



Federal Circuit and Family Court of Australia Act 2021

No. 12, 2021

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

Chapter 1—Introduction	2
Part 1—Introduction	2
Division 1—Preliminary	2
1 Short title	2
2 Commencement	2
3 Crown to be bound	3
4 External Territories	3
Division 2—Objects of this Act	4
5 Objects of this Act	4
Division 3—Simplified outline of this Act	5
6 Simplified outline of this Act	5
Part 2—Definitions	7
7 Definitions	7
Chapter 2—Federal Circuit and Family Court of Australia	18
8 Federal Circuit and Family Court of Australia	18
9 Federal Circuit and Family Court of Australia (Division 1)	18
10 Federal Circuit and Family Court of Australia (Division 2)	19
Chapter 3—Federal Circuit and Family Court of Australia (Division 1)	20
Part 1—Constitution	20
Division 1—Constitution	20
11 Appointment of Judges	20
12 Judges to be assigned to particular location	20
13 Authorised Judges may manage classes of proceedings	21
14 Style	21
15 Seniority	22
16 Oath or affirmation of allegiance and office	22
17 Constitution of a Full Court	23
Division 2—Terms and conditions of judges	25
18 Remuneration	25
19 Resignation from office	25

20	Removal from office.....	25
Division 3—Judges of 2 or more courts		26
21	Dual appointments.....	26
22	Judge also holding office of a prescribed court	26
23	Judge also holding office of a State Family Court.....	27
Division 4—Acting Chief Justice		28
24	Acting Chief Justice	28
Part 2—Jurisdiction		29
Division 1—Original jurisdiction		29
25	Original jurisdiction.....	29
Division 2—Appellate jurisdiction		30
26	Appeals.....	30
27	Family law regulations to be sole source of certain appellate jurisdiction.....	32
28	Leave to appeal needed for some family law or child support proceedings.....	32
Division 3—Associated matters		35
29	Jurisdiction in associated matters	35
Division 4—Exercise of jurisdiction		36
Subdivision A—Original jurisdiction		36
30	Exercise of original jurisdiction.....	36
Subdivision B—Appellate jurisdiction (other than relating to courts of summary jurisdiction)		36
31	Application	36
32	Exercise of appellate jurisdiction.....	36
33	Appeal may be determined without an oral hearing	39
34	Cases stated and questions reserved	39
35	Evidence on appeal.....	40
36	Form of judgment on appeal.....	41
37	Court divided in opinion.....	42
38	Stay of proceedings and suspension of orders	42
39	Appeals relating to court security orders	43
40	Exercise of certain appellate jurisdiction under family law regulations	43
Subdivision C—Appellate jurisdiction relating to courts of summary jurisdiction		44
41	Application	44
42	Exercise of appellate jurisdiction.....	44

Subdivision D—Miscellaneous	44
43 Determination of matter completely and finally	44
Division 5—Certain powers relating to matters of jurisdiction	46
44 Making of orders and issuing writs	46
45 Contempt of court	46
46 Summary judgment	46
Division 6—Administration	48
47 Arrangement of business	48
48 Complaints	49
49 Protection for the Chief Justice and Deputy Chief Justice	50
Part 3—Certain proceedings not to be instituted in Federal Circuit and Family Court of Australia (Division 1)	52
50 Prohibition on instituting first instance family law or child support proceedings	52
Part 4—Transfer of proceedings	53
51 Discretionary transfer of proceedings from the Federal Circuit and Family Court of Australia (Division 2)	53
52 Discretionary transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 2)	54
53 Rules of Court	54
54 Delegation	55
Part 5—Appeals	56
55 Appeals to the High Court	56
Part 6—Practice and procedure	58
Division 1—General	58
56 Practice and procedure	58
57 Representation	58
Division 2—Documents filed in the Federal Circuit and Family Court of Australia (Division 1)	60
58 Filing of documents in the Federal Circuit and Family Court of Australia (Division 1)	60
59 Seal of the Federal Circuit and Family Court of Australia (Division 1)	60
60 Federal Circuit and Family Court of Australia (Division 1) stamps	61
61 Writs etc.	61
62 Proceedings may be instituted by application	62
63 Limits on length of documents	62

Division 3—Conduct of proceedings	63
64 Place of sitting	63
65 Change of venue	63
66 Formal defects not to invalidate	63
Division 4—Case management	64
67 Overarching purpose of family law practice and procedure provisions	64
68 Parties to act consistently with the overarching purpose	65
69 Power of the Federal Circuit and Family Court of Australia (Division 1) to give directions about practice and procedure in a civil proceeding	66
70 Chief Justice to achieve common approaches to case management with the Federal Circuit and Family Court of Australia (Division 2)	67
Division 5—Evidence	68
71 Oaths and affirmations.....	68
72 Swearing of affidavits etc.	68
73 Orders and commissions for examination of witnesses	70
Division 6—Judgments	71
74 Reserved judgments etc.	71
Division 7—Common approaches with the Federal Circuit and Family Court of Australia (Division 2)	72
75 Chief Justice to achieve common approaches with the Federal Circuit and Family Court of Australia (Division 2)	72
Division 8—Rules of Court	73
76 Rules of Court	73
77 Consultation.....	74
Part 7—Management and administration	76
Division 1—Management responsibilities of the Chief Justice	76
78 Management of administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).....	76
79 Arrangements with other courts.....	77
80 Arrangements with agencies or organisations	78
81 Arrangements for sharing courtrooms and other facilities.....	79
82 Advisory committees.....	79
Division 2—Chief Executive Officer	81
Subdivision A—Functions and powers	81
83 Chief Executive Officer.....	81

84	Function of Chief Executive Officer	81
85	Powers of Chief Executive Officer	81
Subdivision B—Terms and conditions of appointment		82
86	Appointment	82
87	Term of appointment	82
88	Remuneration and allowances	82
89	Leave of absence	82
90	Outside employment.....	83
91	Disclosure of interests	83
92	Other terms and conditions.....	83
93	Resignation.....	83
94	Termination of appointment	84
95	Acting Chief Executive Officer	85
Division 3—Registries and registrars		87
96	Registries	87
97	Senior Registrars and Registrars.....	87
98	Delegation	87
99	Independence of delegates	90
100	Review of power exercised by delegate.....	91
101	Protection for Registrars	91
102	Oath or affirmation of office.....	92
Division 4—Other officers and staff		93
103	Officers of the Federal Circuit and Family Court of Australia (Division 1)	93
104	Marshal.....	94
105	Delegation by Registry Managers.....	95
Division 5—Miscellaneous administrative matters		96
106	Procedural information to be given to unrepresented parties.....	96
107	Annual report.....	96
108	Delegation of administrative powers of Chief Justice	96
109	Proceedings arising out of administration of the Federal Circuit and Family Court of Australia (Division 1).....	96
110	Protection of persons involved in handling etc. complaints.....	97
Chapter 4—Federal Circuit and Family Court of Australia (Division 2)		98
Part 1—Constitution		98
Division 1—Constitution		98
111	Appointment of Judges	98

112	Assignment of Judges to Divisions.....	99
113	Authorised Judges may manage classes of proceedings	99
114	Style.....	99
115	Oath or affirmation of office.....	100
Division 2—Terms and conditions of serving Judges		102
116	Remuneration	102
117	Leave	102
118	Outside work	102
119	Other terms and conditions.....	103
120	Resignation from office	103
121	Removal from office.....	103
Division 3—Disability and death benefits		104
122	Certification of retired disabled Judges	104
123	Pensions for retired disabled Judges.....	104
124	Superannuation for retired disabled Judges	105
125	Death benefits.....	106
126	Relationship definitions.....	108
127	Meaning of <i>eligible child</i>	110
128	Appropriation	111
Division 4—Judges of 2 or more courts		112
129	Dual appointments.....	112
Division 5—Acting Chief Judge		113
130	Acting Chief Judge.....	113
Part 2—Jurisdiction		115
Division 1—Original jurisdiction		115
131	Original jurisdiction—general	115
132	Original jurisdiction—family law or child support matters	115
133	Original jurisdiction—Commonwealth tenancy disputes	116
Division 2—Associated matters		118
134	Jurisdiction in associated matters	118
Division 3—Exercise of jurisdiction		119
135	General and Fair Work Divisions of the Federal Circuit and Family Court of Australia (Division 2).....	119
136	Exercise of jurisdiction—open court or in Chambers.....	120
137	Exercise of jurisdiction.....	121
138	Decisions to be final	122
139	Determination of matter completely and finally	122

Division 4—Certain powers relating to matters of jurisdiction	123
140 Making of orders and issue of writs.....	123
141 Declarations of right.....	123
142 Contempt of court.....	123
143 Summary judgment	124
Division 5—Administration	125
144 Arrangement of business	125
145 Complaints	126
146 Exercise of powers of General and Fair Work Divisions of the Federal Circuit and Family Court of Australia (Division 2)	127
147 Assignment of Judges to locations or registries.....	128
148 Protection for Chief Judge and Deputy Chief Judge.....	128
Part 3—Transfer of proceedings	130
Division 1—Transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 1)	130
149 Discretionary transfer of proceedings.....	130
150 Transferred proceedings returned to the Federal Circuit and Family Court of Australia (Division 2).....	131
151 Rules of Court	131
152 Delegation	132
Division 2—Transfer of proceedings to the Federal Court	133
153 Discretionary transfer of proceedings.....	133
154 Rules of Court	134
Part 4—Appeals	135
155 Appeals to the High Court may not be brought	135
Part 5—Dispute resolution for proceedings other than proceedings under the Family Law Act 1975	136
Division 1—General	136
156 This Part does not apply to proceedings under the <i>Family Law Act 1975</i>	136
157 Federal Circuit and Family Court of Australia (Division 2) to consider whether to advise people to use dispute resolution processes.....	136
158 Federal Circuit and Family Court of Australia (Division 2) to advise people to use dispute resolution processes.....	136
159 Duty of legal practitioners to consider whether to advise people to use dispute resolution processes.....	137

160	Officers of the Federal Circuit and Family Court of Australia (Division 2) to advise people about dispute resolution processes.....	137
161	Conciliation	138
162	Referral of question of law—dispute resolution process (other than arbitration).....	138
163	Rules of Court about dispute resolution processes	139
164	Regulations about dispute resolution processes	139
165	Rules of Court about costs of dispute resolution processes	140
166	Rules of Court about dispute resolution processes under the <i>Family Law Act 1975</i>	140
167	Consent orders	140
Division 2—Proceedings other than family law or child support proceedings		
168	Scope of Division	141
169	Mediation	141
170	Arbitration	142
171	Power of arbitrator to refer question of law to the Federal Circuit and Family Court of Australia (Division 2).....	142
172	Review of arbitration award on a question of law etc.	143
173	Arbitration awards	144
Part 6—Practice and procedure		145
Division 1—General		145
174	Practice and procedure.....	145
175	Representation	146
176	Interrogatories and discovery	146
Division 2—Documents filed in the Federal Circuit and Family Court of Australia (Division 2)		147
177	Filing of documents in the Federal Circuit and Family Court of Australia (Division 2).....	147
178	Seal of the Federal Circuit and Family Court of Australia (Division 2)	147
179	Federal Circuit and Family Court of Australia (Division 2) stamps.....	148
180	Writs etc.	148
181	Proceedings may be instituted by application.....	149
182	Limits on length of documents	149
Division 3—Conduct of proceedings		150
183	Place of sitting	150
184	Change of venue	150

185	Determination of proceedings without a jury	150
186	Decisions without oral hearing	150
187	Limits on the length of oral argument	150
188	Written submissions	151
189	Formal defects not to invalidate	151
Division 4—Case management		152
190	Overarching purpose of civil practice and procedure provisions	152
191	Parties to act consistently with the overarching purpose	153
192	Power of the Federal Circuit and Family Court of Australia (Division 2) to give directions about practice and procedure in a civil proceeding	154
193	Chief Judge to achieve common approaches to case management with the Federal Circuit and Family Court of Australia (Division 1)	155
Division 5—Evidence		156
194	Oaths and affirmations	156
195	Swearing of affidavits etc.	156
196	Orders and commissions for examination of witnesses	158
197	Time limits on giving of testimony	158
198	Federal Circuit and Family Court of Australia (Division 2) may question witnesses	158
199	Evidence may be given orally or by affidavit	159
200	Offences by witness	160
Division 6—Use of video links or audio links		162
201	Testimony by video link or audio link	162
202	Appearance of persons by video link or audio link	163
203	Making of submissions by video link or audio link	163
204	Conditions for use of video links and audio links	164
205	Putting documents to a person by video link or audio link	166
206	Administration of oaths and affirmations	166
207	Expenses	167
208	New Zealand proceedings	167
Division 7—Orders and judgments		168
209	Orders	168
210	Reserved judgments etc.	168
211	Interest up to judgment	168
212	Interest on judgment	171
213	Enforcement of judgment	171

Division 8—Costs	172
214 Costs	172
215 Security for costs	172
Division 9—Common approaches with the Federal Circuit and Family Court of Australia (Division 1)	174
216 Chief Judge to achieve common approaches with the Federal Circuit and Family Court of Australia (Division 1)	174
Division 10—Rules of Court	175
217 Rules of Court	175
218 Consultation	176
219 Documents	176
220 Service	177
221 Evidence	177
222 Orders and judgments	178
223 Costs	178
224 General	179
225 Incidental matters	181
Part 7—Suppression and non-publication orders	182
Division 1—Introduction	182
226 Powers of Federal Circuit and Family Court of Australia (Division 2) not affected	182
227 Other laws not affected	182
228 This Part does not apply to proceedings under the <i>Family Law Act 1975</i>	182
Division 2—Suppression and non-publication orders	183
229 Safeguarding public interest in open justice	183
230 Power to make orders	183
231 Grounds for making an order	183
232 Procedure for making an order	184
233 Interim orders	185
234 Duration of orders	185
235 Exception for court officials	186
236 Contravention of order	186
Part 8—Vexatious proceedings	187
Division 1—Introduction	187
237 Meaning of a person <i>acting in concert</i>	187
238 Powers of the Federal Circuit and Family Court of Australia (Division 2) not affected	187

Division 2—Vexatious proceedings orders	188
239 Making vexatious proceedings orders	188
240 Notification of vexatious proceedings orders	189
Division 3—Particular consequences of vexatious proceedings orders	191
241 Proceedings in contravention of vexatious proceedings order	191
242 Application for leave to institute proceedings	192
243 Dismissing application for leave	192
244 Granting application for leave	193
Part 9—Management and administration	194
Division 1—Management responsibilities of the Chief Judge and the Chief Executive Officer	194
245 Management of administrative affairs of the Federal Circuit and Family Court of Australia (Division 2)	194
246 Arrangements with other courts	195
247 Arrangements with agencies or organisations	196
248 Arrangements for sharing courtrooms and other facilities	197
249 Advisory committees	197
Division 2—Chief Executive Officer	199
250 Function of Chief Executive Officer	199
251 Powers of Chief Executive Officer	199
Division 3—Registries and registrars	200
252 Registries	200
253 Senior Registrars and Registrars	200
254 Delegation	200
255 Independence of delegates	204
256 Review of power exercised by delegate	204
257 Protection for Registrars	204
258 Oath or affirmation of office	205
Division 4—Other officers and staff	206
Subdivision A—Officers and staff	206
259 Officers of the Federal Circuit and Family Court of Australia (Division 2)	206
260 Sheriff	206
261 Deputy Sheriffs	207
262 Marshal	207
263 Deputy Marshals	208
264 Family consultants	208

265	Staff of the Federal Circuit and Family Court of Australia (Division 2)	208
Subdivision B—Provisions relating to officers and staff		208
266	Arrangements relating to Commonwealth staff	208
267	Delegation by Registry Managers	209
268	Authorised persons to assist the Sheriff or Deputy Sheriffs	209
269	Authorised persons to assist the Marshal or Deputy Marshals	209
270	Actions by or against Sheriff or Marshal	209
271	Making arrests under this Chapter or warrants	210
272	Receivers	211
Division 5—Miscellaneous administrative matters		213
273	Procedural information to be given to unrepresented parties	213
274	Annual report	213
275	Delegation of the administrative powers of the Chief Judge	213
276	Proceedings arising out of administrative affairs of the Federal Circuit and Family Court of Australia (Division 2)	214
277	Protection of persons involved in handling etc. complaints	214
Chapter 5—Miscellaneous		215
Part 1—Administration of family services		215
278	Chief Executive Officer has functions of family consultants	215
279	Chief Executive Officer may delegate powers and functions that relate to family consultants	215
280	Chief Executive Officer may give directions that relate to family services functions	215
281	Chief Executive Officer may authorise officers or staff members to act as family counsellor or family dispute resolution practitioner	216
Part 2—Miscellaneous		217
282	References in other laws to a Judge of the Federal Circuit and Family Court of Australia	217
283	References in other laws to a Registrar of the Federal Circuit and Family Court of Australia	217
284	Review of operation of this Act	217
285	Regulations	218



Federal Circuit and Family Court of Australia Act 2021

No. 12, 2021

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

[Assented to 1 March 2021]

The Parliament of Australia enacts:

Chapter 1—Introduction

Part 1—Introduction

Division 1—Preliminary

1 Short title

This Act is the *Federal Circuit and Family Court of Australia Act 2021*.

2 Commencement

- (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.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	1 September 2021

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 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.

4 External Territories

This Act extends to every external Territory.

Division 2—Objects of this Act

5 Objects of this Act

The objects of this Act are:

- (a) to ensure that justice is delivered by federal courts effectively and efficiently; and
- (b) to provide for just outcomes, in particular, in family law or child support proceedings; and
- (c) to provide a framework to facilitate cooperation between the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2) with the aim of ensuring:
 - (i) common rules of court and forms; and
 - (ii) common practices and procedures; and
 - (iii) common approaches to case management.

Division 3—Simplified outline of this Act

6 Simplified outline of this Act

The federal court known as the Family Court of Australia continues in existence as the Federal Circuit and Family Court of Australia (Division 1). The Court consists of the Chief Justice, the Deputy Chief Justice, Senior Judges and other Judges. The Court has original jurisdiction in matters that are the subject of family law or child support proceedings transferred from the Federal Circuit and Family Court of Australia (Division 2) or as conferred by another law of the Commonwealth, and has appellate jurisdiction in family law and child support matters.

The federal court known as the Federal Circuit Court of Australia continues in existence as the Federal Circuit and Family Court of Australia (Division 2). The Court consists of the Chief Judge, 2 Deputy Chief Judges and other Judges. The Court has original jurisdiction in general federal law matters, as well as family law and child support matters.

All proceedings before the Federal Circuit and Family Court of Australia are subject to case management. The overarching purpose of case management is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible. Judges may be authorised to manage classes of proceedings. The parties and their lawyers are required to cooperate with the Federal Circuit and Family Court of Australia, and among themselves, to assist in achieving the overarching purpose.

The Chief Executive Officer is to assist the Chief Justice and the Chief Judge in managing the administrative affairs of the Federal Circuit and Family Court of Australia.

Registrars and other officers of the Federal Circuit and Family Court of Australia may hold appointments as officers of more than one of the following courts:

Chapter 1 Introduction

Part 1 Introduction

Division 3 Simplified outline of this Act

Section 6

- | |
|--|
| <ul style="list-style-type: none">(a) the Federal Circuit and Family Court of Australia (Division 1);(b) the Federal Circuit and Family Court of Australia (Division 2);(c) the Federal Court. |
|--|

Part 2—Definitions

7 Definitions

(1) In this Act:

administrative affairs:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1), has a meaning affected by subsection 78(2); and
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2), has a meaning affected by subsection 245(2).

Agency has the same meaning as in the *Public Service Act 1999*.

Agency Head has the same meaning as in the *Public Service Act 1999*.

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 every external Territory.

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

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

beneficiary, in respect of a payment under section 125, has the meaning given by subsection 125(4).

Chief Executive Officer means the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1).

Chief Judge means the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2).

Section 7

Chief Justice means the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

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

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

civil practice and procedure provisions, in relation to the Federal Circuit and Family Court of Australia (Division 2), has the meaning given by subsection 190(4).

commencement day means the day this Act commences.

Commonwealth officer or employee means a person who:

- (a) is appointed or engaged under the *Public Service Act 1999*; or
- (b) is appointed under another law of the Commonwealth; or
- (c) holds an office established by a law of the Commonwealth; or
- (d) is employed by a public authority of the Commonwealth; or
- (e) is a member of the Australian Defence Force; or
- (f) is the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*).

Commonwealth superannuation contribution, in respect of a Judge or retired disabled Judge of the Federal Circuit and Family Court of Australia (Division 2), means a Commonwealth contribution to the Judge's choice of:

- (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*).

Commonwealth tenancy dispute means a matter:

Section 7

- (a) involving a lease, licence or other arrangement to possess, occupy or use land and a dispute about:
 - (i) the recovery of rent or other payments payable under or in relation to the lease, licence or other arrangement; or
 - (ii) the termination of the lease, licence or other arrangement; or
 - (iii) the possession, occupation or use of the land; and
- (b) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

complaint:

- (a) in Chapter 3, means a complaint mentioned in paragraph 47(2)(d); and
- (b) in Chapter 4, means a complaint mentioned in paragraph 144(2)(d).

complaint handler:

- (a) in Chapter 3, means any of the following persons:
 - (i) the Chief Justice;
 - (ii) a person who is authorised by the Chief Justice under subsection 48(2);
 - (iii) a person who is a member of a body that is authorised by the Chief Justice under subsection 48(2); and
- (b) in Chapter 4, means any of the following persons:
 - (i) the Chief Judge;
 - (ii) a person who is authorised by the Chief Judge under subsection 145(2);
 - (iii) a person who is a member of a body that is authorised by the Chief Judge under subsection 145(2).

conveyance includes a vehicle, a vessel and an aircraft.

corporate services:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1), has the meaning given by subsection 78(3); and

Section 7

- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2), has the meaning given by subsection 245(3).

