





# **Courts Administration Legislation Amendment Act 2016**

**No. 24, 2016**

**An Act to amend the law relating to the  
administration of courts, and for other purposes**

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



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# **Courts Administration Legislation Amendment Act 2016**

**No. 24, 2016**

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## **An Act to amend the law relating to the administration of courts, and for other purposes**

*[Assented to 18 March 2016]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Courts Administration Legislation  
Amendment Act 2016*.

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## 2 Commencement

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

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| <b>Commencement information</b>   |   |                     |
|---|---|---------------------|
| <b>Column 1</b>   | <b>Column 2</b>                             | <b>Column 3</b>     |
| <b>Provisions</b>   | <b>Commencement</b>                         | <b>Date/Details</b> |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day this Act receives the Royal Assent. | 18 March 2016       |
| 2. Schedule 1, Part 1   | 1 July 2016.                                | 1 July 2016         |
| 3. Schedule 1, Part 2   | 1 January 2018.                             | 1 January 2018      |
| 4. Schedule 2, Part 1   | 1 July 2016.                                | 1 July 2016         |
| 5. Schedule 2, Part 2   | 1 January 2018.                             | 1 January 2018      |
| 6. Schedules 3 and 4  | 1 July 2016.                                | 1 July 2016         |
| 7. Schedule 5, Parts 1 and 2  | 1 July 2016.                                | 1 July 2016         |
| 8. Schedule 5, Part 3   | 1 January 2018.                             | 1 January 2018      |
| 9. Schedule 6   | The day this Act receives the Royal Assent. | 18 March 2016       |

Note: This table relates only to the provisions of this Act as originally enacted.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

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

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### **3 Schedules**

Legislation 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.

## Schedule 1—Amendments relating to the Federal Court of Australia

### Part 1—Amendments commencing 1 July 2016

#### *Federal Court of Australia Act 1976*

#### 1 Section 4

Insert:

*administrative affairs* of the Court has a meaning affected by subsection 18A(1A).

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

*Chief Executive Officer* means the Chief Executive Officer and Principal Registrar of the Court.

Note: The Chief Executive Officer is appointed under section 18C. A person is appointed to act as the Chief Executive Officer under section 18M.

*corporate services* of the Court has the meaning given by subsection 18A(1B).

*Family Court Chief Executive Officer* means the Chief Executive Officer of the Family Court of Australia.

*Federal Circuit Court Chief Executive Officer* means the Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia.

*finance law* has the same meaning as in section 8 of the *Public Governance, Performance and Accountability Act 2013*.

#### 2 Section 15A (heading)

Repeal the heading, substitute:

## **15A Consultation between the Chief Justice of the Court and the Chief Justice of the Family Court**

### **3 Section 15A**

Omit “Chief Justice and the Chief Judge”, substitute “Chief Justice of the Court and the Chief Justice”.

### **4 Division 1 of Part IIA (heading)**

Repeal the heading, substitute:

## **Division 1—Management responsibilities of Chief Justice and Chief Executive Officer**

### **5 After subsection 18A(1)**

Insert:

- (1A) The *administrative affairs* of the Court do not include the corporate services of the Court.
- (1B) The following matters relating to the Court are the *corporate services* of the Court:
- (a) communications;
  - (b) finance;
  - (c) human resources;
  - (d) information technology;
  - (e) libraries;
  - (f) procurement and contract management;
  - (g) property;
  - (h) risk oversight and management;
  - (i) statistics;
  - (j) any other matter prescribed by a determination under subsection (5).

### **6 Subsection 18A(2)**

Omit “For that purpose,”, substitute “For the purpose referred to in subsection (1),”.

**7 Subsection 18A(4)**

Omit “\$250,000”, substitute “\$1,000,000”.

**8 At the end of section 18A**

Add:

- (5) The Attorney-General may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (1B)(j)).

**9 Section 18B (heading)**

Repeal the heading, substitute:

**18B Chief Executive Officer**

**10 Section 18B**

Omit “Registrar of the Court”, substitute “Chief Executive Officer”.

