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**Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988**

**No. 8 of 1988**

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**Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988**

**No. 8 of 1988**

**An Act relating to the transfer of certain proceedings from the Federal Court of Australia to the Family Court of Australia and the exercise of certain jurisdiction and powers of the Family Court, and for other purposes**

[*Assented to 5 April 1988*]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

**PART I—PRELIMINARY**

**Short title**

**1.** This Act may be cited as the *Family Court of Australia* (*Additional Jurisdiction and Exercise of Powers*) *Act 1988.*

**Commencement**

**2. (1)** Sections 1 to 21 (inclusive), 27, 29 and 30 shall come into operation on the day on which this Act receives the Royal Assent.

**(2)** Paragraphs 12 (a) and (d) commence on 1 January 1990.

**(3)** The remaining provisions of this Act shall come into operation on a day, or on respective days, to be fixed by Proclamation.

**PART II—AMENDMENT OF THE FEDERAL COURT OF AUSTRALIA ACT 1976**

**Principal Act**

**3**. In this Part, “Principal Act” means the *Federal Court of Australia Act 1976*1*.*

**4.** After section 15 of the Principal Act the following section is inserted:

**Consultation between Chief Judge and Chief Judge of Family Court**

“15a. The Chief Judge and the Chief Judge of the Family Court of Australia may consult with each other in relation to the transfer of proceedings pending in the Court to the Family Court (whether generally or in relation to the transfer of particular proceedings).”.

**PART III—AMENDMENTS OF THE FAMILY LAW ACT 1975**

**Principal Act**

**5.** In this Part, “Principal Act” means the *Family Law Act 1975*2*.*

**Insertion of heading**

**6.** Before section 20 of the Principal Act the following heading is inserted in Part IV:

***“Division 1—Interpretation”.***

**Interpretation**

**7.** Section 20 of the Principal Act is amended:

(a) by omitting “a Senior Judge” from the definition of “Chief Judge” and substituting “the Deputy Chief Judge or a Judge Administrator if the Deputy Chief Judge or Judge Administrator is”;

(b) by inserting “, the Deputy Chief Judge, a Judge Administrator” after “Chief Judge” in the definition of “Judge”; and

(c) by inserting the following definitions:

“ ‘Deputy Chief Judge’ means the Deputy Chief Judge of the Court;

‘Judge Administrator’ means a Judge Administrator of the Court;”.

**Insertion of heading**

**8.** Before section 21 of the Principal Act the following heading is inserted:

***“Division 2—The Family Court of Australia”.***

**Creation of Court**

**9**. Section 21 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) The Court consists of:

(a) a Chief Judge, who shall be called the Chief Justice of the Court;

(b) a Deputy Chief Judge, who shall be called the Deputy Chief Justice of the Court; and

(c) Judge Administrators, Senior Judges and other Judges, not exceeding, in total, such number as is prescribed.”.

**Arrangement of business of Court**

**10.** Section 21b of the Principal Act is amended by adding at the end the following subsections:

“(2) The Deputy Chief Judge shall assist the Chief Judge in the exercise of the functions conferred on the Chief Judge by subsection (1).

“(3) A Judge Administrator shall, in relation to such part of Australia as is from time to time assigned by the Chief Judge, assist the Chief Judge and the Deputy Chief Judge in the exercise of such of the functions conferred on the Chief Judge by subsection (1) as are from time to time so assigned.”.

**Insertion of heading**

**11.** Before section 22 of the Principal Act the following heading is inserted:

***“Division 3—Judges”.***

**Appointment, removal and resignation of Judges**

**12.** Section 22 of the Principal Act is amended:

(a) by omitting from subsection (2aa) “Subject to subsection (2ae), the” and substituting “The”;

(b) by inserting in subsection (2aa) “, the Deputy Chief Judge” after “Chief Judge”;

(c) by omitting from subsection (2ac) “5” and substituting “6”;

(d) by omitting subsections (2ad) and (2ae);

(e) by inserting in subsection (2af) “or the Deputy Chief Judge” after “Chief Judge”; and

(f) by inserting after subsection (2af) the following subsection:

“(2afa) Where a person holding office as a Senior Judge or Judge of the Court is appointed Deputy Chief Judge or a Judge Administrator, the person retains that office as Senior Judge or

Judge, as the case may be, and may resign the office of Deputy Chief Judge or Judge Administrator without resigning that first-mentioned office.”.