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

delegate:

- (a) in Chapter 3, means:
 - (i) the Chief Executive Officer; or
 - (ii) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1); and
- (b) in Chapter 4, means:
 - (i) the Chief Executive Officer; or
 - (ii) a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 2).

Deputy Chief Judge means the Deputy Chief Judge (Family Law) or the Deputy Chief Judge (General and Fair Work) of the Federal Circuit and Family Court of Australia (Division 2).

Deputy Chief Judge (Family Law) means the Deputy Chief Judge (Family Law) of the Federal Circuit and Family Court of Australia (Division 2).

Deputy Chief Judge (General and Fair Work) means the Deputy Chief Judge (General and Fair Work) of the Federal Circuit and Family Court of Australia (Division 2).

Deputy Chief Justice means the Deputy Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

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

Section 7

- (e) case appraisal; and
- (f) conciliation.

Division means the General Division or the Fair Work Division of the Federal Circuit and Family Court of Australia (Division 2).

dwelling house includes a conveyance, or a room in accommodation, in which people ordinarily retire for the night.

electronic signature of a person means the person's unique identification in an electronic form that is approved by the Chief Executive Officer.

eligible child has the meaning given by section 127.

eligible spouse has the meaning given by section 126.

excluded child order means:

- (a) a parenting order to the extent to which it provides that:
 - (i) a child is to live with a person; or
 - (ii) a child is to spend time with a person; or
 - (iii) a child is to communicate with a person; or
 - (iv) a person is to have parental responsibility for a child; or
- (b) an order in relation to the welfare of a child; other than:
 - (c) an order made until further order; or
 - (d) an order made in undefended proceedings; or
 - (e) an order made with the consent of all the parties to the proceedings.

Family Law Act 1975 includes regulations made under that Act.

family law or child support proceedings means proceedings in respect of which the Federal Circuit and Family Court of Australia (Division 2) has original jurisdiction under section 132.

family law practice and procedure provisions, in relation to the Federal Circuit and Family Court of Australia (Division 1), has the meaning given by subsection 67(4).

Federal Circuit and Family Court of Australia means:

Section 7

- (a) the Federal Circuit and Family Court of Australia (Division 1); or
- (b) the Federal Circuit and Family Court of Australia (Division 2).

Federal Court means the Federal Court of Australia.

Full Court means a Full Court of the Federal Circuit and Family Court of Australia (Division 1) constituted in accordance with section 17.

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.

information includes any document.

institute, in relation to proceedings and the power of the Federal Circuit and Family Court of Australia (Division 2) to deal with vexatious 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.

Judge:

- (a) in Chapter 3, means a person holding office as a Judge of the Federal Circuit and Family Court of Australia (Division 1), including the Chief Justice, Deputy Chief Justice and a Senior Judge; and
- (b) in Chapter 4, means a person holding office as a Judge of the Federal Circuit and Family Court of Australia (Division 2), including the Chief Judge and a Deputy Chief Judge.

judgment means a judgment, decree or order, whether final or interlocutory, a decision 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 subsection 126(8).

Magistrates Court of Western Australia means the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

marital or couple relationship has the meaning given by subsection 126(5).

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).

overarching purpose:

- (a) of the family law practice and procedure provisions in relation to the Federal Circuit and Family Court of Australia (Division 1), means the overarching purpose set out in subsection 67(1); and
- (b) of the civil practice and procedure provisions in relation to the Federal Circuit and Family Court of Australia (Division 2), means the overarching purpose set out in subsection 190(1).

Section 7

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

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).

party to a proceeding, in the context of a decision by the Federal Circuit and Family Court of Australia (Division 2) about whether to make a suppression order or non-publication order, 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.

police officer means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

premises includes a place and a conveyance.

prior judicial service, in relation to a retired disabled Judge of the Federal Circuit and Family Court of Australia (Division 2), means service, prior to the Judge's appointment as a Judge of the Court (and in the case of more than one appointment as a Judge of the Court, the Judge's most recent appointment), 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 and Family Court of Australia (Division 2);
- (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).

Section 7

proceeding:

- (a) in relation to a court—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; 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.

public authority of the Commonwealth means:

- (a) a body incorporated, whether before or after the commencement of this definition, for a public purpose by a law of the Commonwealth, being a body corporate employing staff on its own behalf; or
- (b) an authority or body, not being a body corporate, established, whether before or after the commencement of this definition, for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth, being an authority or body employing staff on its own behalf; or
- (c) an incorporated company over which the Commonwealth, or a body or authority mentioned in paragraph (a) or (b), is in a position to exercise control.

publish, in relation to a news publisher, 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.

Registrar:

Section 7

- (a) in Chapter 3, means a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 1); and
- (b) in Chapter 4, means a Senior Registrar or Registrar of the Federal Circuit and Family Court of Australia (Division 2).

Registry Manager:

- (a) in Chapter 3, means a Registry Manager of the Federal Circuit and Family Court of Australia (Division 1); and
- (b) in Chapter 4, means a Registry Manager of the Federal Circuit and Family Court of Australia (Division 2).

relevant belief:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1), has the meaning given by subsection 48(4); and
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2), has the meaning given by subsection 145(4).

retired disabled Judge of the Federal Circuit and Family Court of Australia (Division 2) means a person certified by the Minister to be a retired disabled Judge under paragraph 122(2)(a).

retires, in relation to a Judge of the Federal Circuit and Family Court of Australia (Division 2), means ceases, otherwise than by death, to hold any office as a Judge.

Rules of Court:

- (a) in relation to the Federal Circuit and Family Court of Australia (Division 1), means Rules of Court made under Chapter 3; and
- (b) in relation to the Federal Circuit and Family Court of Australia (Division 2), means Rules of Court made under Chapter 4.

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

vexatious proceeding includes:

Section 7

- (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 239(2).

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

- (2) An expression has the same meaning in this Act as it has in the *Family Law Act 1975* (other than the expression “this Act”).
- (3) To the extent of any inconsistency between the meaning of an expression defined in this Act and the *Family Law Act 1975*, the meaning of the expression in this Act prevails.

Section 8

Chapter 2—Federal Circuit and Family Court of Australia

8 Federal Circuit and Family Court of Australia

- (1) The federal court known immediately before the commencement day as the Family Court of Australia is continued in existence as the Federal Circuit and Family Court of Australia (Division 1).
- (2) The federal court known immediately before the commencement day as the Federal Circuit Court of Australia is continued in existence as the Federal Circuit and Family Court of Australia (Division 2).

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

9 Federal Circuit and Family Court of Australia (Division 1)

- (1) The Federal Circuit and Family Court of Australia (Division 1) is:
 - (a) a superior court of record; and
 - (b) a court of law and equity.
- (2) The Federal Circuit and Family Court of Australia (Division 1) consists of the following:
 - (a) a Chief Justice;
 - (b) a Deputy Chief Justice;
 - (c) such Senior Judges and other Judges as from time to time hold office in accordance with this Act.
- (3) At least 25 Judges are to hold office in accordance with this Act.
- (4) In working out whether at least 25 Judges hold office:
 - (a) include the Chief Justice and Deputy Chief Justice; and
 - (b) do not include a Judge who is also a judge of the Family Court of Western Australia.

10 Federal Circuit and Family Court of Australia (Division 2)

- (1) The Federal Circuit and Family Court of Australia (Division 2) is:
 - (a) a court of record; and
 - (b) a court of law and equity.
- (2) The Federal Circuit and Family Court of Australia (Division 2) consists of the following:
 - (a) a Chief Judge;
 - (b) 2 Deputy Chief Judges;
 - (c) such other Judges as from time to time hold office in accordance with this Act.

Chapter 3—Federal Circuit and Family Court of Australia (Division 1)

Part 1—Constitution

Division 1—Constitution

11 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:
 - (a) the person is or has been:
 - (i) a Judge of another court created by the Parliament or of a court of a State; or
 - (ii) enrolled as a legal practitioner of the High Court, or the Supreme Court of a State or Territory, for at least 5 years; and
 - (b) by reason of knowledge, skills, experience and aptitude, the person is a suitable person to deal with family law matters, including matters involving family violence.
- (3) A person must not be appointed as a Judge if the person has attained the age of 70 years.
- (4) The appointment of a Judge (including by way of promotion or to another judicial office) is to be for a term expiring upon the Judge attaining the age of 70 years.

Note 1: Section 72 of the Constitution sets out requirements relating to the appointment and tenure of Judges.

Note 2: Division 2 of this Part deals with terms and conditions of appointment.

12 Judges to be assigned to particular location

- (1) The commission of appointment of a Judge must assign the Judge to a particular location. The Judge:

Section 13

- (a) must not sit at another location on a permanent basis unless the Minister and the Chief Justice consent; and
 - (b) cannot be required to sit at another location on a permanent basis unless the Judge consents (in addition to the consents required by paragraph (a)); and
 - (c) may sit at another location on a temporary basis.
- (2) In deciding whether to consent as mentioned in paragraph (1)(a), the Chief Justice has the same protection and immunity as if the Chief Justice were making that decision as, or as a member of, the Federal Circuit and Family Court of Australia (Division 1).
- (3) Despite section 39B of the *Judiciary Act 1903*, the Federal Court does not have jurisdiction with respect to a matter relating to the exercise by the Minister or the Chief Justice of the power to consent as mentioned in paragraph (1)(a).

13 Authorised Judges may manage classes of proceedings

- (1) The Chief Justice may, by written instrument, authorise a Judge to manage such class or classes of proceedings as may be specified:
 - (a) in the instrument; or
 - (b) by the Rules of Court.
- (2) In managing a class or classes of proceedings, a Judge is subject to any direction from the Chief Justice.
- (3) The authorisation of a Judge does not affect the rank, title, status and precedence as a Judge that the Judge had immediately before any such authorisation.
- (4) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

14 Style*Chief Justice*

- (1) The Chief Justice is to be styled “the Honourable Chief Justice (*name*) of the Federal Circuit and Family Court of Australia (Division 1)”.

Section 15

Deputy Chief Justice

- (2) The Deputy Chief Justice is to be styled “the Honourable Deputy Chief Justice (*name*) of the Federal Circuit and Family Court of Australia (Division 1)”.

Other Judges

- (3) A Judge (other than the Chief Justice or Deputy Chief Justice) is to be styled “the Honourable”.

Former Judges

- (4) A former Judge is to be styled “the Honourable”.

15 Seniority

- (1) The order of seniority of the Judges of the Federal Circuit and Family Court of Australia (Division 1) is as follows:
- (a) the Chief Justice;
 - (b) the Deputy Chief Justice;
 - (c) Senior Judges, according to the days on which their appointments as Senior Judges took effect;
 - (d) Judges (other than Senior Judges), according to the days on which their appointments as Judges took effect.
- (2) If 2 or more commissions of appointment as Judge took effect on the same day, those Judges have such seniority in relation to each other as is assigned to them by the Governor-General.

16 Oath or affirmation of allegiance and office

- (1) Before proceeding to discharge the duties of office, a Judge must take:
- (a) an oath or affirmation of allegiance in the form in the Schedule to the Constitution; and
 - (b) an oath or affirmation in accordance with the form set out in whichever of subsection (3) or (4) is applicable.
- (2) The oaths or affirmations must be taken before:

- (a) the Chief Justice; or
- (b) a Justice of the High Court; or
- (c) another Judge of the Federal Circuit and Family Court of Australia (Division 1); or
- (d) a Judge of another court created by the Parliament.

Oath

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

I, _____, do swear that I will well and truly serve in the office of (*Chief Justice, Deputy Chief Justice, Senior Judge or Judge*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 1) 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 paragraph (1)(b):

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Chief Justice, Deputy Chief Justice, Senior Judge or Judge*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 1) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

17 Constitution of a Full Court

- (1) A Full Court of the Federal Circuit and Family Court of Australia (Division 1) consists of 3 or more Judges sitting together or, to the extent allowed by subsection (2), of 2 Judges sitting together.
- (2) If, after a Full Court has started the hearing, or further hearing, of a proceeding and before the proceeding has been determined, one of the Judges constituting the Full Court dies, resigns the Judge's office or otherwise becomes unable to continue as a member of the Full Court for the purposes of the proceeding, then the hearing and

Section 17

determination, or the determination, of the proceeding may be completed by a Full Court constituted by the remaining Judges, if:

- (a) at least 3 Judges remain; or
 - (b) 2 Judges remain and the parties consent.
- (3) A Full Court of the Federal Circuit and Family Court of Australia (Division 1) constituted in accordance with subsection (2) may have regard to any evidence given or received, and arguments adduced, by or before the Full Court as previously constituted.

Division 2—Terms and conditions of judges

18 Remuneration

- (1) A Judge is to receive salary, annual allowances and travelling allowances at such respective rates as are fixed from time to time by the Parliament.
- (2) The salary and annual allowances of a Judge:
 - (a) accrue from day to day; and
 - (b) are payable monthly.
- (3) The Consolidated Revenue Fund is appropriated to the extent necessary for payment of salaries and annual allowances in accordance with this section.

Note 1: A Judge's remuneration may not be diminished during the Judge's continuance in office: see paragraph 72(iii) of the Constitution.

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.

19 Resignation from office

- (1) A Judge may resign office by delivering a written resignation 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.

20 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 the Judge's removal on the ground of proved misbehaviour or incapacity.

Division 3—Judges of 2 or more courts

21 Dual appointments

Chief Justice

- (1) Nothing in this Act prevents the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) from being appointed to, and holding at the same time, the office of Chief Judge of the Federal Circuit and Family Court of Australia (Division 2).

Deputy Chief Justice

- (2) Nothing in this Act prevents the Deputy Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) from being appointed to, and holding at the same time, the office of the Deputy Chief Judge (Family Law) of the Federal Circuit and Family Court of Australia (Division 2).

22 Judge also holding office of a prescribed court

- (1) Despite any provision of any other Act, a person may hold office at the one time as:
 - (a) a Judge of the Federal Circuit and Family Court of Australia (Division 1); and
 - (b) a Judge of a prescribed court or of 2 or more prescribed courts.
- (2) In this section:

prescribed court means:

- (a) a court (other than the Federal Circuit and Family Court of Australia (Division 1)) created by the Parliament; or
- (b) the Supreme Court of the Northern Territory.

23 Judge also holding office of a State Family Court

If a person who holds office as a Judge of the Federal Circuit and Family Court of Australia (Division 1) is appointed or serves as a Judge of a Family Court of a State, the appointment or service does not affect:

- (a) the person's tenure of office of Judge of the Federal Circuit and Family Court of Australia (Division 1); or
- (b) the person's rank, title, status, precedence, salary or annual allowance, or other rights or privileges, as the holder of the office of Judge of the Federal Circuit and Family Court of Australia (Division 1);

and, for all purposes, the person's service as a Judge of the Family Court of that State is taken to be service as the holder of the office of Judge of the Federal Circuit and Family Court of Australia (Division 1).

Division 4—Acting Chief Justice

24 Acting Chief Justice

- (1) The Deputy Chief Justice may act as Chief Justice:
- (a) during a vacancy in the office of Chief Justice (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chief Justice:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

- (2) The Minister may, by written instrument, appoint a Judge to act as the Chief Justice:
- (a) during a vacancy in the offices of Chief Justice and Deputy Chief Justice (whether or not an appointment has previously been made to either office); or
 - (b) during any period, or all periods, when both the Chief Justice and Deputy Chief Justice are unavailable because:
 - (i) either or both Justices are absent from duty; or
 - (ii) either or both Justices are absent from Australia; or
 - (iii) either or both Justices are, for any reason, unable to perform the duties of the office.

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

- (3) A person who is acting as Chief Justice is to be called Acting Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

Part 2—Jurisdiction

Division 1—Original jurisdiction

25 Original jurisdiction

- (1) The Federal Circuit and Family Court of Australia (Division 1) has original jurisdiction:
- (a) if a matter, being the subject of a family law or child support proceeding, is transferred to the Court by the Court under section 51—as set out in paragraphs 132(1)(a), (b), (c) and (d); or
 - (b) if a matter, being the subject of a family law or child support proceeding, is transferred to the Court by the Federal Circuit and Family Court of Australia (Division 2) under section 149—as set out in paragraphs 132(1)(a), (b), (c) and (d); or
 - (c) as is conferred on the Court, or in respect of which proceedings may be instituted in the Court, by any other Act.
- (2) Subject to such restrictions and conditions (if any) in:
- (a) section 111AA of the *Family Law Act 1975*; or
 - (b) regulations made under that Act; or
 - (c) the Rules of Court made under this Chapter;
- the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) may be exercised in relation to persons or things outside Australia.

Note: Division 4 of Part XIII AA of the *Family Law Act 1975* (international protection of children) may affect the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1).

Division 2—Appellate jurisdiction

26 Appeals

Appeals generally

- (1) Subject to section 28, the Federal Circuit and Family Court of Australia (Division 1) has jurisdiction to hear and determine appeals from:
 - (a) a judgment of a single Judge of the Federal Circuit and Family Court of Australia (Division 1) exercising appellate jurisdiction in relation to a judgment mentioned in paragraph (e); and
 - (b) a judgment of the Federal Circuit and Family Court of Australia (Division 1) exercising original jurisdiction; and
 - (c) a judgment of the Federal Circuit and Family Court of Australia (Division 2) exercising the original jurisdiction mentioned in section 132; and
 - (d) a judgment of:
 - (i) a Family Court of a State; or
 - (ii) a Supreme Court of a State or Territory constituted by a single Judge;
exercising original or appellate jurisdiction under the *Family Law Act 1975*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*; and
 - (e) a judgment of a court of summary jurisdiction of a State or Territory (other than the Magistrates Court of Western Australia) exercising original jurisdiction 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
 - (f) a judgment of the Magistrates Court of Western Australia exercising original jurisdiction 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
- (g) a judgment of a court exercising jurisdiction in section 69GA proceedings; and
- (h) a judgment or decision of a Judge or Magistrate exercising jurisdiction, as mentioned in paragraph (a), (b), (c), (d), (f) or (g), rejecting an application that the Judge or Magistrate disqualify himself or herself from further hearing a matter.

Note 1: Paragraphs (e) and (g)—an appeal from a judgment of a court of summary jurisdiction, or of a court exercising jurisdiction in section 69GA proceedings, may be made to the Federal Circuit and Family Court of Australia (Division 1) under the *Family Law Act 1975*: see section 47A of that Act.

Note 2: This section also applies to appeals from the making, variation and revocation of court security orders under the *Court Security Act 2013* as described in section 39 of this Act.

Certain kinds of appeals prohibited

- (2) An appeal must not be brought from a judgment referred to in subsection (1) if the judgment is:
 - (a) a determination of an application:
 - (i) for leave or special leave to institute proceedings in the Federal Circuit and Family Court of Australia (Division 1); or
 - (ii) for an extension of time within which to institute proceedings in the Federal Circuit and Family Court of Australia (Division 1); or
 - (iii) for leave to amend the grounds of an application or appeal to the Federal Circuit and Family Court of Australia (Division 1); or
 - (b) a decision to do, or not to do, any of the following:
 - (i) join or remove a party;
 - (ii) adjourn or expedite a hearing;
 - (iii) vacate a hearing date.

Section 27

27 Family law regulations to be sole source of certain appellate jurisdiction

Despite section 26, the Federal Circuit and Family Court of Australia (Division 1) has appellate jurisdiction in relation to a matter arising under regulations made for the purposes of section 111C of the *Family Law Act 1975* only as provided by those regulations.

28 Leave to appeal needed for some family law or child support proceedings

Appeals from judgments of the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia

- (1) Leave of the Federal Circuit and Family Court of Australia (Division 1) is required to appeal to the Court from:
 - (a) a judgment of the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia exercising original jurisdiction under:
 - (i) the *Child Support (Assessment) Act 1989*; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; or
 - (b) a prescribed judgment of the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia; or
 - (c) a judgment or decision of a Judge or Magistrate exercising jurisdiction, as mentioned in paragraph (a), rejecting an application that the Judge or Magistrate disqualify himself or herself from further hearing a matter.
- (2) An application for leave of the Federal Circuit and Family Court of Australia (Division 1) under subsection (1) is to be heard and determined by a single Judge unless the Chief Justice directs that the application be heard and determined by a Full Court.

Appeal from judgments of other courts

- (3) Leave of a Full Court of the Federal Circuit and Family Court of Australia (Division 1) is required to appeal to the Court from:
- (a) a judgment of the Federal Circuit and Family Court of Australia (Division 1) constituted by a single Judge exercising appellate jurisdiction in relation to a judgment mentioned in subparagraph 26(1)(e)(ii) or (iii); or
 - (b) a judgment of the Federal Circuit and Family Court of Australia (Division 1) constituted by a single Judge exercising original jurisdiction under:
 - (i) the *Child Support (Assessment) Act 1989*; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; or
 - (c) a judgment of a Family Court of a State exercising original or appellate jurisdiction under:
 - (i) the *Child Support (Assessment) Act 1989*; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; or
 - (d) a judgment of a Supreme Court of a State or Territory constituted by a single Judge exercising original or appellate jurisdiction under:
 - (i) the *Child Support (Assessment) Act 1989*; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*; or
 - (e) the following judgments:
 - (i) a prescribed judgment of the Federal Circuit and Family Court of Australia (Division 1) constituted by a single Judge;
 - (ii) a prescribed judgment of the Family Court of a State;
 - (iii) a prescribed judgment of a Supreme Court of a State or Territory constituted by a single Judge; or
 - (f) a judgment or decision of a Judge exercising original or appellate jurisdiction, as mentioned in paragraph (a), (b), (c) or (d), rejecting an application that the Judge disqualify himself or herself from further hearing a matter.

Section 28

Note: Leave of a single Judge of the Federal Circuit and Family Court of Australia (Division 1) is required for an appeal from a court of summary jurisdiction of a State or Territory: see sections 47A and 47B of the *Family Law Act 1975*.

Rules of Court

- (4) The Rules of Court may make provision for enabling applications for leave to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing.

