

2012

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**COURTS AND TRIBUNALS LEGISLATION AMENDMENT (ADMINISTRATION)
BILL 2012**

EXPLANATORY MEMORANDUM

(Circulated by authority of the
Attorney-General, the Hon Nicola Roxon MP)

COURTS AND TRIBUNALS LEGISLATION AMENDMENT (ADMINISTRATION) BILL 2012

GENERAL OUTLINE

1. This Bill makes amendments to the administrative structures and processes of the National Native Title Tribunal, the Federal Court of Australia, the Family Court of Australia and the Federal Magistrates Court of Australia. The changed administrative structures and processes will allow these agencies to achieve savings and operate more efficiently and effectively into the future.
2. In particular, the Bill will:
 - amend the *Native Title Act 1993* to facilitate the transfer of the National Native Title Tribunal's appropriations, staff and some of its administrative functions to the Federal Court of Australia
 - amend the Native Title Act to reflect that the National Native Title Tribunal is no longer a statutory agency for the purposes of the *Financial Management and Accountability Act 1997* (the FMA Act), and
 - amend the *Family Law Act 1975* and the *Federal Magistrates Act 1999* to facilitate the merger of the administrative functions of the Family Court of Australia and the Federal Magistrates Court of Australia.
3. This Bill implements recommendations of the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, conducted by Mr Stephen Skehill and publicly released on 8 June 2012 (the Skehill Review).

Schedule 1 – Amendments for the National Native Title Tribunal and the Federal Court of Australia

4. This Bill amends the Native Title Act to continue to improve the operation of the native title system by enabling the National Native Title Tribunal (the Tribunal) and Federal Court of Australia (the Federal Court) to work together in a more coordinated and efficient manner and to achieve better outcomes. This supports the Government's ongoing success in tackling the backlog of outstanding native title claims for the benefit of all stakeholders.
5. These reforms were announced in the 2012-13 Budget measure *National Native Title Tribunal – Increased Efficiencies*, and include:
 - the transfer of the Tribunal's native title claims mediation functions and resources to the Federal Court, and
 - consolidation of the corporate services areas of the two agencies.
6. The reforms implement recommendations in Chapter 6 of the Skehill Review and seek to achieve increased efficiencies through reducing duplication and improving administration between the Tribunal and Federal Court.

7. The transfer of the Tribunal's native title claims mediation functions to the Federal Court builds on the Government's 2009 reforms, which gave the Federal Court greater control of native title mediation, and refocuses the resources of the Tribunal on its areas of strength, notably its future act functions and registration role.

8. The Tribunal continues to operate as an independent statutory authority and retains its current native title statutory functions. However, the Tribunal is no longer a separate prescribed agency under the FMA Act and, instead, is serviced from within the Federal Court administration. The *Financial Management and Accountability Regulations 1997* have been amended to revoke the Tribunal's FMA Act Agency status and provide that the Native Title Registrar and Deputy Registrars and staff assisting the Tribunal form part of the Federal Court for which the Registrar of the Federal Court is the Chief Executive for the purposes of the FMA Act. These amendments commenced on 1 July 2012.

9. In addition, the Tribunal will no longer be a separate Statutory Agency for the purposes of the *Public Service Act 1999*, as provided for by section 131 of the Native Title Act. This Bill amends the Act so that Deputy Registrars and the staff assisting the Tribunal form part of the Statutory Agency declared under section 18Q of the *Federal Court of Australia Act 1976* for the purposes of the Public Service Act. The Registrar of the Federal Court is the Head of that Statutory Agency.

10. This Bill makes consequential amendments to the Native Title Act to align the legislation with the changes to the administrative arrangements of the Tribunal and Federal Court made under the FMA Act and those proposed to be made for the purposes of the Public Service Act. This Bill is the last of the legislative amendments needed to implement the Skehill Review reforms.

Schedule 2 – Amendments for the Family Court of Australia and the Federal Magistrates Court of Australia

11. The Family Court of Australia and the Federal Magistrates Court of Australia are to be established as a single agency for the purposes of the FMA Act. This change will see the administrative functions of the two Courts being merged, including by formalising a single Chief Executive Officer position for both Courts.

12. The Chief Executive Officer of the Family Court has also been the acting Chief Executive Officer of the Federal Magistrates Court since 2009, and the two Courts share many administrative resources including staff and facilities. Merging the administration of the Courts will formalise current arrangements and will allow further improvements to the Courts' administrative practices and procedures.

13. The amendments contained in this Bill are to ensure that the Family Law Act and the Federal Magistrates Act allow the Family Court and the Federal Magistrates Court to operate under shared administration. The amendments do not affect the jurisdiction of either Court.

14. The amendments contained in this Bill have been drafted on the basis of the amendments contained in the Federal Circuit Court of Australia Legislation Amendment Bill 2012, which was introduced into Parliament on 20 September 2012. That Bill changes the title of the Federal Magistrates Court of Australia to the 'Federal Circuit Court of Australia', the title of the Chief Federal Magistrate to 'Chief Judge of the Federal Circuit Court', and the title of Federal Magistrates to 'Judges'. These new titles are used in the

notes on clauses in this explanatory memorandum. The only references to the existing titles are for references to existing legislation.