**Seniority**

**13.** Section 23 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

“(2) The Deputy Chief Judge is senior to all other Judges of the Court other than the Chief Judge.

“(3) Judges appointed as Judge Administrators or assigned to the Appeal Division before, or not later than 3 months after, the commencement of section 13 of the *Family Court of Australia* (*Additional Jurisdiction and Exercise of Powers*) *Act 1988* have seniority next to the Deputy Chief Judge, and have such seniority in relation to each other as they had immediately before that commencement.

“(4) The remaining Judge Administrators and Judges assigned to the Appeal Division have seniority next to the Judges to whom subsection (3) applies according to the days on which their appointments as Judge Administrators and their assignments to the Appeal Division (whichever first occurred) took effect.

“(5) Where, because 2 or more appointments as Judge Administrator and assignments to the Appeal Division took effect on the same day, subsection (4) does not determine priority between the Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

“(6) The Senior Judges not assigned to the Appeal Division have seniority next to the Judges to whom subsection (4) applies according to the days on which their appointments as Senior Judges took effect.

“(7) Where, because 2 or more commissions of appointment as Senior Judge took effect on the same day, subsection (6) does not determine seniority between the Senior Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

“(8) The Judges who are not Judge Administrators or Senior Judges and are not assigned to the Appeal Division have seniority next to the Senior Judges to whom subsection (6) applies according to the days on which their appointments as Judges took effect.

“(9) Where, because 2 or more commissions of appointment as Judge took effect on the same day on or after the commencement of this subsection, subsection (8) does not determine seniority between the Judges concerned, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.”.

**Absence or illness of Chief Judge**

**14.** Section 24 of the Principal Act is amended:

(a) by omitting “the next Senior Judge” and substituting “the Deputy Chief Judge or, if the Deputy Chief Judge is unavailable, the senior Judge Administrator”; and

(b) by adding at the end the following subsection:

“(2) A Judge who is, under subsection (1), performing the duties and exercising the powers of the Chief Judge shall be called the Acting Chief Justice of the Court.”.

**Salary and Allowances**

**15.** Section 25 of the Principal Act is amended by inserting in subsection (1) “Deputy Chief Judge, Judge Administrators, Judges assigned to the Appeal Division,” after “Chief Judge,”.

**Oath or affirmation of allegiance and office**

**16.** Section 26 of the Principal Act is amended by inserting “*Deputy Chief Judge, Judge Administrator*,” after “*Chief Judge,*”*.*

**17.** After section 26 of the Principal Act the following Division is inserted:

***“Division 4—Judicial Registrars***

**Judicial Registrars**

“26a. The Governor-General may appoint one or more Judicial Registrars of the Court.

**Powers of Judicial Registrars**

“26b. (1) The Judges, or a majority of them, may make Rules of Court delegating to the Judicial Registrars all or any of the powers of the Court except the power to make an order in relation to the custody, guardianship or welfare of, or access to, a child, other than an order until further order or an order made in undefended proceedings or with the consent of all the parties to the proceedings.

“(2) Without limiting the generality of subsection (1), the Judges, or a majority of them, may make Rules of Court under that subsection:

(a) delegating to the Judicial Registrars all or any of the powers of the Court that could be delegated to the Registrars of the Court; and

(b) delegating to the Judicial Registrars powers of the Court by reference to powers of the Court that have been delegated to the Registrars of the Court under section 37a.

“(3) A power delegated to the Judicial Registrars shall, when exercised by a Judicial Registrar, be deemed to have been exercised by the Court or a Judge, as the case requires.

