; and
 - (b) the Chief Executive Officer is the Head of that Statutory Agency.
- (2) Subsection (1) does not apply to an officer of the Federal Circuit Court of Australia, or a member of the staff of the Federal Circuit Court of Australia, who is also:
 - (a) an officer of the Federal Court or the Family Court; or

- (b) a member of the staff of the Federal Court or the Family Court.

Division 3—Registries

98 Registries

The Minister must cause to be established such Registries of the Federal Circuit Court of Australia as the Minister thinks fit.

Division 4—Other officers and staff

99 Officers of the Federal Circuit Court of Australia

- (1) In addition to the Chief Executive Officer, there are to be the following officers of the Federal Circuit Court of Australia:
 - (a) such Registrars as are necessary;
 - (b) the Sheriff of the Federal Circuit Court of Australia;
 - (c) such Deputy Sheriffs as are necessary;
 - (d) the Marshal of the Federal Circuit Court of Australia;
 - (e) such Deputy Marshals as are necessary;
 - (f) such family consultants as are necessary.
- (2) A person may be an officer of both the Federal Circuit Court of Australia and the Federal Court.
- (3) Subsection (2) has effect despite anything in this Act or the *Federal Court of Australia Act 1976*.
- (4) A person may be an officer of both the Federal Circuit Court of Australia and the Family Court.
- (5) Subsection (4) has effect despite anything in this Act or the *Family Law Act 1975*.
- (6) The officers of the Federal Circuit Court of Australia, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by:
 - (a) this Act; or
 - (b) the Rules of Court; or
 - (c) the Federal Circuit Court of Australia; or
 - (d) the Chief Judge.
- (7) The officers of the Federal Circuit Court of Australia are to be appointed by the Chief Executive Officer.

100 Arrangements relating to Commonwealth staff

The Chief Executive Officer may, on behalf of the Chief Judge, arrange with:

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- (a) an Agency Head (within the meaning of the *Public Service Act 1999*); or
- (b) an authority of the Commonwealth;
for the services of officer or employees of the Agency or authority to be made available for the purposes of the Federal Circuit Court of Australia.

101 Registrars

The Registrars of the Federal Circuit Court of Australia are to be persons engaged under the *Public Service Act 1999*.

102 Registrars' powers

- (1) The object of this section is to allow certain powers of the Federal Circuit Court of Australia to be exercised by a Registrar.
- (2) The following powers of the Federal Circuit Court of Australia may, if the Federal Circuit Court of Australia or a Judge so directs, be exercised by a Registrar:
 - (a) the power to dispense with the service of any process of the Federal Circuit Court of Australia;
 - (b) the power to make orders in relation to substituted service;
 - (c) the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to proceedings in the Federal Circuit Court of Australia or of any other person;
 - (d) the power to make orders in relation to interrogatories;
 - (e) the power, in proceedings in the Federal Circuit Court of Australia, to make an order adjourning the hearing of the proceedings;
 - (f) the power to make an order as to costs;
 - (g) the power to make an order about security for costs;
 - (h) the power to make an order exempting a party to proceedings in the Federal Circuit Court of Australia from compliance with a provision of the Rules of Court;
 - (i) a power of the Federal Circuit Court of Australia prescribed by the Rules of Court;
 - (j) the power, in family law or child support proceedings, to direct a party to the proceedings to answer particular questions;

- (k) the power to make orders under the following provisions of the *Family Law Act 1975*:
 - (i) sections 11F and 11G;
 - (ii) sections 13C and 13D;
 - (iii) subsection 65LA(1);
 - (iv) paragraph 70NEB(1)(a);
- (ka) the power to direct a family consultant to give a report under section 62G of the *Family Law Act 1975*;
- (l) the power, in family law or child support proceedings, to make:
 - (i) an order under section 66Q, 67E, 77 or 90SG of the *Family Law Act 1975*; or
 - (ii) an order for the payment of maintenance pending the disposal of the proceedings;
- (m) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;
- (n) the power to make orders (including an order for garnishment, seizure of property or sequestration) for the enforcement of maintenance orders under the *Family Law Act 1975*;
- (o) the power to make an order exempting a party to family law or child support proceedings from compliance with a provision of regulations under the *Family Law Act 1975*.

Costs

- (3) A Registrar must not exercise the powers referred to in paragraph (2)(f) except in relation to costs of, or in connection with, an application heard by a Registrar.

Limitation on exercise of certain powers under the Family Law Act 1975

- (4) Subsection 37A(2) of the *Family Law Act 1975* applies to the exercise of a power by a Registrar under subsection (2) of this section in a corresponding way to the way in which it applies to a delegation under subsection 37A(1) of that Act.
- (5) Subsection 37A(5) of the *Family Law Act 1975* applies to the exercise of a power referred to in paragraph (2)(l) of this section in

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a corresponding way to the way in which it applies to the power referred to in paragraph 37A(1)(f) of that Act.

Application of laws

- (6) The provisions of this Act, the Rules of Court and any other law of the Commonwealth that relate to the exercise by the Federal Circuit Court of Australia of a power that is, because of subsection (2), exercisable by a Registrar, apply in relation to an exercise of the power by a Registrar under this section as if references in those provisions to the Federal Circuit Court of Australia were references to the Registrar.

103 Delegation of powers to Registrars

- (1) The Rules of Court may delegate to the Registrars any of the powers of the Federal Circuit Court of Australia, including (but not limited to) all or any of the powers mentioned in subsection 102(2).
- (2) A power delegated by Rules of Court under subsection (1), when exercised by a Registrar, is taken, for all purposes, to have been exercised by the Federal Circuit Court of Australia or a Judge, as the case requires.
- (3) The delegation of a power by Rules of Court under subsection (1) does not prevent the exercise of the power by the Federal Circuit Court of Australia or a Judge.

Costs

- (4) If the power referred to in paragraph 102(2)(f) is delegated under subsection (1) of this section, a Registrar must not exercise the power except in relation to costs of, or in connection with, an application heard by a Registrar.

Limitation on exercise of certain powers under the Family Law Act 1975

- (5) Subsection 37A(2) of the *Family Law Act 1975* applies to a delegation under subsection (1) of this section in a corresponding way to the way in which it applies to a delegation under subsection 37A(1) of that Act.

- (6) Subsection 37A(5) of the *Family Law Act 1975* applies to the delegation of a power referred to in paragraph 102(2)(1) of this Act in a corresponding way to the way in which it applies to the delegation of power referred to in paragraph 37A(1)(f) of that Act.

Application of laws

- (7) The provisions of this Act, the Rules of Court and any other law of the Commonwealth that relate to the exercise by the Federal Circuit Court of Australia of a power that is, because of a delegation under subsection (1), exercisable by a Registrar, apply in relation to an exercise of the power by a Registrar under the delegation as if references in those provisions to the Federal Circuit Court of Australia were references to the Registrar.

104 Registrars—additional provisions

Registrars to act independently

- (1) Despite any other provision of this Act and any provision of the *Public Service Act 1999* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the way in which he or she exercises powers under subsection 102(2) or under a delegation under subsection 103(1).

Review of the exercise of Registrars' powers

- (2) A party to proceedings in which a Registrar has exercised any of the powers of the Federal Circuit Court of Australia under subsection 102(2) or under a delegation under subsection 103(1) may:
- (a) within the time prescribed by the Rules of Court; or
 - (b) within any further time allowed in accordance with the Rules of Court;
- apply to the Federal Circuit Court of Australia for review of that exercise of power.
- (3) The Federal Circuit Court of Australia may, on application under subsection (2) or on its own initiative, review an exercise of power by a Registrar under subsection 102(2) or under a delegation under subsection 103(1), and may make any order or orders it thinks fit in relation to the matter in respect of which the power was exercised.

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Referral to Court by Registrars

- (4) If an application for the exercise of a power referred to in subsection 102(2) or under a delegation under subsection 103(1) is to be, or is being, heard by a Registrar, and:
- (a) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under section 102 or under a delegation under subsection 103(1); or
 - (b) an application is made to the Registrar to arrange for the first-mentioned application to be determined by a Judge; he or she must not hear, or continue to hear, the application and must make appropriate arrangements for the application to be heard by a Judge.

105 Registrars—oath or affirmation of office

- (1) Before proceeding to discharge the duties of his or her office, a Registrar must take before a Judge an oath or affirmation in accordance with the form set out in whichever of subsection (2) or (3) is applicable.

Oath

- (2) This is the form of oath for the purposes of subsection (1):

I, _____, do swear that I will well and truly serve in the office of Registrar of the Federal Circuit Court of Australia and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God!

Affirmation

- (3) This is the form of affirmation for the purposes of subsection (1):

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of Registrar of the Federal Circuit Court of Australia and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

106 The Sheriff of the Federal Circuit Court of Australia

- (1) The Sheriff of the Federal Circuit Court of Australia is to be a person engaged under the *Public Service Act 1999*.