FINANCIAL IMPACT

15. The reforms that this Bill implements will achieve \$4.75 million in savings each year from 2012-13 over the four-year forward estimates, for a total saving of \$19 million. The Government will reinvest these savings in the *Stronger Futures in the Northern Territory* initiative.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Courts and Tribunals Legislation Amendment (Administration) Bill 2012

16. This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

17. The Bill implements recommendations of the *Strategic Review of Small and Medium Agencies in the Attorney-General's Portfolio*, completed by Mr Stephen Skehill and released publicly in June 2012. The Bill will make significant improvements to the administrative structures and processes of the Family Court, the Federal Magistrates Court, the Federal Court and the National Native Title Tribunal, and will allow these agencies to realise significant savings through reduced duplication and more efficient administration.

18. The Bill makes legislative amendments to:

- facilitate the merger of the administrative functions of the Family Court of Australia and the Federal Magistrates Court of Australia, including by recognising a single Chief Executive Officer position for the two courts, and
- facilitate the transfer of the National Native Title Tribunal's appropriations, staff and some of its administrative functions to the Federal Court of Australia and to reflect that the National Native Title Tribunal is no longer a statutory agency for the purposes of the FMA Act.

19. The Bill amends provisions in existing legislation which are not compatible with the Family Court and the Federal Magistrates Court, and the Federal Court and the National Native Title Tribunal, being established as single agencies for the purposes of the FMA Act.

Human rights implications

20. The amendments contained in the Bill are of a technical and minor nature, impacting on the Courts' and Tribunals' internal administrative practices and do not have broader impacts on the wider community. The Bill does not have any known negative implications for the rights of staff employed by any of these agencies.

21. For these reasons, this Bill does not engage any of the rights or freedoms outlined in the Human Rights (Parliamentary Scrutiny) Act.

NOTES ON CLAUSES

Preliminary

Clause 1 – Short title

1. This clause provides for the Bill to be cited as the *Courts and Tribunals Legislation Amendment (Administration) Act 2012*.

Clause 2 – Commencement

2. This clause provides for the commencement of each provision in the Bill, as set out in the table. Item 1 in the table provides that sections 1 and 2 which concern the formal aspects of the Bill, as well as anything in the Bill not elsewhere covered by the table, will commence on the day on which the Bill receives Royal Assent.

3. Schedule 1, containing amendments to the *Native Title Act 1993*, commences on the day the Bill receives Royal Assent.

4. Schedule 2, containing amendments for the administrative merger of the Family Court and the Federal Circuit Court will commence on the later of:

- 1 July 2013, or
- immediately after the commencement of Schedule 1 of the *Federal Circuit Court of Australia (Consequential Amendments) Act 2012*.

5. However, none of the provisions in Schedule 2 commence at all if the *Federal Circuit Court of Australia (Consequential Amendments) Act 2012* does not commence.

Clause 3 – Schedules

6. This is a formal clause which makes it clear that the Bill will amend and repeal other Acts as set out in the Schedules to the Bill.

Schedule 1 – Amendments to *Native Title Act 1993*

Part 1 – Administration of the Tribunal

Item 1 – Section 96 – Powers of the Registrar – assisting the President

7. This item repeals the provisions of section 96 that define the Native Title Registrar's powers when assisting the President and that affirm that the Registrar may act for the President in relation to the administrative affairs of the Tribunal. These amendments are made to reflect the Native Title Registrar being replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal.

Item 2 – Subdivision A of Division 4 of Part 6 – Management responsibilities of President and Registrar

8. This item amends Subdivision A of Division 4 of Part 6 to clarify the new administrative framework of the Tribunal as it relates to the President and the Registrar of the Federal Court and amends the heading of Subdivision A to insert ‘etc.’, to reflect the insertion of new section 129A relating to delegation powers of the Registrar of the Federal Court.

9. The amendments to section 128 specify that, similar to arrangements in other courts and tribunals, the President remains responsible for managing the administrative affairs of the Tribunal. However, that responsibility no longer extends to matters under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*. Responsibilities under those Acts necessarily fall to the Registrar of the Federal Court, who is now Chief Executive of the consolidated prescribed Agency, and Head of the consolidated Statutory Agency. It is envisaged that in practice, the Registrar of the Federal Court will make delegations to enable the Tribunal to perform its functions in a way that is consistent with its status as an independent statutory authority.

10. Additionally, and in accordance with this new administrative framework, references to the President’s financial powers to enter into contracts and to acquire and dispose of personal property are also removed.

11. Amendments to section 129 replace the Native Title Registrar with the Registrar of the Federal Court as the person who is to assist the President in managing those administrative affairs of the Tribunal for which the President retains responsibility. In this regard, the Registrar of the Federal Court is given powers similar to those previously exercised by the Native Title Registrar.

12. The President is given powers to give directions to the Registrar of the Federal Court regarding the exercise of the Registrar’s powers under subsection (2) or (3). Under subsections (2) or (3), the Registrar may assist and act for the President in relation to those administrative affairs of the Tribunal for which the President is responsible. This is a similar power to give directions to that which previously existed in relation to the Native Title Registrar.