“(4) The delegation of a power to the Judicial Registrars does not prevent the exercise of the power by the Court or a Judge.

“(5) The provisions of this Act, the regulations and the Rules of Court, and other laws of the Commonwealth, that relate to the exercise by the Court of a power that is, under a delegation made under subsection (1), exercisable by a Judicial Registrar, apply in relation to an exercise of the power by a Judicial Registrar as if references to the Court, or to a court exercising jurisdiction under this Act, were references to a Judicial Registrar.

“(6) The Judicial Registrars shall have, in addition to the powers delegated to them under subsection (1), such other powers (if any) as are conferred on them by this Act, the regulations and the Rules of Court.

**Review of decisions of Judicial Registrars**

“26c. (1) A party to proceedings in which a Judicial Registrar has exercised a power delegated under subsection 26b (1) may, within the time prescribed by, or within such further time as is allowed in accordance with, Rules of Court made by the Judges or a majority of them, apply to the Court to review the exercise of the power.

“(2) The Court may, on application made under subsection (1) or of its own motion, review the exercise by a Judicial Registrar of a power delegated under subsection 26b (1), and may make such orders as it considers appropriate in relation to the matter in relation to which the power was exercised.

“(3) The Court may, on the application of a party or of its own motion, refer an application under subsection (1) to a Full Court of the Court.

**Exercise of delegated powers by Court**

“26d. (1) Where:

(a) an application for the exercise of a power delegated under subsection 26b (1) is to be, or is being, heard by a Judicial Registrar; and

(b) the Judicial Registrar considers that it is not appropriate for the application to be determined by a Judicial Registrar;

the Judicial Registrar shall not hear, or continue to hear, the application, and shall make appropriate arrangements for the application to be heard by the Court.

“(2) Where:

(a) a power delegated under subsection 26b (1) is proposed to be exercised in a particular case by a Judicial Registrar; but

(b) the Judicial Registrar has not commenced to exercise the power in that case;

a Judge may, on application by a person who would be a party to the proceedings before the Judicial Registrar in relation to the proposed exercise of the power, order that the power be exercised in that case by a Judge.

“(3) Where an application is made to a Judge under subsection (2) seeking an order that, in a particular case, a power be exercised by a Judge, the Judicial Registrar shall not commence to exercise the power in that case until the application has been determined.

**Rules of Court disallowable etc.**

“26e. Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to Rules of Court made under sections 26b and 26c as if references to regulations were references to the Rules of Court.

**Independence of Judicial Registrars**

“26f. Notwithstanding any provision of this Act or any other law, a Judicial Registrar is not subject to the direction or control of any person or body in the exercise of a power delegated under subsection 26b (1).

**Judicial Registrars hold office on full time or part time basis**

“26g. A Judicial Registrar may be appointed on a full time or part time basis.

**Qualifications for appointment etc.**

“26h.(1) A person shall not be appointed as a Judicial Registrar unless:

(a) the person is or has been a Judge of a court created by the Parliament or of a court of a State or the Northern Territory or has been enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory for not less than 5 years; and

(b) the person is, by reason of training, experience and personality, a suitable person to deal with matters of family law.

“(2) A person who has attained 65 years of age shall not be appointed as a Judicial Registrar on a full time basis.

**Term of office**

“26i. (1) A Judicial Registrar:

(a) shall be appointed with effect from the day specified in the instrument of appointment; and

(b) holds office, subject to this Act:

(i) for such term (not exceeding 7 years) as is specified in the instrument of appointment, but is eligible for re-appointment; or

(ii) if the instrument of appointment so provides, until attaining 65 years of age, but is eligible for re-appointment on a part time basis.

“(2) The Governor-General shall not appoint a person as a Judicial Registrar on a full time basis for a term that extends beyond the day on which the person will attain 65 years of age.

