

2008-2009-2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Access to Justice (Family Court
Restructure and Other Measures) Bill
2010**

No. , 2010

(Attorney-General)

**A Bill for an Act to amend the law relating to
courts and tribunals, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **courts and tribunals, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Access to Justice (Family Court*
6 *Restructure and Other Measures) Act 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if any of the provision(s) 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.	
3. Schedule 1, item 147	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 1 of Schedule 2 to the <i>Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
4. Schedule 1, item 148	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 2 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2	At the same time as the provision(s) covered by table item 2.	
6. Schedule 3, items 1 to 19	At the same time as the provision(s) covered by table item 2.	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
7. Schedule 3, item 20	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) the registration commencement time within the meaning of section 306 of the <i>Personal Property Securities Act 2009</i> .	
8. Schedule 3, items 21 to 52	At the same time as the provision(s) covered by table item 2.	
9. Schedule 3, item 53	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 2 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedule 3, item 54	At the same time as the provision(s) covered by table item 2.	
11. Schedule 3, item 55	At the same time as the provision(s) covered by table item 2. However, if Schedule 2 to the <i>Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010</i> commences at or before the time the provision(s) covered by table item 2 commence, the provision(s) do not commence at all.	
12. Schedule 3, items 56 and 57	The day after this Act receives the Royal Assent.	
13. Schedule 4	At the same time as the provision(s) covered by table item 2.	
1 2 3	Note:	This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

1 (2) Column 3 of the table contains additional information that is not
2 part of this Act. Information in this column may be added to or
3 edited in any published version of this Act.

4 **3 Schedule(s)**

5 Each Act that is specified in a Schedule to this Act is amended or
6 repealed as set out in the applicable items in the Schedule
7 concerned, and any other item in a Schedule to this Act has effect
8 according to its terms.

1
2 **Schedule 1—Amendment of the Family Law**
3 **Act 1975**

4 **Part 1—Main amendments**

5 *Family Law Act 1975*

6 **1 Subsection 4(1)**

7 Insert:

8 *Administrative Judge (Appellate and Superior Division)* means
9 the Administrative Judge (Appellate and Superior Division) of the
10 Family Court.

11 **2 Subsection 4(1)**

12 Insert:

13 *Administrative Judge (General Division)* means the
14 Administrative Judge (General Division) of the Family Court.

15 **3 Subsection 4(1) (definition of *Appeal Division*)**

16 Repeal the definition.

17 **4 Subsection 4(1)**

18 Insert:

19 *Appellate and Superior Division* means the Appellate and Superior
20 Division of the Family Court.

21 **5 Subsection 4(1)**

22 Insert:

23 *Appellate Judge* means any of the following Judges:
24 (a) the Chief Justice;
25 (b) the Deputy Chief Justice;
26 (c) the Administrative Judge (Appellate and Superior Division);
27 (d) any other Judge who is assigned to the Appellate and
28 Superior Division as an Appellate Judge under section 22A.

1 **6 Subsection 4(1)**

2 Insert:

3 *Chief Justice* means the Chief Justice of the Family Court, and
4 includes the Deputy Chief Justice if the Deputy Chief Justice is for
5 the time being performing the duties and exercising the powers of
6 the Chief Justice.

7 **7 Subsection 4(1)**

8 Insert:

9 *Court* means the Family Court of Australia.

10 **8 Subsection 4(1)**

11 Insert:

12 *Deputy Chief Justice* means the Deputy Chief Justice of the
13 Family Court.

14 **9 Subsection 4(1)**

15 Insert:

16 *Division*, in relation to the Family Court, means the Appellate and
17 Superior Division or the General Division.

18 **10 Subsection 4(1) (definition of *Full Court*)**

19 Repeal the definition, substitute:

20 *Full Court* means:

- 21 (a) 3 or more Judges of the Appellate and Superior Division
22 sitting together, where a majority of those Judges are
23 Appellate Judges; or
24 (b) in relation to particular proceedings:
25 (i) 3 or more Judges of the Appellate and Superior Division
26 sitting together, where, at the commencement of the
27 hearing of the proceedings, a majority of those Judges
28 were Appellate Judges; or
29 (ii) 2 Judges of the Appellate and Superior Division sitting
30 together, where those Judges are permitted, by
31 subsection 28(4), to complete the hearing and

1 determination, or the determination, of those
2 proceedings.

3 **11 Subsection 4(1)**

4 Insert:

5 *Judge*, in relation to the Family Court, includes the Chief Justice,
6 the Deputy Chief Justice, the Administrative Judge (Appellate and
7 Superior Division) and the Administrative Judge (General
8 Division).

9 **12 Subsection 4(1)**

10 Insert:

11 *Judge of the Appellate and Superior Division* means any of the
12 following Judges:

- 13 (a) the Chief Justice;
14 (b) the Deputy Chief Justice;
15 (c) the Administrative Judge (Appellate and Superior Division);
16 (d) any other Judge who is assigned to the Appellate and
17 Superior Division under section 22A.

18 **13 Subsection 4(1)**

19 Insert:

20 *Judge of the General Division* means any of the following Judges:

- 21 (a) the Administrative Judge (General Division);
22 (b) any other Judge who is assigned to the General Division
23 under section 22A.

24 **14 Paragraphs 10C(1)(d) and 10G(1)(d)**

25 Repeal the paragraphs.

26 **15 Paragraph 11B(b)**

27 Repeal the paragraph.

28 **16 Section 11B (note)**

29 Repeal the note, substitute:

1 Note: The Chief Executive Officer has all of the functions and powers of
2 family consultants, and may direct consultants in the performance of
3 their functions. See Division 1A of Part IVA.

4 **17 Subparagraph 11E(1)(e)(i)**

5 Omit “of that court”.

6 **18 After subsection 13G(2)**

7 Insert:

8 (2A) The arbitrator must not refer a question of law arising in relation to
9 the arbitration to the Federal Magistrates Court unless:

- 10 (a) in the case of section 13E arbitration—the Federal
11 Magistrates Court ordered the arbitration; or
12 (b) in the case of relevant property or financial arbitration—the
13 Federal Magistrates Court made orders under section 13F in
14 relation to the arbitration.

15 **19 After subsection 13J(1)**

16 Insert:

17 (1A) An application for review of an award made in an arbitration must
18 not be made to the Federal Magistrates Court unless:

- 19 (a) in the case of section 13E arbitration—the Federal
20 Magistrates Court ordered the arbitration; or
21 (b) in the case of relevant property or financial arbitration—the
22 Federal Magistrates Court made orders under section 13F in
23 relation to the arbitration.

24 **20 Subsection 13K(1)**

25 Omit “award is”, substitute “award or agreement is”.

26 **21 Division 1 of Part IV**

27 Repeal the Division.

28 **22 Division 2 of Part IV (heading)**

29 Repeal the heading, substitute:

30 **Division 2—Creation of the Court etc.**

31 **23 Subsections 21(3) and (4)**

1 Repeal the subsections, substitute:

2 (3) The Court consists of:

- 3 (a) a Chief Justice; and
4 (b) a Deputy Chief Justice; and
5 (c) an Administrative Judge (Appellate and Superior Division);
6 and
7 (d) an Administrative Judge (General Division); and
8 (e) other Judges, not exceeding such number as is prescribed.

9 **24 Section 21A**

10 Repeal the section, substitute:

11 **21A Divisions of Court**

12 For the purposes of the organisation and conduct of the business of
13 the Court, the Court comprises the following 2 Divisions:

- 14 (a) the Appellate and Superior Division;
15 (b) the General Division.

16 **25 Subsection 21B(1)**

17 Repeal the subsection, substitute:

- 18 (1) The Chief Justice is responsible for ensuring the effective, orderly
19 and expeditious discharge of the business of:
20 (a) the Court as a whole; and
21 (b) each Division of the Court (including the allocation of
22 resources between the Divisions).

23 **26 Subsection 21B(1A)**

24 Omit “Chief Judge”, substitute “Chief Justice”.

25 **27 Subsections 21B(2) to (5)**

26 Repeal the subsections, substitute:

- 27 (2) The Deputy Chief Justice is to assist the Chief Justice in the
28 exercise of the functions and powers conferred on the Chief Justice
29 by this section.
30 (3) The Administrative Judge (Appellate and Superior Division) is to
31 assist the Chief Justice in the exercise in relation to the Appellate
-

1 and Superior Division of the functions and powers conferred on the
2 Chief Justice by this section.

3 (4) The Administrative Judge (General Division) is to assist the Chief
4 Justice in the exercise in relation to the General Division of the
5 functions and powers conferred on the Chief Justice by this
6 section.

7 (5) In exercising, or assisting in the exercise of, the functions or
8 powers mentioned in paragraph (1A)(a), the Chief Justice, the
9 Deputy Chief Justice, the Administrative Judge (Appellate and
10 Superior Division) and the Administrative Judge (General
11 Division) have the same protection and immunity as if they were
12 exercising, or assisting in the exercise of, those functions or powers
13 as, or as members of, the Court.

14 (6) Despite section 39B of the *Judiciary Act 1903*, the Federal Court of
15 Australia does not have jurisdiction with respect to a matter
16 relating to:

17 (a) the exercise by the Chief Justice of the functions or powers
18 mentioned in subsection (1A); or

19 (b) the assistance by the Deputy Chief Justice, the
20 Administrative Judge (Appellate and Superior Division) or
21 the Administrative Judge (General Division) in the exercise
22 of those functions or powers.

23 **28 Before section 22**

24 Insert:

25 **Subdivision A—Appointment, seniority, remuneration etc.**

26 Note: The heading to section 22 is replaced by the heading “**Appointment and removal of**
27 **Judges**”.

28 **29 Subsections 22(2AAA) to (2AFA)**

29 Repeal the subsections.

30 **30 Subsection 22(2AG)**

31 Renumber as subsection (3).

32 **31 Subsection 22(2AH)**

33 Renumber as subsection (4).

1 **32 Subsection 22(2AH)**

2 Omit “(2AG)”, substitute “(3)”.

3 **33 Subsection 22(2A)**

4 Renumber as subsection (5).

5 **34 Subsection 22(2B)**

6 Renumber as subsection (6).

7 **35 Subsections 22(3) to (4)**

8 Repeal the subsections.

9 **36 At the end of section 22**

10 Add:

11 (7) A reference in subsection (3), (5) or (6) to a Judge of the Family
12 Court of Australia is a reference to a Judge of the Appellate and
13 Superior Division.

14 *Certain Judges may hold office on part-time basis*

15 (8) A Judge who is assigned to the General Division under
16 section 22A may be appointed on a part-time basis.

17 **37 After section 22**

18 Insert:

19 **22A Assignment of Judges to a Division of the Court**

20 *Assignment at time of appointment*

21 (1) At the time a Judge is appointed, the Governor-General:

22 (a) must assign the Judge to:

23 (i) the Appellate and Superior Division; or

24 (ii) the General Division; and

25 (b) if the Governor-General assigns the Judge to the Appellate
26 and Superior Division—may assign the Judge to that
27 Division as an Appellate Judge.

1 *Assignment of particular office holders*

- 2 (2) If the person appointed as the Chief Justice, the Deputy Chief
3 Justice or the Administrative Judge (Appellate and Superior
4 Division) is not already assigned to the Appellate and Superior
5 Division as an Appellate Judge, the Governor-General must assign
6 the person to that Division as an Appellate Judge.
- 7 (3) If the person appointed as the Administrative Judge (General
8 Division) is not already assigned to the General Division, the
9 Governor-General must assign the person to that Division.

10 *Assignment during term of appointment*

- 11 (4) During the term of appointment of a Judge who is assigned to the
12 Appellate and Superior Division but not as an Appellate Judge, the
13 Governor-General may, with the consent of the Judge but not
14 otherwise, assign the Judge to that Division as an Appellate Judge.
- 15 (5) During the term of appointment of a Judge who is assigned to the
16 General Division, the Governor-General may, with the consent of
17 the Judge but not otherwise, assign the Judge to the Appellate and
18 Superior Division (either as an Appellate Judge or not).

19 *Limit on number of Appellate Judges*

- 20 (6) The Governor-General must not assign a Judge to the Appellate
21 and Superior Division as an Appellate Judge under subsection (1),
22 (4) or (5) if, as a result of that assignment, the number of Appellate
23 Judges (not including the Judges referred to in subsection (2))
24 would exceed the prescribed number.
- 25 (7) Subsection (6) does not apply to the assignment of a Judge referred
26 to in subsection (2).

27 **22B Assignment of Judges to particular locations**

- 28 (1) The commission of appointment of a Judge must assign the Judge
29 to a particular location. The Judge:
30 (a) must not sit at another location on a permanent basis unless
31 the Attorney-General and the Chief Justice consent; and

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

12 **22C Resignation**

- 13 (1) A Judge may resign office by writing under his or her hand
14 addressed to the Governor-General.
- 15 (2) The resignation takes effect on:
16 (a) the day on which it is received by the Governor-General; or
17 (b) if a later day is specified in the resignation—that later day.