13. This item also inserts a new section 129A under which the Registrar of the Federal Court is given the power to delegate his or her powers under this Division to the Native Title Registrar, a Deputy Registrar or staff assisting the Tribunal. This power is similar to the delegation powers of the Native Title Registrar under section 99.

Item 3 – Subdivision B of Division 4 of Part 6 (heading) – Other officers, Tribunal staff and consultants

14. This item amends the heading of Subdivision B of Division 4 of Part 6 to replace the reference to ‘Tribunal staff’ with a reference to ‘staff’, to reflect that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

Item 4 – Section 130 (heading) – Deputy Registrars and staff of the Tribunal

15. This item amends the heading of section 130 to replace the reference to ‘staff of the Tribunal’ with a reference to ‘staff’, to reflect that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

Item 5 – Subsections 130(1), (2) and (3) – Deputy Registrars and staff, Appointment of Deputy Registrars, Employment etc. under Public Service Act

16. This item replaces the references to ‘staff of the Tribunal’ in subsections 130(1), and (3) with references to ‘staff assisting the Tribunal’, to reflect that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

17. Amendments to subsection 130(2) specify that the Deputy Registrars are to be appointed by the Registrar of the Federal Court. This power had previously been exercised by the Native Title Registrar, who is now replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal, as Chief Executive of the consolidated prescribed Agency under the *Financial Management and Accountability Act 1997* and as Head of the consolidated Statutory Agency under the *Public Service Act 1999*.

18. Amendments to subsection 130(3) specify that the staff assisting the Tribunal are made available for the purpose by the Registrar of the Federal Court. This reflects that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency, of which the Registrar of the Federal Court is the Head.

19. For the same reason, this item also inserts new subsection 130(3A), which specifies that, for the purposes of the *Public Service Act 1999*, the Deputy Registrars and staff assisting the Tribunal form part of the Federal Court of Australia Statutory Agency.

Item 6 – Section 130(4) – Secondment

20. This item amends subsection 130(4) to specify that the secondment of officers or employees of another Agency or authority is to be arranged by the Registrar of the Federal Court. This power had previously been exercised by the Native Title Registrar, who is now replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal, as Chief Executive of the consolidated prescribed Agency under the *Financial Management and Accountability Act 1997* and as Head of the consolidated Statutory Agency under the *Public Service Act 1999*.

Item 7 – Section 130(5) – Powers etc.

21. This item amends subsection 130(5) to allow the Registrar of the Federal Court to give those duties, powers and functions that relate to the his or her powers and responsibilities to Deputy Registrars and staff assisting the Tribunal. Deputy Registrars and staff assisting the Tribunal can also be given duties, powers and functions by the Act and the President. This amendment is made to reflect the Tribunal’s new administrative framework, in which the President remains responsible for managing the administrative affairs of the

Tribunal, except for those matters – including matters relating to entering into contracts and staffing – under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*, for which the Registrar of the Federal Court, as Chief Executive of the consolidated prescribed Agency, and as Head of the consolidated Statutory Agency, is necessarily responsible.

Item 8 – Section 131 – Statutory Agency etc. for purposes of Public Service Act

22. This item repeals section 131, removing the status of the Native Title Registrar and the APS employees assisting the Registrar as a Statutory Agency under the Public Service Act. As specified in section 130(3A), the Deputy Registrars and the staff assisting the Tribunal now form part of the Statutory Agency declared under section 18Q of the *Federal Court of Australia Act 1976*. The Registrar of the Federal Court is the Head of that Statutory Agency.

23. As the Native Title Registrar, Deputy Registrars and staff assisting the Tribunal already are part of the prescribed Agency under the *Financial Management and Accountability Act 1997* of which the Registrar of the Federal Court is the Chief Executive, this consolidation more coherently aligns the staffing and financial powers and functions of the Registrar of the Federal Court.

Item 9 – Section 131A (heading) – President may engage consultants

24. This item amends the heading of section 131A to reflect that the President may arrange with the Registrar of the Federal Court for consultants to be engaged, and no longer has the power to engage consultants directly. This amendment is made to reflect the Tribunal's new administrative framework, in which the President remains responsible for managing the administrative affairs of the Tribunal, except for those matters – including matters relating to entering into contracts and staffing – under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*, for which the Registrar of the Federal Court, as Chief Executive of the consolidated prescribed Agency, and as Head of the consolidated Statutory Agency, is necessarily responsible.

Item 10 – Section 131A(1) – President may engage consultants

25. This item amends section 131A(1) to reflect that the President may arrange with the Registrar of the Federal Court for consultants to be engaged, and no longer has the power to engage consultants directly. This amendment is made to reflect the Tribunal's new administrative framework, in which the President remains responsible for managing the administrative affairs of the Tribunal, except for those matters – including matters relating to entering into contracts and staffing – under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*, for which the Registrar of the Federal Court, as Chief Executive of the consolidated prescribed Agency, and as Head of the consolidated Statutory Agency, is necessarily responsible.