**Remuneration and allowances**

“26j. (1) A Judicial Registrar shall be paid such remuneration as is determined by the Remuneration Tribunal.

“(2) A Judicial Registrar shall be paid such allowances as are prescribed.

“(3) This section has effect subject to the *Remuneration Tribunals Act 1973.*

**Resignation**

“26k. A Judicial Registrar may resign by writing signed and delivered to the Governor-General.

**Termination of appointment**

“26l. (1) The Governor-General may terminate the appointment of a Judicial Registrar for misbehaviour or physical or mental incapacity.

“(2) The Governor-General shall terminate the appointment of a Judicial Registrar if the Judicial Registrar becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit.

**Oath or affirmation of office**

“26m. A Judicial Registrar shall, before proceeding to discharge the duties of the office, take, before the Chief Judge or another Judge of the Family Court, an oath or affirmation in the following form:

‘I, , do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Judicial Registrar of the Family Court of Australia, So help me God.’

*or*

‘I, , do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law and that I will well and truly serve Her in the office of Judicial Registrar of the Family Court of Australia.’.

**Terms and conditions of appointment not provided for by Act**

“26n**.** A Judicial Registrar holds office on such terms and conditions (if any) in relation to matters not provided by this Act as are determined, in writing, by the Governor-General.”.

**Insertion of heading**

**18.** Before section 27 of the Principal Act the following heading is inserted:

***“Division 5—Jurisdiction and exercise of jurisdiction”.***

**Insertion of heading**

**19.** Before section 36 of the Principal Act the following heading is inserted:

***“Division 6—Registries and officers”.***

**Delegation of powers to Registrars**

**20.** Section 37a of the Principal Act is amended:

(a) by omitting subsection (2) and substituting the following subsection:

“(2) The powers of the Court that may be delegated under subsection (1) do not include the power to make:

(a) a decree of dissolution of marriage in proceedings that are defended;

(b) a decree of nullity of marriage;

(c) a declaration as to the validity of a marriage or the dissolution or annulment of a marriage; or

(d) an order in relation to the custody, guardianship or welfare of, or access to, a child, other than an order made in undefended proceedings or with the consent of all the parties to the proceedings.”; and

(b) by omitting from subsection (7) “and the Rules of Court” and substituting “, the Rules of Court, and other laws of the Commonwealth,”.

**Insertion of heading**

**21.** Before section 38 of the Principal Act the following heading is inserted:

***“Division 7—Practice and procedure”.***

**Practice and procedure**

**22.** Section 38 of the Principal Act is amended by inserting after subsection (2) the following subsection:

“(2a) This section does not apply in relation to proceedings that are transferred to the Court from the Federal Court of Australia.”.

**Jurisdiction in matrimonial causes**

**23.** Section 39 of the Principal Act is amended by omitting from subsection (2) and paragraphs (6) (a) and (b) “, not being proceedings for principal relief,” and substituting “(other than proceedings of a kind referred to in subparagraph (a) (ii) or paragraph (b) of the definition of ‘matrimonial cause’ in subsection 4 (1))”.

**24.** After section 44 of the Principal Act the following section is inserted:

**Proceedings for decree of dissolution of marriage**

“44a. The regulations may provide that proceedings for a decree of dissolution of marriage may not be instituted in, or transferred to, a court of summary jurisdiction other than a prescribed court.”.

**Stay and transfer of proceedings**

**25.** Section 45 of the Principal Act is amended by inserting in subsection (2) “, or of convenience to the parties,” after “justice”.