18 **22D Effect of appointment to, and resignation from, certain offices**

- 19 (1) This section applies if a person who holds office as a Judge of the
20 Court is appointed to one of the following offices (a *higher office*):
21 (a) Deputy Chief Justice;
22 (b) Administrative Judge (Appellate and Superior Division);
23 (c) Administrative Judge (General Division).
- 24 (2) The person retains the office of Judge of the Court while the person
25 holds the higher office.
- 26 (3) The person may resign the higher office without resigning the
27 office of Judge of the Court.
- 28 (4) If the person resigns the higher office without resigning the office
29 of Judge of the Court, the assignment under section 22A that was
30 in force in relation to the person while the person held the higher
31 office continues in force after the resignation.

- 1 (5) Subsection (4) does not limit the application of section 22A to the
2 person after the resignation.

3 **22E Style**

- 4 (1) A Judge, or former Judge, of the Appellate and Superior Division
5 is entitled to be styled “The Honourable”.
- 6 (2) In addition to the entitlement under subsection (1):
- 7 (a) an Appellate Judge is entitled to include the letters “JA” after
8 his or her name; and
- 9 (b) any other Judge of the Appellate and Superior Division is
10 entitled to include the letters “SJ” (Senior Judge) after his or
11 her name.

12 **38 Subsection 23(1)**

13 Omit “Chief Judge”, substitute “Chief Justice”.

14 Note: The following heading to subsection 23(1) is inserted “*Chief Justice*”.

15 **39 Subsection 23(2)**

16 Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

17 Note: The following heading to subsection 23(2) is inserted “*Deputy Chief Justice*”.

18 **40 Subsections 23(3) and (4)**

19 Repeal the subsections, substitute:

20 *Administrative Judge (Appellate and Superior Division)*

- 21 (3) The Administrative Judge (Appellate and Superior Division) is
22 senior to all other Judges of the Court other than the Chief Justice
23 and the Deputy Chief Justice.

24 *Other Appellate Judges*

- 25 (4) The remaining Appellate Judges have seniority next to the
26 Administrative Judge (Appellate and Superior Division) according
27 to the days on which their assignments to the Appellate and
28 Superior Division as an Appellate Judge took effect.

29 **41 Subsection 23(5)**

1 Omit “appointments as Judge Administrator and assignments to the
2 Appeal Division”, substitute “assignments to the Appellate and Superior
3 Division as an Appellate Judge”.

4 **42 Subsections 23(6) to (11)**

5 Repeal the subsections, substitute:

6 *Other Judges assigned to the Appellate and Superior Division*

7 (6) The remaining Judges assigned to the Appellate and Superior
8 Division have seniority next to the Appellate Judges to whom
9 subsection (4) applies according to the days on which their
10 assignments to the Appellate and Superior Division took effect.

11 (7) Where, because 2 or more assignments to the Appellate and
12 Superior Division took effect on the same day, subsection (6) does
13 not determine priority between the Judges concerned, those Judges
14 have such seniority in relation to each other as is assigned to them
15 by the Governor-General.

16 *Effect of termination of assignment*

17 (8) If:

18 (a) a Judge’s assignment (the *old assignment*) to the Appellate
19 and Superior Division terminates (whether because of
20 resignation or otherwise); and

21 (b) an assignment (the *new assignment*) of the same kind as the
22 old assignment takes effect for the Judge immediately after
23 the termination;

24 then, for the purposes of this section, the new assignment is treated
25 as if it took effect on the day the old assignment took effect.

26 (9) For the purposes of subsection (8), an assignment to the Appellate
27 and Superior Division as an Appellate Judge is not an assignment
28 of the same kind as an assignment to the Appellate and Superior
29 Division but not as an Appellate Judge.

30 **43 Subsection 24(1)**

31 Repeal the subsection, substitute:

32 (1) Whenever:

33 (a) the Chief Justice is absent from Australia or from duty; or

- 1 (b) there is a vacancy in the office of Chief Justice;
2 the Deputy Chief Justice or, if the Deputy Chief Justice is
3 unavailable, the next senior Judge of the Appellate and Superior
4 Division who is in Australia and is available and willing to do so is
5 to perform the duties and may exercise the powers of the Chief
6 Justice.

7 Note: The heading to section 24 is altered by omitting “Chief Judge” and substituting “Chief
8 Justice”.

9 **44 Subsection 24(2)**

10 Omit “Chief Judge”, substitute “Chief Justice”.

11 **45 Sections 25 and 26**

12 Repeal the sections, substitute:

13 **24A Certain references in other laws to Judge of a superior court**
14 **etc. not to include Judge of the General Division**

- 15 (1) In any other law of the Commonwealth, the expressions “Judge of
16 a superior court” and “Judges of a superior court” do not include a
17 Judge of the General Division.

18 Note: See, for example, section 48C of the *Australian Capital Territory*
19 *(Self-Government) Act 1988*.

- 20 (2) A reference in any other law of the Commonwealth to a period
21 during which a person has served as a Judge in a superior court
22 does not include a reference to a period during which the person
23 served as a Judge of the General Division.

24 Note: See, for example, section 34B of the *Australian Security Intelligence*
25 *Organisation Act 1979* and section 105.2 of the *Criminal Code*.

26 **25 Remuneration etc.**

- 27 (1) The following Judges are to be paid such remuneration (within the
28 meaning of Part II of the *Remuneration Tribunal Act 1973*) as is
29 determined by the Remuneration Tribunal:

- 30 (a) the Chief Justice;
31 (b) the Deputy Chief Justice;
32 (c) the Administrative Judge (Appellate and Superior Division);
33 (d) each other Judge who is assigned to the Appellate and
34 Superior Division;
-

- 1 (e) the Administrative Judge (General Division);
2 (f) each other Judge who is assigned to the General Division.
- 3 (2) Subsection (1) has effect subject to the *Remuneration Tribunal Act*
4 *1973*.
- 5 Note 1: Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that
6 a reference in Part II of that Act to **remuneration** is to be read as
7 including a reference to annual allowances.
- 8 Note 2: Under subsection 7(4) of the *Remuneration Tribunal Act 1973*, the
9 Remuneration Tribunal may determine any matter significantly related
10 to the remuneration of a Judge of the Court.
- 11 (3) The remuneration of Judges of the Appellate and Superior Division
12 accrues from day to day and is payable monthly.
- 13 (4) Judges of the General Division are to be treated as if they were
14 Judges of a court of record for the purposes of determining:
15 (a) their remuneration; and
16 (b) other terms and conditions that apply in relation to them.
- 17 Note: Subdivision B of this Division sets out other terms and conditions that
18 apply in relation to Judges of the General Division.
- 19 (5) The remuneration of a Judge is not to be diminished during his or
20 her continuance in office.

21 **26 Oath or affirmation of allegiance and office**

- 22 (1) Before proceeding to discharge the duties of his or her office, a
23 Judge must take an oath or affirmation of allegiance in the form in
24 the Schedule to the Constitution, and also an oath or affirmation in
25 the following form:
- 26 I, (*name*), do swear that I will well and truly serve in the office of
27 (*Chief Justice, Deputy Chief Justice, Administrative Judge*
28 *(Appellate and Superior Division), Administrative Judge (General*
29 *Division) or Judge, as the case may be*) of the Family Court of
30 Australia and that I will do right to all manner of people according
31 to law, without fear or favour, affection or ill-will. So help me
32 God.
- 33 *or*
- 34 I, (*name*), do solemnly and sincerely promise and declare that (*as*
35 *above, omitting the words "So help me God"*).
-

- 1 (2) A Judge of the Appellate and Superior Division must take an oath
2 or affirmation under subsection (1) before:
3 (a) the Governor-General; or
4 (b) the Chief Justice or a Justice of the High Court; or
5 (c) another Judge of the Appellate and Superior Division; or
6 (d) a Judge of another court created by the Parliament.
- 7 (3) A Judge of the General Division must take an oath or affirmation
8 under subsection (1) before:
9 (a) the Governor-General; or
10 (b) the Chief Justice or a Justice of the High Court; or
11 (c) another Judge of the Court; or
12 (d) a Judge of another court created by the Parliament.

13 **46 At the end of Division 3 of Part IV**

14 Add:

15 **Subdivision B—Other terms and conditions of Judges of the** 16 **General Division**

17 **26A Application of this Subdivision**

18 This Subdivision sets out other terms and conditions that apply in
19 relation to Judges of the General Division.

20 Note: Judges of the General Division are to be treated as if they were Judges
21 of a court of record for the purposes of determining other terms and
22 conditions that apply in relation to them: see subsection 25(4).

23 **26B Definitions**

24 (1) In this Subdivision:

25 *beneficiary*, in respect of a payment under section 26J, has the
26 meaning given by subsection 26J(4).

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

- 30 (a) a complying superannuation fund (within the meaning of
31 section 45 of the *Superannuation Industry (Supervision) Act*
32 *1993*); or
-

1 (b) a retirement savings account (within the meaning of section 8
2 of the *Retirement Savings Accounts Act 1997*).

3 ***eligible child*** has the meaning given by section 26L.

4 ***eligible spouse*** has the meaning given by section 26K.

5 ***Judge*** means a Judge of the General Division.

6 ***living with*** a person has the meaning given by subsection 26K(8).

7 ***marital or couple relationship*** has the meaning given by
8 subsection 26K(5).

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

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

- 15 (a) a Justice or Judge of a federal court;
16 (b) the holder of an office, being an office the holder of which
17 has, by virtue of an Act, the same status as a Justice or Judge
18 of a federal court;
19 (c) a Federal Magistrate of the Federal Magistrates Court;
20 (d) a Judge or acting Judge of a court of a State or Territory;
21 (e) a magistrate of a State or Territory;
22 (f) in the case of a State or Territory office that qualifies the
23 holder of the office for a pension or retiring allowance under
24 a law of the State or Territory relating to pensions or retiring
25 allowances payable to retired Judges—a holder of the office
26 (including an acting holder).

27 Note: If the Judge was appointed as a Judge of the Court more than once, see
28 subsection (2).

29 ***retired disabled Judge*** means a person certified by the Minister to
30 be a retired disabled Judge under paragraph 26F(2)(a).

31 ***retires***, in relation to a Judge, means ceases, otherwise than by
32 death, to hold any office as a Judge of the Court.

1 *Prior judicial service*

- 2 (2) For the purposes of the definition of *prior judicial service* in
3 subsection (1), if a retired disabled Judge was appointed as a Judge
4 of the Court more than once, the reference to the Judge's
5 appointment as a Judge of the Court is taken to be a reference to
6 the Judge's most recent appointment as a Judge of the Court.

7 **26C Outside work**

- 8 (1) A Judge must not engage in paid work outside the duties of the
9 Judge's office if that work is incompatible with the holding of a
10 judicial office under Chapter III of the Constitution.
- 11 (2) A Judge must not:
12 (a) engage in work as a legal practitioner; or
13 (b) engage in work as an employee of, or consultant to, a legal
14 practice.
- 15 (3) This section does not, by implication, limit the application to a
16 Judge of any doctrine of constitutional incompatibility.
- 17 (4) In this section:
18 *paid work* means work for financial gain or reward (whether as an
19 employee, a self-employed person or otherwise).

20 **26D Leave**

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

23 **26E Other terms and conditions**

- 24 (1) A Judge holds office on such terms and conditions (if any) in
25 relation to matters not covered by this Act as are specified in a
26 written determination made by the Governor-General for the
27 purposes of this subsection.
- 28 (2) The Minister must cause a copy of a determination under
29 subsection (1) to be tabled in each House of the Parliament.
- 30 (3) Either House may, following a motion upon notice, pass a
31 resolution disallowing the determination. To be effective, the
-

1 resolution must be passed within 15 sittings days of the House after
2 the copy of the determination was tabled in the House.

3 (4) If neither House passes such a resolution, the determination takes
4 effect on the day immediately after the last day upon which such a
5 resolution could have been passed.

6 **26F Certification of retired disabled Judge**

7 (1) If:

8 (a) a Judge retires; and

9 (b) the Judge has not attained the age of 70 years;

10 the Minister may be requested to certify that the Judge is a retired
11 disabled Judge.

12 (2) On receiving the request, the Minister must:

13 (a) if the Minister is satisfied that the retirement was due to
14 permanent disability or infirmity—certify that the Judge is a
15 retired disabled Judge; or

16 (b) otherwise—refuse to so certify.

17 (3) If the Minister refuses to so certify, application may be made to the
18 Administrative Appeals Tribunal for review of the refusal.

19 **26G Pensions for retired disabled Judges**

20 *Entitlement to pension*

21 (1) A retired disabled Judge is entitled to a pension until:

22 (a) he or she attains the age of 70 years; or

23 (b) he or she dies;

24 whichever happens first.

25 *Annual rate of pension*

26 (2) The annual rate of the pension is 60% of the annual rate of salary
27 the Judge would have been entitled to from time to time if he or
28 she had not retired.