- (2) The Sheriff of the Federal Circuit Court of Australia is responsible for the service and execution of all process of the Federal Circuit Court of Australia directed to the Sheriff.
- (3) The Sheriff of the Federal Circuit Court of Australia is also responsible for dealing, on behalf of the Federal Circuit Court of Australia, with:
 - (a) the Australian Federal Police; and
 - (b) the police forces of the States and Territories;in relation to the service and execution of process of the Federal Circuit Court of Australia directed to members of any of those police forces.

107 Deputy Sheriffs

- (1) An officer or employee of the Commonwealth, a State or a Territory may be appointed by the Chief Executive Officer as a Deputy Sheriff of the Federal Circuit Court of Australia.
- (2) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

108 Authorised persons to assist the Sheriff or Deputy Sheriffs

The Sheriff or a Deputy Sheriff may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

109 The Marshal of the Federal Circuit Court of Australia

- (1) The Marshal of the Federal Circuit Court of Australia is to be a person engaged under the *Public Service Act 1999*.
- (2) The Marshal is responsible for:
 - (a) the security of the Federal Circuit Court of Australia; and
 - (b) the personal security of the Judges and officers and staff of the Federal Circuit Court of Australia.
- (3) The Marshal is also responsible for:
 - (a) taking, receiving and detaining all persons committed to his or her custody by the Federal Circuit Court of Australia; and

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- (b) discharging such persons when so directed by the Federal Circuit Court of Australia or otherwise required by law.

110 Deputy Marshals

- (1) An officer or employee of the Commonwealth, a State or a Territory may be appointed by the Chief Executive Officer as a Deputy Marshal of the Federal Circuit Court of Australia.
- (2) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers or functions of the Marshal.

111 Authorised persons to assist the Marshal or Deputy Marshals

The Marshal or a Deputy Marshal may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

111A Family consultants

Family consultants who are officers of the Federal Circuit Court of Australia are to be persons engaged under the *Public Service Act 1999*.

Note: Family consultants who are not officers of the Federal Circuit Court of Australia may be appointed under regulations made under the *Family Law Act 1975*. See paragraph 11B(b) of the *Family Law Act 1975*.

112 Staff of the Federal Circuit Court of Australia

- (1) There are to be such staff of the Federal Circuit Court of Australia as are necessary.
- (2) The staff of the Federal Circuit Court of Australia is to consist of persons engaged under the *Public Service Act 1999*.

113 Actions by or against Sheriff or Marshal

- (1) If the Sheriff or a Deputy Sheriff is a party to a proceeding in the Federal Circuit Court of Australia:
 - (a) all writs, summonses, orders, warrants, precepts, process and commands in the proceeding which should, in the ordinary course, be directed to the Sheriff must be directed to such

- disinterested person as the Federal Circuit Court of Australia or a Judge appoints; and
- (b) the person so appointed may execute and return them.
- (2) If the Marshal or a Deputy Marshal is a party to a proceeding in the Federal Circuit Court of Australia:
- (a) all writs, summonses, orders, warrants, precepts, process and commands in the proceeding which should, in the ordinary course, be directed to the Marshal must be directed to such disinterested person as the Federal Circuit Court of Australia or a Judge appoints; and
- (b) the person so appointed may execute and return them.

114 Receivers

- (1) The Federal Circuit Court of Australia may, at any stage of a proceeding, on such terms and conditions as the Federal Circuit Court of Australia thinks fit, appoint a receiver by interlocutory order in any case in which it appears to the Federal Circuit Court of Australia to be just or convenient so to do.
- (2) A receiver of any property appointed by the Federal Circuit Court of Australia may, without the previous leave of the Federal Circuit Court of Australia, be sued in respect of an act or transaction done or entered into by him or her in carrying on the business connected with the property.
- (3) When, in any cause pending in the Federal Circuit Court of Australia, a receiver appointed by the Federal Circuit Court of Australia is in possession of property, the receiver must manage and deal with the property:
- (a) according to the requirements of the laws of the State or Territory in which the property is situated; and
- (b) in the same manner as that in which the owner or possessor of the property would be bound to do if in possession of the property.

Division 5—Miscellaneous administrative matters

115 Engagement of consultants etc.

- (1) The Chief Executive Officer may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Federal Circuit Court of Australia.
- (1A) The Chief Executive Officer may engage persons to perform:
 - (a) family counselling services under the *Family Law Act 1975*;
or
 - (b) family dispute resolution services under the *Family Law Act 1975*.
- (2) An engagement under subsection (1) or (1A) is to be made:
 - (a) on behalf of the Commonwealth; and
 - (b) by written agreement.

116 Procedural information to be given to unrepresented parties

The Chief Executive Officer may give directions and issue guidelines to officers and staff of the Federal Circuit Court of Australia in relation to the procedural information to be given to parties (and, in particular, unrepresented parties) in order to enable them to formulate and present their cases.

117 Annual report

- (1) As soon as practicable after 30 June in each financial year, the Chief Judge must prepare and give to the Minister a report of the management of the administrative affairs of the Federal Circuit Court of Australia during the financial year.
- (2) The report must include:
 - (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*; and
 - (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

117A Delegation of the administrative powers of the Chief Judge

The Chief Judge may, in writing, delegate all or any of his or her powers under section 89 to any one or more of the Judges.

118 Proceedings arising out of administration of the Federal Circuit Court of Australia

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Federal Circuit Court of Australia under this Part, including any proceeding relating to anything done by the Chief Executive Officer under this Part, may be instituted by or against the Commonwealth, as the case requires.

118A Protection of persons involved in handling etc. complaints

- (1) In exercising powers or performing functions under paragraph 12(3)(c) and subsection 12(3AA), or assisting in exercising those powers or performing those functions, a complaint handler has the same protection and immunity as a Justice of the High Court.
- (2) In authorising a person or body under subsection 12(3AB), the Chief Judge has the same protection and immunity as a Justice of the High Court.
- (3) A witness requested to attend, or appearing, before a complaint handler handling a complaint has the same protection, and is subject to the same liabilities in a proceeding, as a witness in a case tried by the High Court.
- (4) A legal practitioner assisting, or appearing on behalf of a person before, a complaint handler handling a complaint has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

Part 8—Miscellaneous

119 References in other laws to a Judge of the Federal Circuit Court of Australia

A reference in a law of the Commonwealth other than this Act to a Judge of the Federal Circuit Court of Australia includes a reference to the Chief Judge of that Court.

Note: For the interpretation of this Act, see section 5.

120 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.
- (3) The regulations may make provision for or in relation to the following:
 - (a) fees to be paid in respect of either or both of the following:
 - (i) proceedings in the Federal Circuit Court of Australia;
 - (ii) the service or the execution of the process of the Federal Circuit Court of Australia by officers of the Federal Circuit Court of Australia;
 - (b) exemptions from fees covered by paragraph (a);
 - (c) the waiver, remission or refund of fees covered by paragraph (a).
- (4) The regulations may make provision modifying or adapting provisions of the *Legislative Instruments Act 2003* (other than the provisions of Part 5 of that Act or any other provisions whose modifications or adaptation would affect the operation of that Part) in their application to the Federal Circuit Court of Australia.

Schedule 1—Personnel provisions relating to Judges

Note: See section 9.

Part 1—Appointment of Judges

1 Appointment of Judges

- (1) A Judge is to be appointed by the Governor-General by commission.
- (2) A person is not to be appointed as a Judge unless he or she has been enrolled as a legal practitioner (however described) of:
 - (a) the High Court; or
 - (b) a Supreme Court of a State or Territory;for at least 5 years.
- (3) A person must not be appointed as a Judge if he or she has attained the age of 70 years.
- (4) The appointment of a Judge is to be for a term expiring upon his or her attaining the age of 70 years.
- (5) The Chief Judge holds office on a full-time basis.
- (6) A Judge (other than the Chief Judge) holds office on a full-time basis unless the Judge's commission of appointment specifies that the Judge holds office on a part-time basis.
- (7) A reference in this clause to the *appointment* of a Judge is to be read as including:
 - (a) a reference to the appointment of a person who holds office as a Judge (other than the Chief Judge) to the office of Chief Judge; and
 - (b) a reference to the appointment of a person who holds office as Chief Judge to an office of Judge (other than the Chief Judge); and
 - (c) a reference to the appointment of a person who holds office as a Judge on a part-time basis to another office of Judge on a full-time basis; and

Clause 1A

- (d) a reference to the appointment of a person who holds office as a Judge on a full-time basis to another office of Judge on a part-time basis.

Note: Section 72 of the Constitution sets out requirements relating to the appointment and tenure of Judges.

1A Assignment of Judges to Divisions

The Governor-General may:

- (a) assign a Judge (other than the Chief Judge) to one of the Divisions either:
 - (i) in the commission of appointment of the Judge; or
 - (ii) at a later time, with the consent of the Judge; and
- (b) vary any such assignment, with the consent of the Judge.