Item 11 – At the end of subsection 131A(1) – President may engage consultants

26. This item adds a note to section 131A(1) to reflect that the power to enter into contracts (such as a contract to engage consultants) on behalf of the Tribunal now falls to the Registrar of the Federal Court, as Chief Executive of the consolidated prescribed Agency under the *Financial Management and Accountability Act 1997*.

Item 12 – Section 131A(2) – Consultants to have relevant skills or knowledge

27. This item amends section 131A(2) to reflect that it is now the Registrar of the Federal Court, rather than the President, who may engage a person as a consultant under section 131A. This amendment is made to reflect the Tribunal’s new administrative framework, in which the President remains responsible for managing the administrative affairs of the Tribunal, except for those matters – including matters relating to entering into contracts and staffing – under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*, for which the Registrar of the Federal Court, as Chief Executive of the consolidated prescribed Agency, and as Head of the consolidated Statutory Agency, is necessarily responsible.

Item 13 – Section 132 (heading) – Registrar may engage consultants

28. This item amends the heading of section 132 to specify that the Registrar of the Federal Court may engage consultants. This power had previously been exercised by the Native Title Registrar, who is now replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal, as Chief Executive of the consolidated prescribed Agency under the *Financial Management and Accountability Act 1997* and as Head of the consolidated Statutory Agency under the *Public Service Act 1999*.

Item 14 – Subsection 132(1) – Registrar may engage consultants

29. This item amends subsection 132(1) to specify that the Registrar of the Federal Court may engage consultants. This power had previously been exercised by the Native Title Registrar, who is now replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal, as Chief Executive of the consolidated prescribed Agency under the *Financial Management and Accountability Act 1997* and as Head of the consolidated Statutory Agency under the *Public Service Act 1999*.

30. In order to avoid doubt that consultants may continue to perform a wide variety of services related to the Tribunal, persons may now be engaged not merely as consultants to, or to perform services for, the Registrar him or herself, but rather as consultants to, or to perform services for, the Tribunal as a whole.

Item 15 – Section 136 – Proceedings arising out of administration of Tribunal

31. This item amends section 136 to affirm the possibility of judicial or other proceedings relating to a matter arising out of the management of the administrative affairs of the Tribunal by the Registrar of the Federal Court, rather than the Native Title Registrar. This amendment reflects that the Native Title Registrar is now replaced by the Registrar of the Federal Court in matters relating to assisting the President in his or her management of the administrative affairs of the Tribunal.

Part 2: Reporting and financial matters

Item 16 – Subsection 133(1) – Annual report

32. This item amends subsection 133(1) to remove the requirement that the President’s annual report on the Tribunal’s activities be given to the Commonwealth Minister. As specified under subsection 133(3), the Tribunal’s annual report will now be prepared and included in the Chief Justice’s annual report of the activities of the Federal Court of Australia, reflecting the consolidation of the agencies for the purposes of the *Financial Management and Accountability Act 1997* and *Public Service Act 1999*.

Item 17 – Subsection 133(2) – Annual report

33. This item repeals subsection 133(2), removing the requirement that the President’s annual report on the Tribunal’s activities include the statements and audit report as required under the *Financial Management and Accountability Act 1997*. As the Tribunal is no longer a prescribed Agency under that Act, it no longer has any obligations under the Act. As a matter of good administrative practice, these invalid references will be removed.

Item 18 – Subsection 133(3) – Annual report

34. This item amends subsection 133(3) to require that the President prepare, and give to the Chief Justice of the Federal Court, an annual report of the Tribunal’s activities for inclusion in the annual report of the Federal Court. This reflects the consolidation of the agencies for the purposes of the *Financial Management and Accountability Act 1997* and *Public Service Act 1999*. A note to subsection 133(3) clarifies that the financial statements and audit report of the Federal Court also cover the Tribunal.

Item 19 – Subsection 203BK(3) – Assistance in performing dispute resolution functions

35. This item replaces a reference to ‘the NNTT’ in subsection 203BK(3) with a reference to ‘the Commonwealth’. As the Tribunal is no longer an independent prescribed Agency under the *Financial Management and Accountability Act 1997*, it is no longer a financial entity capable of holding and accounting for its own money. This amendment will allow the Tribunal to enter into an agreement to assist representative bodies in the performance of their dispute resolution services, and for the payment for these services to be received and accounted for by the Federal Court.

Part 3: References to staff

Item 20 – Paragraph 94D(3)(a) – Assistance

36. This item replaces the reference to ‘staff of the NNTT’ in paragraph 94D(3)(a) with a reference to ‘staff assisting the NNTT’, to reflect that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

Item 21 – Section 99 – Delegation by Registrar

37. This item replaces the reference to ‘members of the staff of the Tribunal’ in section 99 with a references to ‘members of the staff assisting the Tribunal’, to reflect that the Tribunal

will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

Item 22 – Subsection 136GC(5) – Assistance for member conducting review

38. This item replaces the reference to ‘staff of the Tribunal’ in subsection 136GC(5) with a references to ‘staff assisting the Tribunal’, to reflect that the Tribunal will no longer employ its own staff, but instead be assisted by staff who form part of the Federal Court of Australia Statutory Agency.