Division 3—Associated matters

29 Jurisdiction in associated matters

To the extent that the Constitution permits, jurisdiction is conferred on the Federal Circuit and Family Court of Australia (Division 1) in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) is invoked.

Division 4—Exercise of jurisdiction

Subdivision A—Original jurisdiction

30 Exercise of original jurisdiction

- (1) The original jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) is to be exercised by the Court constituted by a single Judge.
- (2) In a matter before, or coming before, the Federal Circuit and Family Court of Australia (Division 1), a Judge may give directions under subsection 69(1).

Subdivision B—Appellate jurisdiction (other than relating to courts of summary jurisdiction)

31 Application

- (1) This Subdivision applies to the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to a judgment of a court other than a court of summary jurisdiction of a State or Territory.

Note: For the exercise of the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to a court of summary jurisdiction, see Subdivision C.

- (2) For the purposes of subsection (1), the following courts are not courts of summary jurisdiction:
 - (a) a Family Court of a State;
 - (b) the Magistrates Court of Western Australia.

32 Exercise of appellate jurisdiction

Appeals heard by Full Court or a single Judge

- (1) Subject to this section, the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) is to be exercised by:
-

- (a) in relation to a judgment of the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia:
 - (i) a single Judge; or
 - (ii) if the Chief Justice considers that it is appropriate for the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to the appeal to be exercised by a Full Court—a Full Court; and
- (b) in relation to a judgment of any other court—a Full Court.

Certain applications etc. generally heard by a single Judge

- (2) Applications:
 - (a) for an extension of time within which to institute an appeal to the Federal Circuit and Family Court of Australia (Division 1); or
 - (b) for an extension of time within which to file an application for leave to appeal to the Federal Circuit and Family Court of Australia (Division 1); or
 - (c) for leave to amend the grounds of an appeal to the Federal Circuit and Family Court of Australia (Division 1); or
 - (d) to stay an order of the Federal Circuit and Family Court of Australia (Division 1) made in the exercise of its appellate jurisdiction; or
 - (e) for security for costs in relation to an appeal to the Federal Circuit and Family Court of Australia (Division 1);must be heard and determined by a single Judge unless:
 - (f) the Chief Justice directs that the application be heard and determined by a Full Court; or
 - (g) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.
- (3) A single Judge (sitting in Chambers or in open court) or a Full Court of the Federal Circuit and Family Court of Australia (Division 1) may:
 - (a) join or remove a party to an appeal to the Court; or

Section 32

- (b) give summary judgment; or
- (c) make an interlocutory order pending, or after, the determination of an appeal to the Court; or
- (d) make an order by consent disposing of an appeal to the Court (including an order for costs); or
- (e) make an order that an appeal to the Court be dismissed for want of prosecution; or
- (f) make an order that an appeal to the Court be dismissed for:
 - (i) failure to comply with a direction of the Court; or
 - (ii) failure of the appellant to attend a hearing relating to the appeal; or
- (g) vary or set aside an order under paragraph (c), (e) or (f); or
- (h) give directions under subsection 69(1); or
- (i) give other directions about the conduct of an appeal to the Court, including directions about:
 - (i) the use of written submissions; and
 - (ii) limiting the time for oral argument.

Note: For paragraphs (d) and (i), see also subsection (8).

- (4) In subsection (3), a reference to an appeal includes a reference to an application of the kind mentioned in subsection (2).
- (5) An application for the exercise of a power mentioned in subsection (3) must be heard and determined by a single Judge unless:
 - (a) the Chief Justice directs that the application be heard and determined by a Full Court; or
 - (b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it is appropriate for it to hear and determine the application.

Cases stated and questions reserved

- (6) The Federal Circuit and Family Court of Australia (Division 1) constituted by a single Judge may state any case or reserve any question concerning a matter (whether or not an appeal would lie from a judgment of the Judge to a Full Court of the Court on the

Section 33

matter) for the consideration of a Full Court and the Full Court has jurisdiction to hear and determine the case or question.

Rules of Court

- (7) The Rules of Court may make provision enabling matters of the kind mentioned in subsections (2) and (3) to be dealt with, subject to conditions prescribed by the Rules, without an oral hearing either with or without the consent of the parties.

Certain orders and directions not appellable

- (8) No appeal lies under this section from an order or direction of a kind mentioned in paragraph (3)(d) or (i) given by a single Judge or a Full Court of the Federal Circuit and Family Court of Australia (Division 1).

33 Appeal may be determined without an oral hearing

- (1) An appeal under subsection 26(1) may be dealt with by the Federal Circuit and Family Court of Australia (Division 1) without an oral hearing if the parties to the appeal consent to the appeal being dealt with in that way.
- (2) A consent given in relation to an appeal, as mentioned in subsection (1), may only be withdrawn with the leave of the Federal Circuit and Family Court of Australia (Division 1).

34 Cases stated and questions reserved

- (1) The following have effect:
- (a) a court from which appeals lie to the Federal Circuit and Family Court of Australia (Division 1) may state any case or reserve any question concerning a matter with respect to which such an appeal would lie from a judgment of the first-mentioned court for the consideration of the Federal Circuit and Family Court of Australia (Division 1);
 - (b) the Federal Circuit and Family Court of Australia (Division 1) has jurisdiction to hear and determine the case or question.

Section 35

- (2) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) under subsection (1):
 - (a) if the court stating the case or reserving the question is not the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia—must be exercised by a Full Court; or
 - (b) if the court stating the case or reserving the question is the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia—must be exercised by:
 - (i) a single Judge; or
 - (ii) if the Chief Justice considers that it is appropriate for the jurisdiction of the Court in relation to the matter to be exercised by a Full Court—a Full Court.
- (3) Subject to any other Act, the Federal Circuit and Family Court of Australia (Division 1) may draw from the facts and the documents any inference, whether of fact or of law, which could have been drawn from them by the court stating the case or reserving the question.
- (4) A court referred to in subsection (1) must not state a case or reserve a question concerning a matter referred to in that subsection to a court other than the Federal Circuit and Family Court of Australia (Division 1).

35 Evidence on appeal

In an appeal, the Federal Circuit and Family Court of Australia (Division 1):

- (a) must have regard to the evidence given in the proceedings out of which the appeal arose; and
- (b) has the power to draw inferences of fact and, in its discretion, to receive further evidence, which evidence may be given:
 - (i) as provided for in Division 2 of Part XI of the *Family Law Act 1975*; or
 - (ii) by oral examination before the Court or a Judge; or
 - (iii) otherwise in accordance with section 73 of this Act.

36 Form of judgment on appeal

- (1) Subject to any other Act, the Federal Circuit and Family Court of Australia (Division 1) may, in the exercise of its appellate jurisdiction:
 - (a) affirm, reverse or vary the judgment appealed from; or
 - (b) give such judgment or make such order as, in all the circumstances, it thinks fit, or refuse to make an order; or
 - (c) set aside the judgment appealed from, in whole or in part, and remit the proceeding to the court from which the appeal was brought for further hearing and determination, subject to such directions as the Court thinks fit; or
 - (d) award execution from the Court or, in the case of an appeal from another court, award execution from the Court or remit the cause to that other court, or to a court from which a previous appeal was brought, for the execution of the judgment of the Court.
- (2) If, in dismissing an appeal under subsection 26(1), the Federal Circuit and Family Court of Australia (Division 1) is of the opinion that the appeal does not raise any question of general principle, it may give reasons for its decision in short form.
- (3) It is the duty of a court to which a cause is remitted in accordance with paragraph (1)(d) to execute the judgment of the Federal Circuit and Family Court of Australia (Division 1) in the same manner as if it were its own judgment.
- (4) The powers specified in subsection (1) may be exercised by the Federal Circuit and Family Court of Australia (Division 1) even if the notice of appeal asks that part only of the decision be reversed or varied, and may be exercised in favour of all or any of the respondents or parties, including respondents or parties who have not appealed from or complained of the decision.
- (5) An interlocutory judgment or order from which there has been no appeal does not operate to prevent the Federal Circuit and Family Court of Australia (Division 1), upon hearing an appeal, from giving such decision upon the appeal as is just.

Section 37

37 Court divided in opinion

If the Judges constituting a Full Court of the Federal Circuit and Family Court of Australia (Division 1) for the purposes of any proceeding are divided in opinion as to the judgment to be pronounced:

- (a) if there is a majority—judgment is to be pronounced according to the opinion of the majority; or
- (b) if the Judges are equally divided in opinion:
 - (i) in a case of an appeal from a judgment of the Federal Circuit and Family Court of Australia (Division 1), a Family Court of a State or the Supreme Court of a State or Territory—the judgment appealed from is to be affirmed; and
 - (ii) in any other case—the opinion of the Chief Justice or, if the Chief Justice is not a member of the Full Court, the opinion of the most senior Judge who is a member of the Full Court, is to prevail.

38 Stay of proceedings and suspension of orders

- (1) If an appeal to the Federal Circuit and Family Court of Australia (Division 1) from another court has been instituted:
 - (a) the Federal Circuit and Family Court of Australia (Division 1) or a Judge, or a judge of that other court (not being the Federal Circuit and Family Court of Australia (Division 2) or the Magistrates Court of Western Australia), may order, on such conditions (if any) as either court or a judge thinks fit, a stay of all or any proceedings under the judgment appealed from; and
 - (b) the Federal Circuit and Family Court of Australia (Division 1) or a Judge may, by order, on such conditions (if any) as the Court or Judge thinks fit, suspend the operation of an injunction or other order to which the appeal, in whole or in part, relates.
- (2) 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 stay of proceedings.

39 Appeals relating to court security orders

- (1) This section deals with the application of this Subdivision in relation to the making, variation or revocation of a court security order under Part 4 of the *Court Security Act 2013* by a member (as defined in that Act) of:

- (a) the Federal Circuit and Family Court of Australia; or
- (b) the Family Court of Western Australia.

- (2) This Subdivision applies as if the making, variation or revocation were a judgment of the member's court in the exercise of original jurisdiction under the *Family Law Act 1975*.

Note: As a result, an appeal from the making, variation or revocation lies under subsection 26(1).

- (3) However, if the member is a member of the Family Court of Western Australia because the member is a Family Law Magistrate of Western Australia, this Subdivision applies as if:

- (a) the making, variation or revocation were a judgment of the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia exercising original jurisdiction under the *Family Law Act 1975*; and
- (b) proceedings for the making, variation or revocation were proceedings in the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

Note: As a result, an appeal from the making, variation or revocation by the member lies under subsection 26(1) and, generally, the jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to the appeal is to be exercised by a single Judge: see paragraph 32(1)(a).

40 Exercise of certain appellate jurisdiction under family law regulations

Despite the provisions of this Subdivision, the exercise of the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to a matter arising under regulations made for the purposes of section 111C of the *Family Law Act 1975* is as provided by those regulations.

Section 41

Subdivision C—Appellate jurisdiction relating to courts of summary jurisdiction

41 Application

- (1) This Subdivision applies to the appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) in relation to a judgment of a court of summary jurisdiction of a State or Territory.

Note 1: For the definition of *court of summary jurisdiction*, see section 2B of the *Acts Interpretation Act 1901*.

Note 2: See section 47A of the *Family Law Act 1975*.

- (2) For the purposes of subsection (1), the following courts are not courts of summary jurisdiction:
- (a) a Family Court of a State;
 - (b) the Magistrates Court of Western Australia.

42 Exercise of appellate jurisdiction

- (1) The appellate jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) is to be exercised by the Court constituted by a single Judge.
- (2) In a matter before, or coming before, the Federal Circuit and Family Court of Australia (Division 1), a Judge may give directions under subsection 69(1).

Subdivision D—Miscellaneous

43 Determination of matter completely and finally

In every matter before the Federal Circuit and Family Court of Australia (Division 1), the Court must grant, either:

- (a) absolutely; or
 - (b) on such terms and conditions as the Court 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 a party 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.

Division 5—Certain powers relating to matters of jurisdiction

44 Making of orders and issuing writs

The Federal Circuit and Family Court of Australia (Division 1) has power, in relation to matters in which it has jurisdiction, to:

- (a) make orders of such kinds as the Court considers appropriate; or
- (b) issue, or direct the issue of, writs of such kinds as the Court considers appropriate.

45 Contempt of court

- (1) The Federal Circuit and Family Court of Australia (Division 1) 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) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 1) to punish a contempt of the Court committed in the face or hearing of the Court may be exercised by the Court 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.

46 Summary judgment

- (1) The Federal Circuit and Family Court of Australia (Division 1) 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 and Family Court of Australia (Division 1) 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 and Family Court of Australia (Division 1) has apart from this section.

Division 6—Administration

47 Arrangement of business

- (1) The Chief Justice is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Federal Circuit and Family Court of Australia (Division 1).
- (2) In discharging the Chief Justice's responsibility, the Chief Justice:
 - (a) must promote the objects of this Act; and
 - (b) may, subject to this Chapter and to such consultation with Judges of the Federal Circuit and Family Court of Australia (Division 1) as is appropriate and practicable, do all or any of the following:
 - (i) make arrangements as to the Judge who is to constitute the Court 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
 - (c) 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
 - (d) may deal, as set out in section 48, with a complaint about the performance by another Judge of the Judge's judicial or official duties; and
 - (e) may take any measures that the Chief Justice believes are reasonably necessary to maintain public confidence in the Federal Circuit and Family Court of Australia (Division 1), including, but not limited to, temporarily restricting another Judge to non-sitting duties.
- (3) The Deputy Chief Justice is to assist the Chief Justice in the exercise of the functions conferred on the Chief Justice by this section (other than paragraph (2)(d) or (e)).

48 Complaints

- (1) The Chief Justice may, if a complaint is made about another Judge of the Federal Circuit and Family Court of Australia (Division 1), deal with the complaint by doing either or both of the following in respect of the complaint:
- (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 Justice has a relevant belief in relation to the complaint about the other Judge;
 - (iii) arranging for any other complaint handlers to assist the Chief Justice to handle the complaint if the Chief Justice 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 Justice) may handle a complaint by referring it to the Chief Justice. The Chief Justice may then do either or both of the things referred to in paragraph (a) or (b) in respect of the complaint.
- (2) The Chief Justice may authorise, in writing, a person or a body to do one or more of the following:
- (a) assist the Chief Justice 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.
- (3) To avoid doubt, the Chief Justice may authorise under subsection (2):

Section 49

- (a) the Deputy Chief Justice; or
 - (b) a body that includes the Deputy Chief Justice.
- (4) In this section:
 - 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 and Family Court of Australia (Division 1).

49 Protection for the Chief Justice and Deputy Chief Justice

- (1) In exercising the functions or powers mentioned in paragraph 47(2)(b), the Chief Justice has the same protection and immunity as if the Chief Justice were exercising those functions or powers as, or as a member of, the Federal Circuit and Family Court of Australia (Division 1).

Note: See also section 110.
- (2) In assisting in the exercise of the functions or powers mentioned in paragraph 47(2)(b), the Deputy Chief Justice has the same protection and immunity as if the Deputy Chief Justice were exercising those functions or powers as, or as a member of, the Federal Circuit and Family Court of Australia (Division 1).

Note: See also section 110.
- (3) Despite section 39B of the *Judiciary Act 1903*, the Federal Court does not have jurisdiction with respect to a matter relating to:

Section 49

- (a) the exercise by the Chief Justice of the functions or powers mentioned in subsection 47(2) or section 48; or
- (b) the assisting in the exercise by the Deputy Chief Justice of the functions or powers mentioned in subsection 47(2) or section 48.

Functions and powers of the Chief Justice

- (4) In addition to the functions and powers conferred on the Chief Justice by this Chapter, the Chief Justice has such other functions and powers in relation to the Federal Circuit and Family Court of Australia (Division 1) as are specified in the regulations.

Section 50

**Part 3—Certain proceedings not to be instituted in
Federal Circuit and Family Court of
Australia (Division 1)**

**50 Prohibition on instituting first instance family law or child
support proceedings**

- (1) A person must not institute family law or child support proceedings (other than appellate proceedings) in the Federal Circuit and Family Court of Australia (Division 1).

Note: For the institution of proceedings other than family law or child support proceedings, see section 62.

- (2) If proceedings are instituted in the Federal Circuit and Family Court of Australia (Division 1) in contravention of subsection (1), then:
- (a) unless the proceedings are transferred to the Federal Court, the proceedings are, by force of this subsection, transferred to the Federal Circuit and Family Court of Australia (Division 2); and
 - (b) the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

Part 4—Transfer of proceedings

51 Discretionary transfer of proceedings from the Federal Circuit and Family Court of Australia (Division 2)

- (1) If:
 - (a) a proceeding is pending in the Federal Circuit and Family Court of Australia (Division 2); and
 - (b) the proceeding is a family law or child support proceeding; the Chief Justice may, by order, transfer the proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Federal Circuit and Family Court of Australia (Division 1).
- (2) The Chief Justice may transfer a proceeding:
 - (a) on the application of a party to the proceeding; or
 - (b) on the Chief Justice's own initiative.
- (3) In deciding whether to transfer a proceeding, the Chief Justice must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 53(2); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit and Family Court of Australia (Division 1); and
 - (c) whether the resources of the Federal Circuit and Family Court of Australia (Division 1) are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) An appeal does not lie from a decision of the Chief Justice in relation to the transfer of a proceeding under this section.
- (5) This section does not apply to proceedings of a kind specified in the regulations.

Section 52

52 Discretionary transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 2)

- (1) If:
 - (a) a proceeding is pending in the Federal Circuit and Family Court of Australia (Division 1); and
 - (b) the proceeding is a family law or child support proceeding; the Chief Justice may, by order, transfer the proceeding from the Federal Circuit and Family Court of Australia (Division 1) to the Federal Circuit and Family Court of Australia (Division 2).
- (2) The Chief Justice may transfer a proceeding:
 - (a) on the application of a party to the proceeding; or
 - (b) on the Chief Justice's own initiative.
- (3) In deciding whether to transfer a proceeding, the Chief Justice must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 53(2); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit and Family Court of Australia (Division 2); and
 - (c) whether the resources of the Federal Circuit and Family Court of Australia (Division 2) are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) An appeal does not lie from a decision of the Chief Justice in relation to the transfer of a proceeding under this section.
- (5) This section does not apply to proceedings of a kind specified in the regulations.

53 Rules of Court

- (1) The Rules of Court may make provision in relation to:
 - (a) transfers of proceedings from the Federal Circuit and Family Court of Australia (Division 2) under subsection 51(1); or

- (b) transfers of proceedings to the Federal Circuit and Family Court of Australia (Division 2) under subsection 52(1); including in relation to the scale of costs that applies to any order made in respect of proceedings that are transferred.
- (2) In particular, the Rules of Court may specify:
 - (a) in relation to a proceeding to be transferred from the Federal Circuit and Family Court of Australia (Division 2)—matters to which the Chief Justice must have regard in deciding whether to transfer a proceeding under subsection 51(1); or
 - (b) in relation to a proceeding to be transferred to the Federal Circuit and Family Court of Australia (Division 2)—matters to which the Chief Justice must have regard in deciding whether to transfer a proceeding under subsection 52(1).
- (3) Before Rules of Court are made for the purposes of this section, the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) must consult the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2).

54 Delegation

The Chief Justice may, in writing, delegate the Chief Justice's powers under section 51 or 52 to any one or more of the Judges.

Section 55

Part 5—Appeals

55 Appeals to the High Court

- (1) An appeal must not be brought directly to the High Court from:
- (a) a judgment of a single Judge of the Federal Circuit and Family Court of Australia (Division 1) in the exercise of its appellate jurisdiction in relation to a judgment mentioned in paragraph 26(1)(e); or
 - (b) a judgment of the Federal Circuit and Family Court of Australia (Division 1) in the exercise of its original jurisdiction.

Note: See also subsection (6).

- (2) An appeal must not be brought directly to the High Court from a judgment of the Federal Circuit and Family Court of Australia (Division 1), whether constituted by a Full Court or a single Judge, in the exercise of its appellate jurisdiction (other than a judgment mentioned in paragraph (1)(a)), except by special leave of the High Court.
- (3) An appeal must not be brought to the High Court from a judgment of the Federal Circuit and Family Court of Australia (Division 1), whether constituted by a Full Court or a single Judge, in the exercise of its appellate jurisdiction if the judgment is:
- (a) a determination of an application of the kind mentioned in subsection 32(2); or
 - (b) an order under section 38; or
 - (c) a decision to do, or not to do, any of the following:
 - (i) join or remove a party;
 - (ii) grant leave to defend a proceeding;
 - (iii) reinstate an appeal that was taken to have been abandoned or dismissed;
 - (iv) extend the time for making an application for leave to appeal;
 - (v) adjourn or expedite a hearing;

- (vi) vacate a hearing date.
- (4) The fact that there has been, or can be, no appeal to the High Court from an interlocutory judgment of the Federal Circuit and Family Court of Australia (Division 1) in a proceeding does not prevent:
 - (a) a party from founding an appeal from a final judgment in the proceeding on the interlocutory judgment; or
 - (b) the High Court from taking account of the interlocutory judgment in determining:
 - (i) an appeal from a final judgment in the proceeding; or
 - (ii) an application for special leave to appeal from a final judgment in the proceeding.
- (5) The jurisdiction of the High Court to hear and determine an appeal in accordance with this section shall be exercised by a Full Court of the High Court consisting of not less than 3 Justices.
- (6) 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 6—Practice and procedure

Division 1—General

56 Practice and procedure

- (1) Subject to this Chapter and the *Family Law Act 1975*, the practice and procedure of the Federal Circuit and Family Court of Australia (Division 1) is to be in accordance with:
 - (a) regulations made under this Act and the *Family Law Act 1975*; and
 - (b) the Rules of Court.
- (2) To the extent that the provisions mentioned in subsection (1) are insufficient, the Rules of the High Court apply, *mutatis mutandis*, so far as they are capable of applying and subject to any directions of the Federal Circuit and Family Court of Australia (Division 1) or a Judge, to the practice and procedure of the Federal Circuit and Family Court of Australia (Division 1).
- (3) This section does not apply in relation to proceedings that are transferred to the Federal Circuit and Family Court of Australia (Division 1) from the Federal Court.
- (4) In this section, ***practice and procedure*** includes all matters with respect to which regulations under this Act, the *Family Law Act 1975* or Rules of Court may be made.