29 (3) However, the rate of the pension must be reduced by the amount of
30 any pension or retiring allowance:

- 1 (a) payable to the Judge, whether under a law or otherwise, out
2 of money provided in whole or in part by the
3 Commonwealth, a State or a Territory (other than a
4 Commonwealth superannuation contribution the Judge was
5 entitled to under a determination under subsection 26E(1));
6 and
7 (b) payable to the Judge by reason of prior judicial service, or
8 prior judicial service and any other service.
- 9 (4) For the purposes of subsection (2), the annual rate of salary is the
10 annual rate of remuneration determined under section 25:
11 (a) excluding any allowances that are paid in lieu of any other
12 entitlement; and
13 (b) if any arrangements have been entered into for any amount of
14 the annual rate of remuneration (other than an allowance
15 covered by paragraph (a)) to be provided in the form of
16 another benefit—including that amount.

17 *When pension is due and payable*

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

20 *Safety, Rehabilitation and Compensation Act 1988*

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

27 **26H Superannuation for retired disabled Judges**

- 28 (1) A retired disabled Judge who has not attained the age of 65 years is
29 entitled to a Commonwealth superannuation contribution until:
30 (a) he or she attains the age of 65 years; or
31 (b) he or she dies;
32 whichever happens first.
- 33 (2) The amount of the Commonwealth superannuation contribution is
34 the amount of the Commonwealth superannuation contribution (if
-

1 any) the Judge would have been entitled to from time to time,
2 under a determination under subsection 26E(1), if he or she had not
3 retired.

4 (3) The Commonwealth superannuation contribution is to be made by
5 payments on the days on which salary payments are made to
6 Judges of the General Division.

7 **26J Death benefits**

8 *Entitlement to payment*

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

14 *Amount*

- 15 (2) The amount of the payment is the amount of the Commonwealth
16 superannuation contribution (if any) the Judge would have been
17 entitled to, under a determination under subsection 26E(1), during
18 the period in subsection (3) if:
19 (a) the Judge had neither died nor retired before the end of that
20 period; and
21 (b) the amount of the Commonwealth superannuation
22 contribution the Judge was entitled to under that
23 determination did not change during that period.
- 24 (3) The period in this subsection is the period:
25 (a) beginning on the day on which the Judge died; and
26 (b) ending on the day on which the Judge would have attained
27 the age of 65 years.

28 *Beneficiaries*

- 29 (4) The *beneficiaries* in respect of the payment are each eligible
30 spouse and eligible child the Judge leaves.
- 31 (5) If there is only one beneficiary in respect of the payment, the
32 payment is payable to the beneficiary.

1 (6) If there is more than one beneficiary in respect of the payment, the
2 payment is payable to the beneficiaries in the proportions (totalling
3 100% of the amount of the payment) the Minister considers
4 appropriate, having regard to the respective circumstances of each
5 beneficiary.

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

7 *Beneficiaries—eligible children*

8 (7) If the payment (or a proportion of the payment) is payable to an
9 eligible child, the Minister may, in writing, direct that:

10 (a) some or all of the payment or proportion be paid to a
11 specified person for the benefit of the child (including for the
12 support or education of the child); or

13 (b) if the Minister is satisfied that, by reason of special
14 circumstances, it is desirable to do so in the interests of the
15 child—some or all of the payment or proportion be spent in a
16 specified manner for the benefit of the child.

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

18 (8) The Minister may be requested to give a direction under
19 subsection (7) in respect of an eligible child.

20 (9) On receiving an application, the Minister must:

21 (a) if he or she is satisfied that he or she should make a direction
22 in respect of the child—give such a direction; or

23 (b) if he or she is not so satisfied—refuse to give such a
24 direction.

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

26 *Applications for review*

27 (10) Application may be made to the Administrative Appeals Tribunal
28 for review of the following:

29 (a) a decision by the Minister under subsection (6);

30 (b) a direction by the Minister under subsection (7);

31 (c) a refusal by the Minister under paragraph (9)(b) to give a
32 direction.

1 **26K Relationship definitions**

2 *Meaning of eligible spouse*

- 3 (1) For the purposes of this Subdivision, subsections (2), (3) and (4)
4 set out the 3 circumstances in which a person is an *eligible spouse*
5 of a Judge, or a retired disabled Judge, who dies.
- 6 (2) A person is an *eligible spouse* of a Judge who dies if the person
7 had a marital or couple relationship with the Judge at the time of
8 the death of the Judge.
- 9 (3) A person is an *eligible spouse* of a retired disabled Judge who dies
10 if:
11 (a) the person had a marital or couple relationship with the Judge
12 at the time of the Judge's death; and
13 (b) the marital or couple relationship began:
14 (i) before the Judge retired; or
15 (ii) before the Judge attained the age of 60 years.
- 16 (4) A person is an *eligible spouse* of a Judge, or a retired disabled
17 Judge, who dies if:
18 (a) the person had previously had a marital or couple relationship
19 with the Judge; and
20 (b) the person did not, at the time of the Judge's death, have a
21 marital or couple relationship with the Judge but was legally
22 married to him or her; and
23 (c) in the Minister's opinion, the person was wholly or
24 substantially dependent upon the Judge at the time of the
25 Judge's death; and
26 (d) in the case of a marital or couple relationship that began after
27 the Judge retired—the marital or couple relationship began
28 before the Judge attained the age of 60 years.

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

30 *Meaning of marital or couple relationship*

- 31 (5) For the purposes of this Subdivision, a person had a *marital or*
32 *couple relationship* with another person at a particular time if:
33 (a) the person had been living with the other person as the other
34 person's husband or wife or partner for a continuous period
35 of at least 3 years up to that time; or
-

- 1 (b) both:
- 2 (i) the person had been living with the other person as the
- 3 other person's husband or wife or partner for a
- 4 continuous period of less than 3 years up to that time;
- 5 and
- 6 (ii) the Minister, having regard to any relevant evidence, is
- 7 of the opinion that the person ordinarily lived with the
- 8 other person as the other person's husband or wife or
- 9 partner on a permanent and bona fide domestic basis at
- 10 that time;
- 11 whether or not the person was legally married to the other person.
- 12 Note 1: Subsection (7) lists some of the evidence relevant to
- 13 subparagraph (5)(b)(ii).
- 14 Note 2: For review of decisions under subparagraph (5)(b)(ii), see
- 15 subsection (9).
- 16 (6) For the purposes of this Subdivision, a marital or couple
- 17 relationship is taken to have begun at the beginning of the
- 18 continuous period mentioned in paragraph (5)(a) or
- 19 subparagraph (5)(b)(i).
- 20 (7) For the purpose of subparagraph (5)(b)(ii), relevant evidence
- 21 includes, but is not limited to, evidence establishing any of the
- 22 following:
- 23 (a) that the person was wholly or substantially dependent on that
- 24 other person at the time;
- 25 (b) that the persons were legally married to each other at the
- 26 time;
- 27 (c) the persons' relationship was registered under a law of a
- 28 State or Territory prescribed for the purposes of section 22B
- 29 of the *Acts Interpretation Act 1901* as a kind of relationship
- 30 prescribed for the purposes of that section;
- 31 (d) that the persons had a child who was:
- 32 (i) born of the relationship between the persons; or
- 33 (ii) adopted by the persons during the period of the
- 34 relationship; or
- 35 (iii) a child of both of the persons within the meaning of this
- 36 Act;
- 37 (e) that the persons jointly owned a home which was their usual
- 38 residence.

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

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

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

10 *Applications for review*

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

14 **26L Meaning of *eligible child***

- 15 (1) For the purposes of this Subdivision, a person is an **eligible child**
16 of a Judge, or a retired disabled Judge, who dies if:
17 (a) the person:
18 (i) has not attained the age of 16 years; or
19 (ii) has not attained the age of 25 years and is receiving
20 full-time education at a school, college or university;
21 and
22 (b) one of the following applies:
23 (i) the person is a child or adopted child of the Judge;
24 (ii) the person is a child of the Judge within the meaning of
25 this Act;
26 (iii) in the Minister's opinion, the person was wholly or
27 substantially dependent on the Judge at the time of the
28 Judge's death;
29 (iv) in the Minister's opinion, the person would have been
30 wholly or substantially dependent on the Judge but for
31 the Judge's death.
32 (2) Application may be made to the Administrative Appeals Tribunal
33 for review of a decision by the Minister under
34 subparagraph (1)(b)(iii) or (iv).

1 **26M Appropriation**

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

- 4 (a) pensions under section 26G;
5 (b) Commonwealth superannuation contributions under
6 section 26H;
7 (c) payments under section 26J.

8 **47 Division 4 of Part IV**

9 Repeal the Division.

10 **48 Subsection 27(2)**

11 Omit “, may be constituted by 2 or more Judges”, substitute “in the
12 Appellate and Superior Division, may be constituted by 2 or more
13 Judges of that Division”.

14 **49 Subsection 27(2) (note)**

15 Omit “Chief Judge”, substitute “Chief Justice”.

16 **50 Subsections 28(1) to (3)**

17 Repeal the subsections, substitute:

- 18 (1) The original jurisdiction of the Court may be exercised by one or
19 more Judges of the Appellate and Superior Division.
- 20 (2) The jurisdiction of the Court in an appeal from a court of summary
21 jurisdiction is to be exercised by:
22 (a) one Judge of the Appellate and Superior Division; or
23 (b) a Full Court.
- 24 (2A) Nothing in this Act prevents an Appellate Judge from exercising
25 the jurisdiction of the Court that, under subsection (1) or (2), is to
26 be exercised by one or more Judges of the Appellate and Superior
27 Division.
- 28 (3) The jurisdiction of the Court in an appeal from a Judge of the
29 Appellate and Superior Division, or a Judge of the Supreme Court
30 of a State or Territory, is to be exercised by a Full Court.

1 Note: Section 94AAA deals with the exercise of the jurisdiction of the Court
2 in other appeals (including appeals from Judges of the General
3 Division).

4 Note: The heading to section 28 is altered by adding at the end “**by Judges of the Appellate**
5 **and Superior Division**”.

6 **51 Paragraphs 28(4)(a) and (b)**

7 Repeal the paragraphs, substitute:

8 (a) if only 2 Judges remain and one of those Judges is an
9 Appellate Judge, or if more than 2 Judges remain and a
10 majority of those Judges are Appellate Judges—by the Court
11 constituted by the remaining Judges; or

12 (b) with the consent of the parties—by the Court constituted by
13 the remaining Judge or Judges and an additional Judge or
14 Judges of the Appellate and Superior Division, where a
15 majority of the Judges constituting the Court are Appellate
16 Judges.

17 **52 Subsection 28(6)**

18 Repeal the subsection.

19 **53 After section 28**

20 Insert:

21 **29 Exercise of jurisdiction by Judges of the General Division**

22 (1) Subject to this section, the original jurisdiction of the Court may be
23 exercised by one Judge of the General Division.

24 (2) A Judge of the General Division is not to exercise the original
25 jurisdiction of the Court with respect to a proceeding mentioned in
26 an item of the following table.

27

Item	Proceedings
1	A proceeding with respect to the transfer of a PPS matter (within the meaning of the <i>Personal Property Securities Act 2009</i>) under subsection 211(1) of that Act
2	A proceeding for interim relief under Part 4 of the <i>Trans-Tasman Proceedings Act 2010</i>
3	A proceeding for leave under section 9 of the <i>Evidence and Procedure (New Zealand) Act 1994</i>

Schedule 1 Amendment of the Family Law Act 1975

Part 1 Main amendments

- 1 (3) A Judge of the General Division is not to exercise the original
2 jurisdiction of the Court with respect to a proceeding mentioned in
3 an item of the following table unless:
4 (a) the Chief Justice directs the Judge to deal with the
5 proceeding; or
6 (b) the proceeding is in respect of a matter that is associated with
7 a matter that has arisen in a proceeding before the Judge; or
8 (c) the proceeding has been referred to the Judge under
9 section 33AA.

10

Item	Proceedings
1	A proceeding of a kind referred to in subparagraph (a)(ii) or paragraph (b) of the definition of <i>matrimonial cause</i> in subsection 4(1) of this Act
2	A proceeding for leave under subsection 60G(1) of this Act
3	A proceeding transferred to the Court under section 18A of the <i>Administrative Decisions (Judicial Review) Act 1977</i>
4	A proceeding transferred to the Court under section 12GL of the <i>Australian Securities and Investments Commission Act 2001</i>
5	A proceeding with respect to bankruptcy (within the meaning of the <i>Bankruptcy Act 1966</i>)
6	A proceeding with respect to a civil matter arising under the Aboriginal and Torres Strait Islander Corporations legislation (within the meaning of the <i>Corporations (Aboriginal and Torres Strait Islander) Act 2006</i>)
7	A proceeding with respect to a civil matter arising under the Corporations legislation (within the meaning of the <i>Corporations Act 2001</i>)
8	A proceeding: (a) for an order under subsection 7(1), 9A(1) or 11(1) of the <i>Foreign Evidence Act 1994</i> ; or (b) to vary or revoke such an order under subsection 16(1) of that Act
9	A proceeding transferred to the Court under the <i>Jurisdiction of Courts (Cross-vesting) Act 1987</i> or a law of a State, the Australian Capital Territory or the Northern Territory relating to cross-vesting of jurisdiction
10	A proceeding with respect to a PPS matter (within the meaning of the <i>Personal Property Securities Act 2009</i>) of a kind with respect to which the Federal Magistrates Court does not have jurisdiction under section 207 of that Act
11	A proceeding transferred to the Court under section 14ZZS of the <i>Taxation Administration Act 1953</i>
12	A proceeding transferred to the Court under section 86B of the <i>Trade</i>

Item Proceedings

Practices Act 1974

13 A proceeding of a kind prescribed by the regulations

- 1 (4) Original jurisdiction that is conferred on the Court after the
2 commencement of this section is not to be exercised by a Judge of
3 the General Division, except so far as express provision to the
4 contrary is made by this Act or any other law of the
5 Commonwealth.