Note: A Judge (including the Chief Judge) who is not assigned to either Division of the Federal Circuit Court of Australia may exercise the powers of the Federal Circuit Court of Australia in either Division (see subsection 12(3C)).

2 Style

Chief Judge

- (1) The Chief Judge is to be styled “Chief Judge (*name*)”.

Other Judges

- (2) A Judge (other than the Chief Judge) is to be styled “Judge (*name*)”.

3 Oath or affirmation of office

- (1) Before proceeding to discharge the duties of his or her office, a Judge must take an oath or affirmation in accordance with the form set out in whichever of subclause (3) or (4) is applicable.
- (2) The oath or affirmation must be taken before:
 - (a) the Governor-General; or
 - (b) a Justice of the High Court; or
 - (c) a Judge of the Family Court; or
 - (d) a Judge of the Federal Court; or
 - (e) another Judge of the Federal Circuit Court of Australia.

Oath

- (3) This is the form of oath for the purposes of subclause (1):

I, _____, do swear that I will well and truly serve in the office of (*Chief Judge or Judge of the Federal Circuit Court of Australia, as the case requires*) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God!

Affirmation

- (4) This is the form of affirmation for the purposes of subclause (1):

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Chief Judge or Judge of the Federal Circuit Court of Australia, as the case requires*) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

Part 2—Terms and conditions of Judges

Division 1—Terms and conditions of serving Judges

4 Outside work

- (1) A Judge must not engage in paid work outside the duties of the Judge's office if that work is incompatible with the holding of a judicial office under Chapter III of the Constitution.
- (2) A Judge must not:
 - (a) engage in work as a legal practitioner; or
 - (b) engage in work as an employee of, or consultant to, a legal practice.
- (3) This clause does not, by implication, limit the application to a Judge of any doctrine of constitutional incompatibility.
- (4) In this clause:

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

5 Remuneration

- (1) A Judge is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) Subclause (1) has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this clause:

remuneration has the same meaning as in Part II of the *Remuneration Tribunal Act 1973*.

Note 1: Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that a reference in Part II of that Act to *remuneration* is to be read as including a reference to annual allowances.

Note 2: Under subsection 7(4) of the *Remuneration Tribunal Act 1973*, the Remuneration Tribunal may determine any matter significantly related to the remuneration of Judges.

6 Leave

A Judge has the recreation leave entitlements that are determined by the Remuneration Tribunal.

7 Resignation from office

- (1) A Judge may resign his or her office by writing under his or her hand delivered to the Governor-General.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

8 Other terms and conditions

- (1) A Judge holds office on such terms and conditions (if any) in relation to matters not covered by this Act as are specified in a written determination made by the Governor-General for the purposes of this subclause.
- (2) The Minister must cause a copy of a determination under subclause (1) to be tabled in each House of the Parliament.
- (3) Either House may, following a motion upon notice, pass a resolution disallowing the determination. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the determination was tabled in the House.
- (4) If neither House passes such a resolution, the determination takes effect on the day immediately after the last day upon which such a resolution could have been passed.

9 Removal from office

A Judge must not be removed from office except by the Governor-General, on an address from both Houses of the Parliament in the same session, praying for his or her removal on the ground of proved misbehaviour or incapacity.

Division 2—Disability and death benefits

9A Certification of retired disabled Judges

- (1) If:
 - (a) a Judge retires; and
 - (b) the Judge has not attained the age of 70 years;the Minister may be requested to certify that the Judge is a retired disabled Judge.
- (2) On receiving the request, the Minister must:
 - (a) if the Minister is satisfied that the retirement was due to permanent disability or infirmity—certify that the Judge is a retired disabled Judge; or
 - (b) otherwise—refuse to so certify.
- (3) If the Minister refuses to so certify, application may be made to the Administrative Appeals Tribunal for review of the refusal.

9B Pensions for retired disabled Judges

- (1) A retired disabled Judge is entitled to a pension until:
 - (a) he or she attains the age of 70 years; or
 - (b) he or she dies;whichever happens first.
Annual rate of pension
- (2) The annual rate of the pension is 60% of the annual rate of salary the Judge would have been entitled to from time to time if he or she had not retired.
- (3) However, the rate of the pension must be reduced by the amount of any pension or retiring allowance:
 - (a) payable to the Judge, whether under a law or otherwise, out of money provided in whole or in part by the Commonwealth, a State or a Territory (other than a Commonwealth superannuation contribution the Judge was entitled to under a determination under subclause 8(1)); and
 - (b) payable to the Judge by reason of prior judicial service, or prior judicial service and any other service.

- (4) For the purposes of subclause (2), the annual rate of salary is the annual rate of remuneration determined under clause 5:
- (a) excluding any allowances that are paid in lieu of any other entitlement; and
 - (b) if any arrangements have been entered into for any amount of the annual rate of remuneration (other than an allowance covered by paragraph (a)) to be provided in the form of another benefit—including that amount.

When pension is due and payable

- (5) The pension is due daily, but is payable on the days on which salary payments are made to Judges.

Safety, Rehabilitation and Compensation Act 1988

- (6) For the purposes of Division 3 of Part II of the *Safety, Rehabilitation and Compensation Act 1988*:
- (a) the pension is taken to be a pension payable to the Judge under a superannuation scheme; and
 - (b) the Judge is not required to pay superannuation contributions to that scheme.

9C Superannuation for retired disabled Judges

- (1) A retired disabled Judge who has not attained the age of 65 years is entitled to a Commonwealth superannuation contribution until:
- (a) he or she attains the age of 65 years; or
 - (b) he or she dies;
- whichever happens first.
- (2) The amount of the Commonwealth superannuation contribution is the amount of the Commonwealth superannuation contribution (if any) the Judge would have been entitled to from time to time, under a determination under subclause 8(1), if he or she had not retired.
- (3) The Commonwealth superannuation contribution is to be made by payments on the days on which salary payments are made to Judges.

Clause 9D

9D Death benefits

- (1) A payment is payable under this section if:
 - (a) a Judge, or a retired disabled Judge, who has not attained the age of 65 years dies; and
 - (b) the Judge leaves one or more eligible spouses or eligible children.

Amount

- (2) The amount of the payment is the amount of the Commonwealth superannuation contribution (if any) the Judge would have been entitled to, under a determination under subclause 8(1), during the period in subclause (3) if:
 - (a) the Judge had neither died nor retired before the end of that period; and
 - (b) the amount of the Commonwealth superannuation contribution the Judge was entitled to under that determination did not change during that period.
- (3) The period in this subclause is the period:
 - (a) beginning on the day on which the Judge died; and
 - (b) ending on the day on which the Judge would have attained the age of 65 years.

Beneficiaries

- (4) The **beneficiaries** in respect of the payment are each eligible spouse and eligible child the Judge leaves.
- (5) If there is only one beneficiary in respect of the payment, the payment is payable to the beneficiary.
- (6) If there is more than one beneficiary in respect of the payment, the payment is payable to the beneficiaries in the proportions (totalling 100% of the amount of the payment) the Minister considers appropriate, having regard to the respective circumstances of each beneficiary.

Note: For review of decisions under subclause (6), see subclause (10).

Beneficiaries—eligible children

- (7) If the payment (or a proportion of the payment) is payable to an eligible child, the Minister may, in writing, direct that:
- (a) some or all of the payment or proportion be paid to a specified person for the benefit of the child (including for the support or education of the child); or
 - (b) if the Minister is satisfied that, by reason of special circumstances, it is desirable to do so in the interests of the child—some or all of the payment or proportion be spent in a specified manner for the benefit of the child.

Note: For review of decisions under subclause (7), see subclause (10).

- (8) The Minister may be requested to give a direction under subclause (7) in respect of an eligible child.
- (9) On receiving an application, the Minister must:
- (a) if he or she is satisfied that he or she should make a direction in respect of the child—give such a direction; or
 - (b) if he or she is not so satisfied—refuse to give such a direction.

Note: For review of decisions under paragraph (9)(b), see subclause (10).

Applications for review

- (10) Application may be made to the Administrative Appeals Tribunal for review of the following:
- (a) a decision by the Minister under subclause (6);
 - (b) a direction by the Minister under subclause (7);
 - (c) a refusal by the Minister under paragraph (9)(b) to give a direction.

9E Relationship definitions

*Meaning of **eligible spouse***

- (1) For the purposes of this Act, subclauses (2), (3) and (4) set out the 3 circumstances in which a person is an **eligible spouse** of a Judge, or a retired disabled Judge, who dies.