Note: For further provisions concerning procedure and evidence, see Part XI of the *Family Law Act 1975*.

57 Representation

A party to a proceeding before the Federal Circuit and Family Court of Australia (Division 1) 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.

Section 58

Division 2—Documents filed in the Federal Circuit and Family Court of Australia (Division 1)

58 Filing of documents in the Federal Circuit and Family Court of Australia (Division 1)

- (1) If a document is required or permitted to be filed in the Federal Circuit and Family Court of Australia (Division 1):
 - (a) the document is to be filed:
 - (i) at a registry of the Court; or
 - (ii) in accordance with an arrangement under section 79 or 80; 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, are sent to the Federal Circuit and Family Court of Australia (Division 1), using the web portal of the Federal Circuit and Family Court of Australia; or
 - (b) in other circumstances set out in the Rules of Court.

59 Seal of the Federal Circuit and Family Court of Australia (Division 1)

- (1) The Federal Circuit and Family Court of Australia (Division 1) 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 and Family Court of Australia (Division 1) must be kept in such custody as the Chief Justice directs.
 - (3) The seal of the Federal Circuit and Family Court of Australia (Division 1) must be affixed to documents as provided by this or any other Act or by the Rules of Court.
-

60 Federal Circuit and Family Court of Australia (Division 1) stamps

- (1) There are to be one or more Federal Circuit and Family Court of Australia (Division 1) stamps. For this purpose, a ***Federal Circuit and Family Court of Australia (Division 1) 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 and Family Court of Australia (Division 1).
- (2) A document or a copy of a document marked with a Federal Circuit and Family Court of Australia (Division 1) stamp is as valid and effectual as if it had been sealed with a seal of the Federal Circuit and Family Court of Australia (Division 1).
- (3) A Federal Circuit and Family Court of Australia (Division 1) stamp must be affixed to documents as provided by this or any other Act or by the Rules of Court.

61 Writs etc.

- (1) All writs, commissions and process issued from the Federal Circuit and Family Court of Australia (Division 1) must be:
 - (a) under the seal of the Court; and
 - (b) signed (including by way of electronic signature) by:
 - (i) a Judge; or
 - (ii) the Chief Executive Officer; or
 - (iii) a Senior Registrar; or
 - (iv) a Registrar; or
 - (v) 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 79.

Note: See paragraph 79(1)(b).
- (3) To avoid doubt, subsection (1) does not apply to an order of the Federal Circuit and Family Court of Australia (Division 1).

Section 62

62 Proceedings may be instituted by application

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

63 Limits on length of documents

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

Division 3—Conduct of proceedings

64 Place of sitting

Sittings of the Federal Circuit and Family Court of Australia (Division 1) must be held from time to time as required and the Court may sit at any place in Australia.

65 Change of venue

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

66 Formal defects not to invalidate

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

Division 4—Case management

67 Overarching purpose of family law practice and procedure provisions

- (1) The overarching purpose of the family law practice and procedure provisions is to facilitate the just resolution of disputes:

- (a) according to law; and
- (b) as quickly, inexpensively and efficiently as possible.

Note 1: See also paragraphs 5(a) and (b).

Note 2: The Federal Circuit and Family Court of Australia (Division 1) must give effect to principles in the *Family Law Act 1975* when exercising jurisdiction in relation to proceedings under that Act.

- (2) Without limiting subsection (1), the overarching purpose includes the following objectives:

- (a) the just determination of all proceedings before the Federal Circuit and Family Court of Australia (Division 1);
- (b) the efficient use of the judicial and administrative resources available for the purposes of the Court;
- (c) the efficient disposal of the Court's overall caseload;
- (d) the disposal of all proceedings in a timely manner;
- (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.

- (3) The family law practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make Rules of Court) must be exercised or carried out, in the way that best promotes the overarching purpose.

- (4) The ***family law practice and procedure provisions*** are the following, so far as they apply in relation to civil proceedings:
- (a) the Rules of Court;
 - (b) any other provision made by or under this Act, or any other Act, with respect to the practice and procedure of the Federal Circuit and Family Court of Australia (Division 1).

68 Parties to act consistently with the overarching purpose

- (1) The parties to a civil proceeding before the Federal Circuit and Family Court of Australia (Division 1) must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose.
 - (2) A party's lawyer must, in the conduct of a civil proceeding before the Federal Circuit and Family Court of Australia (Division 1) (including negotiations for settlement) on the party's behalf:
 - (a) take account of the duty imposed on the party by subsection (1); and
 - (b) assist the party to comply with the duty.
 - (3) The Federal Circuit and Family Court of Australia (Division 1) or a Judge may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:
 - (a) the likely duration of the proceeding or part of the proceeding; and
 - (b) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding, including:
 - (i) the costs that the lawyer will charge to the party; and
 - (ii) any other costs that the party will have to pay in the event that the party is unsuccessful in the proceeding or part of the proceeding.
- Note: Paragraph (b)—the Federal Circuit and Family Court of Australia (Division 1) may make an order as to costs under section 117 of the *Family Law Act 1975* if the Court is of the opinion that there are circumstances that justify it in doing so.
- (4) In exercising the discretion to award costs in a civil proceeding, the Federal Circuit and Family Court of Australia (Division 1) or a Judge must take account of any failure to comply with the duty imposed by subsection (1) or (2).

Section 69

- (5) Without limiting the exercise of that discretion, the Federal Circuit and Family Court of Australia (Division 1) or a Judge may order a party's lawyer to bear costs personally.
- (6) If the Federal Circuit and Family Court of Australia (Division 1) or a Judge orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

69 Power of the Federal Circuit and Family Court of Australia (Division 1) to give directions about practice and procedure in a civil proceeding

- (1) The Federal Circuit and Family Court of Australia (Division 1) or a Judge may give directions about the practice and procedure to be followed in relation to a civil proceeding, or any part of a civil proceeding, before the Court.
- (2) Without limiting subsection (1), a direction may:
 - (a) require things to be done; or
 - (b) set time limits for the doing of anything, or the completion of any part of the proceeding; or
 - (c) limit the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence; or
 - (d) provide for submissions to be made in writing; or
 - (e) limit the length of submissions (whether written or oral); or
 - (f) waive or vary any provision of the Rules of Court in their application to the proceeding; or
 - (g) revoke or vary an earlier direction.
- (3) If a party fails to comply with a direction given by the Federal Circuit and Family Court of Australia (Division 1) or a Judge under subsection (1), the Court or Judge may make such order or direction as the Court or Judge thinks appropriate.
- (4) In particular, the Federal Circuit and Family Court of Australia (Division 1) or Judge may do any of the following:
 - (a) dismiss the proceeding in whole or in part;

- (b) strike out, amend or limit any part of a party's claim or defence;
 - (c) disallow or reject any evidence;
 - (d) award costs against a party;
 - (e) order that costs awarded against a party are to be assessed on an indemnity basis or otherwise.
- (5) Subsections (3) and (4) do not affect any power that the Federal Circuit and Family Court of Australia (Division 1) or a Judge has apart from those subsections to deal with a party's failure to comply with a direction.

Note: The Federal Circuit and Family Court of Australia (Division 1) or a Judge may also make orders under the *Family Law Act 1975*.

70 Chief Justice to achieve common approaches to case management with the Federal Circuit and Family Court of Australia (Division 2)

For the purposes of ensuring the efficient resolution of family law or child support proceedings, the Chief Justice must work cooperatively with the Chief Judge with the aim of ensuring common approaches to case management.

Division 5—Evidence

71 Oaths and affirmations

- (1) A Judge may require and administer all necessary oaths and affirmations for the purposes of the Federal Circuit and Family Court of Australia (Division 1).
- (2) A Judge may cause to be administered all necessary oaths and affirmations for the purposes of the Federal Circuit and Family Court of Australia (Division 1). For this purpose, the Court 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, in writing, authorise:
 - (a) a Senior Registrar or Registrar; or
 - (b) a staff member of the Federal Circuit and Family Court of Australia (Division 1);to administer oaths and affirmations for the purposes of the Court.

Note: See also paragraph 79(1)(d).

72 Swearing of affidavits etc.

- (1) An affidavit to be used in a proceeding in the Federal Circuit and Family Court of Australia (Division 1) may be sworn or affirmed in Australia before:
 - (a) a Judge; or
 - (b) the Chief Executive Officer; or
 - (c) a Senior Registrar; or
 - (d) a Registrar; or
 - (e) a justice of the peace; or
 - (f) a commissioner for affidavits; or
 - (g) a commissioner for declarations; or
 - (h) a person who is authorised to administer oaths or affirmations for the purposes of:
 - (i) the High Court; or
 - (ii) the Federal Court; or

- (iii) the Federal Circuit and Family Court of Australia; or
 - (iv) the Supreme Court of a State or Territory; or
 - (i) 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 and Family Court of Australia (Division 1) 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) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising the officer's function in that place; or
 - (c) an employee of the Commonwealth who is:
 - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - (ii) exercising the employee's function in that place; or
 - (d) an employee of the Australian Trade and Investment Commission who is:
 - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - (ii) exercising the employee's function in that place; or
 - (e) a notary public who is exercising the notary public's function in that place; or
 - (f) a person who is:
 - (i) qualified to administer an oath or affirmation in that place; and
 - (ii) certified by a person mentioned in any of paragraphs (b), (c), (d) and (e), 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 and Family Court of Australia (Division 1) in circumstances provided by the Rules of Court.

Section 73

73 Orders and commissions for examination of witnesses

The Federal Circuit and Family Court of Australia (Division 1) or a Judge may, for the purposes of any proceeding before the Court or Judge:

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

and the Court 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 Court or Judge directs.

Division 6—Judgments

74 Reserved judgments etc.

- (1) If:
- (a) the Federal Circuit and Family Court of Australia (Division 1) reserves judgment in a proceeding; and
 - (b) a Judge who heard the proceeding, whether as a single Judge or as a member of a Full Court, prepares orders and reasons; those orders and reasons may be made public by another Judge on behalf of the Judge who heard the proceeding or as otherwise provided for by the Rules of Court.
- (2) If:
- (a) the Federal Circuit and Family Court of Australia (Division 1) reserves reasons for its decision in a proceeding; and
 - (b) a Judge who heard the proceeding, whether as a single Judge or as a member of a Full Court, prepares reasons; those reasons may be made public by another Judge on behalf of the Judge who heard the proceeding or as otherwise provided for by the Rules of Court.

Division 7—Common approaches with the Federal Circuit and Family Court of Australia (Division 2)

75 Chief Justice to achieve common approaches with the Federal Circuit and Family Court of Australia (Division 2)

For the purposes of ensuring the efficient resolution of family law or child support proceedings, the Chief Justice must work cooperatively with the Chief Judge with the aim of ensuring:

- (a) common rules of court and forms; and
- (b) common practices and procedures.

Division 8—Rules of Court

76 Rules of Court

(1) The Chief Justice may make Rules of Court:

- (a) providing for, or in relation to, the practice and procedure to be followed in the Federal Circuit and Family Court of Australia (Division 1) (including the practice and procedure to be followed in Registries of the Court); or
- (b) providing 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 and Family Court of Australia (Division 1); or
- (c) providing for, or in relation to, any matter or thing in respect of which Rules of Court may be made under the *Family Law Act 1975* for the purposes of their application to the Federal Circuit and Family Court of Australia (Division 1); or
- (d) providing for, or in relation to, proceedings transferred to the Federal Circuit and Family Court of Australia (Division 1) under section 35A of the *Bankruptcy Act 1966*; or
- (e) providing for, or in relation to, the time and manner of institution of appeals in and to the Federal Circuit and Family Court of Australia (Division 1); or
- (f) prescribing the duties of officers of the Federal Circuit and Family Court of Australia (Division 1); or
- (g) prescribing penalties, not exceeding 50 penalty units, for offences against the Rules of Court; or
- (h) prescribing matters required or permitted by:
 - (i) any other provision of this Chapter; or
 - (ii) any other law of the Commonwealth;to be prescribed by the Rules of Court.

Note: The power to make Rules of Court under this section will be amended 18 months after this section commences, to provide for the Rules to be made by the Judges, or a majority of them (see Part 4 of Schedule 1 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*).

Section 77

- (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.
- (3) 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.
- (4) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to Rules of Court made by the Chief Justice under this Chapter or another Act (other than the *Family Law Act 1975*):
 - (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of the *Legislation Act 2003*) were a reference to a Rule of Court; and
 - (b) subject to such further modifications or adaptations as are provided for in regulations made under section 284 of this Act.
- (5) Despite the fact that section 16 of the *Legislation Act 2003* does not apply to Rules of Court made by the Chief Justice under this Chapter 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 Justice so desires.

77 Consultation

- (1) Before making Rules of Court, the Chief Justice must be satisfied that there has been appropriate consultation with other Judges.
- (2) The fact that consultation does not occur does not affect the validity or enforceability of a Rule of Court.

- (3) To avoid doubt, this section does not limit section 17 of the *Legislation Act 2003*.

Part 7—Management and administration

Division 1—Management responsibilities of the Chief Justice

78 Management of administrative affairs of the Federal Circuit and Family Court of Australia (Division 1)

- (1) The Chief Justice is responsible for managing the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).
- (2) The *administrative affairs* of the Federal Circuit and Family Court of Australia (Division 1) do not include the corporate services of the Court.
- (3) The following matters relating to the Federal Circuit and Family Court of Australia (Division 1) are the *corporate services* of the Court:
 - (a) communications;
 - (b) finance;
 - (c) human resources;
 - (d) information technology;
 - (e) libraries;
 - (f) records management;
 - (g) administrative matters relating to judgments, to the extent that such matters do not involve the exercise of judicial power;
 - (h) procurement and contract management;
 - (i) property;
 - (j) risk oversight and management;
 - (k) court security;
 - (l) statistics;
 - (m) any other matter prescribed by a determination under subsection (7).

- (4) For the purpose referred to in subsection (1), the Chief Justice 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 personal property.
- (5) The powers given to the Chief Justice by subsection (4) are in addition to any powers given to the Chief Justice by any other provision of this Act or by any other Act.
- (6) Subsection (4) does not authorise the Chief Justice to 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.
- (7) The Minister may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (3)(m)).

Note 1: See Part IIB of the *Federal Court of Australia Act 1976* for provisions relating to the corporate services of the Court.

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the officers and staff of the Federal Circuit and Family Court of Australia (Division 1) are officials of the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees referred to in section 103 of this Act are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

79 Arrangements with other courts

- (1) The Chief Justice 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 and Family Court of Australia (Division 1) any or all of the following functions:
 - (a) the receipt of documents to be lodged with or filed in the Court;

Section 80

- (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Court;
 - (c) the authentication of orders of the Court;
 - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Court;
 - (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 Chief Justice 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 and Family Court of Australia (Division 1), the officer may perform that function despite:
 - (a) any other provision of this Chapter; or
 - (b) any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit and Family Court of Australia (Division 1) in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (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.

80 Arrangements with agencies or organisations

- (1) The Chief Justice 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 and Family Court of Australia (Division 1), documents to be lodged with or filed in the Court; or

- (d) perform, on behalf of the Federal Circuit and Family Court of Australia (Division 1), other non-judicial functions of the Court.
- (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 and Family Court of Australia (Division 1), the employee may perform that function despite:
 - (a) any other provision of this Chapter; or
 - (b) any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit and Family Court of Australia (Division 1) in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

81 Arrangements for sharing courtrooms and other facilities

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

- (a) the Federal Circuit and Family Court of Australia (Division 1) to sit in rooms of the other court; and
- (b) the Court to share registry facilities and other facilities with the other court.

82 Advisory committees

- (1) The Federal Circuit and Family Court of Australia (Division 1) may appoint committees consisting of Judges, or of Judges and other persons, for the purpose of advising the Court in relation to the exercise of the powers of the Court under this Chapter.
- (2) The Chief Justice may appoint committees consisting of Judges, or of Judges and other persons, for the purpose of advising the Chief Justice in relation to:
 - (a) the making of the Rules of Court; or

Section 82

- (b) the management of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).

Division 2—Chief Executive Officer

Subdivision A—Functions and powers

83 Chief Executive Officer

There is to be a Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1).

84 Function of Chief Executive Officer

The Chief Executive Officer's function is to assist the Chief Justice in managing the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).

Note: In relation to the Federal Circuit and Family Court of Australia (Division 2), see section 250.

85 Powers of Chief Executive Officer

- (1) The Chief Executive Officer has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Justice under section 84.
- (2) In particular, the Chief Executive Officer may act on behalf of the Chief Justice in relation to the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).
- (3) The Chief Justice may give the Chief Executive Officer directions regarding the exercise of the Chief Executive Officer's powers under:
 - (a) this Chapter; or
 - (b) Chapter 5, to the extent that the provisions of that Chapter apply to the Federal Circuit and Family Court of Australia (Division 1).

Note: In relation to the Federal Circuit and Family Court of Australia (Division 2), see section 251.

Section 86

Subdivision B—Terms and conditions of appointment

86 Appointment

The Chief Executive Officer is to be appointed, on a full-time basis, by the Governor-General by written instrument on the nomination of the Chief Justice.

Note: The Chief Executive Officer is eligible for reappointment: see section 33AA of the *Acts Interpretation Act 1901*.

87 Term of appointment

The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

88 Remuneration and allowances

- (1) The Chief Executive Officer is to be paid the remuneration that 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 the remuneration that is prescribed by the regulations.
- (2) The Chief Executive Officer is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

89 Leave of absence

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

90 Outside employment

- (1) The Chief Executive Officer must not engage in paid employment outside the duties of the Chief Executive Officer's office without the Chief Justice's approval.
- (2) For the purposes of subsection (1), paid employment does not include service in the Australian Defence Force.

91 Disclosure of interests

- (1) The Chief Executive Officer must give written notice to the Chief Justice 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.
- (2) The Chief Executive Officer must give written notice to the Chief Justice of all material personal interests that the Chief Executive Officer has that relate to the affairs of the Federal Circuit and Family Court of Australia (Division 1).
- (3) Subsections (1) and (2) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

92 Other terms and conditions

The Chief Executive Officer holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Chief Justice.

93 Resignation

- (1) The Chief Executive Officer may resign the Chief Executive Officer's appointment by giving the Governor-General a signed notice of 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.

Section 94

94 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Chief Executive Officer:
 - (a) for misbehaviour; or
 - (b) if the Chief Executive Officer is unable to perform the duties of the Chief Executive Officer's office because of physical or mental incapacity.
- (2) The Governor-General must 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 creditors; or
 - (iv) makes an assignment of remuneration for their benefit; or
 - (b) the Chief Executive Officer is absent from duty, 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 Justice's approval, in paid work contrary to section 90; or
 - (d) fails, without reasonable excuse, to comply with section 91; or
 - (e) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (3) The Governor-General may, with the consent of the Chief Executive Officer who is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

retire the Chief Executive Officer from office on the ground of incapacity.

- (4) Despite subsections (1) to (3), if the Chief Executive Officer:
- (a) is an eligible employee for the purposes of the *Superannuation Act 1976*; and
 - (b) has not reached the Chief Executive Officer's maximum retiring age (within the meaning of that Act);
- the Chief Executive Officer is not capable of being retired from office on the ground of invalidity (within the meaning of Part IVA of that Act) unless CSC has given a certificate under section 54C of that Act.
- (5) Despite subsections (1) to (3), if the Chief Executive Officer:
- (a) is a member of the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (b) is under 60 years of age;
- the Chief Executive Officer is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given a certificate under section 13 of that Act.
- (6) Despite subsections (1) to (3), if the Chief Executive Officer:
- (a) is an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*; and
 - (b) is under 60 years of age;
- the Chief Executive Officer is not capable of being retired from office on the ground of invalidity (within the meaning of that Act) unless CSC has given an approval and certificate under section 43 of that Act.

95 Acting Chief Executive Officer

The Chief Justice may, by written instrument, appoint a person to act as the Chief Executive Officer:

- (a) during a vacancy in the office of Chief Executive Officer (whether or not an appointment has previously been made to that office); or
- (b) during any period, or during all periods, when the Chief Executive Officer:

Section 95

- (i) is absent from duty or from Australia; or
- (ii) is, for any other reason, unable to perform the duties of the office.

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

Division 3—Registries and registrars

96 Registries

The Minister must cause such Registries of the Federal Circuit and Family Court of Australia (Division 1) to be established as the Minister thinks fit.

97 Senior Registrars and Registrars

The Federal Circuit and Family Court of Australia (Division 1) is to have such Senior Registrars and Registrars as are necessary.

98 Delegation

Delegation of powers

- (1) The Chief Justice may make Rules of Court delegating any of the powers of the Federal Circuit and Family Court of Australia (Division 1) to a delegate or a prescribed class of delegate.

Note: For the definition of *delegate*, see subsection 7(1).

- (2) The kinds of powers of the Federal Circuit and Family Court of Australia (Division 1) that the Rules of Court may delegate include the following:

- (a) the power, under subsection 68(3), to require a party's lawyer to give the party an estimate of:
 - (i) the likely duration of a proceeding or part of a proceeding; and
 - (ii) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding;
- (b) the power, under subsection 69(1), to give directions about the practice and procedure to be followed in relation to a proceeding or part of a proceeding;
- (c) the power, under subsection 69(3), to make such order or direction as is appropriate when a party fails to comply with a

Section 98

direction about the practice and procedure to be followed in relation to a proceeding or part of a proceeding;

- (d) the power to dispense with the service of any process of the Court;
- (e) the power to make orders in relation to substituted service;
- (f) 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 Court or of any other person;
- (g) the power to make orders in relation to interrogatories;
- (h) the power, in proceedings in the Court, to make an order adjourning the hearing of the proceedings;
- (i) the power to make an order as to costs;
- (j) the power to make an order about security for costs;
- (k) the power to make an order exempting a party to proceedings in the Court from compliance with a provision of the Rules of Court;
- (l) a power of the Court prescribed by the Rules of Court;
- (m) the power, in family law or child support proceedings, to direct a party to the proceedings to answer particular questions;
- (n) 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);
- (o) the power to direct a family consultant to give a report under section 62G of the *Family Law Act 1975*;
- (p) 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;

- (q) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;
- (r) 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*;
- (s) the power to make an order exempting a party to family law or child support proceedings from compliance with a provision of regulations made under the *Family Law Act 1975*.

