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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Courts and Tribunals Legislation
Amendment (Administration) Bill 2012**

No. , 2012

(Attorney-General)

**A Bill for an Act to amend legislation relating to the
administration of certain federal courts and the
National Native Title Tribunal, and for related
purposes**

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1 **A Bill for an Act to amend legislation relating to the**
2 **administration of certain federal courts and the**
3 **National Native Title Tribunal, and for related**
4 **purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Courts and Tribunals Legislation*
8 *Amendment (Administration) Act 2012*.

9 **2 Commencement**

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

1

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	The day this Act receives the Royal Assent.	
3. Schedule 2	The later of: (a) the start of 1 July 2013; and (b) immediately after the commencement of Schedule 2 to the <i>Federal Circuit Court of Australia (Consequential Amendments) Act 2012</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

2

Note: This table relates only to the provisions of this Act as originally enacted.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

3

4

5

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

6

7

8

3 Schedule(s)

9

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

10

11

12

13

1 **Schedule 1—National Native Title Tribunal**

2 **Part 1—Administration of the Tribunal**

3 *Native Title Act 1993*

4 **1 Section 96**

5 Repeal the section, substitute:

6 **96 President may give directions to Registrar**

7 The President may give the Registrar directions regarding the
8 exercise of the Registrar's powers under this Part.

9 **2 Subdivision A of Division 4 of Part 6**

10 Repeal the Subdivision, substitute:

11 **Subdivision A—Management responsibilities etc. of President**
12 **of Tribunal and Registrar of Federal Court**

13 **128 Management of administrative affairs of Tribunal**

14 (1) The President is responsible for managing the administrative
15 affairs of the Tribunal.

16 (2) However, the President is not responsible under subsection (1) for
17 matters under:

18 (a) the *Financial Management and Accountability Act 1997*; or

19 (b) the *Public Service Act 1999*;

20 relating to the Tribunal.

21 Note 1: For the purposes of the *Financial Management and Accountability Act*
22 *1997*, the Registrar of the Federal Court is the Chief Executive of the
23 prescribed Agency that includes the Native Title Registrar, Deputy
24 Registrars and staff assisting the Tribunal.

25 Note 2: For the purposes of the *Public Service Act 1999*, the Deputy Registrars
26 and staff assisting the Tribunal are part of the Statutory Agency
27 declared under section 18Q of the *Federal Court of Australia Act 1976*
28 (see subsection 130(3A) of this Act). The Registrar of the Federal
29 Court is the Head of that Statutory Agency.

1 **129 Registrar of the Federal Court**

- 2 (1) In the management of the administrative affairs of the Tribunal in
3 accordance with section 128, the President is to be assisted by the
4 Registrar of the Federal Court.

5 *Powers, when assisting President*

- 6 (2) The Registrar of the Federal Court may do all things necessary or
7 convenient to be done for the purpose of assisting the President
8 under subsection (1).
- 9 (3) In particular, the Registrar of the Federal Court may act for the
10 President in relation to the administrative affairs of the Tribunal for
11 which the President is responsible in accordance with section 128.

12 *President may give directions*

- 13 (4) The President may give the Registrar of the Federal Court
14 directions regarding the exercise of the powers of the Registrar of
15 the Federal Court under subsection (2) or (3).

16 **129A Delegation by Registrar of the Federal Court**

17 The Registrar of the Federal Court may, by signed instrument,
18 delegate all or any of the powers of the Registrar of the Federal
19 Court under this Division to any of the following:

- 20 (a) the Native Title Registrar;
21 (b) a Deputy Registrar of the Tribunal;
22 (c) a member of the staff assisting the Tribunal.

23 Note: For other powers of delegation, see section 53 of the *Financial*
24 *Management and Accountability Act 1997* and section 78 of the *Public*
25 *Service Act 1999*.

26 **3 Subdivision B of Division 4 of Part 6 (heading)**

27 Repeal the heading, substitute:

28 **Subdivision B—Other officers, staff and consultants**

29 **4 Section 130 (heading)**

30 Repeal the heading, substitute:

1 **130 Deputy Registrars and staff etc.**

2 **5 Subsections 130(1), (2) and (3)**

3 Repeal the subsections, substitute:

4 *Deputy Registrars and staff*

- 5 (1) There are to be such Deputy Registrars of the Tribunal, and staff
6 assisting the Tribunal, as are necessary.
- 7 (2) The Deputy Registrars are to be appointed by the Registrar of the
8 Federal Court.
- 9 (3) The Deputy Registrars and the staff assisting the Tribunal are to be
10 persons engaged under the *Public Service Act 1999* and made
11 available for the purpose by the Registrar of the Federal Court.