**Transfer of proceedings from court of summary jurisdiction in certain cases**

**26.** Section 46 of the Principal Act is amended:

(a) by omitting paragraph (1) (b) and substituting the following paragraph:

“(b) property of a value exceeding $20,000;”;

(b) by inserting after subsection (1a)the following subsection:

“(1ab) In determining the value of any property for the purposes of subsection (1), any mortgage, lien, charge or other security over the property is to be disregarded.”;

(c) by omitting from subsection (1b) “, as mentioned in paragraph (1) (d),”;

(d) by inserting after subsection (2) the following subsection:

“(2a) Where:

(a) proceedings for a decree of dissolution of a marriage have been instituted in or transferred to a court of summary jurisdiction; and

(b) the proceedings are defended;

the court is required to transfer the proceedings to the Family Court or the Supreme Court of a State or Territory.”;

(e) by inserting in subsection (3) “or (2a)” after “subsection (1)”;

(f) by inserting after subsection (3) the following subsection:

“(3a) Where proceedings instituted under this Act, or continued under section 9, are pending in a court of summary jurisdiction, the Family Court or the Supreme Court of a State or Territory may, on the application of a party or of its own motion, order that the proceedings be removed to the Family Court or the Supreme Court, as the case may be.”; and

(g) by inserting in subsection (4) “or removed” after “transferred”.

**Powers of court in custodial proceedings**

**27.** Section 64 of the Principal Act is amended by inserting after subsection (1a) the following subsection:

“(1aa) In proceedings in relation to the custody, guardianship or welfare of, or access to, a child, the court may order the parties to the proceedings

to attend a conference with a court counsellor or welfare officer in relation to the matter to which the proceedings relate.”.

**Appeals to Family Court**

**28.** Section 94 of the Principal Act is amended by adding at the end the following subsection:

“(3) This section does not apply in relation to a proceeding that is transferred to the Court from the Federal Court of Australia.”.

**Appeals from courts of summary jurisdiction**

**29.** Section 96 of the Principal Act is amended:

(a) by inserting in paragraph (4) (a) “, subject to subsection (5),” after “shall”; and

(b) by adding at the end the following subsections:

“(5) The court hearing an appeal under this section may, on the application of a party or of its own motion, refer the appeal to a Full Court of the Family Court.

“(6) Where an appeal is referred to a Full Court of the Family Court under subsection (5), the Full Court may:

(a) proceed by way of a hearing *de novo*,but may receive as evidence any record of evidence given, including any affidavit filed or exhibit received in the court of summary jurisdiction;

(b) order that questions of fact arising in the proceedings be tried by a Judge;

(c) determine questions of law arising in the proceedings and remit the appeal to a Judge for hearing in accordance with directions given by it; and

(d) make such other decrees as it considers appropriate, including a decree affirming, reversing or varying the decree the subject of the appeal.”.

**Procedure**

**30.** Section 97 of the Principal Act is amended:

(a) by omitting from subsection (1) “subsection (2)” and substituting “subsections (1a) and (2),”;

(b) by inserting after subsection (1) the following subsection:

“(1a) The regulations and the Rules of Court may authorise proceedings to be heard by a Judge or magistrate sitting in Chambers.”; and

(c) by omitting subsection (4).

**PART IV—AMENDMENTS OF THE ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977**

**Principal Act**

**31.** In this Part, “Principal Act” means the *Administrative Decisions* (*Judicial Review*) *Act 1977*3*.*

**Interpretation**

**32.** Section 3 of the Principal Act is amended by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“ ‘Family Court Judge’ means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge);

‘the Family Court’ means the Family Court of Australia;

‘the Federal Court’ means the Federal Court of Australia;”.

**33.** After section 18 of the Principal Act the following section is inserted:

**Transfer of proceedings to Family Court**

“18a. (1) Subject to subsection (2), where a proceeding under this Act is pending in the Federal Court, the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.

“(2) A proceeding under this Act that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

“(3) Subject to subsection (4), where a proceeding under this Act is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32 (1) of the *Federal Court of Australia Act 1976*,the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*,the Rules of Court, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to a Family Court Judge;

(iii) a reference to the expression ‘the Court or a Judge’ when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

“(4) Where any difficulty arises in the application of paragraphs (3) (c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

“(5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.”.