Schedule 1 Personnel provisions relating to Judges

Part 2 Terms and conditions of Judges

Division 2 Disability and death benefits

Clause 9E

- (2) A person is an *eligible spouse* of a Judge who dies if the person had a marital or couple relationship with the Judge at the time of the death of the Judge.
- (3) A person is an *eligible spouse* of a retired disabled Judge who dies if:
 - (a) the person had a marital or couple relationship with the Judge at the time of the Judge's death; and
 - (b) the marital or couple relationship began:
 - (i) before the Judge retired; or
 - (ii) before the Judge attained the age of 60 years.
- (4) A person is an *eligible spouse* of a Judge, or a retired disabled Judge, who dies if:
 - (a) the person had previously had a marital or couple relationship with the Judge; and
 - (b) the person did not, at the time of the Judge's death, have a marital or couple relationship with the Judge but was legally married to him or her; and
 - (c) in the Minister's opinion, the person was wholly or substantially dependent upon the Judge at the time of the Judge's death; and
 - (d) in the case of a marital or couple relationship that began after the Judge retired—the marital or couple relationship began before the Judge attained the age of 60 years.

Note: For review of decisions under paragraph (4)(c), see subclause (9).

Meaning of marital or couple relationship

- (5) For the purposes of this Act, a person had a *marital or couple relationship* with another person at a particular time if:
 - (a) the person had been living with the other person as the other person's husband or wife or partner for a continuous period of at least 3 years up to that time; or
 - (b) both:
 - (i) the person had been living with the other person as the other person's husband or wife or partner for a continuous period of less than 3 years up to that time; and
 - (ii) the Minister, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with the

other person as the other person's husband or wife or partner on a permanent and bona fide domestic basis at that time;

whether or not the person was legally married to the other person.

Note 1: Subclause (7) lists some of the evidence relevant to subparagraph (5)(b)(ii).

Note 2: For review of decisions under subparagraph (5)(b)(ii), see subclause (9).

- (6) For the purposes of this Act, a marital or couple relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (5)(a) or subparagraph (5)(b)(i).
- (7) For the purpose of subparagraph (5)(b)(ii), relevant evidence includes, but is not limited to, evidence establishing any of the following:
- (a) that the person was wholly or substantially dependent on that other person at the time;
 - (b) that the persons were legally married to each other at the time;
 - (ba) the persons' relationship was registered under a law of a State or Territory prescribed for the purposes of section 2E of the *Acts Interpretation Act 1901* as a kind of relationship prescribed for the purposes of that section;
 - (c) that the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship; or
 - (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;
 - (d) that the persons jointly owned a home which was their usual residence.

Meaning of living with a person

- (8) For the purposes of this Act, a person is taken to be **living with** another person if the Minister is satisfied that the person would have been living with that other person except for a period of:
- (a) temporary absence; or
 - (b) absence because of special circumstances (for example, absence because of the person's illness or infirmity).

Schedule 1 Personnel provisions relating to Judges

Part 2 Terms and conditions of Judges

Division 2 Disability and death benefits

Clause 9F

Note: For review of decisions under subclause (8), see subclause (9).

Applications for review

- (9) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under paragraph (4)(c), subparagraph (5)(b)(ii) or subclause (8).

9F Meaning of *eligible child*

- (1) For the purposes of this Act, a person is an *eligible child* of a Judge, or a retired disabled Judge, who dies if:
- (a) the person:
 - (i) has not attained the age of 16 years; or
 - (ii) has not attained the age of 25 years and is receiving full-time education at a school, college or university; and
 - (b) one of the following applies:
 - (i) the person is a child or adopted child of the Judge;
 - (ia) the person is a child of the Judge within the meaning of the *Family Law Act 1975*;
 - (ii) in the Minister's opinion, the person was wholly or substantially dependent on the Judge at the time of the Judge's death;
 - (iii) in the Minister's opinion, the person would have been wholly or substantially dependent on the Judge but for the Judge's death.
- (2) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under subparagraph (1)(b)(ii) or (iii).

9G Appropriation

The following are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) pensions under clause 9B;
- (b) Commonwealth superannuation contributions under clause 9C;
- (c) payments under clause 9D.

Division 3—Remuneration of a Judge not to be diminished

9H Remuneration of a Judge not to be diminished

(1) The remuneration of a Judge is not to be diminished during his or her continuance in office.

(2) In subclause (1):

diminished has the same meaning as in paragraph 72(iii) of the Constitution.

remuneration has the same meaning as in paragraph 72(iii) of the Constitution.

Part 3—Acting Chief Judge

10 Acting Chief Judge

- (1) The Minister may appoint a Judge to act as Chief Judge:
 - (a) during a vacancy in the office of Chief Judge; or
 - (b) during any period, or all periods, when the Chief Judge is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) For the purposes of this Act, a person who is acting as Chief Judge under subclause (1) is taken not to be assigned to either Division of the Federal Circuit Court of Australia.

Note: A Judge who is not assigned to either Division of the Federal Circuit Court of Australia may exercise the powers of the Federal Circuit Court of Australia in either Division (see subsection 12(3C)).

Schedule 2—Personnel provisions relating to Chief Executive Officer

Note: See section 95.

1 Appointment of Chief Executive Officer

- (1) The Chief Executive Officer is to be appointed by the Governor-General.
- (2) The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

2 Disclosure of interests

The Chief Executive Officer must give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.

3 Outside employment

The Chief Executive Officer must not engage in paid employment outside the duties of the Chief Executive Officer's office without the Chief Judge's approval.

4 Remuneration

- (1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid such remuneration as is prescribed.
- (2) The Chief Executive Officer is to be paid such allowances as are prescribed.
- (3) This clause has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this clause:

Clause 5

remuneration has the same meaning as in Part II of the *Remuneration Tribunal Act 1973*.

Note 1: Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that a reference in Part II of that Act to **remuneration** is to be read as including a reference to annual allowances.

Note 2: Under subsection 7(4) of the *Remuneration Tribunal Act 1973*, the Remuneration Tribunal may determine any matter significantly related to the remuneration of the Chief Executive Officer.

5 Leave

- (1) The Chief Executive Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chief Judge may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise, that the Chief Judge determines in writing.

6 Resignation

- (1) A Chief Executive Officer may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

7 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Chief Executive Officer if:
 - (a) the Chief Executive Officer:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (b) the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
- (c) the Chief Executive Officer engages, except with the Chief Judge's approval, in paid employment outside the duties of his or her office; or
- (d) the Chief Executive Officer fails, without reasonable excuse, to comply with clause 2.

8 Other terms and conditions

The Chief Executive Officer holds office on such terms and conditions (if any) in relation to matters not covered by this Act as are determined by the Chief Judge.

9 Acting Chief Executive Officer

The Chief Judge may appoint a person to act as Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer; or
- (b) during any period, or all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Endnotes

Endnote 1—Legislation history

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Federal Circuit Court of Australia Act 1999*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Federal Magistrates Act 1999	193, 1999	23 Dec 1999	23 Dec 1999	
Public Employment (Consequential and Transitional) Amendment Act 1999 as amended by Statute Law Revision Act 2002	146, 1999 63, 2002	11 Nov 1999 3 July 2002	Schedule 1 (items 472–479): (a) s. 4: Royal Assent Schedule 2 (item 23): (aa)	— s. 4
Family Law Amendment Act 2000	143, 2000	29 Nov 2000	Schedule 3 (item 117): Royal Assent (b) Schedule 3 (items 118, 119): 27 Dec 2000 (b)	—
Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003	140, 2003	17 Dec 2003	s. 4 and Schedule 1 (items 25, 26): (c)	s. 4
Migration Litigation Reform Act 2005	137, 2005	15 Nov 2005	Schedule 1 (items 8, 40, 42, 44): 1 Dec 2005 (see F2005L03684) Schedule 2 (items 1–21): Royal Assent	Sch. 1 (items 40, 42, 44) and Sch. 2 (item 21)
Family Law Amendment (Shared Parental Responsibility) Act 2006	46, 2006	22 May 2006	Schedule 4 (items 87–113): 1 July 2006	—

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 1 (items 11, 12): (d)	—
Federal Magistrates Amendment (Disability and Death Benefits) Act 2007	163, 2007	25 Sept 2007	26 Sept 2007	Sch. 1 (item 16)
Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008	115, 2008	21 Nov 2008	Schedule 2 (item 32): 1 Mar 2009	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008	134, 2008	4 Dec 2008	s. 4: Royal Assent Schedule 2 (items 2–12): 1 Jan 2009	s. 4 and Sch. 2 (item 12)
Fair Work (Transitional Provisions and Consequential Amendments) Act 2009	55, 2009	25 June 2009	Schedule 17 (items 10–17, 20): 1 July 2009 (<i>see</i> s. 2(1))	Sch. 17 (item 20)
Access to Justice (Civil Litigation Reforms) Amendment Act 2009	117, 2009	4 Dec 2009	Schedule 3 (items 11–14(1)): 1 Jan 2010	Sch. 3 (item 14(1))
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	Schedule 2 (items 17–20): [<i>see</i> s. 2(1) and Endnote 4]	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 598–603) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Parliamentary Counsel and Other Legislation Amendment Act 2012	107, 2012	22 July 2012	Schedule 2 (item 10): 1 Oct 2012 (<i>see</i> F2012L01963)	—