12 *Statutory Agency*

- 13 (3A) For the purposes of the *Public Service Act 1999*, the Statutory
14 Agency declared under section 18Q of the *Federal Court of*
15 *Australia Act 1976* includes the Deputy Registrars and the staff
16 assisting the Tribunal.

17 Note: The Registrar of the Federal Court is the Head of that Statutory
18 Agency.

19 **6 Subsection 130(4)**

20 After “The Registrar”, insert “of the Federal Court”.

21 **7 Subsection 130(5)**

22 Repeal the subsection, substitute:

23 *Powers etc.*

- 24 (5) The Deputy Registrars and the staff assisting the Tribunal have
25 such duties, powers and functions as are given by this Act, by the
26 President or by the Registrar of the Federal Court.

27 **8 Section 131**

28 Repeal the section.

29 **9 Section 131A (heading)**

1 Repeal the heading, substitute:

2 **131A President may arrange for consultants to be engaged**

3 **10 Subsection 131A(1)**

4 Omit “engage a person”, substitute “arrange with the Registrar of the
5 Federal Court for a person to be engaged”.

6 **11 At the end of subsection 131A(1)**

7 Add:

8 Note: The Registrar of the Federal Court may enter into contracts on behalf
9 of the Commonwealth and has responsibilities under the *Financial*
10 *Management and Accountability Act 1997* in relation to the Tribunal.

11 **12 Subsection 131A(2)**

12 Omit “President” (first occurring), substitute “Registrar of the Federal
13 Court”.

14 **13 Section 132 (heading)**

15 Repeal the heading, substitute:

16 **132 Registrar of the Federal Court may engage consultants**

17 **14 Subsection 132(1)**

18 Repeal the subsection, substitute:

19 (1) The Registrar of the Federal Court may engage persons having
20 suitable qualifications and experience as consultants to, or to
21 perform services for, the Tribunal.

22 **15 Section 136**

23 After “Registrar”, insert “of the Federal Court”.
24

1 **Part 2—Reporting and financial matters**

2 *Native Title Act 1993*

3 **16 Subsection 133(1)**

4 Omit “and give to the Commonwealth Minister”.

5 **17 Subsection 133(2)**

6 Repeal the subsection.

7 **18 Subsection 133(3)**

8 Repeal the subsection, substitute:

9 (3) The President must give the report to the Chief Justice, for
10 inclusion in the report prepared for the relevant year under
11 section 18S of the *Federal Court of Australia Act 1976*.

12 Note: The financial statements and audit report included in the annual report
13 prepared under section 18S of the *Federal Court of Australia Act 1976*
14 also cover the Tribunal. That annual report must be tabled in each
15 House of the Parliament under subsection 18S(3) of that Act.

16 **19 Subsection 203BK(3)**

17 Omit “the NNTT” (third occurring), substitute “the Commonwealth”.

18

1 **Part 3—References to staff**

2 *Native Title Act 1993*

3 **20 Paragraph 94D(3)(a)**

4 Omit “staff of the NNTT”, substitute “staff assisting the NNTT”.

5 **21 Section 99**

6 Omit “or of the members of the staff of the Tribunal”, substitute “of the
7 Tribunal, or the members of the staff assisting the Tribunal,”.

8 **22 Subsection 136GC(5)**

9 Omit “staff of the Tribunal”, substitute “staff assisting the Tribunal”.

10 **23 Subsection 150(2) (heading)**

11 Repeal the heading, substitute:

12 *Member, officer or staff assisting to preside*

13 **24 Subsection 150(2)**

14 Omit “or by an officer of the Tribunal”, substitute “, an officer of the
15 Tribunal or a member of the staff assisting the Tribunal”.

16 **25 Subsection 181(1)**

17 Omit “or officer of the Tribunal”, substitute “, an officer of the
18 Tribunal, a member of the staff assisting the Tribunal”.

19

1 **Part 4—Saving and transitional provisions**

2 **26 Transitional—Deputy Registrars**

3 A person who, immediately before the commencement of this item was
4 a Deputy Registrar of the Tribunal, as mentioned in subsection 130(1)
5 of the *Native Title Act 1993*, continues, after that commencement, as a
6 Deputy Registrar of the Tribunal, as if the person had been appointed by
7 the Registrar of the Federal Court.

8 **27 Transitional—consultants**

9 (1) This item applies to a person if:

- 10 (a) before the commencement of this item, the person was
11 engaged as a consultant under subsection 132(1) of the
12 *Native Title Act 1993*; and
13 (b) the engagement was in effect immediately before that
14 commencement.

15 (2) After the commencement of this item, the person is taken to be engaged
16 as a consultant under subsection 132(1) of the *Native Title Act 1993* as
17 amended by this Schedule, on the same terms and conditions that
18 applied to the engagement immediately before that commencement.