6 **29A Exercise of jurisdiction by different Judges at the same time**

7 The Court constituted by one or more Judges may sit and exercise
8 the jurisdiction of the Court even if the Court constituted by one or
9 more other Judges is at the same time sitting and exercising the
10 jurisdiction of the Court.

11 **54 Paragraph 30(b)**

12 Omit “Chief Judge”, substitute “Chief Justice”.

13 **55 After section 33**

14 Insert:

15 **33AA Referral of proceedings from one Division to the other**

- 16 (1) If a proceeding is pending in a Division of the Court, the Judge or
17 Judges dealing with the proceeding may refer the proceeding to the
18 other Division of the Court.
- 19 (2) A proceeding may be referred under this section:
20 (a) on the application of a party to the proceeding; or
21 (b) on the initiative of the Judge or Judges dealing with the
22 proceeding.
- 23 (3) The standard Rules of Court may make provision in relation to the
24 referral of a proceeding under this section.
- 25 (4) In particular, the standard Rules of Court may set out factors that
26 are to be taken into account by a Judge in deciding whether to refer
27 a proceeding under this section.

- 1 (5) In deciding whether to refer a proceeding under this section, the
2 Judge or Judges dealing with the proceeding must have regard to:
3 (a) any standard Rules of Court made for the purposes of
4 subsection (3); and
5 (b) whether the referral will facilitate the resolution of the
6 dispute as quickly, inexpensively and efficiently as possible.
- 7 (6) If a proceeding is referred under this section, the Judge or Judges
8 who referred the proceeding may make such orders as the Judge or
9 Judges consider necessary pending the disposal of the proceeding.
- 10 (7) An appeal does not lie from a decision to refer, or not to refer, a
11 proceeding under this section.

12 **56 Subsection 33A(1)**

13 Repeal the subsection, substitute:

- 14 (1) Proceedings must not be instituted in the Family Court in respect
15 of a matter if proceedings in respect of an associated matter are
16 pending in the Federal Magistrates Court.

17 **57 Subsection 33B(2)**

18 Repeal the subsection.

19 **58 Subsection 33B(8A)**

20 Repeal the subsection, substitute:

- 21 (8A) The Federal Magistrates Court has jurisdiction in a matter that is
22 the subject of a proceeding transferred to it under this section.
- 23 (8B) A proceeding transferred to the Federal Magistrates Court under
24 this section is to be treated as if it had been instituted in the Federal
25 Magistrates Court.

26 **59 Subsection 33B(10)**

27 Repeal the subsection.

28 **60 Section 33C**

29 Repeal the section.

30 **61 Section 34**

1 Omit “(1)”.

2 **62 Subsections 37(1) and (2)**

3 Omit “Chief Judge”, substitute “Chief Justice”.

4 **63 Subsection 37A(1)**

5 Omit “, or a majority of them, may,”, substitute “of the Court may, in
6 accordance with section 124 and”.

7 **64 Subsections 37A(3) and (4)**

8 Omit “applicable”.

9 **65 Subsection 37A(9)**

10 Omit “applicable Rules of Court made by the Judges or a majority of
11 them”, substitute “Rules of Court made”.

12 **66 Paragraph 37A(14)(b)**

13 Omit “Chief Judge”, substitute “Chief Justice”.

14 **67 Subsection 37A(15) (note)**

15 Omit “26B,”.

16 **68 Subsections 37B(1) to (4)**

17 Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

18 **69 Subsection 37B(5)**

19 Repeal the subsection, substitute:

20 (5) In this section:

21 *Principal Registrar* means the Principal Registrar of the Court.

22 *Registrar* means a Registrar of the Court.

23 **70 Section 37C**

24 Omit “shall”, substitute “of the Court must”.

25 **71 Section 37C**

26 Omit “Chief Judge”, substitute “Chief Justice”.

1 **72 Division 1 of Part IVA (heading)**

2 Repeal the heading, substitute:

3 **Division 1—Management responsibilities of the Chief**
4 **Justice and the Chief Executive Officer**

5 **73 Section 38A**

6 Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

7 **74 Section 38B**

8 Omit “Chief Judge”, substitute “Chief Justice”.

9 **75 Section 38C**

10 Omit “Chief Judge”, substitute “Chief Justice”.

11 **76 Section 38D**

12 Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

13 **77 Subsection 38F(4)**

14 Omit “Chief Judge”, substitute “Chief Justice”.

15 **78 Subsection 38G(2)**

16 Omit “Chief Judge” (wherever occurring), substitute “Chief Justice”.

17 **79 Subsection 38J(1)**

18 Omit “Chief Judge”, substitute “Chief Justice”.

19 **80 Section 38L**

20 Omit “Chief Judge”, substitute “Chief Justice”.

21 **81 Subsection 38M(1)**

22 Omit “Chief Judge”, substitute “Chief Justice”.

23 **82 Subsections 38N(2) and (6)**

24 Omit “Chief Judge”, substitute “Chief Justice”.

25 **83 Subsection 38S(1)**

26 Omit “Chief Judge”, substitute “Chief Justice”.

1 **84 Section 38W**

2 Omit “Chief Judge”, substitute “Chief Justice”.

3 Note: The heading to section 38W is altered by omitting “**Chief Judge**” and substituting
4 “**Chief Justice**”.

5 **85 Subsections 39(1A), (5AA) and (5A)**

6 Repeal the subsections.

7 **86 Paragraph 39A(1)(b)**

8 Repeal the paragraph.

9 **87 Paragraph 39B(1)(b)**

10 Repeal the paragraph.

11 **88 Subsection 39B(1) (note 2)**

12 Repeal the note.

13 **89 Subsection 39B(1) (note 3)**

14 Omit “Note 3”, substitute “Note 2”.

15 **90 Subparagraph 46(1)(a)(ii)**

16 Omit “; or”, substitute “; and”.

17 **91 Subparagraph 46(1)(a)(iii)**

18 Repeal the subparagraph.

19 **92 Subparagraph 46(1)(b)(ii)**

20 Omit “Territory; or”, substitute “Territory.”.

21 **93 Subparagraph 46(1)(b)(iii)**

22 Repeal the subparagraph.

23 **94 Paragraph 46(1C)(b)**

24 Omit “Territory; or”, substitute “Territory.”.

25 **95 Paragraph 46(1C)(c)**

26 Repeal the paragraph.

1 **96 Paragraph 46(2A)(d)**

2 Omit “Territory; or”, substitute “Territory.”.

3 **97 Paragraph 46(2A)(e)**

4 Repeal the paragraph.

5 **98 Paragraph 46(3A)(c)**

6 Repeal the paragraph.

7 **99 Subsection 65D(3) (note)**

8 Repeal the note.

9 **100 Subsection 69H(4)**

10 Repeal the subsection.

11 Note: The heading to section 69H is altered by omitting “, Northern Territory Supreme
12 Court and Federal Magistrates Court” and substituting “and Northern Territory
13 Supreme Court”.

14 **101 Paragraph 69N(2)(c)**

15 Omit “Territory; or”, substitute “Territory.”.

16 **102 Paragraph 69N(2)(d)**

17 Repeal the paragraph.

18 **103 Paragraph 69N(3)(c)**

19 Omit “Territory; or”, substitute “Territory.”.

20 **104 Paragraph 69N(3)(d)**

21 Repeal the paragraph.

22 **105 Subparagraph 69N(5)(b)(iii)**

23 Omit “Territory; or”, substitute “Territory.”.

24 **106 Subparagraph 69N(5)(b)(iv)**

25 Repeal the subparagraph.

26 **107 Paragraph 69N(6)(c)**

27 Omit “Territory; or”, substitute “Territory.”.

1 **108 Paragraph 69N(6)(d)**

2 Repeal the paragraph.

3 **109 Section 69ZO**

4 Omit “Judicial Registrar.”.

5 **110 Subsection 69ZR(3)**

6 Omit “Judicial Registrar.”.

7 **111 Paragraphs 70NFD(a) and (b)**

8 Repeal the paragraphs, substitute:

9 (a) by the court that made the order; or

10 (b) by the Family Court.

11 **112 Paragraph 87(11)(b)**

12 Before “Rules”, insert “applicable”.

13 **113 Paragraph 94(1)(a)**

14 After “constituted”, insert “by one or more Judges of the Appellate and
15 Superior Division sitting”.

16 Note: The heading to section 94 is replaced by the heading “**Appeals to Full Court of Family**
17 **Court**”.

18 **114 Subsection 94(1AA)**

19 Repeal the subsection, substitute:

20 (1AA) An appeal lies to a Full Court of the Family Court from:

21 (a) a decree or decision of a Judge of the Appellate and Superior
22 Division exercising original or appellate jurisdiction under
23 this Act or any other law rejecting an application that he or
24 she disqualify himself or herself from further hearing a
25 matter; or

26 (b) a decree or decision of a Judge of a Family Court of a State,
27 or a Judge of a Supreme Court of a State or Territory,
28 exercising original or appellate jurisdiction under this Act
29 rejecting an application that he or she disqualify himself or
30 herself from further hearing a matter.

31 **115 Subsections 94(2B) and (2D)**

1 Omit “a Judge of the Appeal Division or other Judge if there is no Judge
2 of the Appeal Division”, substitute “an Appellate Judge or other Judge
3 of the Appellate and Superior Division if there is no Appellate Judge”.

4 **116 Before paragraph 94AAA(1)(a)**

5 Insert:

6 (aa) a decree of the Family Court, constituted by a Judge of the
7 General Division, exercising original jurisdiction under this
8 Act or any other law; or

9 (ab) a decree or decision of a Judge of the General Division
10 exercising original jurisdiction under this Act or any other
11 law rejecting an application that he or she disqualify himself
12 or herself from further hearing a matter; or

13 Note: The heading to section 94AAA is replaced by the heading “**Other appeals to Family**
14 **Court**”.

15 **117 Subsection 94AAA(3)**

16 Omit “Chief Judge”, substitute “Chief Justice”.

17 **118 Subsection 94AAA(13)**

18 Repeal the subsection, substitute:

19 (13) The single Judge referred to in subsection (3), (8) or (10) must be a
20 Judge of the Appellate and Superior Division but need not be an
21 Appellate Judge.

22 **119 Subsection 94AA(1) (cell at table item 1, column headed**
23 **“Appeal from”)**

24 After “constituted”, insert “by one or more Judges of the Appellate and
25 Superior Division sitting”.

26 **120 Subsection 94AA(1) (after table item 3)**

27 Insert:

3A	a prescribed decree of the Family Court (constituted by a Judge of the General Division)	the Family Court	(a) a single Judge of the Appellate and Superior Division (who need not be an Appellate Judge); or (b) a Full Court of the Family Court
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1 **121 Subsection 94AA(1) (paragraph (a) of the cell at table**
2 **item 4, column headed “Who determines the**
3 **application for leave to appeal”)**

4 Repeal the paragraph, substitute:

- (a) a single Judge of
the Appellate and
Superior Division
(who need not be an
Appellate Judge);
or

5 **122 Subsection 94AA(1) (paragraph (a) of the cell at table**
6 **item 5, column headed “Who determines the**
7 **application for leave to appeal”)**

8 Repeal the paragraph, substitute:

- (a) a single Judge of
the Appellate and
Superior Division
(who need not be an
Appellate Judge);
or

9 **123 Paragraphs 94AA(2)(b) and (c)**

10 Repeal the paragraphs, substitute:

- 11 (b) an Appellate Judge; or
- 12 (c) another Judge of the Appellate and Superior Division if there
- 13 is no Appellate Judge available.

14 **124 Subsection 94AA(2A)**

15 Omit “Despite subsection (1)”, substitute “To avoid doubt”.

16 **125 Paragraph 94AA(2A)(b)**

17 Repeal the paragraph, substitute:

- 18 (b) a single Judge of the Appellate and Superior Division (who
- 19 need not be an Appellate Judge).