Endnotes

Endnote 1—Legislation history

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Federal Circuit Court of Australia Legislation Amendment Act 2012	165, 2012	28 Nov 2012	Schedule 1 (items 1–186): 12 Apr 2013 (<i>see</i> F2013L00643) Schedule 1 (item 187): (<i>e</i>) Schedule 1 (items 188–402): 12 Apr 2013	s. 2(1) (item 2) (rs. by 13, 2013, Sch. 3 [item 62]) s. 2(1) (items 3, 4) (ad. by 13, 2013, Sch. 3 [item 62])
as amended by				
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 3 (item 62): 28 Nov 2012	—
Access to Justice (Federal Jurisdiction) Amendment Act 2012	186, 2012	11 Dec 2012	Schedule 2 (items 6, 7, 11, 12(3), (4)): 12 Dec 2012 Schedule 3 (items 9, 11, 12(3), (4)): [<i>see</i> Endnotes 3 and 4]	Sch. 2 (items 11, 12(3), (4)) and Sch. 3 (items 11, 12(3), (4))
Courts Legislation Amendment (Judicial Complaints) Act 2012	187, 2012	11 Dec 2012	Schedule 1 (items 24–33): 12 Apr 2013 (<i>see</i> F2013L00645)	Sch. 1 (item 33)
Courts and Tribunals Legislation Amendment (Administration) Act 2013	7, 2013	12 Mar 2013	Schedule 2 (items 17–23): [<i>see</i> Endnote 4]	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 3 (items 48–53, 70–80): (<i>f</i>) Schedule 3 (items 54–61): [<i>see</i> (<i>f</i>) and Endnote 4]	—

Endnote 1—Legislation history

Number and year	Gazettal or FRLI registration date	Commencement date	Application, saving and transitional provisions
1999 No. 301	4 Dec 1999	5 Dec 1999 (<i>see</i> r. 1.2)	—
as amended by			
2000 No. 332	8 Dec 2000	Schedule 2: 23 Dec 1999	—

(a) The *Federal Circuit Court of Australia Act 1999* was amended by Schedule 1 (items 472–479) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsection 2(3) of which provides as follows:

(3) If:

- (a) an item (the *amending item*) of a Schedule to this Act is expressed to amend another Act (the *amended Act*); and
- (b) the whole of the amended Act is expressed to commence at one time; and
- (c) at the time when the *Public Service Act 1999* commences, the amended Act:
 - (i) has not yet been enacted; or
 - (ii) has been enacted but has not yet commenced;

then the amending item commences immediately after the commencement of the amended Act.

(aa) Subsection 2(1) (item 52) of the *Statute Law Revision Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
52. Schedule 2, item 23	Immediately after the time specified in the <i>Public Employment (Consequential and Transitional) Amendment Act 1999</i> for the commencement of item 472 of Schedule 1 to that Act	23 December 1999

Endnotes

Endnote 1—Legislation history

(b) The *Federal Circuit Court of Australia Act 1999* was amended by Schedule 3 (items 117–119) only of the *Family Law Amendment Act 2000*, subsections 2(1) and (1A) of which provide as follows:

(1) Subject to subsections (1A) and (2), this Act commences 28 days after the day on which it receives the Royal Assent.

(1A) Items 31A and 117 of Schedule 3 commence on the day on which this Act receives the Royal Assent.

(c) Subsection 2(1) (items 2 and 3) of the *Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences on the day or at the time specified in column 2 of the table.

Provision(s)	Commencement	Date/Details
2. Sections 4 and 5	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005
3. Schedule 1	Immediately after the commencement of sections 3 to 62 of the <i>Legislative Instruments Act 2003</i>	1 January 2005

(d) Subsection 2(1) (item 9) of the *Statute Law Revision Act 2007* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Provision(s)	Commencement	Date/Details
9. Schedule 1, items 11 and 12	Immediately after the commencement of item 106 of Schedule 4 to the <i>Family Law Amendment (Shared Parental Responsibility) Act 2006</i>	1 July 2006

(e) Subsection 2(1) (item 3) of the *Federal Circuit Court of Australia Legislation Amendment Act 2012* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Endnote 1—Legislation history

Provision(s)	Commencement	Date/Details
3. Schedule 1, item 187	At the same time as the provision(s) covered by table item 2. However, the provision(s) do not commence at all if item 6 of Schedule 2 to the <i>Access to Justice (Federal Jurisdiction) Amendment Act 2012</i> commences at or before the time the provision(s) covered by table item 2 commence.	Does not commence
(f)	Subsection 2(1) (items 2, 9, 10 and 15) of the <i>Federal Circuit Court of Australia (Consequential Amendments) Act 2013</i> provides as follows: (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.	
Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as item 1 of Schedule 1 to the <i>Federal Circuit Court of Australia Legislation Amendment Act 2012</i> commences.	12 April 2013
9. Schedule 3, items 48 to 53	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 7 of Schedule 2 to the <i>Access to Justice (Federal Jurisdiction) Amendment Act 2012</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	12 April 2013 (paragraph (a) applies)
10. Schedule 3, items 54 to 61	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 9 of Schedule 3 to the <i>Access to Justice (Federal Jurisdiction) Amendment Act 2012</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	[see Endnote 4] (paragraph (b) applies)

Endnotes

Endnote 1—Legislation history

Provision(s)	Commencement	Date/Details
15. Schedule 3, Part 4	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 1 to the <i>Courts Legislation Amendment (Judicial Complaints) Act 2012</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	12 April 2013 (paragraph (b) applies)

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Federal Circuit Court of Australia Act 1999*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Title	am. No. 165, 2012
Part 1	
s. 1	am. No. 165, 2012
s. 2	am. No. 165, 2012
s. 3	am. No. 165, 2012
s. 4	am. No. 137, 2005; No. 46, 2006; No. 55, 2009 rs. No. 165, 2012
s. 5	am. No. 46, 2006; No. 163, 2007; No. 134, 2008; No. 55, 2009; Nos. 165 and 187, 2012; No. 13, 2013
s. 5A	ad. No. 163, 2007 rs. No. 165, 2012
Part 2	
Heading to Part 2	rs. No. 165, 2012
Heading to s. 8	rs. No. 165, 2012
s. 8	am. No. 165, 2012
Heading to s. 9	rs. No. 165, 2012
Part 3	
Heading to Part 3	rs. No. 165, 2012
s. 10	am. No. 165, 2012
Heading to s. 10A	rs. No. 165, 2012
s. 10A	ad. No. 55, 2009 am. No. 165, 2012
Note to s. 10A(3)	am. No. 165, 2012
Heading to s. 11	rs. No. 165, 2012
s. 11	am. No. 165, 2012
Heading to s. 12	rs. No. 165, 2012

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Subhead. to s. 12(1).....	ad. No. 55, 2009 rs. No. 165, 2012
Subhead. to s. 12(3A).....	rs. No. 165, 2012
Subhead. to s. 12(4).....	ad. No. 55, 2009 rs. No. 165, 2012
Subhead. to s. 12(6A).....	rs. No. 165, 2012
Subhead. to s. 12(7).....	ad. No. 55, 2009 rs. No. 165, 2012
s. 12.....	am. Nos. 55 and 117, 2009; Nos. 165 and 187, 2012; No. 13, 2013
Note to s. 12(3AA).....	am. No. 13, 2013
Note to s. 12(6A).....	ad. No. 187, 2012
Subhead. to s. 13(3).....	rs. No. 165, 2012
s. 13.....	am. No. 165, 2012
s. 14.....	am. No. 165, 2012
s. 15.....	am. No. 165, 2012
s. 16.....	am. No. 165, 2012
s. 17.....	am. No. 165, 2012
s. 17A.....	ad. No. 137, 2005 am. No. 165, 2012
s. 18.....	am. No. 165, 2012
Heading to s. 19.....	rs. No. 165, 2012
s. 19.....	am. No. 143, 2000; No. 165, 2012
s. 20.....	am. No. 165, 2012
Note to s. 20(2).....	am. No. 165, 2012
Part 4	
Heading to Part 4.....	rs. No. 46, 2006
Division 1	
s. 20A.....	ad. No. 46, 2006 am. No. 165, 2012
Note 1 to s. 20A.....	am. No. 165, 2012

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Heading to s. 21	am. No. 46, 2006
s. 21	am. No. 46, 2006
Heading to s. 22	am. No. 46, 2006
	rs. No. 165, 2012
s. 22	am. No. 46, 2006; No. 165, 2012
Heading to s. 23	am. No. 46, 2006
	rs. No. 165, 2012
s. 23	am. No. 46, 2006; No. 165, 2012
Note to s. 23	am. No. 46, 2006
Heading to s. 24	am. No. 46, 2006
s. 24	am. No. 46, 2006; No. 165, 2012
Heading to s. 25	am. No. 46, 2006
	rs. No. 165, 2012
s. 25	am. No. 46, 2006; No. 165, 2012
s. 26	am. No. 165, 2012
Heading to s. 27	am. No. 46, 2006
s. 27	am. No. 46, 2006; No. 165, 2012
Heading to s. 28	am. No. 46, 2006
s. 28	am. No. 46, 2006; No. 165, 2012
Heading to s. 29	am. No. 46, 2006
s. 29	am. No. 46, 2006; No. 165, 2012
Heading to s. 30	am. No. 46, 2006
s. 30	am. No. 46, 2006; No. 165, 2012
Heading to s. 31	am. No. 46, 2006
s. 32	am. No. 165, 2012
Division 2	
s. 33	am. No. 165, 2012
s. 34	am. No. 165, 2012
s. 35	am. No. 165, 2012
Heading to s. 36	rs. No. 165, 2012