Powers that may not be delegated

- (3) Despite subsection (1), the powers of the Federal Circuit and Family Court of Australia (Division 1) that the Rules of Court may not delegate are the following:
 - (a) the power to make a divorce order in proceedings that are defended;
 - (b) the power to make a decree of nullity of marriage;
 - (c) the power to make a declaration as to the validity of:
 - (i) a marriage; or
 - (ii) a divorce; or
 - (iii) the annulment of a marriage;
 - (d) the power to make an excluded child order;
 - (e) the power to make an order setting aside a registered award under section 13K of the *Family Law Act 1975*.

Effect of delegation

- (4) A power delegated by the Rules of Court, when exercised by a delegate, is taken, for all purposes, to have been exercised by the Federal Circuit and Family Court of Australia (Division 1) or a Judge of the Court.
- (5) The delegation of a power by the Rules of Court does not prevent the exercise of the power by the Federal Circuit and Family Court of Australia (Division 1) or a Judge of the Court.

Section 99

Costs

- (6) Despite the Rules of Court, a delegate must not exercise the power referred to in paragraph (2)(i) except in relation to costs of, or in connection with, an application heard by a delegate.

Orders made as a matter of urgency

- (7) Despite the Rules of Court, a delegate must not exercise the power referred to in paragraph (2)(p) on application by a party to proceedings under the *Family Law Act 1975* unless:
- (a) the other party to the proceedings appears at the hearing of the application; or
 - (b) the delegate is satisfied that notice of the intention of the party to make the application has been served on the other party.

Exercise of delegable power may be limited

- (8) The Rules of Court may, in relation to a power delegated by the Rules of Court, limit or specify the circumstances in which the power may be exercised by a delegate.

Application of laws

- (9) 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 and Family Court of Australia (Division 1) of a power that is, because of the Rules of Court, exercisable by a delegate, apply in relation to an exercise of the power by a delegate under this section as if references in those provisions to the Federal Circuit and Family Court of Australia (Division 1) (expressly or otherwise) were references to the delegate.

99 Independence of delegates

Despite any other provision of this Chapter and any provision of the *Public Service Act 1999* or of any other law, a delegate is not subject to the direction or control of any person or body in relation to the way in which the delegate exercises powers under section 98.

100 Review of power exercised by delegate

- (1) A party to proceedings in which a delegate has exercised any of the powers of the Federal Circuit and Family Court of Australia (Division 1) under section 98 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 Court for review of that exercise of power.
- (2) The Federal Circuit and Family Court of Australia (Division 1) may, on application under subsection (1) or on its own initiative, review an exercise of power by a delegate under section 98, and may make any order or orders it thinks fit in relation to the matter in respect of which the power was exercised.

Referral to Court by delegates

- (3) If:
 - (a) an application for the exercise of a power referred to in section 98 is to be, or is being, heard by a delegate; and
 - (b) the delegate considers that it is not appropriate for the application to be determined by a delegate acting under section 98;the delegate must not hear, or continue to hear, the application and must make appropriate arrangements for the application to be heard by a Judge.

101 Protection for Registrars

- (1) In the following cases:
 - (a) in conducting a conference that:
 - (i) is with the parties to property settlement proceedings; and
 - (ii) relates to the matter to which the proceedings relate;
 - (b) in exercising a power of the Federal Circuit and Family Court of Australia (Division 1) referred to in section 98;

Section 102

the Chief Executive Officer, or a Senior Registrar or Registrar of the Court, has the same protection and immunity as a Judge of the Court has in performing the functions of a Judge.

- (2) This section does not limit any other protection or immunity the Chief Executive Officer, or such a Senior Registrar or Registrar has (in relation to such a conference or otherwise).

102 Oath or affirmation of office

- (1) Before proceeding to discharge the duties of office, a Senior Registrar or Registrar must take an oath or affirmation in the form set out in whichever of subsection (3) or (4) is applicable.
- (2) The oath or affirmation must be taken before the Chief Justice or another Judge of the Federal Circuit and Family Court of Australia (Division 1).

Oath

- (3) 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 (*Senior Registrar or Registrar*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 1) 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 subsection (1):

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Senior Registrar or Registrar*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 1) and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

Division 4—Other officers and staff

103 Officers of the Federal Circuit and Family Court of Australia (Division 1)

- (1) In addition to the Chief Executive Officer, there are the following officers of the Federal Circuit and Family Court of Australia (Division 1):
 - (a) such Senior Registrars and Registrars of the Court as are necessary;
 - (b) such Registry Managers of the Court as are necessary;
 - (c) the Marshal of the Court;
 - (d) such Deputy Marshals of the Court as are necessary;
 - (e) such family consultants as are necessary.
- (2) The officers of the Federal Circuit and Family Court of Australia (Division 1), other than the Chief Executive Officer, have such duties, powers and functions as are given to them:
 - (a) by or under:
 - (i) this Chapter or Chapter 5; or
 - (ii) the *Family Law Act 1975*; or
 - (iii) the Rules of Court; or
 - (b) by the Chief Justice or the Court.
- (3) The officers of the Federal Circuit and Family Court of Australia (Division 1), other than the Chief Executive Officer and the Deputy Marshals, are to be persons engaged under the *Public Service Act 1999*.
- (4) The Deputy Marshals may be persons engaged under the *Public Service Act 1999*.
- (5) The Chief Executive Officer may, on behalf of the Chief Justice, arrange with an Agency Head, or with an authority of the Commonwealth, for the services of officers or employees of the Agency or authority to be made available for the purposes of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1).

Section 104

- (6) There are to be such staff of the Registries as are necessary.
- (7) The staff of the Registries are to consist of persons engaged under the *Public Service Act 1999*.

104 Marshal

- (1) The Marshal of the Federal Circuit and Family Court of Australia (Division 1) is responsible for the service and execution of all process of the Court directed to the Marshal.
- (2) The Marshal is also responsible for:
 - (a) dealing, on behalf of the Federal Circuit and Family Court of Australia (Division 1), with the Australian Federal Police and the police forces of the States and Territories in relation to the service and execution of process of the Court directed to members of any of those police forces; and
 - (b) the security of the Federal Circuit and Family Court of Australia (Division 1); and
 - (c) the personal security of the Judges, officers and staff of the Court; and
 - (d) taking, receiving and detaining all persons committed to the Marshal's custody by the Federal Circuit and Family Court of Australia (Division 1); and
 - (e) discharging such persons when so directed by the Federal Circuit and Family Court of Australia (Division 1) or otherwise required by law.
- (3) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers and functions of the Marshal.
- (4) The Marshal may authorise persons to assist the Marshal in exercising powers or performing functions as the Marshal.
- (5) A Deputy Marshal may authorise persons to assist the Deputy Marshal in exercising powers or performing functions as a Deputy Marshal.

105 Delegation by Registry Managers

- (1) A Registry Manager of the Federal Circuit and Family Court of Australia (Division 1) may delegate all or any of a Registry Manager's functions or powers under the *Family Law Act 1975* to a person whom the Registry Manager considers is an appropriate officer or staff member of the Court.
- (2) In performing a delegated function or exercising a delegated power, the person must comply with any written directions of the relevant Registry Manager.

Division 5—Miscellaneous administrative matters

106 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 and Family Court of Australia (Division 1) in relation to the procedural information to be given to parties (and, in particular, unrepresented parties) to enable them to formulate and present their cases.

107 Annual report

- (1) As soon as practicable after 30 June in each financial year, the Chief Justice must prepare a report of the management of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 1) during the financial year.
- (2) A report prepared after 30 June in a year must be given to the Minister by 15 October of that year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.
- (4) A report prepared under this section may be included in a report prepared and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

108 Delegation of administrative powers of Chief Justice

The Chief Justice may, in writing, delegate all or any of the Chief Justice's powers under section 78 to any one or more of the Judges.

109 Proceedings arising out of administration of the Federal Circuit and Family Court of Australia (Division 1)

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Federal Circuit

and Family Court of Australia (Division 1) 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.

110 Protection of persons involved in handling etc. complaints

- (1) In exercising powers or performing functions under paragraph 47(2)(d) and subsection 48(1), 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 48(2), the Chief Justice 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 lawyer 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.

Chapter 4—Federal Circuit and Family Court of Australia (Division 2)

Part 1—Constitution

Division 1—Constitution

111 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:
 - (a) the person has been enrolled as a legal practitioner (however described) of the High Court, or a Supreme Court of a State or Territory, for at least 5 years; and
 - (b) by reason of knowledge, skills, experience and aptitude, the person is a suitable person to deal with the kinds of matters that may be expected to come before the person as a Judge of the Federal Circuit and Family Court of Australia (Division 2).
- (3) To avoid doubt, for the purposes of paragraph (2)(b), if the kinds of matters that may be expected to come before a person as a Judge of the Federal Circuit and Family Court of Australia (Division 2) are family law matters, the person, by reason of their knowledge, skills, experience and aptitude, is a suitable person to deal with those matters, including matters involving family violence.
- (4) A person must not be appointed as a Judge if the person has attained the age of 70 years.
- (5) The appointment of a Judge (including by way of promotion or to another judicial office) is to be for a term expiring upon the Judge attaining the age of 70 years.

Note 1: Section 72 of the Constitution sets out requirements relating to the appointment and tenure of Judges.

Note 2: Division 2 of this Part deals with terms and conditions of appointment.

112 Assignment of Judges to Divisions

The Governor-General may:

- (a) assign a Judge (other than the Chief Judge and a Deputy 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 and a Deputy Chief Judge) who is not assigned to any Division of the Federal Circuit and Family Court of Australia (Division 2) may exercise the powers of the Court in all Divisions (see subsection 146(3)).

113 Authorised Judges may manage classes of proceedings

- (1) The Chief Judge may, by written instrument, authorise a Judge to manage such class or classes of proceedings as may be specified:
 - (a) in the instrument; or
 - (b) by the Rules of Court.
- (2) In managing a class or classes of proceedings, a Judge is subject to any direction from the Chief Judge.
- (3) A Judge may be authorised even though the Judge is not assigned to a Division.
- (4) The authorisation of a Judge does not affect the rank, title, status and precedence as a Judge that the Judge had immediately before any such authorisation.
- (5) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

114 Style*Chief Judge*

- (1) The Chief Judge is to be styled “His Honour Chief Judge (*name*) of the Federal Circuit and Family Court of Australia (Division 2)” or

Section 115

“Her Honour Chief Judge (*name*) of the Federal Circuit and Family Court of Australia (Division 2)”.

Deputy Chief Judge (Family Law)

- (2) The Deputy Chief Judge (Family Law) is to be styled “His Honour Deputy Chief Judge (Family Law) (*name*) of the Federal Circuit and Family Court of Australia (Division 2)” or “Her Honour Deputy Chief Judge (Family Law) (*name*) of the Federal Circuit and Family Court of Australia (Division 2)”.

Deputy Chief Judge (General and Fair Work)

- (3) The Deputy Chief Judge (General and Fair Work) is to be styled “His Honour Deputy Chief Judge (General and Fair Work) (*name*) of the Federal Circuit and Family Court of Australia (Division 2)” or “Her Honour Deputy Chief Judge (General and Fair Work) (*name*) of the Federal Circuit and Family Court of Australia (Division 2)”.

Other Judges

- (4) A Judge (other than the Chief Judge and a Deputy Chief Judge) is to be styled “His Honour Judge (*name*)” or “Her Honour Judge (*name*)”.

115 Oath or affirmation of office

- (1) Before proceeding to discharge the duties of office, a Judge must take an oath or affirmation in accordance with the form set out in whichever of subsection (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 Federal Court; or
 - (d) a Judge of the Federal Circuit and Family Court of Australia (Division 1); or
 - (e) another Judge of the Federal Circuit and Family Court of Australia (Division 2).

Oath

- (3) 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 (*Chief Judge, Deputy Chief Judge (Family Law), Deputy Chief Judge (General and Fair Work) or Judge*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 2) 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 subsection (1):

I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Chief Judge, Deputy Chief Judge (Family Law), Deputy Chief Judge (General and Fair Work) or Judge*, as the case may be) of the Federal Circuit and Family Court of Australia (Division 2) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

Division 2—Terms and conditions of serving Judges

116 Remuneration

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

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

Note 1: A Judge's remuneration may not be diminished during the Judge's continuance in office: see paragraph 72(iii) of the Constitution.

Note 2: 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 3: Under subsection 7(4) of the *Remuneration Tribunal Act 1973*, the Remuneration Tribunal may determine any matter significantly related to the remuneration of Judges.

117 Leave

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

118 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 section does not, by implication, limit the application to a Judge of any doctrine of constitutional incompatibility.

(4) In this section:

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

119 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 subsection.
- (2) The Minister must cause a copy of a determination under subsection (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 that such a resolution could have been passed.

120 Resignation from office

- (1) A Judge may resign office by delivering a written resignation 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.

121 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 the Judge's removal on the ground of proved misbehaviour or incapacity.

Division 3—Disability and death benefits

122 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) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister to refuse to so certify.

123 Pensions for retired disabled Judges

- (1) A retired disabled Judge is entitled to a pension until the retired disabled Judge attains the age of 70 years or 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 the Judge 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 subsection 119(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 subsection (2), the annual rate of salary is the annual rate of remuneration determined under section 116:
 - (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 that 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.

124 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 the retired disabled Judge attains the age of 65 years or 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 subsection 119(1), if the Judge had not retired.
 - (3) The Commonwealth superannuation contribution is to be made by payments on the days that salary payments are made to Judges.
-

Section 125

125 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 subsection 119(1), during the period in subsection (3) of this section 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 subsection is the period:
- (a) beginning on the day that the Judge died; and
 - (b) ending on the day that 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 subsection (6), see subsection (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 subsection (7), see subsection (10).

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

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

Applications for review

- (10) Applications may be made to the Administrative Appeals Tribunal for review of the following decisions of the Minister:
- (a) a decision to determine the proportions of a payment under subsection (6);
 - (b) a decision to give a direction under subsection (7);
 - (c) a decision to refuse to give a direction under paragraph (9)(b).

Section 126

126 Relationship definitions

*Meaning of **eligible spouse***

- (1) For the purposes of this Chapter, subsections (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.
- (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 the Judge; 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 subsection (9).

*Meaning of **marital or couple relationship***

- (5) For the purposes of this Chapter, 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, wife, spouse 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, wife, spouse 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, wife, spouse 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: Subsection (7) lists some of the evidence relevant to subparagraph (5)(b)(ii).

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

- (6) For the purposes of this Chapter, 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;
 - (c) that 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;
 - (d) 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

Section 127

- (iii) a child of both of the persons within the meaning of the *Family Law Act 1975*;
- (e) that the persons jointly owned a home which was their usual residence.

*Meaning of **living with** a person*

- (8) For the purposes of this Chapter, 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).

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

Applications for review

- (9) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister under paragraph (4)(c), subparagraph (5)(b)(ii) or subsection (8).

127 Meaning of *eligible child*

- (1) For the purposes of this Chapter, 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;
 - (ii) the person is a child of the Judge within the meaning of the *Family Law Act 1975*;
 - (iii) in the Minister's opinion, the person was wholly or substantially dependent on the Judge at the time of the Judge's death;

- (iv) in the Minister's opinion, the person would have been wholly or substantially dependent on the Judge but for the Judge's death.
- (2) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Minister under subparagraph (1)(b)(iii) or (iv).

128 Appropriation

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

- (a) pensions under section 123;
- (b) Commonwealth superannuation contributions under section 124;
- (c) payments under section 125.

Division 4—Judges of 2 or more courts

129 Dual appointments

Chief Judge

- (1) Nothing in this Act prevents the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) from being appointed to, and holding at the same time, the office of Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

Deputy Chief Judge (Family Law)

- (2) Nothing in this Act prevents the Deputy Chief Judge (Family Law) of the Federal Circuit and Family Court of Australia (Division 2) from being appointed to, and holding at the same time, the office of Deputy Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

Division 5—Acting Chief Judge**130 Acting Chief Judge**

- (1) The Deputy Chief Judge (Family Law) may act as Chief Judge:
- (a) during a vacancy in the office of Chief Judge (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Chief Judge:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

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

- (2) The Deputy Chief Judge (General and Fair Work) may act as Chief Judge:
- (a) during a vacancy in the offices of both the Chief Judge and Deputy Chief Judge (Family Law) (whether or not an appointment has previously been made to the offices); or
 - (b) during any period, or during all periods, when both of the following subparagraphs apply:
 - (i) the Chief Judge is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chief Judge;
 - (ii) the Deputy Chief Judge (Family Law) is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chief Judge; or
 - (c) during any period, or during all periods, when both of the following subparagraphs apply:
 - (i) the Chief Judge is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Chief Judge;
 - (ii) there is a vacancy in the office of Deputy Chief Judge (Family Law) (whether or not an appointment has previously been made to the office); or

Section 130

- (d) during any period, or during all periods, when both of the following subparagraphs apply:
 - (i) there is a vacancy in the office of Chief Judge (whether or not an appointment has previously been made to the office);
 - (ii) the Deputy Chief Judge (Family Law) is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office of Deputy Chief Judge (Family Law).

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

- (3) The Minister may, by written instrument, appoint a Judge to act as the Chief Judge:
 - (a) during a vacancy in the offices of Chief Judge, Deputy Chief Judge (Family Law) and Deputy Chief Judge (General and Fair Work) (whether or not an appointment has previously been made to the offices); or
 - (b) during any period, or all periods, when the Chief Judge and Deputy Chief Judges are unavailable because one or more of the following subparagraphs apply in relation to all of them:
 - (i) any of all of the Judges are absent from duty;
 - (ii) any or all of the Judges are absent from Australia;
 - (iii) any or all of the Judges are, for any reason, unable to perform the duties of their office or offices.

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

- (4) A person who is acting as Chief Judge is to be called Acting Chief Judge of the Federal Circuit and Family Court of Australia (Division 2).
- (5) For the purposes of this Chapter, a person who is acting as Chief Judge is taken not to be assigned to a Division of the Federal Circuit and Family Court of Australia (Division 2).

Note: A Judge who is not assigned to a Division of the Federal Circuit and Family Court of Australia (Division 2) may exercise the powers of the Court in any Division (see subsection 146(3)).

Part 2—Jurisdiction

Division 1—Original jurisdiction

131 Original jurisdiction—general

- (1) The Federal Circuit and Family Court of Australia (Division 2) has such original jurisdiction as is vested in it:
 - (a) by laws made by the Parliament:
 - (i) by express provision; or
 - (ii) 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 and Family Court of Australia (Division 2) in relation to a matter; or
 - (b) by a legislative instrument made under section 133.
- (2) The original jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) runs, and the judgments of the Federal Circuit and Family Court of Australia (Division 2) have effect and may be executed, throughout Australia.

132 Original jurisdiction—family law or child support matters

- (1) The Federal Circuit and Family Court of Australia (Division 2) has original jurisdiction:
 - (a) with respect to matters in respect of which proceedings may be instituted under the *Family Law Act 1975*; or
 - (b) with respect to matters arising under the *Marriage Act 1961* in respect of which proceedings (other than proceedings under Part VII of that Act) are instituted under that Act; or

Section 133

- (c) with respect to matters arising under a law of a Territory (other than the Northern Territory) concerning:
 - (i) the adoption of children; or
 - (ii) the property of the parties to a marriage or either of them, being matters between those parties referred to in the definition of *matrimonial cause* in the *Family Law Act 1975*; or
 - (iii) the rights and status of a person who is an ex-nuptial child, and the relationship of such a person to the person's parents; or
 - (d) as is conferred on the Court, or in respect of which proceedings may be instituted in the Court, by:
 - (i) the *Child Support (Assessment) Act 1989*; or
 - (ii) the *Child Support (Registration and Collection) Act 1988*.
- (2) Subject to such restrictions and conditions (if any) in:
- (a) section 111AA of the *Family Law Act 1975*; or
 - (b) regulations made under that Act; or
 - (c) the related Federal Circuit and Family Court of Australia (Division 2) Rules, as defined by that Act;
- the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) may be exercised in relation to persons or things outside Australia.

Note: Division 4 of Part XIII of the *Family Law Act 1975* (international protection of children) may affect the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2).

133 Original jurisdiction—Commonwealth tenancy disputes

- (1) The Federal Circuit and Family Court of Australia (Division 2) has original jurisdiction to hear and determine a Commonwealth tenancy dispute between the parties to a lease, licence or other arrangement in which:
 - (a) the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is:
 - (i) the lessor (other than as a sublessor); or
 - (ii) the licensor (other than as a sublicensor); or

Section 133

- (iii) the grantor of a right or permission to possess, occupy or use land owned by the Commonwealth; and
- (b) a person other than:
 - (i) the Commonwealth; or
 - (ii) a person suing or being sued on behalf of the Commonwealth; or
 - (iii) a Commonwealth officer or employee;is:
 - (iv) the lessee (other than as a sublessee); or
 - (v) the licensee (other than as a sublicensee); or
 - (vi) the grantee of the right or permission.
- (2) The Minister may, by legislative instrument, confer jurisdiction on the Federal Circuit and Family Court of Australia (Division 2) in respect of any other specified Commonwealth tenancy dispute.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) The Minister may, by legislative instrument, make provision for and in relation to all or any of the following matters in respect of a Commonwealth tenancy dispute:
 - (a) the rights of the parties to the Commonwealth tenancy dispute;
 - (b) the law (whether a law of the Commonwealth or a law of a State or Territory) to be applied in determining the Commonwealth tenancy dispute (the *applicable law*);
 - (c) any modifications of the applicable law that are to apply in relation to the Commonwealth tenancy dispute;
 - (d) the powers that the Federal Circuit and Family Court of Australia (Division 2) may exercise under the applicable law;
 - (e) if the Federal Circuit and Family Court of Australia (Division 2) makes an order when exercising jurisdiction over the Commonwealth tenancy dispute—the powers that may be exercised when executing the order or a class of orders.