20 **126 After subsection 94A(2)**

21 Insert:

- 1 (2A) If, in proceedings in the General Division of the Family Court,
2 being proceedings in which a decree or decision to which
3 subsection 94AAA(1) applies could be made, a question of law
4 arises which:
5 (a) the Judge; and
6 (b) at least one of the parties;
7 wish to have determined by a Full Court of the Family Court
8 before the proceedings are further dealt with:
9 (c) the Judge must state the facts and question in the form of a
10 special case for the opinion of a Full Court; and
11 (d) a Full Court must hear and determine the question.
- 12 (2B) The Full Court may draw from the facts and the documents any
13 inference, whether of fact or of law, which could have been drawn
14 from them by the Judge.

15 **127 At the end of subsection 96(1)**

16 Add:

17 Note: The jurisdiction of the Family Court in an appeal from a court of
18 summary jurisdiction is to be exercised by a Judge of the Appellate
19 and Superior Division or by a Full Court: see subsection 28(2).

20 **128 At the end of section 96**

21 Add:

- 22 (7) The Judge referred to in paragraph (6)(b) or (c) must be a Judge of
23 the Appellate and Superior Division but need not be an Appellate
24 Judge.

25 **129 Before section 97**

26 Insert:

27 **Subdivision A—Proceedings in the Family Court and courts**
28 **exercising jurisdiction under this Act**

29 **96B Application of Subdivision**

30 This Subdivision applies in relation to proceedings in the Family
31 Court or in another court when exercising jurisdiction under this
32 Act.

1 **96C Conduct of proceedings**

2 In proceedings under this Act, the court must proceed without
3 undue formality and must endeavour to ensure that the proceedings
4 are not protracted.

5 **130 Subsection 97(1A)**

6 Omit “Judicial Registrar.”.

7 Note: The heading to section 97 is replaced by the heading “**Exercise of jurisdiction in open**
8 **court and in Chambers**”.

9 **131 Subsection 97(3)**

10 Repeal the subsection.

11 **132 At the end of Division 1 of Part XI**

12 Add:

13 **Subdivision B—Proceedings in the Family Court**

14 **102BAA Application of Subdivision**

15 (1) This Subdivision applies in relation to proceedings in the Appellate
16 and Superior Division or the General Division of the Family Court.

17 (2) This Subdivision has effect subject to Subdivision C and any other
18 provision of this Act with respect to the practice and procedure of
19 the Family Court in particular matters.

20 **102BAB Limits on length of documents**

21 (1) The Court may give directions about limiting the length of
22 documents required or permitted to be filed in the Court.

23 (2) Subsection (1) has effect subject to the standard Rules of Court.

24 **102BAC Limits on length of oral argument**

25 (1) The Court may give directions about limiting the time for oral
26 argument in proceedings before the Court.

27 (2) Subsection (1) has effect subject to the standard Rules of Court.

1 **102BAD Written submissions**

- 2 (1) The Court may give directions about the use of written submissions
3 in proceedings before the Court.
- 4 (2) The Court may give directions limiting the length of written
5 submissions in proceedings before the Court.
- 6 (3) Subsections (1) and (2) have effect subject to the standard Rules of
7 Court.

8 **102BAE Orders and commission for examination of witnesses**

- 9 The Court may, for the purposes of any proceeding before the
10 Court:
- 11 (a) order the examination of a person upon oath or affirmation
12 before the Court, a Judge, an officer of the Court or other
13 person, at any place within Australia; or
- 14 (b) order that a commission issue to a person, either within or
15 beyond Australia, authorising him or her to take the evidence
16 of a person on oath or affirmation;
- 17 and the Court may:
- 18 (c) by the same or a subsequent order, give any necessary
19 directions concerning the time, place and manner of the
20 examination; and
- 21 (d) empower any party to the proceeding to give in evidence in
22 the proceeding the evidence taken under paragraph (b) on
23 such terms (if any) as the Court directs.

24 **102BAF Time limits on giving evidence**

- 25 (1) The Court may give directions about limiting the time for giving
26 evidence in proceedings before the Court.
- 27 (2) Subsection (1) has effect subject to the standard Rules of Court.

28 **102BAG Court may question witnesses**

- 29 (1) The Court may:
- 30 (a) put a question to a person giving evidence in a proceeding if,
31 in the opinion of the Court, the question is likely to assist in:
-

- 1 (i) the resolution of a matter in dispute in the proceeding;
2 or
3 (ii) the expeditious and efficient conduct of the proceeding;
4 and
5 (b) require the person to answer the question.
6 (2) Subsection (1) has effect subject to the standard Rules of Court.

7 **102BAH Evidence may be given orally or by affidavit**

- 8 (1) Evidence in a proceeding in the Court is to be given orally or by
9 affidavit.
10 (2) However, the Court may:
11 (a) direct that particular evidence is to be given orally; or
12 (b) direct that particular evidence is to be given by affidavit.
13 (3) Subsections (1) and (2) have effect subject to:
14 (a) the standard Rules of Court; and
15 (b) any other law of the Commonwealth.

16 *Cross-examination of person who makes an affidavit*

- 17 (4) If:
18 (a) a person makes an affidavit; and
19 (b) a party to a proceeding in the Court adduces, or proposes to
20 adduce, evidence by the affidavit;
21 a party to the proceeding may request the person to appear as a
22 witness to be cross-examined with respect to the matters in the
23 affidavit.
24 (5) Subsection (4) has effect subject to the standard Rules of Court.
25 (6) If:
26 (a) a request under subsection (4) is given to a person who has
27 made an affidavit; and
28 (b) the person does not appear as a witness to be cross-examined
29 with respect to the matters in the affidavit;
30 the Court is to give the matters in the affidavit such weight as the
31 Court thinks fit in the circumstances.

1 **102BAI Formal defects not to invalidate**

- 2 (1) Proceedings in the Court are not invalidated by a formal defect or
3 an irregularity, unless the Court is of the opinion that:
4 (a) substantial injustice has been caused by the defect or
5 irregularity; and
6 (b) the injustice cannot be remedied by an order of the Court.
- 7 (2) The Court may, on such conditions (if any) as the Court thinks fit,
8 make an order declaring that the proceeding is not invalid:
9 (a) by reason of a defect that the Court considers to be formal; or
10 (b) by reason of an irregularity.

11 **Subdivision C—Proceedings in the General Division of the**
12 **Family Court**

13 **102BBA Application of Subdivision**

- 14 (1) This Subdivision applies in relation to proceedings in the General
15 Division of the Family Court.
- 16 (2) This Subdivision has effect subject to any other provision of this
17 Act (other than Subdivision B) with respect to the practice and
18 procedure of the Family Court in particular matters.

19 **102BBB Use of streamlined procedures and dispute resolution**
20 **processes**

- 21 The Court must:
22 (a) endeavour to use streamlined procedures; and
23 (b) encourage the use of a range of appropriate dispute resolution
24 processes.

25 **102BBC Reserved judgments etc.**

- 26 (1) If:
27 (a) the Court reserves judgment in a proceeding; and
28 (b) the Judge who heard the proceeding subsequently prepares
29 orders and reasons, but is not available to publish those
30 orders and reasons;

1 those orders and reasons may be made public by another Judge of
2 the General Division on behalf of the Judge who heard the
3 proceeding.

4 (2) If:

5 (a) the Court reserves reasons for its decision in a proceeding;
6 and

7 (b) the Judge who heard the proceeding has prepared reasons,
8 but is not available to publish those reasons;

9 those reasons may be made public by another Judge of the General
10 Division on behalf of the Judge who heard the proceeding.

11 **133 At the end of subsection 102M(1)**

12 Add:

13 Note: Section 27 allows the Family Court constituted by 2 or more Judges of
14 the Appellate and Superior Division to sit in different places in
15 Australia at the same time.

16 **134 Paragraph 102N(1)(b)**

17 Before “Rules”, insert “standard”.

18 **135 Subsection 102N(4) (paragraph (c) of the definition of**
19 ***communicate with***)

20 Omit “applicable”, insert “standard”.

21 **136 Subsection 109A(1)**

22 Omit “, or a majority of them,”.

23 **137 Subsection 109A(5) (note)**

24 Repeal the note, substitute:

25 Note: A power to make Rules of Court is also contained in section 37A.

26 **138 Subsection 111C(7A)**

27 Omit “, or a majority of them,”.

28 **139 Subsection 121(10) (note)**

29 Omit “26B,”.

30 **140 Subsection 123(1)**

1 Omit “, or a majority of them, may”, substitute “of the Court may, in
2 accordance with section 124,”.

3 **141 Subsection 123(1)**

4 Omit “Court and any”, substitute “Court or any”.

5 **142 Paragraph 123(2)(b)**

6 Omit “Chief Judge”, substitute “Chief Justice”.

7 **143 Subsection 123(2A)**

8 Omit “Chief Judge”, substitute “Chief Justice”.

9 **144 Subsection 123(3) (not including the note)**

10 Repeal the subsection.

11 **145 Section 123 (note)**

12 Repeal the note, substitute:

13 Note: The power to make Rules of Court conferred by this section is
14 extended by section 109A and subsection 111C(7A) of this Act and by
15 certain other Acts that confer jurisdiction on the Court. A power to
16 make Rules of Court is also contained in section 37A of this Act.

17 **146 Section 124**

18 Repeal the section, substitute:

19 **124 Requirements relating to the making of Rules of Court**

20 (1) Rules of Court made under this Act may relate to:

- 21 (a) both Divisions of the Court and (if applicable) other courts
22 exercising jurisdiction under this Act; or
23 (b) the Appellate and Superior Division and (if applicable) other
24 courts exercising jurisdiction under this Act; or
25 (c) the General Division only.

26 Note: Sections 37A and 123 provide for Rules of Court to be made.

27 (2) Rules of Court covered by paragraph (1)(a) must be made by:

- 28 (a) a majority of Judges of the Appellate and Superior Division;
29 and
30 (b) a majority of Judges of the General Division.

- 1 (3) Rules of Court covered by paragraph (1)(b) must be made by a
2 majority of Judges of the Appellate and Superior Division.
- 3 (4) Rules of Court covered by paragraph (1)(c) must be made by a
4 majority of Judges of the General Division.
- 5 (5) Rules of Court covered by paragraph (1)(b) or (c) must not be
6 inconsistent with Rules of Court covered by paragraph (1)(a).
- 7 (6) A reference in subsection (1) to a *court exercising jurisdiction*
8 *under this Act* does not include a reference to the Federal
9 Magistrates Court.

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2 **Part 2—Other amendments**

3 *Family Law Act 1975*

4 **147 Subsection 29(2) (table item 3)**

5 Repeal the item.

6 **148 Subsection 29(3) (table item 12)**

7 Repeal the item, substitute:

- 12 A proceeding transferred to the Court under section 138E of the
Competition and Consumer Act 2010

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Schedule 2—Amendment of the Federal Magistrates Act 1999

Federal Magistrates Act 1999

1 Section 5

Insert:

family law or child support matter means a matter arising under:

- (a) the *Family Law Act 1975*; or
- (b) the *Child Support (Assessment) Act 1989*; or
- (c) the *Child Support (Registration and Collection) Act 1988* (other than section 72Q); or
- (d) the *Marriage Act 1961*.

2 Section 5 (paragraph (c) of the definition of *Family law or child support proceedings*)

Repeal the paragraph, substitute:

- (c) the *Child Support (Registration and Collection) Act 1988* (other than section 72Q); or
- (d) the *Marriage Act 1961*.

3 After section 10

Insert:

10AA Jurisdiction—family law or child support matters

- (1) Except as provided in subsections (2) and (4), the Federal Magistrates Court does not have original jurisdiction with respect to a family law or child support matter.
- (2) The Federal Magistrates Court has original jurisdiction with respect to a family law or child support matter only if the matter is:
 - (a) the subject of a proceeding in the Federal Magistrates Court to which subsection (3) applies; or
 - (b) the subject of a proceeding transferred, after the commencement of this section, to the Federal Magistrates

- 1 Court by the Family Court under section 33B of the *Family*
2 *Law Act 1975*; or
- 3 (c) the subject of an application under subsection 104(2) for
4 review of the exercise of power by a Registrar in family law
5 or child support proceedings; or
- 6 (d) associated with a matter that is the subject of a proceeding
7 that is pending in the Federal Magistrates Court.
- 8 (3) This subsection applies to family law or child support proceedings
9 if the Federal Magistrates Court:
- 10 (a) had begun the final hearing of an application for final orders
11 (the **final hearing**) in the proceedings before the
12 commencement of this section; or
- 13 (b) had not begun the final hearing in the proceedings before the
14 commencement of this section, but had:
- 15 (i) referred any of the matters in dispute in the proceedings
16 for an external dispute resolution process; or
- 17 (ii) required any of the parties to the proceedings to attend
18 an external dispute resolution process.
- 19 (4) If the Federal Magistrates Court has original jurisdiction with
20 respect to a family law or child support matter as described in
21 subsection (2), then:
- 22 (a) jurisdiction is taken to be conferred on the Federal
23 Magistrates Court by the *Family Law Act 1975*, the *Child*
24 *Support (Assessment) Act 1989*, the *Child Support*
25 *(Registration and Collection) Act 1988* or the *Marriage Act*
26 *1961* (as the case requires); and
- 27 (b) the Federal Magistrates Court is taken to be a court having or
28 exercising jurisdiction under that Act;
- 29 for the purpose of dealing with that matter or hearing and
30 determining a proceeding in respect of that matter.
- 31 Note: The Federal Magistrates Court also has jurisdiction in respect of
32 matters that are associated with a family law or child support matter
33 referred to in subsection (4) (see section 18).
- 34 (5) For the purposes of subsection (3), an **external dispute resolution**
35 **process** is:
- 36 (a) arbitration under Division 4 of Part II of the *Family Law Act*
37 *1975* or Part 4 of this Act; or
- 38 (b) conciliation under Part 4 of this Act; or
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- 1 (c) mediation under Part 4 of this Act; or
2 (d) family dispute resolution conducted by a family dispute
3 resolution practitioner referred to in paragraph 10G(1)(a) or
4 (b) of the *Family Law Act 1975*.