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 36.....	am. No. 165, 2012
s. 37.....	am. No. 165, 2012
s. 38.....	am. No. 165, 2012
Part 5	
s. 39.....	am. No. 165, 2012
s. 40.....	am. No. 165, 2012
s. 41.....	am. No. 165, 2012
Part 6	
Division 1	
Heading to s. 42.....	rs. No. 165, 2012
s. 42.....	am. No. 165, 2012
s. 43.....	am. No. 165, 2012
s. 44.....	am. No. 165, 2012
s. 45.....	am. No. 165, 2012
Division 2	
Heading to Div. 2 of.....	rs. No. 165, 2012
Part 6	
Heading to s. 46.....	rs. No. 165, 2012
s. 46.....	am. No. 165, 2012
Heading to s. 47.....	rs. No. 165, 2012
s. 47.....	am. No. 165, 2012
Heading to s. 48.....	rs. No. 165, 2012
s. 48.....	am. No. 165, 2012
s. 49.....	am. No. 165, 2012
s. 50.....	am. No. 165, 2012
s. 51.....	am. No. 165, 2012
Division 3	
s. 52.....	am. No. 165, 2012
s. 53.....	am. No. 165, 2012
s. 54.....	am. No. 165, 2012
s. 55.....	am. No. 165, 2012

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 56.....	am. No. 165, 2012
s. 57.....	am. No. 165, 2012
Division 4	
s. 58.....	am. No. 165, 2012
s. 59.....	am. No. 165, 2012
s. 60.....	am. No. 165, 2012
s. 61.....	rep. No. 186, 2012
s. 62.....	am. No. 165, 2012
Heading to s. 63.....	rs. No. 165, 2012
s. 63.....	am. No. 165, 2012
s. 64.....	am. No. 165, 2012
s. 65.....	am. No. 165, 2012
Note to s. 65(3).....	am. No. 143, 2000
Division 5	
s. 66.....	am. No. 165, 2012
s. 67.....	am. No. 165, 2012
s. 68.....	am. No. 165, 2012
s. 69.....	am. No. 165, 2012
s. 70.....	am. No. 165, 2012
s. 71.....	am. No. 165, 2012
s. 72.....	am. No. 165, 2012
Division 6	
s. 74.....	am. No. 165, 2012
s. 75.....	am. No. 165, 2012
s. 76.....	am. No. 165, 2012
s. 77.....	am. No. 165, 2012
s. 78.....	am. No. 165, 2012
Note to s. 78(1).....	am. No. 143, 2000
Division 7	
s. 79.....	am. No. 55, 2009; No. 165, 2012

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Note to s. 79(1).....	am. No. 55, 2009
s. 80.....	am. No. 165, 2012
Division 8	
s. 81.....	am. No. 140, 2003; Nos. 107 and 165, 2012
s. 82.....	am. No. 165, 2012
s. 83.....	am. No. 165, 2012
s. 85.....	am. No. 165, 2012
s. 86.....	am. No. 165, 2012
s. 87.....	am. No. 46, 2006; No. 165, 2012
Part 6A	
Part 6A.....	ad. No. 186, 2012
Division 1	
s. 88A.....	ad. No. 186, 2012
Heading to s. 88B.....	rs. No. 13, 2013
s. 88B.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88C.....	ad. No. 186, 2012
s. 88D.....	ad. No. 186, 2012 am. No. 13, 2013
Division 2	
s. 88E.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88F.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88G.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88H.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88J.....	ad. No. 186, 2012 am. No. 13, 2013

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 88K.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88L.....	ad. No. 186, 2012 am. No. 13, 2013
s. 88M.....	ad. No. 186, 2012 am. No. 13, 2013
Part 7	
Heading to Part 7.....	rs. No. 165, 2012
Division 1	
Heading to Div. 1 of Part 7	rs. No. 165, 2012
Heading to s. 89.....	rs. No. 165, 2012
s. 89.....	am. No. 137, 2005; No. 165, 2012
s. 90.....	am. No. 137, 2005; No. 165, 2012
s. 91.....	am. No. 137, 2005; No. 165, 2012
s. 92.....	am. No. 137, 2005; No. 165, 2012
s. 93.....	am. No. 137, 2005; No. 165, 2012
Division 1A	
Heading to Div. 1A of Part 7	rs. No. 165, 2012
Div. 1A of Part 7.....	ad. No. 46, 2006
s. 93A.....	ad. No. 46, 2006
s. 93B.....	ad. No. 46, 2006
s. 93C.....	ad. No. 46, 2006
s. 93D.....	ad. No. 46, 2006 am. No. 8, 2007; No. 165, 2012
Division 2	
s. 94.....	am. No. 165, 2012
s. 96.....	am. No. 137, 2005; No. 165, 2012
s. 97.....	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Division 3	
s. 98	am. No. 165, 2012
Division 4	
Heading to s. 99	rs. No. 165, 2012
s. 99	am. No. 137, 2005; No. 46, 2006; No. 165, 2012
s. 100	rs. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332) am. No. 137, 2005; No. 165, 2012
s. 101	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012
s. 102	am. No. 46, 2006; No. 115, 2008; No. 165, 2012
s. 103	am. No. 165, 2012
s. 104	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012
s. 105	am. No. 165, 2012
Heading to s. 106	rs. No. 165, 2012
s. 106	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012
s. 107	am. No. 165, 2012
Heading to s. 109	rs. No. 165, 2012
s. 109	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012
s. 110	am. No. 165, 2012
s. 111A	ad. No. 46, 2006 am. No. 165, 2012
Note to s. 111A	am. No. 165, 2012
Heading to s. 112	rs. No. 165, 2012
s. 112	am. Statutory Rules 1999 No. 301 (as am. by Statutory Rules 2000 No. 332); No. 165, 2012
s. 113	am. No. 165, 2012
s. 114	am. No. 165, 2012
Division 5	

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 115	am. No. 46, 2006; No. 165, 2012
s. 116	am. No. 165, 2012
s. 117	am. No. 165, 2012
Heading to s. 117A	rs. No. 165, 2012
s. 117A	ad. No. 137, 2005
	am. No. 165, 2012
Heading to s. 118	rs. No. 165, 2012
s. 118	am. No. 165, 2012
s. 118A	ad. No. 187, 2012
	am. No. 13, 2013
Part 8	
s. 119	rs. No. 165, 2012
s. 120	am. No. 140, 2003; No. 165, 2012
Schedule 1	
Heading to Schedule 1	rs. No. 165, 2012
Part 1	
Heading to Part 1	ad. No. 163, 2007
	rs. No. 165, 2012
Heading to c. 1	rs. No. 165, 2012
c. 1	am. No. 165, 2012
Note to c. 1	am. No. 165, 2012
Heading to c. 1A	rs. No. 165, 2012
c. 1A	ad. No. 55, 2009
	am. No. 165, 2012
Note to c. 1A	am. No. 165, 2012
c. 2	rs. No. 165, 2012
c. 3	am. No. 165, 2012
Part 2	
Heading to Part 2	ad. No. 163, 2007
	rs. No. 165, 2012

Endnotes

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
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Division 1

Heading to Div. 1 of Part 2.....	ad. No. 163, 2007 rs. No. 165, 2012
c. 4.....	am. No. 165, 2012
c. 5.....	am. No. 165, 2012
Note 2 to c. 5(4).....	am. No. 165, 2012
c. 6.....	am. No. 165, 2012
c. 7.....	am. No. 165, 2012
c. 8.....	am. No. 165, 2012
c. 9.....	am. No. 165, 2012

Division 2

Div. 2 of Part 2.....	ad. No. 163, 2007
Heading to c. 9A.....	rs. No. 165, 2012
c. 9A.....	ad. No. 163, 2007 am. No. 165, 2012
Heading to c. 9B.....	rs. No. 165, 2012
c. 9B.....	ad. No. 163, 2007 am. No. 165, 2012
Heading to c. 9C.....	rs. No. 165, 2012
c. 9C.....	ad. No. 163, 2007 am. No. 165, 2012
c. 9D.....	ad. No. 163, 2007 am. No. 165, 2012
Subhead. to c. 9E(5).....	rs. No. 134, 2008
c. 9E.....	ad. No. 163, 2007 am. No. 134, 2008; No. 46, 2011; No. 165, 2012
c. 9F.....	ad. No. 163, 2007 am. No. 134, 2008; No. 165, 2012
c. 9G.....	ad. No. 163, 2007