Division 2—Associated matters

134 Jurisdiction in associated matters

To the extent that the Constitution permits, jurisdiction is conferred on the Federal Circuit and Family Court of Australia (Division 2) in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) is invoked.

Division 3—Exercise of jurisdiction

135 General and Fair Work Divisions of the Federal Circuit and Family Court of Australia (Division 2)

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

Fair Work Division

- (3) The following jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) 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;
 - (b) jurisdiction that is incidental to such jurisdiction.

Note: Under section 567 of the *Fair Work Act 2009*, jurisdiction is required to be exercised in the Fair Work Division of the Federal Circuit and Family Court of Australia (Division 2) in relation to matters arising under that Act.

General Division

- (4) The following jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) 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).

Section 136

Jurisdiction that is required to be exercised in more than one Division

- (5) If the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) is required to be exercised in both the General Division and the Fair Work Division 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 the General Division or the Fair Work Division of those proceedings or proceedings of that kind.

136 Exercise of jurisdiction—open court or 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 and Family Court of Australia (Division 2) must be exercised in open court. However, this rule does not apply where, as authorised by this Chapter or another law of the Commonwealth, the jurisdiction of the Court is exercised by a Judge of that Court sitting in Chambers.

Judge sitting in Chambers

- (3) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) may be exercised by a Judge of the Court 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 Chapter or any other law of the Commonwealth, is made subject to the direction of a Judge of the Court sitting in Chambers; and
 - (c) a proceeding on any other application authorised by the Rules of Court to be made to a Judge of the Court sitting in Chambers.

- (4) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) is to be exercised by a Judge of the Court sitting in Chambers in a proceeding where:
- (a) under the Rules of Court, the Court 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 Court making a decision in relation to the proceeding without an oral hearing.

Proceeding in Chambers may be adjourned into court

- (5) A Judge of the Federal Circuit and Family Court of Australia (Division 2) may order a proceeding in Chambers to be adjourned into the Court.

Proceeding in open court may be adjourned into Chambers

- (6) The Federal Circuit and Family Court of Australia (Division 2) may order a proceeding in open court to be adjourned into Chambers if, apart from this subsection, the jurisdiction of the Court may be exercised by a Judge of the Court sitting in Chambers in that proceeding.

Closed court etc.

- (7) The Federal Circuit and Family Court of Australia (Division 2) may order the exclusion of the public or of persons specified by the Court from a sitting of the Court if the Court 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.

137 Exercise of jurisdiction

- (1) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) is to be exercised by the Court constituted by a single Judge.

Section 138

- (2) In a matter before, or coming before, the Federal Circuit and Family Court of Australia (Division 2), a Judge may give directions under subsection 192(1).

138 Decisions to be final

A judgment or decision of the Federal Circuit and Family Court of Australia (Division 2) is valid and binding until set aside, even if it is given or made in excess of the Court's jurisdiction.

139 Determination of matter completely and finally

In every matter before the Federal Circuit and Family Court of Australia (Division 2), the Court must grant, either:

- (a) absolutely; or
- (b) on such terms and conditions as the Court 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 a party 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.

Division 4—Certain powers relating to matters of jurisdiction

140 Making of orders and issue of writs

The Federal Circuit and Family Court of Australia (Division 2) has power, in relation to matters in which it has jurisdiction, to:

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

141 Declarations of right

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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.

142 Contempt of court

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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) The jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) to punish a contempt of the Court committed in the face or hearing of the Court may be exercised by the Court 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.

Section 143

143 Summary judgment

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) has apart from this section.
- (5) This section does not apply if the Federal Circuit and Family Court of Australia (Division 2) is exercising jurisdiction under the *Family Law Act 1975*.

Note: For the power of the Federal Circuit and Family Court of Australia (Division 2) to give summary judgment if the Court is exercising jurisdiction under the *Family Law Act 1975*, see section 45A of that Act.

Division 5—Administration**144 Arrangement of business**

- (1) The Chief Judge is responsible for ensuring the effective, orderly and expeditious discharge of the business of the Federal Circuit and Family Court of Australia (Division 2).
- (2) In discharging the Chief Judge's responsibility, the Chief Judge:
 - (a) must promote the objects of this Act; and
 - (b) may, subject to this Chapter and to such consultation with Judges of the Federal Circuit and Family Court of Australia (Division 2) as is appropriate and practicable, do all or any of the following:
 - (i) make arrangements as to the Judge who is to constitute the Court 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
 - (c) 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
 - (d) may deal, as set out in section 145, with a complaint about the performance by another Judge of the Judge's judicial or official duties; and
 - (e) may take any measures that the Chief Judge believes are reasonably necessary to maintain public confidence in the Federal Circuit and Family Court of Australia (Division 2), including, but not limited to, temporarily restricting another Judge to non-sitting duties.
- (3) Either Deputy Chief Judge may assist the Chief Judge in the exercise of the functions conferred on the Chief Judge by this section (other than paragraph (2)(d) or (e)).

Section 145

145 Complaints

- (1) The Chief Judge may, if a complaint is made about another Judge of the Federal Circuit and Family Court of Australia (Division 2), deal with the complaint by doing either or both of the following in respect of the complaint:
- (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.
- (2) 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.
- (3) To avoid doubt, the Chief Judge may authorise under subsection (2):
- (a) a Deputy Chief Judge; or

(b) a body that includes a Deputy Chief Judge.

(4) In this section:

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 and Family Court of Australia (Division 2).

146 Exercise of powers of General and Fair Work Divisions of the Federal Circuit and Family Court of Australia (Division 2)

- (1) A Judge who is assigned to a Division of the Federal Circuit and Family Court of Australia (Division 2) must exercise, or participate in exercising, the powers of the Court only in that Division, except as set out in subsection (2).
- (2) The Chief Judge may arrange for a Judge who is assigned to a particular Division of the Federal Circuit and Family Court of Australia (Division 2) to exercise, or participate in exercising, the powers of the Court in another Division if the Chief Judge considers that circumstances make it desirable to do so.
- (3) To avoid doubt, a Judge who is not assigned to any Division of the Federal Circuit and Family Court of Australia (Division 2) may exercise, or participate in exercising, the powers of the Court in all Divisions.

Section 147

- (4) Subsection (1) does not affect the validity of any exercise of powers by the Federal Circuit and Family Court of Australia (Division 2) otherwise than in accordance with that subsection.

147 Assignment of Judges to locations or registries

- (1) The Chief Judge may, by written instrument, assign a particular Judge to a particular location or registry.
- (2) An instrument under subsection (1) has no effect unless it is approved, in writing, by the Minister.
- (3) Subsection (1) does not prevent a Judge from performing duties at one or more other locations or registries on a temporary basis (whether on circuit or otherwise).

148 Protection for Chief Judge and Deputy Chief Judge

- (1) In exercising the functions or powers mentioned in paragraph 144(2)(b) or subsection 147(1), the Chief Judge has the same protection and immunity as if the Chief Judge were exercising those functions or powers as, or as a member of, the Federal Circuit and Family Court of Australia (Division 2).

Note: See also section 277.

- (2) In assisting in the exercise of the functions or powers mentioned in paragraph 144(2)(b), a Deputy Chief Judge has the same protection and immunity as if the Deputy Chief Judge were exercising those functions or powers as, or as a member of, the Federal Circuit and Family Court of Australia (Division 2).

Note: See also section 277.

- (3) Despite section 39B of the *Judiciary Act 1903*, the Federal Court does not have jurisdiction with respect to a matter relating to:
 - (a) the exercise by the Chief Judge of the functions or powers mentioned in subsection 144(2), section 145 or subsection 147(1); or
 - (b) the assisting in the exercise by a Deputy Chief Judge of the functions or powers mentioned in subsection 144(2) or section 145.

Functions and powers of the Chief Judge

- (4) In addition to the functions and powers conferred on the Chief Judge by this Chapter, the Chief Judge has such other functions and powers in relation to the Federal Circuit and Family Court of Australia (Division 2) as are specified in the regulations.

Part 3—Transfer of proceedings

Division 1—Transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 1)

149 Discretionary transfer of proceedings

- (1) If a family law or child support proceeding is pending in the Federal Circuit and Family Court of Australia (Division 2), the Court may, by order, transfer the proceeding from the Court to the Federal Circuit and Family Court of Australia (Division 1).
- (2) The Federal Circuit and Family Court of Australia (Division 2) may transfer a proceeding:
 - (a) on the application of a party to the proceeding; or
 - (b) on its own initiative.
- (3) In deciding whether to transfer a proceeding, the Federal Circuit and Family Court of Australia (Division 2) must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 151(2); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Circuit and Family Court of Australia (Division 1); and
 - (c) whether the resources of the Federal Circuit and Family Court of Australia (Division 1) are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) An appeal does not lie from a decision of the Federal Circuit and Family Court of Australia (Division 2) in relation to the transfer of a proceeding under this section.
- (5) This section does not apply to proceedings of a kind specified in the regulations.

150 Transferred proceedings returned to the Federal Circuit and Family Court of Australia (Division 2)

- (1) If:
- (a) a family law or child support proceeding was transferred to the Federal Circuit and Family Court of Australia (Division 1) under subsection 149(1); and
 - (b) the proceeding is transferred back to the Federal Circuit and Family Court of Australia (Division 2) under section 52;
- the Chief Judge may make another order (the *second order*) under section 149 transferring the proceeding to the Federal Circuit and Family Court of Australia (Division 1) again.
- Note: Section 52 allows the Chief Justice to order the transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 2).
- (2) For the purposes of subsection (1), section 149 has effect as if a reference to the Federal Circuit and Family Court of Australia (Division 2) were a reference to the Chief Judge.
- (3) This section does not apply to proceedings of a kind specified in the regulations.

151 Rules of Court

- (1) The Rules of Court may make provision in relation to transfers of proceedings to the Federal Circuit and Family Court of Australia (Division 1) under subsection 149(1), including in relation to the scale of costs that applies to any order made in respect of proceedings that are transferred.
- (2) In particular, the Rules of Court may specify matters to which the Federal Circuit and Family Court of Australia (Division 2) must have regard in deciding whether to transfer a proceeding to the Federal Circuit and Family Court of Australia (Division 1) under subsection 149(1).
- (3) Before Rules of Court are made for the purposes of this section, the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) must consult the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1).

Chapter 4 Federal Circuit and Family Court of Australia (Division 2)

Part 3 Transfer of proceedings

Division 1 Transfer of proceedings to the Federal Circuit and Family Court of Australia (Division 1)

Section 152

152 Delegation

The Chief Judge may, in writing, delegate the Chief Judge's power under subsection 150(1) to any one or more of the Judges.

Division 2—Transfer of proceedings to the Federal Court

153 Discretionary transfer of proceedings

- (1) If:
 - (a) a proceeding is pending in the Federal Circuit and Family Court of Australia (Division 2); and
 - (b) the proceeding is not a family law or child support proceeding;the Court may, by order, transfer the proceeding from the Court to the Federal Court.
- (2) The Federal Circuit and Family Court of Australia (Division 2) may transfer a proceeding:
 - (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, the Federal Circuit and Family Court of Australia (Division 2) must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 154(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 and Family Court of Australia (Division 2) are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) If an order is made under subsection (1), the order takes effect on the day that the order is confirmed by the Federal Court under section 32AD of the *Federal Court of Australia Act 1976*.
- (5) The Federal Circuit and Family Court of Australia (Division 2) may make such orders as it considers necessary pending the order transferring the proceeding being confirmed by the Federal Court.

Section 154

- (6) An appeal does not lie from a decision of the Federal Circuit and Family Court of Australia (Division 2) in relation to the transfer of a proceeding under this section.
- (7) This section does not apply to proceedings of a kind specified in the regulations.

154 Rules of Court

- (1) The Rules of Court may make provision in relation to transfers of proceedings to the Federal Court under subsection 153(1), including in relation to the scale of costs that applies to any order made in respect of proceedings that are transferred.
- (2) In particular, the Rules of Court may set out factors that are to be taken into account by the Federal Circuit and Family Court of Australia (Division 2) in deciding whether to transfer a proceeding to the Federal Court under subsection 153(1).
- (3) Before Rules of Court are made for the purposes of this section, the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) must consult the Chief Justice of the Federal Court.

Part 4—Appeals

155 Appeals to the High Court may not be brought

- (1) An appeal must not be brought directly to the High Court from a judgment of the Federal Circuit and Family Court of Australia (Division 2).
- (2) 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 5—Dispute resolution for proceedings other than proceedings under the Family Law Act 1975

Division 1—General

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

This Part applies to proceedings in the Federal Circuit Court and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) in relation to proceedings under that Act.

Note 2: This Part (other than Division 2: see section 168) applies to proceedings under the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988*.

157 Federal Circuit and Family Court of Australia (Division 2) to consider whether to advise people to use dispute resolution processes

The Federal Circuit and Family Court of Australia (Division 2) must consider whether or not to advise the parties to proceedings before it about the dispute resolution processes that could be used to resolve any matter in dispute.

158 Federal Circuit and Family Court of Australia (Division 2) to advise people to use dispute resolution processes

- (1) If the Federal Circuit and Family Court of Australia (Division 2) considers that a dispute resolution process may help the parties to a dispute before it to resolve that dispute, the Court must advise the parties to use that dispute resolution process.

- (2) If the Federal Circuit and Family Court of Australia (Division 2) 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.

159 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 and Family Court of Australia (Division 2), 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.

160 Officers of the Federal Circuit and Family Court of Australia (Division 2) to advise people about dispute resolution processes

- (1) A designated officer of the Federal Circuit and Family Court of Australia (Division 2) must, as far as practicable, on request by:
- (a) a party to proceedings in the Court; or
 - (b) a person considering instituting proceedings in the Court;
- 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 and Family Court of Australia (Division 2) is taken to be an officer of the Court.
- (3) For the purposes of this section, a ***designated officer*** of the Federal Circuit and Family Court of Australia (Division 2) is an officer of the Court specified in writing by the Chief Executive Officer for the purposes of this subsection.

Section 161

161 Conciliation

- (1) The Federal Circuit and Family Court of Australia (Division 2) may, by order, refer proceedings in the Court, 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.

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

- (1) If the Federal Circuit and Family Court of Australia (Division 2) makes an order, or gives a direction, under this Chapter 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 Court for determination of a question of law arising out of the proceedings.
- (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

Section 163

and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) may determine the question of law.
- (4) If the Federal Circuit and Family Court of Australia (Division 2) determines a question of law under subsection (3), the determination is binding on the parties to the proceedings concerned.

163 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 and Family Court of Australia (Division 2) under this Chapter 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.

164 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 and Family Court of Australia (Division 2) under this Chapter 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

Section 165

- (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.

165 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 and Family Court of Australia (Division 2) under this Chapter 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 and Family Court of Australia (Division 2).

166 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 13F of that Act. Section 156 of this Act does not affect this section.

Note: For provision about the award of costs, see Division 4 of Part 6 and paragraphs 192(4)(d) and (e).

167 Consent orders

- (1) If the parties to proceedings in the Federal Circuit and Family Court of Australia (Division 2) have reached agreement about a matter in dispute in the proceedings, the Court 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

168 Scope of Division

This Division applies to proceedings in the Federal Circuit and Family Court of Australia (Division 2) other than family law or child support proceedings.

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

169 Mediation

- (1) The Federal Circuit and Family Court of Australia (Division 2) may, by order, refer proceedings in the Court, 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 of the Federal Circuit and Family Court of Australia (Division 2) has in performing the functions of a Judge.

Section 170

170 Arbitration

- (1) The Federal Circuit and Family Court of Australia (Division 2) may, by order, refer proceedings in the Court, 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 of the Federal Circuit and Family Court of Australia (Division 2) has in performing the functions of a Judge.

171 Power of arbitrator to refer question of law to the Federal Circuit and Family Court of Australia (Division 2)

- (1) If:
 - (a) any proceedings in the Federal Circuit and Family Court of Australia (Division 2), or any part of them or any matter arising out of them, has been referred under subsection 170(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 Court for leave to refer to the Court a question of law arising in the arbitration;the arbitrator may apply to the Court or a Judge for leave to refer the question to the Court.
- (2) The Federal Circuit and Family Court of Australia (Division 2) or a Judge must not grant leave unless satisfied that the determination

of the question of law by the Court might result in substantial savings in costs to the parties to the arbitration.

- (3) If:
- (a) the Federal Circuit and Family Court of Australia (Division 2) or a Judge grants leave; and
 - (b) the arbitrator refers the question of law to the Court; the Court must determine the question of law.

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

- (1) If:
- (a) any proceedings in the Federal Circuit and Family Court of Australia (Division 2), or any part of them or any matter arising out of them, has been referred under subsection 170(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 Court under the Rules of Court;
- the following provisions have effect.
- (2) A party to the award may apply to the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) 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 Court; or
 - (iv) an order setting aside the award and determining the matter to which the award related.

Section 173

- (4) A party to the award may apply to the Federal Circuit and Family Court of Australia (Division 2) 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).

173 Arbitration awards

- (1) The Federal Circuit and Family Court of Australia (Division 2) may, on application by a party to an award made in an arbitration (whether carried out under an order made under subsection 170(1) or otherwise) in relation to a matter in which the Court 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 170(1) unless the award has been registered with the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2). 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 6—Practice and procedure

Division 1—General

174 Practice and procedure

- (1) The practice and procedure of the Federal Circuit and Family Court of Australia (Division 2) is to be in accordance with:
- (a) the Rules of Court; and
 - (b) the regulations.

However, this subsection is subject to any provision made by or under this or any other Act with respect to practice and procedure of the Court.

Note: Rules of Court are made under section 217 and regulations are made under section 284.

- (2) To the extent that the provisions mentioned in subsection (1) are insufficient:
- (a) in relation to the jurisdiction of the Court in a family law or child support proceeding—the Rules of Court made under Chapter 3 apply, with necessary modifications, so far as they are capable of application and subject to any directions of the Federal Circuit and Family Court of Australia (Division 2) or a Judge, to the practice and procedure of the Court; and
 - (b) in relation to the jurisdiction of the Court in a proceeding that is not a family law or child support proceeding—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 and Family Court of Australia (Division 2) or a Judge, to the practice and procedure of the Court.
- (3) In this section:
- practice and procedure*** includes all matters in relation to which:
- (a) Rules of Court may be made; and
 - (b) regulations may be made.

Section 175

175 Representation

A party to a proceeding before the Federal Circuit and Family Court of Australia (Division 2) 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.

176 Interrogatories and discovery

- (1) Interrogatories and discovery are allowed in relation to family law and child support proceedings in the Federal Circuit and Family Court of Australia (Division 2).
- (2) However, interrogatories and discovery are not allowed in relation to any other proceedings in the Federal Circuit and Family Court of Australia (Division 2), unless the Court or a Judge declares that it is appropriate, in the interests of the administration of justice, to allow the interrogatories or discovery.
- (3) In deciding whether to make a declaration under subsection (2), the Federal Circuit and Family Court of Australia (Division 2) 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 Court or the Judge considers relevant.

Division 2—Documents filed in the Federal Circuit and Family Court of Australia (Division 2)

177 Filing of documents in the Federal Circuit and Family Court of Australia (Division 2)

- (1) If a document is required or permitted to be filed in the Federal Circuit and Family Court of Australia (Division 2):
 - (a) the document is to be filed:
 - (i) at a registry of the Court; or
 - (ii) in accordance with an arrangement under section 246 or 247; 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, are sent to the Federal Circuit and Family Court of Australia (Division 2), using the web portal of the Federal Circuit and Family Court of Australia; or
 - (b) in other circumstances set out in the Rules of Court.

178 Seal of the Federal Circuit and Family Court of Australia (Division 2)

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

Section 179

**179 Federal Circuit and Family Court of Australia (Division 2)
stamps**

- (1) There are to be one or more Federal Circuit and Family Court of Australia (Division 2) stamps. For this purpose, a ***Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2).
- (2) A document or a copy of a document marked with a Federal Circuit and Family Court of Australia (Division 2) stamp is as valid and effectual as if it had been sealed with a seal of the Federal Circuit and Family Court of Australia (Division 2).
- (3) A Federal Circuit and Family Court of Australia (Division 2) stamp must be affixed to documents as provided by this or any other Act or by the Rules of Court.

180 Writs etc.

- (1) All writs, commissions and process issued from the Federal Circuit and Family Court of Australia (Division 2) must be:
 - (a) under the seal of the Court; and
 - (b) signed (including by way of electronic signature) by:
 - (i) a Judge; or
 - (ii) the Chief Executive Officer; or
 - (iii) a Registrar; or
 - (iv) 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 246.

Note: See paragraph 246(1)(b).

- (3) To avoid doubt, subsection (1) does not apply to an order of the Federal Circuit and Family Court of Australia (Division 2).

Note: For orders, see section 209.

181 Proceedings may be instituted by application

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

182 Limits on length of documents

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

Division 3—Conduct of proceedings

183 Place of sitting

Sittings of the Federal Circuit and Family Court of Australia (Division 2) must be held from time to time as required and the Court may sit at any place in Australia.

184 Change of venue

The Federal Circuit and Family Court of Australia (Division 2) or a Judge may, at any stage of a proceeding in the Court, 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 Court or Judge imposes.

185 Determination of proceedings without a jury

A civil proceeding between parties in the Federal Circuit and Family Court of Australia (Division 2) is to be determined without a jury.