5 Note: The heading to section 10 is altered by adding at the end “—**general**”.

6 **4 Subsection 19(1)**

7 Omit “the Family Court or”.

8 Note: The heading to section 19 is altered by omitting “**or the Family Court**”.

9 **5 Subsection 19(2)**

10 Repeal the subsection.

11 **6 Paragraph 19(3)(b)**

12 Omit “or the Family Court”.

13 **7 After section 19**

14 Insert:

15 **19A Applications in respect of family law or child support matters**
16 **not to be made to the Federal Magistrates Court except in**
17 **certain circumstances**

- 18 (1) An application in respect of a family law or child support matter
19 must not be made to the Federal Magistrates Court unless:
20 (a) proceedings in respect of an associated matter are pending in
21 the Federal Magistrates Court; or
22 (b) the application is made under subsection 104(2) for review of
23 the exercise of a power by a Registrar under subsection
24 102(2) or under a delegation under subsection 103(1) in
25 family law or child support proceedings.

26 Note: An application that may not be made to the Federal Magistrates Court
27 because of subsection (1) may be made to the Family Court.

- 28 (2) This section has effect despite any other provision of this Act or
29 any other law of the Commonwealth.

30 **8 Subsection 20(2) (paragraph (a) of the note)**

31 Omit “94”, substitute “94AAA”.

1 **9 Part 4 (heading)**

2 Repeal the heading, substitute:

3 **Part 4—Dispute resolution for proceedings other**
4 **than family law or child support**
5 **proceedings**

6 **10 Division 1 of Part 4 (heading)**

7 Repeal the heading.

8 **11 Section 20A**

9 Repeal the section, substitute:

10 **20A This Part does not apply to family law or child support**
11 **proceedings**

12 This Part applies to proceedings in the Federal Magistrates Court
13 other than family law or child support proceedings.

14 Note: The *Family Law Act 1975*, in particular Parts II, III, IIIA and IIIB,
15 contains provisions dealing with family counselling, family dispute
16 resolution and other processes that apply to the Federal Magistrates
17 Court in relation to family law or child support proceedings.

18 **12 Subsection 23(2) (note)**

19 Repeal the note.

20 **13 Section 31**

21 Repeal the section.

22 **14 Division 2 of Part 4 (heading)**

23 Repeal the heading.

24 **15 Section 33**

25 Repeal the section.

26 **16 Subsection 43(2)**

27 Repeal the subsection, substitute:

- 1 (2) In so far as the provisions applicable in accordance with
2 subsection (1) are insufficient:
- 3 (a) the Rules of Court made under the *Family Law Act 1975*
4 apply, with necessary modifications, so far as they are
5 capable of application and subject to any directions of the
6 Federal Magistrates Court or a Federal Magistrate, to the
7 practice and procedure of the Federal Magistrates Court in
8 relation to the jurisdiction of the Federal Magistrates Court
9 with respect to family law or child support matters; and
- 10 (b) the Rules of Court made under the *Federal Court of*
11 *Australia Act 1976* apply, with necessary modifications, so
12 far as they are capable of application and subject to any
13 directions of the Federal Magistrates Court or a Federal
14 Magistrate, to the practice and procedure of the Federal
15 Magistrates Court in relation to the jurisdiction of the Federal
16 Magistrates Court with respect to any other matters.

17 **17 At the end of subsection 50(1)**

18 Add:

19 Note: An application in respect of a family law or child support matter must
20 not be made to the Federal Magistrates Court except as provided by
21 section 19A.

22 **18 After subsection 81(1)**

23 Insert:

- 24 (1A) The Federal Magistrates, or a majority of them, must ensure, so far
25 as practicable, that Rules of Court, so far as they apply in relation
26 to the practice and procedure to be followed in the Federal
27 Magistrates Court in relation to family law or child support
28 matters, are not inconsistent with Rules of Court made under the
29 *Family Law Act 1975* that apply in relation to the practice and
30 procedure to be followed in the General Division of the Family
31 Court in relation to matters of that kind.

32 **19 Division 1A of Part 7**

33 Repeal the Division.

34 **20 Paragraph 99(1)(e)**

35 Omit “necessary;”, substitute “necessary.”.

1 **21 Paragraph 99(1)(f)**

2 Repeal the paragraph.

3 **22 At the end of section 99**

4 Add:

5 (8) The Chief Executive Officer must not appoint a person to be an
6 officer of the Federal Magistrates Court unless the person is an
7 officer of the Federal Court or the Family Court.

8 **23 Section 100**

9 Before “The Chief”, insert “(1)”.

10 **24 At the end of section 100**

11 Add:

12 (2) To avoid doubt, the Chief Executive Officer may make an
13 arrangement under subsection (1) with the Registrar of the Federal
14 Court, even if the Chief Executive Officer and the Registrar of the
15 Federal Court are the same person.

16 **25 Section 101**

17 Repeal the section.

18 **26 Subsection 106(1)**

19 Repeal the subsection.

20 **27 Subsection 107(1)**

21 Repeal the subsection.

22 **28 Subsection 107(2)**

23 Omit “(2)”.

24 **29 Subsection 109(1)**

25 Repeal the subsection.

26 **30 Subsection 110(1)**

27 Repeal the subsection.

28 **31 Subsection 110(2)**

1 Omit “(2)”.

2 **32 Section 111A**

3 Repeal the section.

4 **33 Subsection 115(1A)**

5 Repeal the subsection.

6 **34 Subsection 115(2)**

7 Omit “or (1A)”.

8 **35 At the end of clause 1 of Schedule 2**

9 Add:

10 (3) The same person may hold the office of Chief Executive Officer
11 and the office of Registrar of the Federal Court.

12 (4) Subclause (3) has effect despite anything in this Act or the *Federal*
13 *Court of Australia Act 1976*.

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Schedule 3—Amendment of other Acts

Part 1—Amendments relating to the restructure of the Family Court

Division 1—Attorney-General

Administrative Decisions (Judicial Review) Act 1977

1 Subsection 3(1) (definition of *Family Court Judge*)

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the Administrative Judge (Appellate and Superior Division) or the Administrative Judge (General Division)”.

2 Subparagraph (zd)(i) of Schedule 1

Omit “Chief Judge or the Deputy Chief Judge”, substitute “Chief Justice or the Deputy Chief Justice”.

3 Subparagraph (zd)(ii) of Schedule 1

Omit “Chief Judge”, substitute “Chief Justice”.

4 Subparagraph (zd)(ii) of Schedule 1

Omit “22(2AAA)(a)”, substitute “22B(1)(a)”.

Bankruptcy Act 1966

5 Subsection 5(1) (definition of *Family Court Judge*)

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the Administrative Judge (Appellate and Superior Division) or the Administrative Judge (General Division)”.

Federal Court of Australia Act 1976

6 Section 15A

Omit “Chief Judge”, substitute “Chief Justice”.

1 Note: The heading to section 15A is altered by omitting “**Chief Judge**” and substituting
2 “**Chief Justice**”.

3 ***Federal Proceedings (Costs) Act 1981***

4 **7 Subsection 3(1) (paragraph (j) of the definition of *Federal***
5 ***appeal*)**

6 Omit “the Full Court of”.

7 ***Judges (Long Leave Payments) Act 1979***

8 **8 Title**

9 Omit “(other than Justices of the High Court and Federal
10 Magistrates)”.

11 **9 Section 3 (paragraph (a) of the definition of *Judge*)**

12 Omit “the High Court or the Federal Magistrates Court”, substitute “a
13 Justice of the High Court, a Judge of the General Division of the Family
14 Court of Australia or a Federal Magistrate”.

15 **10 Section 3**

16 Insert:

17 ***Judge of the General Division of the Family Court of Australia***
18 means a Judge of the General Division of that Court after the
19 commencement of Part 1 of Schedule 1 to the *Access to Justice*
20 (*Family Court Restructure and Other Measures*) Act 2010.

21 ***Judiciary Act 1903***

22 **11 Subsection 39B(2)**

23 After “Judges”, insert “of the Appellate and Superior Division”.

24 ***Jurisdiction of Courts (Cross-vesting) Act 1987***

25 **12 At the end of subsection 5(1)**

26 Add:

27 Note: See also subsection (5A) in relation to proceedings pending in the
28 Family Court.

1 **13 At the end of subsection 5(4)**

2 Add:

3 Note: See also subsection (5A) in relation to proceedings pending in the
4 Family Court.

5 **14 At the end of subsection 5(5)**

6 Add:

7 Note: See also subsection (5A) in relation to proceedings pending in the
8 Family Court.

9 **15 After subsection 5(5)**

10 Insert:

11 (5A) A reference in subsection (1), (4) or (5) to a proceeding pending in
12 the Family Court is a reference to a proceeding pending in the
13 Family Court constituted by one or more Judges of the Appellate
14 and Superior Division of that Court.

15 **16 Paragraph 6A(2)(a)**

16 After “Family Court”, insert “constituted by one or more Judges of the
17 Appellate and Superior Division of that Court”.

18 **17 Subparagraph 8(1)(b)(i)**

19 After “Family Court”, insert “constituted by one or more Judges of the
20 Appellate and Superior Division of that Court”.

21 **18 Paragraph 10(a)**

22 After “Family Court”, insert “constituted by one or more Judges of the
23 Appellate and Superior Division of that Court”.

24 ***Marriage Act 1961***

25 **19 Subsection 92(1)**

26 Omit “the Federal Magistrates Court”.

27 ***Personal Property Securities Act 2009***

28 **20 Subsection 210(2) (paragraph (b) of note 2)**

29 Omit “to 33C”, substitute “and 33B”.

1 **Division 2—Families, Housing, Community Services and**
2 **Indigenous Affairs**

3 ***Child Support (Assessment) Act 1989***

4 **21 Section 98X**

5 Omit “, the Federal Magistrates Court”.

6 **22 Subsection 99(1)**

7 Omit “and the Federal Magistrates Court”.

8 **23 Subsection 101(3)**

9 After “Judge”, insert “of the Appellate and Superior Division of that
10 Court”.

11 **24 Paragraph 102(1)(a)**

12 After “constituted”, insert “by one or more Judges of the Appellate and
13 Superior Division sitting”.

14 Note: The heading to section 102 is replaced by the heading “**Appeals to Full Court of**
15 **Family Court**”.

16 **25 Subsection 102(2)**

17 After “Judge”, insert “(other than a Judge of the General Division of the
18 Family Court)”.

19 **26 Subsections 102(6) and (8)**

20 Omit “a Judge of the Appeal Division or other Judge if there is no Judge
21 of the Appeal Division”, substitute “an Appellate Judge or other Judge
22 of the Appellate and Superior Division if there is no Appellate Judge”.

23 **27 Before paragraph 102A(1)(a)**

24 Insert:

25 (aa) a decree of the Family Court, constituted by a Judge of the
26 General Division, exercising original jurisdiction under this
27 Act; or

28 Note: The heading to section 102A is replaced by the heading “**Other appeals to Family**
29 **Court**”.

30 **28 Paragraph 102A(1)(b)**

1 Omit “Federal Magistrate”, substitute “Judge of the General Division of
2 the Family Court, or a Federal Magistrate,”.

3 **29 Subsection 102A(2)**

4 Omit “Chief Judge”, substitute “Chief Justice”.

5 **30 Subsection 102A(12)**

6 Repeal the subsection, substitute:

7 (12) The single Judge referred to in subsection (2), (7) or (9) must be a
8 Judge of the Appellate and Superior Division of the Family Court
9 but need not be an Appellate Judge of the Family Court.

10 **31 After subsection 103(2)**

11 Insert:

12 (2A) If, in proceedings in the Family Court, being proceedings in which
13 a decree to which subsection 102A(1) applies could be made, a
14 question of law arises which:

15 (a) the Judge; and

16 (b) at least one of the parties;

17 wish to have determined by a Full Court of the Family Court
18 before the proceedings are further dealt with:

19 (c) the Judge must state the facts and question in the form of a
20 special case for the opinion of a Full Court; and

21 (d) a Full Court must hear and determine the question.

22 (2B) The Full Court may draw, from the facts and the documents, any
23 inference, whether of fact or of law, that could have been drawn
24 from them by the Judge.