**PART V—AMENDMENTS OF THE BANKRUPTCY ACT 1966**

**Principal Act**

**34.** In this Part, “Principal Act” means the *Bankruptcy Act 1966*4*.*

**Interpretation**

**35.** Section 5 of the Principal Act is amended by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“ ‘Family Court Judge’ means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge);

‘the Family Court’ means the Family Court of Australia;

‘the Federal Court’ means the Federal Court of Australia;”.

**36.** After section 35 of the Principal Act the following section is inserted:

**Transfer of proceedings to Family Court**

“35a. (1) Subject to subsection (2), where a proceeding is pending in the Federal Court, the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.

“(2) A proceeding that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

“(3) Subject to subsection (4), where a proceeding is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32 (1) of the *Federal Court of Australia Act 1976,* the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the *Federal Court of Australia Act 1976*, the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to a Family Court Judge;

(iii) a reference to the expression ‘the Court or a Judge’ when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar in Bankruptcy, a Deputy Registrar in Bankruptcy or a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

“(4) Where any difficulty arises in the application of paragraphs (3) (c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

“(5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.”.

**PART VI—AMENDMENTS OF THE INCOME TAX ASSESSMENT ACT 1936**

**Principal Act**

**37.** In this Part, “Principal Act” means the *Income Tax Assessment Act 1936*5*.*

**38.** Section 184 of the Principal Act is repealed and the following section is substituted:

**Interpretation**

“184. In this Division:

‘Family Court’ means the Family Court of Australia;

‘Family Court Judge’ means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge);

‘Federal Court’ means the Federal Court of Australia.”.

**39.** After section 189a of the Principal Act the following section is inserted:

**Transfer of certain proceedings to Family Court**

“189b. (1) Subject to subsection (2), where a proceeding on a referral under section 189 of a decision to the Federal Court is pending in the Federal Court, the Federal Court may, on the application of a party to the

proceeding or of its own motion, transfer the proceeding to the Family Court.

“(2) A proceeding under this Part that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

“(3) Subject to subsection (4), where a proceeding under this Part is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32 (1) of the *Federal Court of Australia Act 1976*,the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*,the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to a Family Court Judge;

(iii) a reference to the expression ‘the Court or a Judge’ when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

“(4) Where any difficulty arises in the application of paragraphs (3) (c), (d) and (f) in or in relation to a particular proceeding, the Family Court may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

“(5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.”.

**PART VII—AMENDMENTS OF THE TRADE PRACTICES ACT 1974**

**Principal Act**

**40.** In this Part, “Principal Act” means the *Trade Practices Act 1974*6*.*

**Interpretation**

**41.** Section 4 of the Principal Act is amended:

(a) by omitting from subsection (1) the definition of “Court”; and

(b) by inserting in subsection (1) the following definitions in their respective appropriate alphabetical positions (determined on a letter-by-letter basis):

“ ‘Family Court Judge’ means a Judge of the Family Court (including the Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge);

‘the Court’ or ‘the Federal Court’ means the Federal Court of Australia;

‘the Family Court’ means the Family Court of Australia;”.

**42.** After section 86a of the Principal Act the following section is inserted:

**Transfer of certain proceedings to Family Court**

“86b. (1) Subject to subsection (2), where:

(a) a civil proceeding is pending in the Federal Court; and

(b) a matter for determination in the proceeding arises under Division 1 or 1a of Part V;

the Federal Court may, on the application of a party to the proceeding or of its own motion, transfer the proceeding to the Family Court.

“(2) A proceeding that is pending in the Federal Court at the commencement of this section shall not be transferred to the Family Court unless the parties to the proceeding consent to the transfer.