186 Decisions without oral hearing

The Rules of Court may authorise the Federal Circuit and Family Court of Australia (Division 2) 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.

187 Limits on the length of oral argument

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

188 Written submissions

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

189 Formal defects not to invalidate

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

Division 4—Case management

190 Overarching purpose of civil practice and procedure provisions

- (1) The overarching purpose of the civil practice and procedure provisions is to facilitate the just resolution of disputes:
 - (a) according to law; and
 - (b) as quickly, inexpensively and efficiently as possible.

Note 1: See also paragraphs 5(a) and (b).

Note 2: The Federal Circuit and Family Court of Australia (Division 2) must give effect to principles in the *Family Law Act 1975* when exercising jurisdiction in relation to proceedings under that Act.

- (2) Without limiting subsection (1), the overarching purpose includes the following objectives:
 - (a) the just determination of all proceedings before the Federal Circuit and Family Court of Australia (Division 2);
 - (b) the efficient use of the judicial and administrative resources available for the purposes of the Court;
 - (c) the efficient disposal of the Court's overall caseload;
 - (d) the disposal of all proceedings in a timely manner;
 - (e) the resolution of disputes at a cost that is proportionate to the importance and complexity of the matters in dispute.
- (3) The civil practice and procedure provisions must be interpreted and applied, and any power conferred or duty imposed by them (including the power to make Rules of Court) must be exercised or carried out, in the way that best promotes the overarching purpose.
- (4) The ***civil practice and procedure provisions*** are the following, so far as they apply in relation to civil proceedings:
 - (a) the Rules of Court;
 - (b) any other provision made by or under this Act or any other Act with respect to the practice and procedure of the Federal Circuit and Family Court of Australia (Division 2).

191 Parties to act consistently with the overarching purpose

- (1) The parties to a civil proceeding before the Federal Circuit and Family Court of Australia (Division 2) must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose.
 - (2) A party's lawyer must, in the conduct of such a proceeding before the Federal Circuit and Family Court of Australia (Division 2) (including negotiations for settlement) on the party's behalf:
 - (a) take account of the duty imposed on the party by subsection (1); and
 - (b) assist the party to comply with the duty.
 - (3) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may, for the purpose of enabling a party to comply with the duty imposed by subsection (1), require the party's lawyer to give the party an estimate of:
 - (a) the likely duration of the proceeding or part of the proceeding; and
 - (b) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding, including:
 - (i) the costs that the lawyer will charge to the party; and
 - (ii) any other costs that the party will have to pay in the event that the party is unsuccessful in the proceeding or part of the proceeding.
- Note: Paragraph (b)—in relation to a family law or child support proceeding, the Federal Circuit and Family Court of Australia (Division 2) may make an order as to costs under section 149 of the *Family Law Act 1975* if the Court is of the opinion that there are circumstances that justify it in doing so.
- (4) In exercising the discretion to award costs in a civil proceeding, the Federal Circuit and Family Court of Australia (Division 2) or a Judge must take account of any failure to comply with the duty imposed by subsection (1) or (2).

Section 192

- (5) Without limiting the exercise of that discretion, the Federal Circuit and Family Court of Australia (Division 2) or a Judge may order a party's lawyer to bear costs personally.
- (6) If the Federal Circuit and Family Court of Australia (Division 2) or a Judge orders a lawyer to bear costs personally because of a failure to comply with the duty imposed by subsection (2), the lawyer must not recover the costs from the lawyer's client.

192 Power of the Federal Circuit and Family Court of Australia (Division 2) to give directions about practice and procedure in a civil proceeding

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may give directions about the practice and procedure to be followed in relation to a civil proceeding, or any part of such a proceeding, before the Court.
- (2) Without limiting subsection (1), a direction may:
 - (a) require things to be done; or
 - (b) set time limits for the doing of anything, or the completion of any part of the proceeding; or
 - (c) limit the number of witnesses who may be called to give evidence, or the number of documents that may be tendered in evidence; or
 - (d) provide for submissions to be made in writing; or
 - (e) limit the length of submissions (whether written or oral); or
 - (f) waive or vary any provision of the Rules of Court in their application to the proceeding; or
 - (g) revoke or vary an earlier direction.
- (3) If a party fails to comply with a direction given by the Federal Circuit and Family Court of Australia (Division 2) or a Judge under subsection (1), the Court or Judge may make such order or direction as the Court or Judge thinks appropriate.
- (4) In particular, the Federal Circuit and Family Court of Australia (Division 2) or Judge may do any of the following:
 - (a) dismiss the proceeding in whole or in part;

- (b) strike out, amend or limit any part of a party's claim or defence;
 - (c) disallow or reject any evidence;
 - (d) award costs against a party;
 - (e) order that costs awarded against a party are to be assessed on an indemnity basis or otherwise.
- (5) Subsections (3) and (4) do not affect any power that the Federal Circuit and Family Court of Australia (Division 2) or a Judge has apart from those subsections to deal with a party's failure to comply with a direction.

Note: The Federal Circuit and Family Court of Australia (Division 2) or a Judge may also make orders under the *Family Law Act 1975*.

193 Chief Judge to achieve common approaches to case management with the Federal Circuit and Family Court of Australia (Division 1)

For the purposes of ensuring the efficient resolution of family law or child support proceedings, the Chief Judge must work cooperatively with the Chief Justice with the aim of ensuring common approaches to case management.

Division 5—Evidence

194 Oaths and affirmations

- (1) A Judge may require and administer all necessary oaths and affirmations for the purposes of the Federal Circuit and Family Court of Australia (Division 2).
- (2) A Judge may cause to be administered all necessary oaths and affirmations for the purposes of the Federal Circuit and Family Court of Australia (Division 2). For this purpose, the Court 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 staff member of the Federal Circuit and Family Court of Australia (Division 2);to administer oaths and affirmations for the purposes of the Court.

Note: See also paragraph 246(1)(d).

195 Swearing of affidavits etc.

- (1) An affidavit to be used in a proceeding in the Federal Circuit and Family Court of Australia (Division 2) may be sworn or affirmed within Australia before:
 - (a) a Judge; or
 - (b) the Chief Executive Officer; or
 - (c) a Registrar; or
 - (d) a justice of the peace; or
 - (e) a commissioner for affidavits; or
 - (f) a commissioner for declarations; or
 - (g) a person who is authorised to administer oaths or affirmations for the purposes of:
 - (i) the High Court; or
 - (ii) the Federal Court; or
 - (iii) the Federal Circuit and Family Court of Australia; or

- (iv) the Supreme Court of a State or Territory; or
- (h) a person before whom affidavits can be sworn or affirmed under the *Evidence Act 1995*.

Note: See also paragraph 246(1)(d).

- (2) An affidavit to be used in a proceeding in the Federal Circuit and Family Court of Australia (Division 2) 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) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising the officer's function in that place; or
 - (c) an employee of the Commonwealth who is:
 - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - (ii) exercising the employee's function in that place; or
 - (d) an employee of the Australian Trade and Investment Commission who is:
 - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - (ii) exercising the employee's function in that place; or
 - (e) a notary public who is exercising the notary public's function in that place; or
 - (f) 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) and (e), 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 and Family Court of Australia (Division 2) in circumstances provided by the Rules of Court.

Section 196

196 Orders and commissions for examination of witnesses

The Federal Circuit and Family Court of Australia (Division 2) or a Judge may, for the purposes of any proceeding before the Court or Judge:

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

and the Court 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 Court or Judge directs.

197 Time limits on giving of testimony

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

198 Federal Circuit and Family Court of Australia (Division 2) may question witnesses

- (1) The Federal Circuit and Family Court of Australia (Division 2) may:
 - (a) put a question to a person giving testimony in a proceeding if, in the opinion of the Court, 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 and Family Court of Australia (Division 2) may have to ask questions.

199 Evidence may be given orally or by affidavit

- (1) Testimony in a proceeding in the Federal Circuit and Family Court of Australia (Division 2) is to be given orally or by affidavit.
- (2) However, the Federal Circuit and Family Court of Australia (Division 2) 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 Chapter; 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 and Family Court of Australia (Division 2) 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

Section 200

(b) the person does not appear as a witness to be cross-examined with respect to the matters in the affidavit;
the Federal Circuit and Family Court of Australia (Division 2) is to give the matters in the affidavit such weight as the Court thinks fit in the circumstances.

200 Offences by witness

- (1) A person commits an offence if:
- (a) the person has been duly served with a subpoena or summons to appear as a witness before the Federal Circuit and Family Court of Australia (Division 2); and
 - (b) the person:
 - (i) fails to attend as required by the subpoena or summons; or
 - (ii) fails to appear and report from day to day unless excused, or released from further attendance, by the Court.

Penalty: Imprisonment for 6 months.

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

Penalty: Imprisonment for 6 months.

- (3) This section does not limit the power of the Federal Circuit and Family Court of Australia (Division 2) to punish persons for contempt of the Court, but a person must not be punished under this section and for contempt of the Court in respect of the same act or omission.

Section 200

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.

Section 201

Division 6—Use of video links or audio links

201 Testimony by video link or audio link

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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 204.

- (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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2) or the Judge is to give the testimony such weight as the Court or the Judge thinks fit in the circumstances.
- (4) The power conferred on the Federal Circuit and Family Court of Australia (Division 2) or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Court'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 Part 6 of the *Trans-Tasman Proceedings Act 2010*.

202 Appearance of persons by video link or audio link

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may, for the purposes of any proceeding, direct or allow a person to appear before the Court or the Judge by way of video link or audio link.

Note: See also section 204.

- (2) The power conferred on the Federal Circuit and Family Court of Australia (Division 2) or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Court'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 Part 6 of the *Trans-Tasman Proceedings Act 2010*.

203 Making of submissions by video link or audio link

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may, for the purposes of any proceeding, direct or allow a person to make a submission to the Court or the Judge by way of video link or audio link.

Note: See also section 204.

- (2) The power conferred on the Federal Circuit and Family Court of Australia (Division 2) or a Judge by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Court's own initiative or on the Judge's own initiative, as the case may be.

Section 204

- (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 Part 6 of the *Trans-Tasman Proceedings Act 2010*.

204 Conditions for use of video links and audio links

Video link

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge must not exercise the power conferred by subsection 201(1), 202(1) or 203(1) in relation to a video link unless the Court 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 Court 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 Court 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 Court 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

Section 204

- (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 and Family Court of Australia (Division 2) or a Judge must not exercise the power conferred by subsection 201(1), 202(1) or 203(1) in relation to an audio link unless the Court 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 Court 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 Court 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 Court 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.
-

Section 205

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 and Family Court of Australia (Division 2) or a Judge considers should be treated as eligible persons for the purposes of the proceeding.

205 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 and Family Court of Australia (Division 2) 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 Court 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 Court or the Judge is sitting.

206 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 and Family Court of Australia (Division 2) or the Judge is sitting; or

- (b) if the Federal Circuit and Family Court of Australia (Division 2) 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.

207 Expenses

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may make such orders as the Court 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.

208 New Zealand proceedings

This Division does not affect the operation of the *Trans-Tasman Proceedings Act 2010*.

Division 7—Orders and judgments

209 Orders

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

210 Reserved judgments etc.

- (1) If:
 - (a) the Federal Circuit and Family Court of Australia (Division 2) reserves judgment in a proceeding; and
 - (b) the Judge who heard the proceeding prepares orders and reasons;those orders and reasons may be made public by another Judge on behalf of the Judge who heard the proceeding or as otherwise provided for by the Rules of Court.
- (2) If:
 - (a) the Federal Circuit and Family Court of Australia (Division 2) reserves reasons for its decision in a proceeding; and
 - (b) the Judge who heard the proceeding prepares reasons;those reasons may be made public by another Judge on behalf of the Judge who heard the proceeding or as otherwise provided for by the Rules of Court.

211 Interest up to judgment

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

Section 211

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:
- (a) in the Federal Circuit and Family Court of Australia (Division 2); 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 Court 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 and Family Court of Australia (Division 2) or the Judge is not satisfied that good cause has been shown for not making an order under this subsection;
- the Court 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 Court 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

Section 211

- (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 and Family Court of Australia (Division 2) 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 Court 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.

212 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.

- (2) A judgment debt under a judgment of the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2), in a particular case, thinks that justice so requires—at such lower rate as the Court determines.

213 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 and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2).

Section 214

Division 8—Costs

214 Costs

- (1) This section does not apply to:
- (a) family law or child support proceedings; or
 - (b) proceedings in relation to a matter arising under:
 - (i) the *Fair Work Act 2009*; or
 - (ii) section 14, 15 or 16 of the *Public Interest Disclosure Act 2013*.

Note 1: Paragraph (a)—see section 117 of the *Family Law Act 1975* in relation to family law or child support proceedings.

Note 2: Subparagraph (b)(i)—see section 570 of the *Fair Work Act 2009* for proceedings in relation to matters arising under that Act.

Note 3: Subparagraph (b)(ii)—see section 18 of the *Public Interest Disclosure Act 2013* for proceedings in relation to matters arising under section 14, 15 or 16 of that Act.

- (2) The Federal Circuit and Family Court of Australia (Division 2) or a Judge has jurisdiction to award costs in all proceedings before the Court (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 and Family Court of Australia (Division 2) or Judge.

Note: For further provision about the award of costs, see Division 4 of Part 6 and paragraphs 192(4)(d) and (e).

215 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 and Family Court of Australia (Division 2) or a Judge may order an applicant in a proceeding in the Court to give security for the payment of costs that may be awarded against the applicant.
- (3) The security is to be of such amount, and given at such time and in such manner and form, as the Federal Circuit and Family Court of Australia (Division 2) or Judge directs.
- (4) The Federal Circuit and Family Court of Australia (Division 2) 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.
- (5) If security, or further security, is not given in accordance with an order under this section, the Federal Circuit and Family Court of Australia (Division 2) 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.

Section 216

Division 9—Common approaches with the Federal Circuit and Family Court of Australia (Division 1)

216 Chief Judge to achieve common approaches with the Federal Circuit and Family Court of Australia (Division 1)

For the purposes of ensuring the efficient resolution of family law or child support proceedings, the Chief Judge must work cooperatively with the Chief Justice with the aim of ensuring:

- (a) common rules of court and forms; and
- (b) common practices and procedures.

Division 10—Rules of Court

217 Rules of Court

- (1) The Chief Judge may make Rules of Court:
- (a) providing for, or in relation to, the practice and procedure to be followed in the Federal Circuit and Family Court of Australia (Division 2) (including the practice and procedure to be followed in registries of the Court); or
 - (b) providing 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 and Family Court of Australia (Division 2); or
 - (c) prescribing penalties, not exceeding 50 penalty units, for offences against the Rules of Court; or
 - (d) prescribing matters required or permitted by:
 - (i) any other provision of this Chapter; or
 - (ii) any other law of the Commonwealth;to be prescribed by the Rules of Court.

Note: The power to make Rules of Court under this section will be amended 18 months after this section commences, to provide for the Rules to be made by the Judges, or a majority of them (see Part 4 of Schedule 1 to the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021*).

- (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 of the Federal Circuit and Family Court of Australia (Division 2) in particular matters.
- (3) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to Rules of Court made by the Chief Judge under this Chapter or another Act:
- (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of the *Legislation Act 2003*) were a reference to a rule of court; and

Section 218

- (b) subject to such further modifications or adaptations as are provided for in regulations made under section 284 of this Act.
- (4) Despite the fact that section 16 of the *Legislation Act 2003* does not apply to Rules of Court made by the Chief Judge under this Chapter 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.

218 Consultation

- (1) Before making Rules of Court, the Chief Judge must be satisfied that there has been appropriate consultation with other Judges.
- (2) The fact that consultation does not occur does not affect the validity or enforceability of a Rule of Court.
- (3) To avoid doubt, this section does not limit section 17 of the *Legislation Act 2003*.

219 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 and Family Court of Australia (Division 2).
- (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.

220 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 and Family Court of Australia (Division 2), including:
 - (i) the manner in which and the extent to which the process of the Court, or notice of any such process, may be served out of the jurisdiction of the Court; and
 - (ii) dispensing with service; and
- (b) the issue by the Court of letters of request for the service in another country of any process of the Court; and
- (c) the service by officers of the Court, 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.

221 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 sent by fax; and
- (g) the reception from New Zealand of evidence or submissions by video link or audio link; and

Section 222

- (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.

222 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 and Family Court of Australia (Division 2); and
- (b) the stay of proceedings in, or under judgments of, the Federal Circuit and Family Court of Australia (Division 2) or another court; and
- (c) the stay of proceedings in, or under decisions of, tribunals; and
- (d) the procedure of the Federal Circuit and Family Court of Australia (Division 2) exercising its powers (whether under section 112AP of the *Family Law Act 1975* or otherwise) to deal with a person for contempt of the Court; and
- (e) the form in which the Federal Circuit and Family Court of Australia (Division 2) or a Judge is to give reasons for decisions.

223 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 and Family Court of Australia (Division 2); and
- (c) the fees to be charged by practitioners practising in the Federal Circuit and Family Court of Australia (Division 2) for the work done by them in relation to proceedings in the Court 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 the party's own costs.

224 General

- (1) The Rules of Court may make provision for or in relation to:
- (a) the power, under subsection 191(3), to require a party's lawyer to give the party an estimate of:
 - (i) the likely duration of a proceeding or part of a proceeding; and
 - (ii) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding; and
 - (b) the power, under subsection 192(1), to give directions about the practice and procedure to be followed in relation to a proceeding or part of a proceeding; and
 - (c) the power, under subsection 192(3), to make such order or direction as is appropriate when a party fails to comply with a direction about the practice and procedure to be followed in relation to a proceeding or part of a proceeding; and
 - (d) trial management; and
 - (e) the custody of convicted persons; and
 - (f) the prevention or termination of vexatious proceedings; and
 - (g) the summary disposal of proceedings; and
 - (h) authorising the Federal Circuit and Family Court of Australia (Division 2) to refer to an officer of the Court, for investigation, report and recommendation:
 - (i) claims for, or relating to, any matters before the Court; or
 - (ii) applications for, or relating to, any matters before the Court; and
 - (i) authorising an officer making an investigation mentioned in paragraph (h) 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

Section 224

under section 65F, 65L, 65LA, 70NEB or 70NEG of the *Family Law Act 1975*; and

- (j) enabling the summoning of witnesses before an officer making an investigation mentioned in paragraph (h) for the purposes of giving evidence or producing books or documents; and
 - (k) the procedure of the Federal Circuit and Family Court of Australia (Division 2) on receiving a report of an officer who has made an investigation referred to in paragraph (h); and
 - (l) the appointment, by the Minister, of a guardian *ad litem* for a party in proceedings; and
 - (m) 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
 - (n) the attachment of money payable by:
 - (i) the Commonwealth, a State, a Territory or the Government of a Territory; or
 - (ii) an authority of the Commonwealth, of a State or of a Territory; and
 - (o) the death of parties; and
 - (p) the duties of officers of the Federal Circuit and Family Court of Australia (Division 2).
- (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 and Family Court of Australia (Division 2) and officers of the Court in family law or child support 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 paragraph (a), (b), (c) or (d).

225 Incidental matters

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

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

Part 7—Suppression and non-publication orders

Division 1—Introduction

226 Powers of Federal Circuit and Family Court of Australia (Division 2) not affected

This Part does not limit or otherwise affect any powers that the Federal Circuit and Family Court of Australia (Division 2) has apart from this Part to regulate its proceedings or to deal with a contempt of the Court.

227 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.

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

This Part applies to proceedings in the Federal Circuit Court and Family Court of Australia (Division 2) 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

229 Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the Federal Circuit and Family Court of Australia (Division 2) must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

230 Power to make orders

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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 Court or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Court; or
 - (b) information that relates to a proceeding before the Court 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 Court.
- (2) The Federal Circuit and Family Court of Australia (Division 2) may make such orders as it thinks appropriate to give effect to an order under subsection (1).

231 Grounds for making an order

- (1) The Federal Circuit and Family Court of Australia (Division 2) may make a suppression order or non-publication order on one or more of the following grounds:

Section 232

- (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (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.

232 Procedure for making an order

- (1) The Federal Circuit and Family Court of Australia (Division 2) 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 Court 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 and Family Court of Australia (Division 2) 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 Court'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 and Family Court of Australia (Division 2) 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 it is made.

233 Interim orders

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

234 Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the Federal Circuit and Family Court of Australia (Division 2) and specified in the order.
- (2) In deciding the period for which an order is to operate, the Federal Circuit and Family Court of Australia (Division 2) 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.

Section 235

235 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 and Family Court of Australia (Division 2) for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Court.

236 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 and Family Court of Australia (Division 2) under section 230.

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 8—Vexatious proceedings

Division 1—Introduction

237 Meaning of a person *acting in concert*

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.

238 Powers of the Federal Circuit and Family Court of Australia (Division 2) not affected

This Part does not limit or otherwise affect any powers that the Federal Circuit and Family Court of Australia (Division 2) has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

239 Making vexatious proceedings orders

- (1) This section applies if the Federal Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) may make any or all of the following orders:
 - (a) an order staying or dismissing all or part of any proceedings in the Court already instituted by the person;
 - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court;
 - (c) any other order the 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 Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) 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.

240 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 Circuit and Family Court of Australia (Division 2),

Section 240

restricting the publication or disclosure of the name of a party to proceedings in the Court.

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

Division 3—Particular consequences of vexatious proceedings orders

241 Proceedings in contravention of vexatious proceedings order

- (1) If the Federal Circuit and Family Court of Australia (Division 2) makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 244; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 244.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the Federal Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) 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.

Section 242

242 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 Circuit and Family Court of Australia (Division 2); 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 Circuit and Family Court of Australia (Division 2) 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
 - (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 244(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

243 Dismissing application for leave

- (1) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may make an order dismissing an application under section 242 for leave to institute a proceeding if the Court or Judge considers the affidavit does not substantially comply with subsection 242(3).
- (2) The Federal Circuit and Family Court of Australia (Division 2) or a Judge must make an order dismissing an application under

section 242 for leave to institute a proceeding if the Court or Judge considers the proceeding is a vexatious proceeding.