25 **32 At the end of section 105**

26 Add:

27 (9) The Judge referred to in paragraph (8)(b) or (c) must be a Judge of
28 the Appellate and Superior Division of the Family Court but need
29 not be an Appellate Judge of the Family Court.

30 ***Child Support (Registration and Collection) Act 1988***

31 **33 Subsection 4(1) (definition of *Judge*)**

1 Repeal the definition.

2 **34 Section 103ZC**

3 Omit “, the Federal Magistrates Court”.

4 **35 Subsection 104(1)**

5 Omit “and the Federal Magistrates Court”.

6 **36 Subsection 106(3)**

7 After “Judge”, insert “of the Appellate and Superior Division of that
8 Court”.

9 **37 Paragraph 107(1)(a)**

10 After “constituted”, insert “by one or more Judges of the Appellate and
11 Superior Division sitting”.

12 Note: The heading to section 107 is replaced by the heading “**Appeals to Full Court of**
13 **Family Court**”.

14 **38 Subsection 107(1A)**

15 After “Judge”, insert “(other than a Judge of the General Division of the
16 Family Court)”.

17 **39 Subsections 107(5) and (7)**

18 Omit “a Judge of the Appeal Division or other Judge if there is no Judge
19 of the Appeal Division”, substitute “an Appellate Judge or other Judge
20 of the Appellate and Superior Division if there is no Appellate Judge”.

21 **40 Before paragraph 107A(1)(a)**

22 Insert:

23 (aa) a decree of the Family Court, constituted by a Judge of the
24 General Division, exercising original jurisdiction under this
25 Act; or

26 Note: The heading to section 107A is replaced by the heading “**Other appeals to Family**
27 **Court**”.

28 **41 Paragraph 107A(1)(b)**

29 Omit “Federal Magistrate”, substitute “Judge of the General Division of
30 the Family Court, or a Federal Magistrate,”.

1 **42 Subsection 107A(2)**

2 Omit “Chief Judge”, substitute “Chief Justice”.

3 **43 Subsection 107A(12)**

4 Repeal the subsection, substitute:

5 (12) The single Judge referred to in subsection (2), (7) or (9) must be a
6 Judge of the Appellate and Superior Division of the Family Court
7 but need not be an Appellate Judge of the Family Court.

8 **44 After subsection 108(2)**

9 Insert:

10 (2A) If, in proceedings in the Family Court, being proceedings in which
11 a decree to which subsection 107A(1) applies could be made, a
12 question of law arises which:

13 (a) the Judge; and

14 (b) at least one of the parties;

15 wish to have determined by a Full Court of the Family Court
16 before the proceedings are further dealt with:

17 (c) the Judge must state the facts and question in the form of a
18 special case for the opinion of a Full Court; and

19 (d) a Full Court must hear and determine the question.

20 (2B) The Full Court may draw, from the facts and the documents, any
21 inference, whether of fact or of law, that could have been drawn
22 from them by the Judge.

23 **45 At the end of section 110**

24 Add:

25 (9) The Judge referred to in paragraph (8)(b) or (c) must be a Judge of
26 the Appellate and Superior Division of the Family Court but need
27 not be an Appellate Judge of the Family Court.

28 **Division 3—Finance and Deregulation**

29 ***Judges’ Pensions Act 1968***

30 **46 Title**

1 Before “**Judges**”, insert “**certain**”.

2 **47 Subsection 4(1) (paragraph (a) of the definition of**
3 ***appropriate current judicial salary*)**

4 Omit “or (e)”, substitute “, (e) or (f)”.

5 **48 Subsection 4(1) (at the end of the definition of *appropriate***
6 ***current judicial salary*)**

7 Add:

8 ; and (f) in the case of a Judge (other than a Chief Judge or a Deputy
9 Chief Judge) of the Family Court of Australia who retired or
10 died before the commencement of Part 1 of Schedule 1 to the
11 *Access to Justice (Family Court Restructure and Other*
12 *Measures) Act 2010*—the salary for the time being payable to
13 a Judge of the Appellate and Superior Division of the Family
14 Court of Australia.

15 **49 Subsection 4(1) (paragraph (a) of the definition of *Judge*)**

16 Omit “the Federal Magistrates Court”, substitute “a Judge of the
17 General Division of the Family Court of Australia or a Federal
18 Magistrate”.

19 **50 Subsection 4(1)**

20 Insert:

21 *Judge of the Appellate and Superior Division of the Family Court*
22 *of Australia* does not include the Chief Justice, the Deputy Chief
23 Justice or the Administrative Judge (Appellate and Superior
24 Division) of that Court.

25 **51 Subsection 4(1)**

26 Insert:

27 *Judge of the General Division of the Family Court of Australia*
28 means a Judge of the General Division of that Court after the
29 commencement of Part 1 of Schedule 1 to the *Access to Justice*
30 *(Family Court Restructure and Other Measures) Act 2010*.

1 **Division 4—Treasury**

2 ***Australian Securities and Investments Commission Act 2001***

3 **52 Subsection 12BA(1) (definition of *Family Court Judge*)**

4 Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a
5 Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the
6 Administrative Judge (Appellate and Superior Division) or the
7 Administrative Judge (General Division)”.

8 ***Competition and Consumer Act 2010***

9 **53 Section 130 (definition of *Family Court Judge*)**

10 Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a
11 Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the
12 Administrative Judge (Appellate and Superior Division) or the
13 Administrative Judge (General Division)”.

14 ***Taxation Administration Act 1953***

15 **54 Section 14ZQ (definition of *Family Court Judge*)**

16 Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a
17 Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the
18 Administrative Judge (Appellate and Superior Division) or the
19 Administrative Judge (General Division)”.

20 ***Trade Practices Act 1974***

21 **55 Subsection 4(1) (definition of *Family Court Judge*)**

22 Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator or a
23 Senior Judge”, substitute “Chief Justice, the Deputy Chief Justice, the
24 Administrative Judge (Appellate and Superior Division) or the
25 Administrative Judge (General Division)”.

1

2 **Part 2—Other amendment**

3 *Administrative Appeals Tribunal Act 1975*

4 **56 At the end of section 70**

5 Add:

6 (3) Without limiting the generality of subsection (1), the regulations
7 may make provision:

8 (a) prescribing fees to be payable in respect of proceedings
9 before the Tribunal; and

10 (b) for, or in relation to, the waiver (in whole or in part) of such
11 fees.

12 **57 Application**

13 The amendment made by item 56 of this Schedule applies in relation to
14 proceedings before the Tribunal:

15 (a) that commence after the commencement of this item; or

16 (b) that commenced, but were not completed, before the
17 commencement of this item.

1
2 **Schedule 4—Application, saving and**
3 **transitional provisions**

4 **Part 1—Definitions**

5 **1 Definitions**

6 In this Schedule:

7 *Administrative Judge (General Division)* has the meaning given by
8 subsection 4(1) of the new Family Law Act.

9 *Appeal Division* means the Appeal Division of the Family Court before
10 the commencement time.

11 *Appellate and Superior Division* means the Appellate and Superior
12 Division of the Family Court after the commencement time.

13 *Appellate Judge* has the meaning given by subsection 4(1) of the new
14 Family Law Act.

15 *commencement time* means the time when Part 1 of Schedule 1 to this
16 Act commences.

17 *Chief Judge* has the meaning given by section 20 of the old Family
18 Law Act.

19 *Chief Justice* has the meaning given by subsection 4(1) of the new
20 Family Law Act.

21 *Deputy Chief Judge* has the meaning given by section 20 of the old
22 Family Law Act.

23 *Deputy Chief Justice* has the meaning given by subsection 4(1) of the
24 new Family Law Act.

25 *Family Court* means the Family Court of Australia.

26 *family law or child support matter* has the meaning given by section 5
27 of the *Federal Magistrates Act 1999*, as in force after the
28 commencement time.

29 *family law or child support proceedings* has the meaning given by
30 section 5 of the *Federal Magistrates Act 1999*, as in force after the
31 commencement time.

32 *Federal Magistrate* means a Federal Magistrate of the Federal
33 Magistrates Court.

34 *Judge* means a Judge of the Family Court.

1 **new Family Law Act** means the *Family Law Act 1975* as in force after
2 the commencement time.

3 **new General Division** means the General Division of the Family Court
4 after the commencement time.

5 **old Family Law Act** means the *Family Law Act 1975* as in force
6 immediately before the commencement time.

7 **old General Division** means the General Division of the Family Court
8 before the commencement time.

1

2

Part 2—Restructure of the Family Court

3

2 Continuity of the Family Court

4

The amendments made by Part 1 of Schedule 1 do not affect the continuity, after the commencement time, of the Family Court.

5

6

3 Transitional—change of title of offices of Chief Judge and Deputy Chief Judge

7

8

(1) To avoid doubt, the office of Chief Judge of the Family Court under the old Family Law Act is the same office as the office of Chief Justice under the new Family Law Act.

9

10

11

(2) To avoid doubt, the office of Deputy Chief Judge of the Family Court under the old Family Law Act is the same office as the office of Deputy Chief Justice under the new Family Law Act.

12

13

14

4 Transitional—references to Chief Justice and Deputy Chief Justice

15

16

References to Chief Justice

17

(1) A reference in an Act or instrument to the Chief Justice, whether enacted before or after the commencement time, is taken to include a reference to the person:

18

19

20

(a) holding the office of Chief Judge immediately before the commencement time; and

21

22

(b) continuing to hold that office.

23

References to Deputy Chief Justice

24

(2) A reference in an Act or instrument to the Deputy Chief Justice, whether enacted before or after the commencement time, is taken to include a reference to the person:

25

26

27

(a) holding the office of Deputy Chief Judge immediately before the commencement time; and

28

29

(b) continuing to hold that office.

30

5 Transitional—references to Chief Judge and Deputy Chief Judge

31

1 *References to Chief Judge*

- 2 (1) A reference in an instrument in force immediately before the
3 commencement time to the Chief Judge is taken, after that time, to be a
4 reference to:
5 (a) the Chief Justice; or
6 (b) the person:
7 (i) holding the office of Chief Judge immediately before
8 the commencement time; and
9 (ii) continuing to hold that office.

10 *References to Deputy Chief Judge*

- 11 (2) A reference in an instrument in force immediately before the
12 commencement time to the Deputy Chief Judge is taken, after that time,
13 to be a reference to:
14 (a) the Deputy Chief Justice; or
15 (b) the person:
16 (i) holding the office of Deputy Chief Judge immediately
17 before the commencement time; and
18 (ii) continuing to hold that office.

19 **6 Transitional—assignment of Judges to new Divisions of**
20 **Family Court**

21 *Judges who were members of the Appeal Division before*
22 *commencement time*

- 23 (1) A Judge (including the Chief Justice and the Deputy Chief Justice) who,
24 immediately before the commencement time, was a member of the
25 Appeal Division under subsection 22(2AA) of the old Family Law Act
26 is taken, after that time, to be assigned, under section 22A of the new
27 Family Law Act, to the Appellate and Superior Division as an Appellate
28 Judge.

29 *Judges who were assigned to the old General Division before*
30 *commencement time*

- 31 (2) A Judge who, immediately before the commencement time, was
32 assigned to the old General Division under subsection 22(2AF) of the
33 old Family Law Act is taken, after that time, to be assigned, under

1 section 22A of the new Family Law Act, to the Appellate and Superior
2 Division (but not as an Appellate Judge).

3 *Assignment under new Family Law Act not limited*

4 (3) This item does not limit the application, after the commencement time,
5 of section 22A of the new Family Law Act to a Judge covered by this
6 item.

7 **7 Transitional—assignment of Judges to particular locations**

8 A Judge who, immediately before the commencement time, was
9 assigned to a particular location under subsection 22(2AAA) of the old
10 Family Law Act is taken, after that time, to be assigned to that location
11 under subsection 22B(1) of the new Family Law Act.

12 **8 Saving—style for former Judges**

13 Despite the repeal of subsection 22(4) of the old Family Law Act by
14 Part 1 of Schedule 1, that subsection continues to apply, after the
15 commencement time, in relation to a person who was a former Judge
16 before that time.

17 **9 Saving—seniority of Judges**

18 *Appellate Judges*

19 (1) Subitems (2) and (3) apply to a Judge if, immediately before the
20 commencement time, the seniority of the Judge was determined under
21 subsection 23(3), (4) or (5) of the old Family Law Act.

22 (2) For the purposes of the application, after the commencement time, of
23 subsection 23(4) or (5) of the new Family Law Act to the Judge:

24 (a) the Judge is taken to have been assigned to the Appellate and
25 Superior Division as an Appellate Judge on the day on which
26 the Judge's assignment to the Appeal Division under the old
27 Family Law Act took effect; and

28 (b) if subsection 23(3) of the old Family Law Act applied to the
29 Judge—the Judge has such seniority in relation to each other
30 Judge to whom that subsection applied as he or she had
31 before the commencement time.