Item 23 – Subsection 150(2) (heading) – Member or officer to preside

39. This item inserts a reference to ‘staff assisting’ into the heading of subsection 150(2). This amendment confirms existing practice by clarifying that the power to preside over a conference of the parties under section 150 is given to members, officers, and all staff assisting the Tribunal.

Item 24 – Subsection 150(2) – Member or officer to preside

40. This item inserts a reference to ‘a member of the staff assisting the Tribunal’ into subsection 150(2). This amendment confirms existing practice by clarifying that the power to preside over a conference of the parties under section 150 is given to members, officers, and all staff assisting the Tribunal.

Item 25 – Subsection 181(1) – Persons to whom section applies

41. This item inserts a reference to ‘a member of the staff assisting the Tribunal’ into subsection 181(1). This amendment confirms existing practice by clarifying that the responsibility not to disclose confidential information under section 181 applies to members, officers, and all staff assisting the Tribunal.

Part 4: Savings and transitional provisions

Item 26 – Transitional – Deputy Registrars

42. This item is a transitional provision that deems all persons who, immediately before the commencement of this item, were Deputy Registrars of the Tribunal as having been appointed by the Registrar of the Federal Court, and allows them to continue in their role as a Deputy Registrar of the Tribunal.

43. It is intended that the staff of the Tribunal will be transferred to the Statutory Agency declared under section 18Q of the *Federal Court of Australia Act 1976* in accordance with section 72 of the *Public Service Act 1999*. This is consistent with the Australian Public Service Commission’s preferences for effecting such transfers, as section 72 of the *Public Service Act 1999* provides certain protections (for example, with regards to remuneration and other conditions of employment) for transferring staff.

Item 27 – Transitional – consultants

44. This item is a transitional provision that provides that any consultants engaged under subsection 132(1) immediately before the commencement of items [13-15] continue to be engaged as a consultant on the same terms and conditions after commencement of the item.

Item 28 – Savings – agreements for NNTT to provide assistance to representative bodies

45. This item is a transitional provision that provides that any agreements in force under subsection 203BK(3) immediately before the commencement of item [19] are not affected by the amendments to that subsection. This allows for their uninterrupted continuation.

Item 29 – Transitional regulations

46. This item allows regulations of a transitional nature to be made relating to the amendments contained in Schedule 1 of this Bill.

Schedule 2 – Family Court and Federal Circuit Court

Part 1 – Main Amendments

Family Law Act 1975

Item 1 – section 4 – Interpretation

47. This item amends the definition of ‘appropriate officer’ in subsection 4(1) of the Family Law Act to clarify that the reference to the Chief Executive Officer in this definition refers to the Chief Executive Officer of the Family Court and the Federal Circuit Court.

48. This amendment ensures that the Chief Executive Officer of the Family Court and the Federal Circuit Court will be able to exercise powers and functions conferred on an ‘appropriate officer’ by the Family Law Act.

Item 2 – section 4 – Interpretation

49. This item amends the definition of ‘Chief Executive Officer’ in subsection 4(1) of the Family Law Act to provide that references to ‘Chief Executive Officer’ throughout this Act refer to the Chief Executive Officer of the Family Court and the Federal Circuit Court.

Item 3 – section 4 – Interpretation

50. This item inserts a definition of ‘Federal Circuit Court’. The definition provides that references to the ‘Federal Circuit Court’ in the Act refer to the Federal Circuit Court of Australia.

Item 4 – section 11B (note) – Definition of *family consultant*

51. This item amends the note at the end of section 11B of the Family Law Act to provide that the Chief Executive Officer of the Family Court and the Federal Circuit Court has all the functions and powers of family consultants, and may direct consultants in the performance of their functions. This is a consequential amendment to reflect that there is a single Chief Executive Officer for the Family Court and the Federal Circuit Court.

Item 5 – subparagraph 11E(1)(e)(i) – Courts to consider seeking advice from family consultants

52. This item amends subparagraph 11E(1)(e)(i) of the Family Law Act to clarify that the Family Court or the Federal Circuit Court may seek advice from a family consultant nominated by the Chief Executive Officer. This is a consequential amendment to reflect that there is a single Chief Executive Officer for the Family Court and the Federal Circuit Court and does not affect the powers or jurisdiction of the courts.

Item 6 – section 38B

53. The effect of this item is to amend section 38B of the Family Law Act to provide that the Chief Judge of the Family Court is assisted by ‘the Chief Executive Officer’ rather than ‘a Chief Executive Officer’ in the management of the administrative affairs of the court. This is a consequential amendment to reflect that there is a single Chief Executive Officer for the Family Court and the Federal Circuit Court as defined in subsection 4(1) of the Family Law Act.

Item 7 – Division 2 of Part IVA – heading

54. This item changes the heading of Division 2 of Part IVA from ‘Appointment, powers, etc of the Chief Executive Officer’ to ‘Chief Executive Officer’. This new title reflects that this Division contains a number of different amendments relating to the Chief Executive Officer of the Family Court and the Federal Circuit Court.