19 **28 Saving—agreements for NNTT to provide assistance to**
20 **representative bodies**

21 The amendment of subsection 203BK(3) of the *Native Title Act 1993*
22 made by item 19 of this Schedule does not affect an agreement that was
23 in force between a representative body and the NNTT, as mentioned in
24 that subsection, immediately before the commencement of this item.

25 **29 Transitional regulations**

26 The Governor-General may make regulations prescribing matters of a
27 transitional nature (including prescribing any saving or application
28 provisions) relating to amendments and repeals made by this Schedule.
29

1 **Schedule 2—Family Court and Federal Circuit**
2 **Court**

3 **Part 1—Main amendments**

4 *Family Law Act 1975*

5 **1 Subsection 4(1) (paragraph (a) of the definition of**
6 ***appropriate officer*)**

7 Omit “of the Family Court”.

8 **2 Subsection 4(1) (at the end of the definition of *Chief***
9 ***Executive Officer*)**

10 Add “and the Federal Circuit Court”.

11 **3 Subsection 4(1)**

12 Insert:

13 *Federal Circuit Court* means the Federal Circuit Court of
14 Australia.

15 **4 Section 11B (note)**

16 Omit “The Chief Executive Officers of the Family Court and the
17 Federal Circuit Court of Australia have”, substitute “The Chief
18 Executive Officer has”.

19 **5 Subparagraph 11E(1)(e)(i)**

20 Omit “of that court”.

21 **6 Section 38B**

22 Omit “a Chief”, substitute “the Chief”.

23 **7 Division 2 of Part IVA (heading)**

24 Repeal the heading, substitute:

25 **Division 2—Chief Executive Officer**

26 **8 Section 38C**

1 Repeal the section, substitute:

2 **38C Establishment and appointment of Chief Executive Officer**

3 (1) There is to be a Chief Executive Officer of the Family Court and
4 the Federal Circuit Court.

5 (2) The Chief Executive Officer is to be appointed by the
6 Governor-General on the joint nomination of the Chief Judge of
7 the Family Court and the Chief Judge of the Federal Circuit Court.

8 **9 At the end of subsection 38D(3)**

9 Add “under this Act”.

10 **10 Subsection 38F(4)**

11 Omit “by the Chief Judge”, substitute “jointly by the Chief Judge and
12 the Chief Judge of the Federal Circuit Court”.

13 **11 Subsection 38G(2)**

14 Repeal the subsection, substitute:

15 (2) The Chief Judge and the Chief Judge of the Federal Circuit Court
16 may jointly grant the Chief Executive Officer leave of absence,
17 other than recreation leave, on such terms and conditions as the
18 Chief Judge and the Chief Judge of the Federal Circuit Court, with
19 the approval of the Attorney-General, jointly determine.

20 **12 Subsection 38J(1)**

21 After “Chief Judge”, insert “and the Chief Judge of the Federal Circuit
22 Court”.

23 **13 Section 38L**

24 After “Chief Judge”, insert “and the Chief Judge of the Federal Circuit
25 Court”.

26 **14 Section 38M**

27 Omit all the words before paragraph (a), substitute:

28 The Chief Judge and the Chief Judge of the Federal Circuit Court
29 may, in writing, jointly appoint a person to act in the office of
30 Chief Executive Officer:

1 **15 At the end of section 38Q**

2 Add:

3 Note: The Statutory Agency declared by this section also includes officers
4 and members of staff of the Federal Circuit Court who are APS
5 employees (see section 112A of the *Federal Circuit Court of Australia*
6 *Act 1999*).

7 **16 Subsection 38S(2)**

8 Repeal the subsection.

9 ***Federal Circuit Court of Australia Act 1999***

10 **17 Section 5 (definition of *Chief Executive Officer*)**

11 Repeal the definition, substitute:

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

15 **18 Sections 94 and 95**

16 Repeal the sections.

17 **19 Section 97**

18 Repeal the section.

19 **20 Section 100**

20 Omit “officer”, substitute “officers”.

21 **21 After section 112**

22 Insert:

23 **112A APS employees are included in Statutory Agency under the**
24 **Family Law Act**

25 (1) For the purposes of the *Public Service Act 1999*, the APS
26 employees referred to in section 101 (Registrars), subsection
27 106(1) (Sheriff), subsection 109(1) (Marshal), section 111A
28 (family consultants) and section 112 (staff) are included in the
29 Statutory Agency declared by section 38Q of the *Family Law Act*
30 *1975*.