- (3) The Federal Circuit and Family Court of Australia (Division 2) or a Judge may dismiss the application without an oral hearing (either with or without the consent of the applicant).

244 Granting application for leave

- (1) Before the Federal Circuit and Family Court of Australia (Division 2) makes an order granting an application under section 242 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 Circuit and Family Court of Australia (Division 2) 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 Circuit and Family Court of Australia (Division 2) may make an order granting the application. The order may be made subject to the conditions the Court considers appropriate.
- (4) The Federal Circuit and Family Court of Australia (Division 2) may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

Part 9—Management and administration

Division 1—Management responsibilities of the Chief Judge and the Chief Executive Officer

245 Management of administrative affairs of the Federal Circuit and Family Court of Australia (Division 2)

- (1) The Chief Judge is responsible for managing the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2).
- (2) The *administrative affairs* of the Federal Circuit and Family Court of Australia (Division 2) do not include the corporate services of the Court.
- (3) The following matters relating to the Federal Circuit and Family Court of Australia (Division 2) are the *corporate services* of the Court:
 - (a) communications;
 - (b) finance;
 - (c) human resources;
 - (d) information technology;
 - (e) libraries;
 - (f) records management;
 - (g) administrative matters relating to judgments, to the extent that such matters do not involve the exercise of judicial power;
 - (h) procurement and contract management;
 - (i) property;
 - (j) risk oversight and management;
 - (k) court security;
 - (l) statistics;
 - (m) any other matter prescribed by a determination under subsection (7).

Section 246

- (4) For the purpose mentioned in subsection (1), 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.
- (5) The Chief Judge's powers under subsection (4) are in addition to any powers given to the Chief Judge by this Chapter or any other Act.
- (6) Despite subsection (4), 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.
- (7) The Minister may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (3)(m)).

Note 1: See Part IIB of the *Federal Court of Australia Act 1976* for provisions relating to the corporate services of the Federal Circuit and Family Court of Australia (Division 2).

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the officers and staff of the Federal Circuit and Family Court of Australia (Division 2) are officials of the listed entity mentioned in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees mentioned in section 253, subsections 260(1), 261(1), 262(1) and 263(1) and sections 264 and 265 of this Act are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

246 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 and Family Court of Australia (Division 2) any or all of the following functions:

Section 247

- (a) the receipt of documents to be lodged with or filed in the Court;
 - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Court;
 - (c) the authentication of orders of the Court;
 - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Court;
 - (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 Chief Judge 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 and Family Court of Australia (Division 2), the officer may perform that function despite:
 - (a) any other provision of this Chapter; or
 - (b) any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit and Family Court of Australia (Division 2) in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (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.

247 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 and Family Court of Australia (Division 2), documents to be lodged with or filed in the Court; or
 - (d) perform, on behalf of the Federal Circuit and Family Court of Australia (Division 2), other non-judicial functions of the Court.
- (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 and Family Court of Australia (Division 2), the employee may perform that function despite:
 - (a) any other provision of this Chapter; or
 - (b) any other law of the Commonwealth.
- (3) A function performed on behalf of the Federal Circuit and Family Court of Australia (Division 2) in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

248 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 and Family Court of Australia (Division 2) to sit in rooms of the other court; and
- (b) the Court to share registry facilities and other facilities with the other court.

249 Advisory committees

- (1) The Federal Circuit and Family Court of Australia (Division 2) may appoint committees consisting of Judges, or of Judges and other persons, for the purpose of advising the Court in relation to the exercise of the powers of the Court under this Chapter.

Section 249

- (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:
- (a) the making of the Rules of Court; or
 - (b) the management of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2).

Division 2—Chief Executive Officer

250 Function of Chief Executive Officer

The Chief Executive Officer's function is to assist the Chief Judge in managing the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2).

Note: In relation to the Federal Circuit and Family Court of Australia (Division 1), see section 84.

251 Powers of Chief Executive Officer

- (1) 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 section 250.
- (2) In particular, the Chief Executive Officer may act on behalf of the Chief Judge in relation to the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2).
- (3) The Chief Judge may give the Chief Executive Officer directions relating to the exercise of the Chief Executive Officer's powers under:
 - (a) this Chapter; or
 - (b) Chapter 5, to the extent that the provisions of that Chapter apply to the Federal Circuit and Family Court of Australia (Division 2).

Note: In relation to the Federal Circuit and Family Court of Australia (Division 1), see section 85.

Division 3—Registries and registrars

252 Registries

The Minister must cause such Registries of the Federal Circuit and Family Court of Australia (Division 2) to be established as the Minister thinks fit.

253 Senior Registrars and Registrars

- (1) The Federal Circuit and Family Court of Australia (Division 2) is to have such Senior Registrars and Registrars as are necessary.
- (2) The Senior Registrars and Registrars of the Federal Circuit and Family Court of Australia (Division 2) are to be persons engaged under the *Public Service Act 1999*.

254 Delegation

Delegation of powers

- (1) The Chief Judge may make Rules of Court delegating any of the powers of the Federal Circuit and Family Court of Australia (Division 2) to a delegate or a prescribed class of delegate.

Note: For the definition of *delegate*, see subsection 7(1).
- (2) The kinds of powers of the Federal Circuit and Family Court of Australia (Division 2) that the Rules of Court may delegate include the following:
 - (a) the power, under subsection 191(3), to require a party's lawyer to give the party an estimate of:
 - (i) the likely duration of a proceeding or part of a proceeding; and
 - (ii) the likely amount of costs that the party will have to pay in connection with the proceeding or part of the proceeding;

- (b) the power, under subsection 192(1), to give directions about the practice and procedure to be followed in relation to a proceeding or part of a proceeding;
- (c) the power, under subsection 192(3), to make such order or direction as is appropriate when a party fails to comply with a direction about the practice and procedure to be followed in relation to a proceeding or part of a proceeding;
- (d) the power to dispense with the service of any process of the Court;
- (e) the power to make orders in relation to substituted service;
- (f) 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 Court or of any other person;
- (g) the power to make orders in relation to interrogatories;
- (h) the power, in proceedings in the Court, to make an order adjourning the hearing of the proceedings;
- (i) the power to make an order as to costs;
- (j) the power to make an order about security for costs;
- (k) the power to make an order exempting a party to proceedings in the Court from compliance with a provision of the Rules of Court;
- (l) a power of the Court prescribed by the Rules of Court;
- (m) the power, in family law or child support proceedings, to direct a party to the proceedings to answer particular questions;
- (n) 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);
- (o) the power to direct a family consultant to give a report under section 62G of the *Family Law Act 1975*;
- (p) the power, in family law or child support proceedings, to make:

Section 254

- (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;
- (q) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;
- (r) 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*;
- (s) the power to make an order exempting a party to family law or child support proceedings from compliance with a provision of regulations made under the *Family Law Act 1975*.

Powers that may not be delegated

- (3) Despite subsection (1), the powers of the Federal Circuit and Family Court of Australia (Division 2) that the Rules of Court may not delegate are the following:
 - (a) the power to make a divorce order in proceedings that are defended;
 - (b) the power to make a decree of nullity of marriage;
 - (c) the power to make a declaration as to the validity of:
 - (i) a marriage; or
 - (ii) a divorce; or
 - (iii) the annulment of a marriage;
 - (d) the power to make an excluded child order;
 - (e) the power to make an order setting aside a registered award under section 13K of the *Family Law Act 1975*.

Effect of delegation

- (4) A power delegated by the Rules of Court, when exercised by a delegate, is taken, for all purposes, to have been exercised by the Federal Circuit and Family Court of Australia (Division 2) or a Judge of the Court.

- (5) The delegation of a power by the Rules of Court does not prevent the exercise of the power by the Federal Circuit and Family Court of Australia (Division 2) or a Judge of the Court.

Costs

- (6) A delegate must not exercise the power referred to in paragraph (2)(i) except in relation to costs of, or in connection with, an application heard by a delegate.

Orders made as a matter of urgency

- (7) A delegate must not exercise the power referred to in paragraph (2)(p) on application by a party to proceedings under the *Family Law Act 1975* unless:
- (a) the other party to the proceedings appears at the hearing of the application; or
 - (b) the delegate is satisfied that notice of the intention of the party to make the application has been served on the other party.

Exercise of delegable power may be limited

- (8) The Rules of Court may, in relation to a power delegated by the Rules of Court, limit or specify the circumstances in which the power may be exercised by a delegate.

Application of laws

- (9) 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 and Family Court of Australia (Division 2) of a power that is, because of the Rules of Court, exercisable by a delegate, apply in relation to an exercise of the power by a delegate under this section as if references in those provisions to the Federal Circuit and Family Court of Australia (Division 2) (expressly or otherwise) were references to the delegate.

Section 255

255 Independence of delegates

Despite any other provision of this Chapter and any provision of the *Public Service Act 1999* or of any other law, a delegate is not subject to the direction or control of any person or body in relation to the way in which the delegate exercises powers under section 254.

256 Review of power exercised by delegate

- (1) A party to proceedings in which a delegate has exercised any of the powers of the Federal Circuit and Family Court of Australia (Division 2) under section 254 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 Court for review of that exercise of power.
- (2) The Federal Circuit and Family Court of Australia (Division 2) may, on application under subsection (1) or on its own initiative, review an exercise of power by a delegate under section 254, and may make any order or orders it thinks fit in relation to the matter in respect of which the power was exercised.

Referral to Court by delegates

- (3) If:
 - (a) an application for the exercise of a power referred to in section 254 is to be, or is being, heard by a delegate; and
 - (b) the delegate considers that it is not appropriate for the application to be determined by a delegate acting under section 254;the delegate must not hear, or continue to hear, the application and must make appropriate arrangements for the application to be heard by a Judge.

257 Protection for Registrars

- (1) In the following cases:
-

- (a) in conducting a conference that:
 - (i) is with the parties to property settlement proceedings;
and
 - (ii) relates to the matter to which the proceedings relate;
 - (b) in exercising a power of the Federal Circuit and Family Court of Australia (Division 2) referred to in section 254;
the Chief Executive Officer, or a Senior Registrar or Registrar of the Court, has the same protection and immunity as a Judge of the Court has in performing the functions of a Judge.
- (2) This section does not limit any other protection or immunity the Chief Executive Officer, or such a Senior Registrar or Registrar, has (in relation to such a conference or otherwise).

258 Oath or affirmation of office

- (1) Before proceeding to discharge the duties of office, a Senior Registrar or 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 (*Senior Registrar or Registrar*) of the Federal Circuit and Family Court of Australia (Division 2) 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 (*Senior Registrar or Registrar*) of the Federal Circuit and Family Court of Australia (Division 2) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

Division 4—Other officers and staff

Subdivision A—Officers and staff

259 Officers of the Federal Circuit and Family Court of Australia (Division 2)

- (1) In addition to the Chief Executive Officer, there are to be the following officers of the Federal Circuit and Family Court of Australia (Division 2):
 - (a) such Senior Registrars and Registrars of the Court as are necessary;
 - (b) such Registry Managers of the Court as are necessary;
 - (c) the Sheriff of the Court;
 - (d) such Deputy Sheriffs of the Court as are necessary;
 - (e) the Marshal of the Court;
 - (f) such Deputy Marshals of the Court as are necessary;
 - (g) such family consultants as are necessary.
- (2) The officers of the Federal Circuit and Family Court of Australia (Division 2), other than the Chief Executive Officer, have such duties, powers and functions as are given to them by:
 - (a) by or under:
 - (i) this Chapter or Chapter 5; or
 - (ii) the *Family Law Act 1975*; or
 - (iii) the Rules of Court; or
 - (b) by the Chief Judge or the Court.

260 Sheriff

- (1) The Sheriff of the Federal Circuit and Family Court of Australia (Division 2) is to be a person engaged under the *Public Service Act 1999*.
- (2) The Sheriff of the Federal Circuit and Family Court of Australia (Division 2) is responsible for the service and execution of all process of the Court directed to the Sheriff.

- (3) The Sheriff of the Federal Circuit and Family Court of Australia (Division 2) is also responsible for dealing, on behalf of the Court, 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 Court directed to members of any of those police forces.

261 Deputy Sheriffs

- (1) The Deputy Sheriffs of the Federal Circuit and Family Court of Australia (Division 2) may be persons engaged under the *Public Service Act 1999*.
- (2) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

262 Marshal

- (1) The Marshal of the Federal Circuit and Family Court of Australia (Division 2) 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 and Family Court of Australia (Division 2); and
 - (b) the personal security of the Judges, officers and staff of the Court.
- (3) The Marshal is also responsible for:
- (a) taking, receiving and detaining all persons committed to the Marshal's custody by the Federal Circuit and Family Court of Australia (Division 2); and
 - (b) discharging such persons when so directed by the Court or otherwise required by law.

Section 263

263 Deputy Marshals

- (1) The Deputy Marshals of the Federal Circuit and Family Court of Australia (Division 2) may be persons engaged under the *Public Service Act 1999*.
- (2) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers or functions of the Marshal.

264 Family consultants

Family consultants who are officers of the Federal Circuit and Family Court of Australia (Division 2) are to be persons engaged under the *Public Service Act 1999*.

Note: Family consultants who are not officers of the Federal Circuit and Family Court of Australia (Division 2) may be appointed under regulations made under the *Family Law Act 1975*: see paragraph 11B(c) of that Act.

265 Staff of the Federal Circuit and Family Court of Australia (Division 2)

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

Subdivision B—Provisions relating to officers and staff

266 Arrangements relating to Commonwealth staff

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

- (a) an Agency Head; or
- (b) an authority of the Commonwealth;

for the services of officers or employees of the Agency or authority to be made available for the purposes of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2).

267 Delegation by Registry Managers

- (1) A Registry Manager of the Federal Circuit and Family Court of Australia (Division 2) may delegate all or any of a Registry Manager's functions or powers under the *Family Law Act 1975* to a person whom the Registry Manager considers is an appropriate officer or staff member of the Court.
- (2) In performing a delegated function or exercising a delegated power, the person must comply with any written directions of the relevant Registry Manager.

268 Authorised persons to assist the Sheriff or Deputy Sheriffs

- (1) The Sheriff may authorise persons to assist the Sheriff in exercising powers or performing functions as the Sheriff.
- (2) A Deputy Sheriff may authorise persons to assist the Deputy Sheriff in exercising powers or performing functions as the Deputy Sheriff.

269 Authorised persons to assist the Marshal or Deputy Marshals

- (1) The Marshal may authorise persons to assist the Marshal in exercising powers or performing functions as the Marshal.
- (2) A Deputy Marshal may authorise persons to assist the Deputy Marshal in exercising powers or performing functions as the Deputy Marshal.

270 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 and Family Court of Australia (Division 2):
 - (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 Court or a Judge appoints; and
 - (b) the person so appointed may execute and return them.

Section 271

- (2) If the Marshal or a Deputy Marshal is a party to a proceeding in the Federal Circuit and Family Court of Australia (Division 2):
 - (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 Court or a Judge appoints; and
 - (b) the person so appointed may execute and return them.

271 Making arrests under this Chapter or warrants

Application

- (1) This section applies to any of the following persons (the **arrestor**) who is authorised by this Chapter, or a warrant issued under this Chapter or the Rules of Court, to arrest another person (the **arrestee**):
 - (a) the Sheriff of the Federal Circuit and Family Court of Australia (Division 2);
 - (b) a Deputy Sheriff of the Federal Circuit and Family Court of Australia (Division 2);
 - (c) the Sheriff of a court of a State or Territory;
 - (d) a Deputy Sheriff of a court of a State or Territory;
 - (e) a police officer.

Power to enter premises

- (2) If the arrestor reasonably believes the arrestee is on premises, the arrestor may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the arrestee or arresting the arrestee.
- (3) However, the arrestor must not enter a dwelling house between 9 pm one day and 6 am the next day unless the arrestor reasonably believes that it would not be practicable to arrest the arrestee there or elsewhere at another time.

Use of force

- (4) In the course of arresting the arrestee, the arrestor:
-

- (a) must not use more force, or subject the arrestee to greater indignity, than is necessary and reasonable to make the arrest or to prevent the arrestee's escape after the arrest; and
- (b) must not do anything that is likely to cause the death of, or grievous bodily harm to, the arrestee unless the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and
- (c) if the arrestee is attempting to escape arrest by fleeing—must not do a thing described in paragraph (b) unless:
 - (i) the arrester reasonably believes that doing that thing is necessary to protect life or prevent serious injury to another person (including the arrester); and
 - (ii) the arrestee has, if practicable, been called on to surrender and the arrester reasonably believes that the arrestee cannot be arrested in any other way.

Informing the arrestee of grounds for arrest

- (5) When arresting the arrestee, the arrester must inform the arrestee of the grounds for the arrest.
- (6) It is sufficient if the arrestee is informed of the substance of those grounds, not necessarily in precise or technical language.
- (7) Subsection (5) does not apply if:
 - (a) the arrestee should, in the circumstances, know the substance of the grounds for the arrest; or
 - (b) the arrestee's actions make it impracticable for the arrester to inform the arrestee of those grounds.

272 Receivers

- (1) The Federal Circuit and Family Court of Australia (Division 2) may, at any stage of a proceeding, on such terms and conditions as the Court thinks fit, appoint a receiver by interlocutory order in any case in which it appears to the Court to be just or convenient to do so.

Section 272

- (2) A receiver of any property appointed by the Federal Circuit and Family Court of Australia (Division 2) may, without the previous leave of the Court, be sued in respect of an act or transaction done or entered into by the receiver in carrying on the business connected with the property.
- (3) When, in any cause pending in the Federal Circuit and Family Court of Australia (Division 2), a receiver appointed by the Court 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

273 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 and Family Court of Australia (Division 2) in relation to the procedural information to be given to parties (and, in particular, unrepresented parties) to enable them to formulate and present their cases.

274 Annual report

- (1) As soon as practicable after 30 June in each financial year, the Chief Judge must prepare a report of the management of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2) during the financial year.
- (2) A report prepared after 30 June in a year must be given to the Minister by 15 October of that year.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.
- (4) A report prepared under this section may be included in a report prepared and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity mentioned in section 18ZB of the *Federal Court of Australia Act 1976*.

275 Delegation of the administrative powers of the Chief Judge

The Chief Judge may, in writing, delegate all or any of the Chief Judge's powers under section 245 to any one or more of the Judges.

Section 276

276 Proceedings arising out of administrative affairs of the Federal Circuit and Family Court of Australia (Division 2)

Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Federal Circuit and Family Court of Australia (Division 2) 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.

277 Protection of persons involved in handling etc. complaints

- (1) In exercising powers or performing functions under paragraph 144(2)(d) and subsection 145(1), 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 145(2), 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.

Chapter 5—Miscellaneous

Part 1—Administration of family services

278 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.

279 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.

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

The Chief Executive Officer may give directions that relate to:

- (a) the functions of an officer of the Federal Circuit and Family Court of Australia as a family consultant; or

Section 281

- (b) the functions of an officer or staff member of the Federal Circuit and Family Court of Australia as a family counsellor or family dispute resolution practitioner.

281 Chief Executive Officer may authorise officers or staff members 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 and Family 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 and Family 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.

Part 2—Miscellaneous

282 References in other laws to a Judge of the Federal Circuit and Family Court of Australia

- (1) A reference in a law of the Commonwealth (other than this Act) to a Judge of the Federal Circuit and Family Court of Australia (Division 1) includes a reference to the Chief Justice, the Deputy Chief Justice and a Senior Judge of the Court.
- (2) A reference in a law of the Commonwealth (other than this Act) to a Judge of the Federal Circuit and Family Court of Australia (Division 2) includes a reference to the Chief Judge and a Deputy Chief Judge of the Court.

283 References in other laws to a Registrar of the Federal Circuit and Family Court of Australia

- (1) A reference in a law of the Commonwealth (other than this Act) to a Registrar of the Federal Circuit and Family Court of Australia (Division 1) includes a reference to a Senior Registrar and a Registrar of the Court.
- (2) A reference in a law of the Commonwealth (other than this Act) to a Registrar of the Federal Circuit and Family Court of Australia (Division 2) includes a reference to a Senior Registrar and a Registrar of the Court.

284 Review of operation of this Act

- (1) The Minister must cause a review of the operation of this Act to be conducted within 6 months after the fifth anniversary of the commencement of this Act.
- (2) The person who conducts the review must give the Minister a written report of the review.

Section 285

- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of that House after the report is given to the Minister.

285 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) Without limiting subsection (1), the regulations may provide for, on in relation to, the following:
 - (a) penalties, not exceeding 60 penalty units, for offences against the regulations;
 - (b) fees to be paid in respect of all or any following:
 - (i) proceedings in the Federal Circuit and Family Court of Australia;
 - (ii) the service or the execution of the process of the Federal Circuit and Family Court of Australia (Division 1) by officers of the Court;
 - (iii) the service or the execution of the process of the Federal Circuit and Family Court of Australia (Division 2) by officers of the Court;
 - (iv) services provided by the Federal Circuit and Family Court of Australia in circumstances other than where a court orders or directs the provision of the services;
 - (c) exemptions from fees covered by paragraph (b);
 - (d) the waiver, remission or refund of fees covered by paragraph (b);
 - (e) the authorisation of:
 - (i) officers or staff members of the Federal Circuit and Family Court of Australia as family counsellors under subsection 281(1); and
 - (ii) officers or staff members of the Federal Circuit and Family Court of Australia as family dispute resolution practitioners under subsection 281(2).

Section 285

- (3) The regulations may make provision modifying or adapting provisions of the *Legislation Act 2003* (other than the provisions of Part 2 of Chapter 3 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 and Family Court of Australia.
 - (4) To the extent of any inconsistency between regulations and Rules of Court made under Chapter 3 or 4, the regulations prevail.
-

*[Minister's second reading speech made in—
House of Representatives on 5 December 2019
Senate on 2 December 2020]*