Division 3

Endnote 2—Amendment history

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Heading to Div. 3 of Part 2.....	rs. No. 165, 2012
Div. 3 of Part 2.....	ad. No. 163, 2007
Heading to c. 9H.....	rs. No. 165, 2012
c. 9H.....	ad. No. 163, 2007
	am. No. 165, 2012
Part 3	
Heading to Part 3.....	ad. No. 163, 2007
	rs. No. 165, 2012
Heading to c. 10.....	rs. No. 165, 2012
c. 10.....	am. No. 55, 2009; No. 46, 2011; No. 165, 2012
Note to c. 10(1).....	rs. No. 46, 2011
Note to c. 10(3).....	am. No. 165, 2012
c. 11.....	rep. No. 163, 2007
Schedule 2	
Heading to Schedule 2.....	rs. No. 165, 2012
c. 2.....	am. No. 165, 2012
c. 3.....	am. No. 165, 2012
c. 5.....	am. No. 146, 1999; No. 165, 2012
c. 7.....	am. No. 165, 2012
c. 8.....	am. No. 165, 2012
c. 9.....	am. No. 46, 2011; No. 165, 2012
Note to c. 9.....	rs. No. 46, 2011

Endnote 3—Application, saving and transitional provisions

This endnote sets out application, saving and transitional provisions for amendments of the *Federal Circuit Court of Australia Act 1999*.

Statute Law Revision Act 2002 (No. 63, 2002)

4 Effect of repeal

To avoid doubt, items 472 to 478 (inclusive) of Schedule 1 to the *Public Employment (Consequential and Transitional) Amendment Act 1999* are taken never to have had effect.

Note: These items are repealed by item 23 of Schedule 2 to this Act.

Legislative Instruments (Transitional Provisions and Consequential Amendments) Act 2003 (No. 140, 2003)

4 Transitional provisions

- (1) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to require that instrument to be published as a statutory rule under the *Statutory Rules Publication Act 1903*; any instrument so made is taken to be an instrument referred to in paragraph 6(b) of the *Legislative Instruments Act 2003* despite the repeal by this Act of the *Statutory Rules Publication Act 1903*.
- (2) If legislation introduced into the Parliament before the commencing day but commencing on or after that day:
 - (a) authorises an instrument to be made in the exercise of a power delegated by the Parliament; and
 - (b) is expressed to declare that instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; any instrument so made is taken to be an instrument referred to in subparagraph 6(d)(i) of the *Legislative Instruments Act 2003* despite the repeal by this Act of section 46A of the *Acts Interpretation Act 1901*.

Endnote 3—Application, saving and transitional provisions

- (3) If legislation that is in force immediately before the commencing day or that is introduced into the Parliament before that day but that commences on or after that day:
- (a) authorised or authorises an instrument to be made in the exercise of a power delegated by the Parliament that adversely affects the rights of a person, or results in the imposition of liabilities on a person; and
 - (b) provided or provides that the instrument has effect, to the extent that it adversely affects those rights or results in the imposition of those liabilities, despite subsection 48(2) of the *Acts Interpretation Act 1901*, before the date of its notification in the *Gazette*;
- that legislation is to be construed, on and after the commencing day or the day of its commencement, whichever last occurs, as if it had provided instead that the instrument, to the extent that it adversely affects those rights or results in the imposition of those liabilities, has effect, despite subsection 12(2) of the *Legislative Instruments Act 2003*, before its registration under that Act.
- (4) If:
- (a) legislation (the ***enabling legislation***) in force immediately before the commencing day:
 - (i) authorises the making of an instrument; and
 - (ii) does not declare such an instrument to be a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901* but nonetheless makes provision for its disallowance by the application, with or without modification, of the provisions of Part XII of that Act; and
 - (b) an instrument is made in the exercise of that authority on or after the commencing day; and
 - (c) the instrument is not a legislative instrument for the purposes of the *Legislative Instruments Act 2003* or otherwise;
- the enabling legislation has effect, on and after the commencing day, as if:
- (d) it had declared such instruments to be disallowable instruments for the purposes of section 46B of the *Acts Interpretation Act 1901*; and

Endnote 3—Application, saving and transitional provisions

(e) it had provided for such modifications of the operation of that section as are necessary to ensure that the effect of the applied provisions of Part XII of the *Acts Interpretation Act 1901* is preserved.

(5) In this section:

commencing day means the commencing day within the meaning of the *Legislative Instruments Act 2003*.

Migration Litigation Reform Act 2005 (No. 137, 2005)

Schedule 1

40 Definitions

In this Part:

commencement day means the day on which this Schedule commences.

migration decision has the same meaning as in the *Migration Act 1958*, as amended by Part 1 of this Schedule.

migration litigation has the same meaning as in Part 8B of the *Migration Act 1958*, as amended by Part 1 of this Schedule.

substantive proceedings has the same meaning as in paragraph 503B(1)(b) of the *Migration Act 1958*.

42 Transitional provision—migration decision made before commencement day

Where proceedings are commenced on or after the commencement day in relation to a migration decision made before the commencement day, and actual notification of the decision is given before the commencement day:

- (a) section 477 of the *Migration Act 1958* applies as if the actual notification of the decision took place on the commencement day; and
- (b) section 477A of that Act applies as if the actual notification of the decision took place on the commencement day; and
- (c) section 486A of that Act applies as if the actual notification of the decision took place on the commencement day.

44 Application of items 5, 7, 8 and 9

The amendments made by items 5, 7, 8 and 9 of this Schedule apply in relation to proceedings commenced on or after the commencement day.

Schedule 2**21 Transitional provision—things done before the commencement of this Schedule**

Anything done under the *Federal Magistrates Act 1999* before the commencement of this Schedule has the same effect, after that commencement, as it would have had if this Schedule had not been enacted.

Federal Magistrates Amendment (Disability and Death Benefits) Act 2007 (No. 163, 2007)**Schedule 1****16 Application**

The amendments made by this Schedule apply in relation to persons who are Federal Magistrates at or after the commencement of this item.

Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008 (No. 134, 2008)**4 Entitlements from 1 July 2008**

(1) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under an Act that is amended by Schedule 1, 2, 3 or 5 to this Act if the relevant Schedule had commenced on 1 July 2008; and
- (b) because the Schedule did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

Endnote 3—Application, saving and transitional provisions

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(2) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Military Superannuation and Benefits Act 1991* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(3) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Superannuation Act 1990* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(4) A determination by the Finance Minister under this subsection must:

- (a) be in writing; and
- (b) set out:
 - (i) the amount and timing of the replacement payments; or

Endnote 3—Application, saving and transitional provisions

- (ii) the method of determining the amount and timing of the replacement payments.
- (5) An application must be in writing in the form approved by the Finance Minister.
- (6) To avoid doubt, a determination of the Finance Minister that a person is entitled to one or more replacement payments does not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to this Act, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.
- (7) Replacement payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (8) A determination made under this section is not a legislative instrument.
- (9) In this section:

Finance Minister means the Minister who administers the *Financial Management and Accountability Act 1997*.

Schedule 2

12 Application of amendments of the *Federal Magistrates Act 1999*

The amendments of the *Federal Magistrates Act 1999* made by this Schedule apply in relation to any payment payable under clause 9D of Schedule 1 to that Act in respect of a person who dies on or after the commencement of this Schedule if, at the time of his or her death, the deceased person:

- (a) held office as a Federal Magistrate; or
- (b) was a retired disabled Federal Magistrate.

Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 (No. 55, 2009)

Schedule 17

20 Application of Part 2

- (1) The amendments made by Part 2 of this Schedule apply:
 - (a) in relation to proceedings commenced after the Part commences; and
 - (b) in relation to proceedings that are pending in the Federal Magistrates Court immediately before that Part commences, as if the reference in subsection 10A(2) of the *Federal Magistrates Act 1999* (as inserted by item 12 of this Schedule) to “be instituted, heard and determined” were a reference to “, after item 12 of Schedule 17 to the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* commences, be heard and determined”.
- (2) A person who is a Federal Magistrate (other than the Chief Federal Magistrate) of the Federal Magistrates Court immediately before Part 2 of this Schedule commences, is taken, for all purposes, not to have been assigned under clause 1A of Schedule 1 to the *Federal Magistrates Act 1999* (as inserted by item 16 of this Schedule) to either Division of the Federal Magistrates Court.

Note: A Federal Magistrate (including the Chief Federal Magistrate) who is not assigned to either Division of the Federal Magistrates Court may exercise the powers of the Federal Magistrates Court in either Division (see subsection 12(3C) of the *Federal Magistrates Act 1999*, as inserted by item 13 of this Schedule).