Item 8 – section 38C – Establishment and appointment of the Chief Executive Officer

55. This item repeals existing section 38C of the Family Law Act and replaces it with a new provision for the establishment and appointment of the Chief Executive Officer.

56. Amended subsection 38C(1) provides that there is to be a single Chief Executive Officer of the Family Court and the Federal Circuit Court.

57. Amended subsection 38C(2) ensures that both heads of jurisdiction have involvement in deciding the person to be nominated as Chief Executive Officer of the two courts. The appointment of the Chief Executive Officer follows a joint nomination from the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court. The Chief Executive Officer will be responsible for assisting each of the heads of jurisdiction to manage the administrative affairs of their court.

Item 9 – subsection 38D(3) – Powers of the Chief Executive Officer

58. This item amends subsection 38D(3) of the Family Law Act to provide that the Chief Judge of the Family Court may give directions to the Chief Executive Officer relating to the exercise of his or her powers under the Family Law Act.

59. Existing subsection 96(4) of the Federal Magistrates Act allows the Chief Federal Magistrate to give directions to the Chief Executive Officer relating to the exercise of his or her powers under that Act.

60. The Chief Executive Officer will be exercising powers under two different Acts, and will be acting under the direction of the heads of jurisdiction of two different courts. This amendment provides clarity about the areas on which the heads of jurisdiction can give directions to the Chief Executive Officer. This amendment means that each head of

jurisdiction will be able to give directions to the Chief Executive Officer relating to the exercise of his or her powers under the legislation relating to their court.

Item 10 – subsection 38F(4) – Terms and conditions of appointment of the Chief Executive Officer

61. This item amends section 38F(4) of the Family Law Act to provide that any terms and conditions of the Chief Executive Officer’s appointment in respect of matters not covered by the Family Law Act must be determined by the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

62. This amendment incorporates the effect of existing item 8 of Schedule 2 of the Federal Magistrates Act into the Family Law Act.

Item 11 – subsection 38G(2) – Leave of absence

63. This item amends subsection 38G(2) of the Family Law Act to provide for leave of absence, other than recreational leave, of the Chief Executive Officer, with the agreement of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

64. The terms and conditions of that leave as determined by the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court must be approved by the Attorney-General.

65. Amended subsection 38G(2) is equivalent to item 5(2) of Schedule 2 of the Federal Magistrates Act.

Item 12 – subsection 38J(1) – Outside employment of Chief Executive Officer

66. This amendment provides that the Chief Executive Officer must not engage in paid employment other than as the Chief Executive Officer without the approval of both the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

67. Current section 38J of the Family Law Act and current item 3 of Schedule 2 of the Federal Magistrates Act provide that the Chief Executive Officer is not to engage in employment other than the duties of his or her Chief Executive Officer position without the approval of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court respectively. This amendment merges these two provisions together but does not change the existing prohibition on the Chief Executive Officer engaging in paid employment without approval from both heads of jurisdiction.

Item 13 – section 38L – Disclosure of interests by Chief Executive Officer

68. This item amends section 38L of the Family Law Act to provide that the Chief Executive Officer must give written notice to both the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court of all pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.

69. Current section 38L and current item 2 of Schedule 2 of the Federal Magistrates Act require the Chief Executive Officer to disclose to the Chief Judge of the Family Court

and the Chief Judge of the Federal Circuit Court respectively any direct or indirect pecuniary interests he or she has or acquires in any business or in any body corporate carrying on a business. This amendment merges these two provisions together but does not change the existing obligation of the Chief Executive Officer to disclose pecuniary interests to both heads of jurisdiction.

Item 14 – section 38M – Acting Chief Executive Officer

70. This item amends section 38M of the Family Law Act to provide that the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court may appoint a person to act in the position of Chief Executive Officer.

71. This amendment merges current section 38M and current item 9 of Schedule 2 of the Federal Magistrates Act to provide a single provision for the appointment of a person to act in the position of Chief Executive Officer. New section 38M ensures that both the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court make this appointment.

Item 15 – section 38Q – Statutory Agency etc. for purposes of Public Service Act

72. This item adds a note at the end of section 38Q of the Family Law Act to clarify that the statutory agency declared under this provision includes the officers and staff members of the Federal Circuit Court who are APS employees. This note cross-references new section 112A of the Federal Circuit Court Act (see item 22), which provides that the staff members and officers of the Federal Circuit Court who are APS employees are part of the statutory agency declared by this provision.

Item 16 – subsection 38S(2) – Annual report

73. This item repeals subsection 38S(2) of the Family Law Act.

74. Existing subsection 38S(2) provides that the annual report prepared by the Chief Judge of the Family Court under subsection 38S(1) is to include the financial statements required by section 49 of the FMA Act as well as the audit reports on those statements as required by section 57 of the FMA Act. Subsection 57(7) of the FMA Act requires that copies of an agency's financial statements under section 49 and the audit reports under section 57 are included in an agency's annual report that is tabled in Parliament.