“(3) Subject to subsection (4), where a proceeding is transferred to the Family Court:

(a) the Family Court has jurisdiction to hear and determine the proceeding;

(b) the Family Court also has jurisdiction to hear and determine matters not otherwise within its jurisdiction (whether by virtue of paragraph (a) or otherwise):

(i) that are associated with matters arising in the proceeding; or

(ii) that, apart from subsection 32 (1) of the *Federal Court of Australia Act 1976*,the Federal Court would have had jurisdiction to hear and determine in the proceeding;

(c) the Family Court may, in and in relation to the proceeding:

(i) grant such remedies;

(ii) make orders of such kinds; and

(iii) issue, and direct the issue of, writs of such kinds;

as the Federal Court could have granted, made, issued or directed the issue of, as the case may be, in and in relation to the proceeding;

(d) remedies, orders and writs granted, made or issued by the Family Court in and in relation to the proceeding have effect, and may be enforced by the Family Court, as if they had been granted, made or issued by the Federal Court;

(e) appeals lie from judgments of the Family Court given in and in relation to the proceeding as if the judgments were judgments of the Federal Court constituted by a single Judge of that Court, and do not otherwise lie; and

(f) subject to paragraphs (a) to (e) (inclusive), this Act, the regulations, the *Federal Court of Australia Act 1976*,the Rules of Court made under that Act, and other laws of the Commonwealth, apply in and in relation to the proceeding as if:

(i) a reference to the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to the Family Court;

(ii) a reference to a Judge of the Federal Court (other than in the expression ‘the Court or a Judge’) included a reference to a Family Court Judge;

(iii) a reference to the expression ‘the Court or a Judge’ when used in relation to the Federal Court included a reference to a Family Court Judge sitting in Chambers;

(iv) a reference to a Registrar of the Federal Court included a reference to a Registrar of the Family Court; and

(v) any other necessary changes were made.

“(4) Where any difficulty arises in the application of paragraphs (3) (c), (d) and (f) in or in relation to a particular proceeding, the Family Court

may, on the application of a party to the proceeding or of its own motion, give such directions, and make such orders, as it considers appropriate to resolve the difficulty.

“(5) An appeal does not lie from a decision of the Federal Court in relation to the transfer of a proceeding under this Act to the Family Court.”.

**PART VIII—AMENDMENTS OF THE FAMILY LAW AMENDMENT ACT 1987**

**Principal Act**

**43.** In this Part, “Principal Act” means the *Family Law Amendment Act 1987*7*.*

**Transfer of proceedings from court of summary jurisdiction in certain cases**

**44.** Section 20 of the Principal Act is amended by omitting from the proposed subsection (1) in paragraph (a) “the amount in relation to which the court has jurisdiction in an action for the recovery of a debt” and substituting “$20,000”.

**Transitional provision in relation to section 46 of Family Law Act**

**45.** Section 65 of the Principal Act is amended:

(a) by omitting “section 18 of the *Family Court of Australia* (*Additional Jurisdiction and Exercise of Powers*) *Act 1987*”and substituting “the amendment of subsection 46 (1) of the *Family Law Act 1975* made by the *Family Court of Australia* (*Additional Jurisdiction and Exercise of Powers*) *Act 1988*”;and

(b) by omitting “the first-mentioned section” and substituting “that amendment”.

**NOTES**

1. No. 156, 1976, as amended. For previous amendments, see Nos. 19 and 87, 1979; No. 61, 1981; No. 26, 1982; No. 191, 1983; Nos. 11, 72 and 165, 1984; Nos. 65 and 193, 1985; and No. 76, 1986.

2. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; Nos. 67 and 72, 1983; Nos. 63, 72 and 165, 1984; Nos. 65, 166 and 193, 1985; and Nos. 76 and 168, 1986.

3. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978; No. 111, 1980; Nos. 111, 115, 122, 137, 140 and 153, 1982; Nos. 62 and 144, 1983; Nos. 76, 159 and 164, 1984; Nos. 4, 47 and 65, 1985; Nos. 41, 76, 102, 112 and 153, 1986; and Nos. 62 and 76, 1987.