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

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

6 **22 Subsection 117(2)**

7 Repeal the subsection.

8 **23 Schedule 2**

9 Repeal the Schedule.

10 ***Ombudsman Act 1976***

11 **24 Subsection 3(1) (paragraphs (c) and (ca) of the definition**
12 **of chief executive officer of a court or tribunal)**

13 Repeal the paragraphs, substitute:

14 (c) in relation to the Family Court of Australia—the Chief
15 Executive Officer within the meaning of subsection 4(1) of
16 the *Family Law Act 1975*;

17 (ca) in relation to the Federal Circuit Court of Australia—the
18 Chief Executive Officer within the meaning of section 5 of
19 the *Federal Circuit Court of Australia Act 1999*;
20

1 **Part 2—Saving and transitional provisions**

2 **25 Saving—existing Chief Executive Officer**

- 3 (1) This item applies to the person who, immediately before the
4 commencement of this item (the *commencement time*), held office as
5 the Chief Executive Officer of the Family Court under section 38C of
6 the *Family Law Act 1975*.
- 7 (2) After the commencement time, the person holds office as the Chief
8 Executive Officer of the Family Court and the Federal Circuit Court as
9 if the person had been appointed to that office under subsection 38C(2)
10 of the *Family Law Act 1975*, as in force after the commencement time,
11 on the joint nomination of the Chief Judge of the Family Court and the
12 Chief Judge of the Federal Circuit Court.
- 13 (3) The person holds office as the Chief Executive Officer of the Family
14 Court and the Federal Circuit Court:
15 (a) for the balance of the person's term of appointment as the
16 Chief Executive Officer of the Family Court that remained
17 immediately before the commencement time; and
18 (b) on the same terms and conditions as applied to the person
19 immediately before the commencement time.
- 20 (4) If a determination under subsection 38F(4) of the *Family Law Act 1975*
21 (additional terms and conditions of appointment) is in force
22 immediately before the commencement time, the determination
23 continues in force after the commencement time as if it had been made
24 by the Chief Judge of the Family Court and the Chief Judge of the
25 Federal Circuit Court acting jointly under subsection 38F(4) of that Act,
26 as in force after the commencement time.

27 **26 References in instruments to Chief Executive Officer of**
28 **the Family Court or Chief Executive Officer of the**
29 **Federal Circuit Court**

- 30 (1) If:
31 (a) an instrument is in force immediately before the
32 commencement of this item; and
33 (b) the instrument contains a reference to the Chief Executive
34 Officer of the Family Court of Australia or the Chief
35 Executive Officer of the Federal Circuit Court of Australia;

1 the instrument has effect after that commencement as if the reference
2 were a reference to the Chief Executive Officer of the Family Court and
3 the Federal Circuit Court referred to in section 38C of the *Family Law*
4 *Act 1975*.

5 (2) The Minister may, by writing, determine that subitem (1) does not apply
6 in relation to a specified reference. A determination under this subitem
7 has effect accordingly.

8 (3) The regulations may provide that an instrument containing a reference
9 specified in a determination under subitem (2) has effect, after the
10 commencement time, as if the reference were a reference to a person
11 other than the Chief Executive Officer of the Family Court and the
12 Federal Circuit Court referred to in section 38C of the *Family Law Act*
13 *1975*.

14 (4) A determination made under subitem (2) is not a legislative instrument.

15 **27 Things done by, or in relation to, the Chief Executive**
16 **Officer of the Family Court or Chief Executive Officer of**
17 **the Federal Circuit Court**

18 (1) If, before the commencement of this item, a thing was done by, or in
19 relation to, the Chief Executive Officer of the Family Court of Australia
20 or the Chief Executive Officer of the Federal Circuit Court of Australia,
21 then after that commencement, the thing is taken to have been done by,
22 or in relation to, the Chief Executive Officer of the Family Court and
23 the Federal Circuit Court referred to in section 38C of the *Family Law*
24 *Act 1975*.

25 (2) The Minister may, by writing, determine that subitem (1) does not apply
26 in relation to a specified thing done by, or in relation to, the Chief
27 Executive Officer of the Family Court of Australia or the Chief
28 Executive Officer of the Federal Circuit Court of Australia. A
29 determination under this subitem has effect accordingly.

30 (3) The regulations may provide for a thing specified in a determination
31 under subitem (2) to be taken to have been done by, or in relation to, a
32 person other than the Chief Executive Officer of the Family Court and
33 the Federal Circuit Court referred to in section 38C of the *Family Law*
34 *Act 1975*.

35 (4) A determination made under subitem (2) is not a legislative instrument.

Schedule 2 Family Court and Federal Circuit Court

Part 2 Saving and transitional provisions

- 1 (5) To avoid doubt, the amendments made by this Schedule do not affect
2 the validity of anything done by the Chief Executive Officer of the
3 Family Court of Australia or the Chief Executive Officer of the Federal
4 Circuit Court of Australia before the commencement of this item.

5 **28 Transitional regulations**

- 6 The Governor-General may make regulations prescribing matters of a
7 transitional nature (including prescribing any saving or application
8 provisions) relating to amendments and repeals made by this Schedule.