75. The requirements as to financial statements and audit reports set out in the FMA Act will apply to the Family Court and the Federal Circuit Court as a single FMA Act agency as a consequence of amendments to the *Financial Management and Accountability Regulations 1997* that will commence at the same time as this legislation. The requirements for preparation and publication of these statements are included in the FMA Act and do not need to also be included in the courts' legislation.

76. As the Family Court and the Federal Circuit Court will form a single agency for the purposes of the FMA Act, the Chief Executive Officer will be able to prepare a single set of financial statements covering both courts for the purposes of meeting the requirements under section 49 of the FMA Act.

77. Existing subsection 38S(1) of the Family Law Act is being retained, meaning that the Chief Judge of the Family Court will continue to be required to prepare an annual report on

the administrative affairs of the Family Court. Similarly, the Chief Judge of the Federal Circuit Court will continue to be required under existing subsection 117(1) to prepare an annual report on the administrative affairs of the Federal Circuit Court. The report for each court will include a single set of financial statements covering the Family Court and the Federal Circuit Court in order to meet the requirements of the FMA Act.

Federal Circuit Court of Australia Act 1999

Item 17 – section 5 – Interpretation

78. This item amends the definition of ‘Chief Executive Officer’ in subsection 5 of the Federal Magistrates Act to provide that references to ‘Chief Executive Officer’ throughout this Act refer to the Chief Executive Officer of the Family Court and the Federal Circuit Court.

Item 18 – section 94 – Chief Executive Officer; and section 95 – Personnel provisions relating to the Chief Executive Officer

79. This item repeals sections 94 and 95 of the Federal Magistrates Act.

80. Current section 94 provides that there is to be a Chief Executive Officer of the Federal Magistrates Court. As there will be a single Chief Executive Officer of the Family Court and the Federal Circuit Court, and the amended definition of ‘Chief Executive Officer’ in subsection 5 of the Federal Magistrates Act provides that references to ‘Chief Executive Officer’ throughout this Act refer to the Chief Executive Officer of the Family Court and the Federal Circuit Court, section 94 is no longer necessary.

81. Current section 95 refers to Schedule 2 of the Federal Magistrates Act. As Schedule 2 is being repealed in its entirety (item 24 of this Bill), this provision becomes redundant.

Item 19 – section 97 – Staff powers

82. This item repeals section 97 of the Federal Magistrates Act.

83. This amendment, along with new section 112A of the Federal Magistrates Act (item 22 of this Bill), means that the Family Court and the Federal Circuit Court will be established as a single agency for the purposes of the Public Service Act. This is consistent with the courts being established as a single agency for the purposes of the FMA Act with a single Chief Executive Officer.

Item 20 – section 100 – Arrangements relating to Commonwealth staff

84. This item corrects a typographical error in the current legislation. The reference in this provision to ‘officer’ should refer to ‘officers’.

85. New section 100 provides that the Chief Executive Officer may, on behalf of the Chief Federal Magistrate, arrange for the services of *officers* or employees of another agency or authority to be made available to the Federal Circuit Court.

Item 21 – new section 112A – APS employees are included in Statutory Agency under the Family Law Act

86. This item creates new section 112A to provide that the following persons, who are APS employees of the Federal Circuit Court, are members of the statutory agency declared under section 38Q of the Family Law Act :

- registrars (referred to in section 101 of the Federal Magistrates Act)
- the Sheriff (referred to in subsection 106(1) of the Federal Magistrates Act)
- the Marshal (referred to in subsection 109(1) of the Federal Magistrates Act), and
- family consultants (referred to in section 111A of the Federal Magistrates Act), and
- staff (referred to in section 112 of the Federal Magistrates Act).

87. As the Family Court and the Federal Circuit Court will form a single agency for the purposes of the FMA Act, it is necessary that they are also established as a single statutory agency for the purposes of the Public Service Act. This amendment ensures that all APS officers and staff members of the Federal Circuit Court are included in the statutory agency declared under section 38Q of the Family Law Act, which is the provision that declares the statutory agency for the Family Court and the Federal Circuit Court.

Item 22 – subsection 117(2) – Annual report

88. This item repeals subsection 117(2) of the Federal Magistrates Act.

89. Existing subsection 117(2) provides that the annual report prepared by the Chief Federal Magistrate under subsection 117(1) is to include the financial statements required by section 49 of the FMA Act as well as the audit reports on those statements as required by section 57 of the FMA Act. Subsection 57(7) of the FMA Act requires that copies of an agency's financial statements under section 49 and the audit reports under section 57 are included in an agency's annual report that is tabled in Parliament.

90. The requirements as to financial statements and audit reports set out in the FMA Act will apply to the Family Court and the Federal Circuit Court as a single FMA Act agency as a consequence of amendments to the *Financial Management and Accountability Regulations 1997* that will commence at the same time as this legislation. The requirements for preparation and publication of these statements are included in the FMA Act and do not need to also be included in the courts' legislation.

91. As the Family Court and the Federal Circuit Court will form a single agency for the purposes of the FMA Act, the Chief Executive Officer will be able to prepare a single set of financial statements covering both courts for the purposes of meeting the requirements under section 49 of the FMA Act.