32 (3) If subsection 23(4) of the new Family Law Act does not determine
33 priority between 2 or more Appellate Judges, then those Appellate

1 Judges are taken, for the purposes of subsection 23(5) of the new
2 Family Law Act, to have such seniority in relation to each other after
3 the commencement time, as they had under subsection 23(5) of the old
4 Family Law Act immediately before that time.

5 *Other Judges assigned to the Appellate and Superior Division*

6 (4) Subitems (5) and (6) apply to a Judge if, immediately before the
7 commencement time, the seniority of the Judge was determined under
8 subsection 23(8) or (9) of the old Family Law Act.

9 (5) For the purposes of the application, after the commencement time, of
10 subsection 23(6) or (7) of the new Family Law Act to the Judge, the
11 Judge is taken to have been assigned to the Appellate and Superior
12 Division:

13 (a) if subsection 23(10) of the old Family Law Act applied to the
14 Judge—on the day on which the Judge’s appointment as a
15 Judge took effect because of that subsection; or

16 (b) in any other case—on the day on which the Judge’s
17 appointment as a Judge took effect.

18 (6) If subsection 23(6) of the new Family Law Act does not determine
19 priority between 2 or more Judges, then those Judges are taken, for the
20 purposes of subsection 23(7) of the new Family Law Act, to have such
21 seniority in relation to each other after the commencement time, as they
22 had under subsection 23(9) of the old Family Law Act immediately
23 before that time.

24 *Assignment under new Family Law Act may affect seniority*

25 (7) This item does not prevent any changes to a Judge’s seniority as a result
26 of the application, after the commencement time, of section 22A of the
27 new Family Law Act to the Judge.

28 **10 Saving—things done by Family Court or Judge before**
29 **commencement time**

30 To avoid doubt, the amendments made by Part 1 of Schedule 1 do not
31 affect the validity of anything done by the Family Court or a Judge
32 before the commencement time.

33 **11 Transitional—remuneration etc.**

- 1 (1) This item applies in relation to a determination made by the
2 Remuneration Tribunal, under subsections 7(3) and (4) of the
3 *Remuneration Tribunal Act 1973*, that relates to the remuneration to be
4 paid to a Judge of the Family Court if:
- 5 (a) the determination was in force immediately before the
6 commencement time; and
7 (b) the determination is in force after the commencement time.
- 8 (2) The determination has effect after the commencement time as if:
- 9 (a) a reference to a Judge of the Family Court were a reference
10 to a Judge of the Appellate and Superior Division; and
11 (b) a reference to a Judge assigned to the Appeal Division were a
12 reference to an Appellate Judge (other than the Chief Justice
13 or the Deputy Chief Justice); and
14 (c) the references to Judge Administrator and Senior Judge were
15 omitted; and
16 (d) a reference to a Judge (other than a reference that includes a
17 reference to a Federal Magistrate) does not include a
18 reference to a Judge of the new General Division; and
19 (e) the provisions that apply to a Federal Magistrate also apply to
20 a Judge of the new General Division.

21 **12 Transitional—Judges of the new General Division**

- 22 (1) This item applies in relation to a person if:
- 23 (a) after the commencement time, the person:
- 24 (i) is appointed to the office of Judge (including the office
25 of Administrative Judge (General Division)); and
26 (ii) is assigned to the new General Division; and
27 (b) before the appointment took effect:
- 28 (i) the person held office as a Federal Magistrate; and
29 (ii) the person resigned that office; and
30 (iii) the resignation took effect immediately before the
31 person's appointment to the office of Judge took effect.

32 *Remuneration*

- 33 (2) The determination by the Remuneration Tribunal of the remuneration
34 that the person was to be paid as a Federal Magistrate continues to have
35 effect in relation to the person after the person's appointment as a Judge

1 takes effect, as if a reference in the determination to a Federal
2 Magistrate included a reference to a Judge of the new General Division.

3 *Recreation leave entitlements*

4 (3) The person retains any recreation leave entitlements that had accrued to
5 the person under clause 6 of Schedule 1 to the *Federal Magistrates Act*
6 *1999* immediately before the person's appointment as a Judge took
7 effect and, for this purpose, those entitlements are taken to have accrued
8 to the person under section 26D of the new Family Law Act.

9 *Other terms and conditions*

10 (4) A determination that was in force in relation to the person, under
11 subclause 8(1) of Schedule 1 to the *Federal Magistrates Act 1999*
12 immediately before the time the person's appointment as a Judge took
13 effect, continues to have effect in relation to the person after that time as
14 if it had been made under subsection 26E(1) of the new Family Law
15 Act.

16 (5) Any entitlements (for example to personal leave or carer's leave) that
17 had accrued to the person, under a determination referred to in
18 subitem (4), immediately before the person's appointment as a Judge
19 took effect are taken to have accrued to the person under that
20 determination as it continues to have effect because of subitem (4).

21 (6) For the purposes of subitem (4), the determination continues to have
22 effect in relation to the person, after the person's appointment as a
23 Judge takes effect, as if a reference in the determination to a Federal
24 Magistrate were a reference to a Judge of the new General Division.

25 *Amendment of determinations etc. not prevented*

26 (7) Nothing in this item prevents the amendment or repeal of a
27 determination or other instrument covered by this item.

28 **13 Saving and transitional—Judicial Registrars**

29 (1) This item applies in relation to the following provisions of the old
30 Family Law Act:

- 31 (a) Division 4 of Part IV;
32 (b) section 69ZO;
33 (c) subsection 69ZR(3);

- 1 (d) subsection 97(1A).
- 2 (2) Despite the repeal or amendment of those provisions by Part 1 of
3 Schedule 1:
- 4 (a) those provisions, as in force immediately before the
5 commencement time; and
- 6 (b) any Rules of Court in force under Division 4 of Part IV of the
7 old Family Law Act immediately before the commencement
8 time; and
- 9 (c) any other instrument in force in relation to a Judicial
10 Registrar of the Family Court immediately before the
11 commencement time;
- 12 continue in force after the commencement time as if the repeals and
13 amendments had not happened.
- 14 (3) However, the Governor-General must not make any appointments under
15 section 26A of the old Family Law Act (as it continues in force because
16 of subitem (2)) after the commencement time.
- 17 (4) This item ceases to have effect when there are no longer any Judicial
18 Registrars of the Family Court.

19 **14 Application—practice and procedure**

20 Subdivisions B and C of Division 1 of Part XI of the new Family Law
21 Act apply in relation to proceedings instituted in the Family Court after
22 the commencement time.

23 **15 Transitional—Rules of Court**

- 24 (1) Rules of Court that were in force under the old Family Law Act
25 immediately before the commencement time are taken, after that time,
26 to be Rules of Court covered by paragraph 124(1)(a) of the new Family
27 Law Act.

28 Note: Rules of Court covered by paragraph 124(1)(a) of the new Family Law Act relate to
29 both the Appellate and Superior Division and the new General Division.

- 30 (2) Subitem (1) does not prevent the amendment or repeal of Rules of Court
31 covered by that subitem.

32 **16 Saving—instruments**

1 The amendments made by Part 1 of Schedule 1 do not affect the
2 continuity of an instrument made under any law and in force
3 immediately before the commencement time.

1

2

Part 3—Removal from Federal Magistrates Court of jurisdiction with respect to family law or child support matters

3

4

5

17 Transfer of family law or child support proceedings to Family Court

6

7

(1) Subject to subitems (4) and (6), this item applies to family law or child support proceedings in the Federal Magistrates Court if the Federal Magistrates Court had not, before the commencement time, begun the final hearing of an application for final orders in the proceedings.

8

9

10

11

(2) At the commencement time, the proceedings are transferred to the Family Court.

12

13

(3) If proceedings are transferred to the Family Court under subitem (2):

14

15

16

(a) all documents filed in the Federal Magistrates Court in relation to the proceedings are to be transmitted to the Family Court; and

17

18

19

20

(b) any money lodged with the Federal Magistrates Court in relation to the proceedings is to be transferred to the Family Court and is taken to be money lodged with the Family Court in relation to the proceedings; and

21

22

23

(c) everything done in, or in relation to, the proceedings in the Federal Magistrates Court is taken to have been done in the Family Court.

24

25

(4) Subitem (2) does not apply to the proceedings if, before the commencement time, the Federal Magistrates Court had:

26

27

28

29

(a) referred any of the matters in dispute in the proceedings for an external dispute resolution process; or

(b) required any of the parties to the proceedings to attend an external dispute resolution process.

30

31

(5) For the purposes of subitem (4), an *external dispute resolution process* is:

32

33

(a) arbitration under Division 4 of Part II of the *Family Law Act 1975* or Part 4 of the *Federal Magistrates Act 1999*; or

- 1 (b) conciliation under Part 4 of the *Federal Magistrates Act*
2 1999; or
3 (c) mediation under Part 4 of the *Federal Magistrates Act 1999*;
4 or
5 (d) family dispute resolution conducted by a family dispute
6 resolution practitioner referred to in paragraph 10G(1)(a) or
7 (b) of the *Family Law Act 1975*.

- 8 (6) This item does not affect a family law or child support matter that was
9 remitted by the High Court to the Federal Magistrates Court before the
10 commencement time under section 44 of the *Judiciary Act 1903*.

11 Note: Subitem 18(1) applies in relation to a matter covered by subitem (6).

12 **18 Family law or child support matters remitted under the**
13 ***Judiciary Act 1903***

14 *Family law or child support matters remitted to the Federal*
15 *Magistrates Court before the commencement time*

16 (1) If:

- 17 (a) a family law or child support matter had been remitted by the
18 High Court to the Federal Magistrates Court under section 44
19 of the *Judiciary Act 1903* before the commencement time;
20 and
21 (b) the Federal Magistrates Court had not, before the
22 commencement time, begun the final hearing of an
23 application for final orders in a proceeding with respect to the
24 matter;

25 then the Federal Magistrates Court must transfer the matter to the
26 Family Court.

27 *Family law or child support matters remitted after the*
28 *commencement time*

- 29 (2) To avoid doubt, a family law or child support matter may not be
30 remitted, after the commencement time, by the High Court to the
31 Federal Magistrates Court under section 44 of the *Judiciary Act 1903*.

32 Note: The matter may be remitted instead to the Family Court.

33 **19 Re-hearings ordered by Family Court on appeal**

Schedule 4 Application, saving and transitional provisions

Part 3 Removal from Federal Magistrates Court of jurisdiction with respect to family law or child support matters

- 1 (1) This item applies if, in an appeal from a decree of the Federal
2 Magistrates Court (whether that decree was made before or after the
3 commencement time), the Family Court orders a re-hearing under
4 subsection 94AAA(6) of the new Family Law Act.
- 5 (2) The re-hearing is to be dealt with in the new General Division.

6 **20 Application—Rules of Court**

7 Subsection 81(1A) of the *Federal Magistrates Act 1999* (as in force
8 after the commencement time) applies in relation to Rules of Court that
9 are made under that Act after the commencement time.

10 **21 Transitional—authorisation to provide family counselling**

- 11 (1) This item applies to an authorisation that was given to a person by the
12 Chief Executive Officer of the Federal Magistrates Court under
13 subsection 93D(1) of the *Federal Magistrates Act 1999* (as in force
14 before the commencement time) if the authorisation was in force
15 immediately before that time.
- 16 (2) The authorisation has effect after the commencement time as if it had
17 been given to the person by the Chief Executive Officer of the Family
18 Court under subsection 38BD(1) of the new Family Law Act.

19 **22 Transitional—authorisation to provide family dispute
20 resolution**

- 21 (1) This item applies to an authorisation that was given to a person by the
22 Chief Executive Officer of the Federal Magistrates Court under
23 subsection 93D(2) of the *Federal Magistrates Act 1999* (as in force
24 before the commencement time) if the authorisation was in force
25 immediately before that time.
- 26 (2) The authorisation has effect after the commencement time as if it had
27 been given to the person by the Chief Executive Officer of the Family
28 Court under subsection 38BD(2) of the new Family Law Act.

29 **23 Transitional—family consultants**

30 *Appointments made under the Federal Magistrates Act 1999*

- 31 (1) Subitem (2) applies to an appointment of a person as a family consultant
32 under paragraph 99(1)(f) of the *Federal Magistrates Act 1999* (as in
-

1 force before the commencement time) if the appointment was in force
2 immediately before that time.

3 (2) The appointment has effect, after the commencement time, as if it had
4 been made under paragraph 38N(1)(d) of the new Family Law Act.

5 *Appointments made under regulations made under the Family*
6 *Law Act 1975*

7 (3) Subitem (4) applies to an appointment of a person as a family consultant
8 by the Chief Executive Officer of the Federal Magistrates Court under
9 regulations made for the purposes of paragraph 11B(c) of the old
10 Family Law Act if the appointment was in force immediately before the
11 commencement time.

12 (4) The appointment has effect, after the commencement time, as if it had
13 been made by the Chief Executive Officer of the Family Court under
14 regulations made for the purposes of paragraph 11B(c) of the new
15 Family Law Act.

1

2

Part 4—Regulations

3

24 Regulations may deal with transitional etc. matters

4

The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to amendments made by this Act.

5

6