Access to Justice (Civil Litigation Reforms) Amendment Act 2009 (No. 117, 2009)

Schedule 3

14 Application of amendments

- (1) The amendments made by this Part, other than items 6 and 7, apply in relation to Judges and Federal Magistrates whether appointed before or after the commencement of the amendments.

Endnote 3—Application, saving and transitional provisions

Acts Interpretation Amendment Act 2011 (No. 46, 2011)

Schedule 3

10 Saving—appointments

The amendments made by Schedule 2 do not affect the validity of an appointment that was made under an Act before the commencement of this item and that was in force immediately before that commencement.

11 Transitional regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments and repeals made by Schedules 1 and 2.

Access to Justice (Federal Jurisdiction) Amendment Act 2012 (No. 186, 2012)

Schedule 2

11 Application of amendments

The amendments made by Part 1 apply in relation to proceedings (including interlocutory proceedings):

- (a) that are instituted in, or transferred to, a court on or after the commencement of that Part; or
- (b) that are pending in a court immediately before that commencement.

12 Saving—proceedings already heard

- (3) Despite the amendment made by item 6, section 61 of the *Federal Magistrates Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a proceeding heard by the Federal Magistrates Court before that commencement.
- (4) Despite the amendment made by item 6, the *Federal Magistrates Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an

order made under section 61 of that Act before, on or after that commencement.

Schedule 3

11 Application of amendments

The power of a court to make a vexatious proceedings order under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903*, as amended by this Schedule, applies in relation to proceedings instituted in, or transferred to, that court on or after the commencement of this item.

12 Saving—pending proceedings etc.

- (3) Despite the amendments made by this Schedule, rules of court, in relation to a court, that were in force immediately before the commencement of this item under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings) continue to apply on and after that commencement in relation to proceedings that were pending in the court immediately before that commencement.
- (4) The amendments made by this Schedule do not affect the validity of any orders that were made before the commencement of this item under rules of court made under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings).

Courts Legislation Amendment (Judicial Complaints) Act 2012 (No. 187, 2012)

Schedule 1

33 Application of items 24 to 32

The amendments made by items 24 to 32 of this Schedule apply on or after the commencement of this item in relation to a complaint, regardless of whether:

Endnote 3—Application, saving and transitional provisions

- (a) the complaint was made before, on or after that commencement; or
- (b) the circumstances that gave rise to the complaint occurred before, on or after that commencement.

Endnote 4—Uncommenced amendments

This endnote sets out amendments of the *Federal Circuit Court of Australia Act 1999* that have not yet commenced.

Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010 (No. 36, 2010)

Schedule 2

17 Subsection 66(5) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

18 Subsection 67(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

19 Subsection 68(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

20 Section 73

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

Access to Justice (Federal Jurisdiction) Amendment Act 2012 (No. 186, 2012)

Schedule 3

9 Before Part 7

Insert:

Part 6B—Vexatious proceedings

Division 1—Preliminary

88N Definitions

- (1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

- (a) in relation to a court—has the meaning given by section 5; and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

proceedings of a particular type includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

vexatious proceeding includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and
- (d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 88Q(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a legal practitioner or representative of the other person.

88P Powers of the Federal Magistrates Court not affected

This Part does not limit or otherwise affect any powers that the Federal Magistrates Court has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

88Q Making vexatious proceedings orders

- (1) This section applies if the Federal Magistrates Court is satisfied:
 - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
 - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.
- (2) The Federal Magistrates Court may make any or all of the following orders:

Endnote 4—Uncommenced amendments

- (a) an order staying or dismissing all or part of any proceedings in the Federal Magistrates Court already instituted by the person;
- (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court;
- (c) any other order the Federal Magistrates Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

- (3) Subsection (2) applies in relation to proceedings in the Federal Magistrates Court other than proceedings under the *Family Law Act 1975*.

Note: Part XIB of the *Family Law Act 1975* deals with vexatious proceedings under that Act.

- (4) The Federal Magistrates Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive Officer;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.
- (5) The Federal Magistrates Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (6) An order made under paragraph (2)(a) or (b) is a final order.
- (7) For the purposes of subsection (1), the Federal Magistrates Court may have regard to:
 - (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
 - (b) orders made by any Australian court or tribunal; and

(c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal); including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

88R Notification of vexatious proceedings orders

- (1) A person may request the Chief Executive Officer for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order, the Chief Executive Officer must issue to the person making the request a certificate:
 - (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by the Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the Federal Magistrates Court, restricting the publication or disclosure of the name of a party to proceedings in the Federal Magistrates Court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

88S Proceedings in contravention of vexatious proceedings order

- (1) If the Federal Magistrates Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the Federal Magistrates Court without the leave of the Federal Magistrates Court under section 88V; and

Endnote 4—Uncommenced amendments

- (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the Federal Magistrates Court without the leave of the Federal Magistrates Court under section 88V.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the Federal Magistrates Court may make:
 - (a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The Federal Magistrates Court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive Officer;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.

88T Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Federal Magistrates Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that:
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and

Endnote 4—Uncommenced amendments

- (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and
 - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 88V(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

88U Dismissing application for leave

- (1) The Federal Magistrates Court or a Federal Magistrate may make an order dismissing an application under section 88T for leave to institute a proceeding if the Federal Magistrates Court or Federal Magistrate considers the affidavit does not substantially comply with subsection 88T(3).
- (2) The Federal Magistrates Court or a Federal Magistrate must make an order dismissing an application under section 88T for leave to institute a proceeding if the Federal Magistrates Court or Federal Magistrate considers the proceeding is a vexatious proceeding.
- (3) The Federal Magistrates Court or a Federal Magistrate may dismiss the application without an oral hearing (either with or without the consent of the applicant).

88V Granting application for leave

- (1) Before the Federal Magistrates Court makes an order granting an application under section 88T for leave to institute a proceeding, it must:
 - (a) order that the applicant serve:
 - (i) the person against whom the applicant proposes to institute the proceeding; and
 - (ii) any other person specified in the order;with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and

- (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Federal Magistrates Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Federal Magistrates Court may make an order granting the application. The order may be made subject to the conditions the Federal Magistrates Court considers appropriate.
- (4) The Federal Magistrates Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

**Courts and Tribunals Legislation Amendment (Administration) Act 2013
(No. 7, 2013)**

Schedule 2

17 Section 5 (definition of *Chief Executive Officer*)

Repeal the definition, substitute:

Chief Executive Officer means the Chief Executive Officer of the Family Court and the Federal Circuit Court appointed under section 38C of the *Family Law Act 1975*.

18 Sections 94 and 95

Repeal the sections.

19 Section 97

Repeal the section.

20 Section 100

Omit “officer”, substitute “officers”.

21 After section 112

Insert:

112A APS employees are included in Statutory Agency under the Family Law Act

- (1) For the purposes of the *Public Service Act 1999*, the APS employees referred to in section 101 (Registrars), subsection 106(1) (Sheriff), subsection 109(1) (Marshal), section 111A (family consultants) and section 112 (staff) are included in the Statutory Agency declared by section 38Q of the *Family Law Act 1975*.

Note: The Chief Executive Officer is the Head of that Statutory Agency (see section 38Q of the *Family Law Act 1975*).

- (2) Subsection (1) does not apply to an officer, or a member of the staff, of the Federal Circuit Court of Australia who is also an officer, or a member of the staff, of the Federal Court.

22 Subsection 117(2)

Repeal the subsection.

23 Schedule 2

Repeal the Schedule.

Federal Circuit Court of Australia (Consequential Amendments) Act 2013 (No. 13, 2013)

Schedule 3

54 Section 88P (heading)

Repeal the heading, substitute:

88P Powers of the Federal Circuit Court of Australia not affected

55 Sections 88P, 88Q, 88R, 88S and 88T

Omit “Federal Magistrates Court” (wherever occurring), substitute “Federal Circuit Court of Australia”.

56 Subsection 88U(1)

Omit “Federal Magistrates Court or a Federal Magistrate”, substitute “Federal Circuit Court of Australia or a Judge”.

57 Subsection 88U(1)

Omit “Federal Magistrates Court or Federal Magistrate”, substitute “Federal Circuit Court of Australia or Judge”.

58 Subsection 88U(2)

Omit “Federal Magistrates Court or a Federal Magistrate”, substitute “Federal Circuit Court of Australia or a Judge”.

59 Subsection 88U(2)

Omit “Federal Magistrates Court or Federal Magistrate”, substitute “Federal Circuit Court of Australia or Judge”.

60 Subsection 88U(3)

Omit “Federal Magistrates Court or a Federal Magistrate”, substitute “Federal Circuit Court of Australia or a Judge”.

61 Section 88V

Omit “Federal Magistrates Court” (wherever occurring), substitute “Federal Circuit Court of Australia”.

Endnotes

Endnote 5—Misdescribed amendments

Endnote 5—Misdescribed amendments

This endnote sets out amendments of the *Federal Circuit Court of Australia Act 1999* that have been misdescribed.

There are no misdescribed amendments.