92. Similarly to the reporting requirements for the Family Court under subsection 38S(1) of the Family Law Act, the Chief Judge of the Federal Circuit Court will continue to be required to prepare an annual report on the administrative affairs of the Federal Circuit Court

under subsection 117(1) of the Federal Magistrates Act. The report for each court will include a single set of financial statements covering the Family Court and the Federal Circuit Court in order to meet the requirements of the FMA Act.

Item 23 – Schedule 2 – Personnel provisions relating to the Chief Executive Officer of the Federal Magistrates Court

93. This amendment repeals Schedule 2 of the Federal Magistrates Act.

94. As there will be a single Chief Executive Officer for both the Family Court and the Federal Circuit Court, there needs to be a single legislative provision for the appointment of the Chief Executive Officer, and a single set of legislative provisions relating to the Chief Executive Officer's terms and conditions.

95. Amended section 38C of the Family Law Act (including the amendments contained in item 8 of this Bill) provides for the appointment of the Chief Executive Officer of the Family Court and the Federal Circuit Court. Amended subsection 38C(2) ensures that the Chief Judge of the Federal Circuit Court is involved in the appointment of the Chief Executive Officer, as the Chief Executive Officer will be appointed by the Governor-General on the joint nomination of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

96. The amendments to the provisions relating to the Chief Executive Officer's terms and conditions contained in Division 2 of Part IVA of the Family Law Act (contained in items 9-14 of this Bill) will ensure that the Chief Judge of the Federal Circuit Court will be jointly involved in decisions relating to the terms and conditions of the Chief Executive Officer.

Ombudsman Act 1976

Item 24 – Subsection 3(1) (paragraphs (c) and (ca) of the definition of *chief executive officer of a court or tribunal*)

97. This amendment to the definition of chief executive officer of a court or tribunal in subsection 3(1)(c) and (ca) of the *Ombudsman Act 1976* is consequential to the changes to the definition of Chief Executive Officer in section 4(1) of the Family Law Act (see item 2) and section 5 of the Federal Circuit Court of Australia Act (see item 17).

Part 2 – Saving and transitional provisions

Item 25 – Saving—existing Chief Executive Officer

98. This item provides that the Chief Executive Officer of the Family Court becomes the Chief Executive Officer of the Family Court and the Federal Circuit Court until the expiry of his current term of appointment as Chief Executive Officer of the Family Court.

99. This provision is necessary to allow the Chief Executive Officer to continue in this position despite not having been formally appointed under new subsection 38C of the Family Law Act. Any additional terms and conditions of appointment made by a determination under subsection 38F(4) of the Family Law Act shall continue in force after the commencement time.

100. Future appointments of Chief Executive Officers of the Family Court and the Federal Circuit Court will be made under section 38C of the Family Law Act.

Item 26 – References in instruments to Chief Executive Officer

101. Subitem 28(1) provides that references to either the Chief Executive Officer of the Family Court or the Chief Executive Officer of the Federal Circuit Court of Australia in instruments in force immediately before commencement time shall be read as references to the Chief Executive Officer of the Family Court and the Federal Circuit of Australia under section 38C of the Family Law Act.

102. The Minister may make a determination that subitem 28(1) does not apply to a specified reference and this determination is not a legislative instrument (subitem 28(4)). This is not an exemption from the *Legislative Instruments Act 2003* but is declaratory of the nature of the instrument provided for in subitem 28(2).

103. Subitem 28(3) provides that regulations may make provision for a person other than the Chief Executive Officer of the Family Court and the Federal Circuit of Australia referred to in section 38C of the Family Law Act, for instruments containing a reference specified in a determination made under subitem 28(2).

Item 27 – Things done by, or in relation to the Chief Executive Officer

104. Subitem 29(1) provides that things done by, or in relation to, either the Chief Executive Officer of the Family Court or the Chief Executive Officer of the Federal Circuit Court of Australia before commencement time shall be taken to have been done by, or in

relation to, the Chief Executive Officer of the Family Court and the Federal Circuit of Australia referred to in section 38C of the Family Law Act.

105. The Minister may make a determination that subitem 29(1) does not apply to a specified thing done by or in relation to either the Chief Executive Officer of the Family Court or the Chief Executive Officer of the Federal Circuit Court of Australia and this determination is not a legislative instrument (subitem 29(4)). This is not an exemption from the Legislative Instruments Act but is declaratory of the nature of the instrument provided for in subitem 29(2).

106. Subitem 29(3) provides that regulations may make provision for a thing to be taken to have been done by, or in relation to a person other than the Chief Executive Officer of the Family Court and the Federal Circuit of Australia referred to in section 38C of the Family Law Act, for a thing specified in a determination made under subitem 29(2).

107. The intention is that nothing in the amendments in Schedule 2 should affect the validity of anything done by the Chief Executive Officer of the Family Court or the Chief Executive Officer of the Federal Circuit Court of Australia before commencement of Schedule 2.

Item 28 – Transitional regulations

108. This item allows regulations of a transitional nature to be made relating to the amendments contained in Part 1 of Schedule 2 of this Bill.