4. No. 33, 1966, as amended. For previous amendments, see No. 121, 1968; No. 40, 1969; No. 122, 1970; No. 216, 1973; No. 56, 1975; Nos. 91 and 161, 1976; No. 111,

**NOTES**—continued

1977; No. 155, 1979; Nos. 12 and 70, 1980; Nos. 74 and 176, 1981; No. 18, 1983; Nos. 10 and 63, 1984; Nos. 21 and 193, 1985; Nos. 154 and 168, 1986; and No. 73, 1987.

5. No. 27, 1936, as amended. For previous amendments, see No. 88, 1936; No. 5, 1937; No. 46, 1938; No. 30, 1939; No. 17, 1940 (as amended by No. 50, 1942); No. 65, 1940; Nos. 58 and 69, 1941; Nos. 22 and 50, 1942; No. 10, 1943; Nos. 3 and 28, 1944; Nos. 4 and 37, 1945; No. 6, 1946; Nos. 11 and 63, 1947; No. 44, 1948; No. 66, 1949; No. 48, 1950; No. 44, 1951; Nos. 4, 28 and 90, 1952; Nos. 1, 28, 45 and 81, 1953; No. 43, 1954; Nos. 18 and 62, 1955; Nos. 25, 30 and 101, 1956; Nos. 39 and 65, 1957; No. 55, 1958; Nos. 12, 70 and 85, 1959; Nos. 17, 18, 58 and 108, 1960; Nos. 17, 27 and 94, 1961; Nos. 39 and 98, 1962; Nos. 34 and 69, 1963; Nos. 46, 68, 110 and 115, 1964; Nos. 33, 103 and 143, 1965; No. 50, 1966 (as amended by No. 83, 1966); No. 83, 1966; Nos. 19, 38, 76 and 85, 1967; Nos. 4, 70, 87 and 148, 1968; No. 60, 1968 (as amended by No. 51, 1973); Nos. 18, 93 and 101, 1969; No. 87, 1970; Nos. 6, 54 and 93, 1971; Nos. 5, 46, 47, 65 and 85, 1972; Nos. 51, 52, 53 and 164, 1973; No. 165, 1973 (as amended by No. 50, 1976); No. 216, 1973 (as amended by No. 20, 1974); Nos. 26 and 126, 1974; No. 80, 1975 (as amended by No. 205, 1976); No. 117, 1975 (as amended by No. 50, 1976); Nos. 50, 56, 98, 143, 165 and 205, 1976; No. 53, 1976 (as amended by No. 98, 1976); Nos. 57, 126 and 127, 1977; Nos. 36, 57, 87, 90, 123, 171 and 172, 1978; Nos. 12, 19, 27, 43, 62, 146, 147 and 149, 1979; Nos. 19, 24, 57, 58, 124, 133 and 134, 1980; No. 159, 1980 (as amended by No. 108, 1981); Nos. 61, 92, 109, 110, 111, 154 and 175, 1981; Nos. 29, 38, 39, 76, 80, 106 and 123, 1982; Nos. 14, 25, 39, 49, 51, 54 and 103, 1983; Nos. 14, 42, 47, 63, 76, 115, 124, 165 and 174, 1984; No. 123, 1984 (as amended by No. 65, 1985); Nos. 47, 49, 104, 123, 129, 168 and 174, 1985; No. 173, 1985 (as amended by No. 49, 1986); Nos. 41, 46, 48, 49, 51, 52, 90, 109, 112 and 154, 1986; and Nos. 23, 58, 61 and 62, 1987.

6. No. 51, 1974, as amended. For previous amendments, see Nos. 56 and 63, 1975; Nos. 37, 88 and 157, 1976; Nos. 81, 111 and 151, 1977; Nos. 206 and 207, 1978; No. 73, 1980; Nos. 61 and 176, 1981; No. 80, 1982; No. 39, 1983; Nos. 63, 73 and 165, 1984; No. 65, 1985; Nos. 8, 17 and 168, 1986; and No. 23, 1987.

7. No. 181, 1987.

[*Minister’s second reading speech made in—*

*House of Representatives on 28 October 1987*

*Senate on 17 November 1987*]