**11 After section 18B**

Insert:

**18BAA Arrangements with other courts**

- (1) The Chief Justice may arrange with the chief judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Court any or all of the following functions:
- (a) the receipt of documents to be lodged with or filed in the Court;
  - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Court;
  - (c) the authentication of orders of the Court;
  - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Court;
  - (e) such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement;
  - (f) such other non-judicial functions as the Chief Justice considers appropriate.

- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Court, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

## **12 Division 1A of Part IIA**

Repeal the Division.

## **13 Division 2 of Part IIA (heading)**

Repeal the heading, substitute:

## **Division 2—Appointment, powers etc. of Chief Executive Officer**

### **14 Section 18C**

Repeal the section, substitute:

### **18C Establishment and appointment of Chief Executive Officer**

- (1) There is to be a Chief Executive Officer and Principal Registrar of the Court.
- (2) The Chief Executive Officer is to be appointed by the Governor-General by written instrument on the nomination of the Chief Justice.

### **15 Section 18D (heading)**

Repeal the heading, substitute:

## **18D Powers of Chief Executive Officer**

### **16 Section 18D**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

### **17 Section 18E (heading)**

Repeal the heading, substitute:

## **18E Remuneration of Chief Executive Officer**

### **18 Section 18E**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

### **19 Section 18F (heading)**

Repeal the heading, substitute:

## **18F Terms and conditions of appointment of Chief Executive Officer**

### **20 Sections 18F, 18G and 18H**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

### **21 Section 18J (heading)**

Repeal the heading, substitute:

## **18J Outside employment of Chief Executive Officer**

### **22 Subsection 18J(1)**

Omit “Registrar”, substitute “Chief Executive Officer”.

### **23 Section 18K**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

**24 Section 18L (heading)**

Repeal the heading, substitute:

**18L Disclosure of interests by Chief Executive Officer**

**25 Section 18L**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

**26 Section 18M (heading)**

Repeal the heading, substitute:

**18M Acting Chief Executive Officer**

**27 Section 18M**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

**28 Section 18N (heading)**

Repeal the heading, substitute:

**18N Personnel other than the Chief Executive Officer**

**29 Subsection 18N(1)**

Omit “the Registrar”, substitute “the Chief Executive Officer”.

**30 Before paragraph 18N(1)(a)**

Insert:

(aa) such Registrars as are necessary;

**31 Paragraph 18N(1)(b)**

Omit “Deputy Registrars and”.

**32 Subsection 18N(2)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**33 Subsection 18N(3)**

Repeal the subsection.

**34 Subsections 18N(4) and (6)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**35 Subsection 18N(6)**

After “the purposes of”, insert “the administrative affairs of”.

**36 Sections 18Q and 18R**

Repeal the sections.

**37 Subsection 18S(1) (note)**

Repeal the note.

**38 At the end of section 18S**

Add:

- (4) A report prepared under this section may be included in a report prepared and given to the Attorney-General under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity referred to in section 18ZB.

**39 Section 18X (heading)**

Repeal the heading, substitute:

**18X Proceedings arising out of the administrative affairs of Court**

**40 Section 18X**

Omit “Registrar”, substitute “Chief Executive Officer”.

**41 Section 18Y**

Omit “The Registrar, a District Registrar, a Deputy Registrar”, substitute “The Chief Executive Officer, a Registrar, a District Registrar”.

**42 Section 18Y**

Omit “*Registrar, District Registrar, Deputy Registrar*”, substitute “*Chief Executive Officer, Registrar, District Registrar*”.

**43 After Part IIA**

Insert:

---

## **Part IIB—Corporate services and other matters**

### **Division 1—Corporate services**

#### **18Z Corporate services**

- (1) The Chief Executive Officer has the following functions:
  - (a) providing the corporate services of the Court;
  - (b) providing the corporate services of the Family Court of Australia (within the meaning of the *Family Law Act 1975*);
  - (c) providing the corporate services of the Federal Circuit Court (within the meaning of the *Federal Circuit Court of Australia Act 1999*).
- (2) The Chief Executive Officer has the power to do all things necessary or convenient to be done for the purpose of subsection (1).
- (3) The Chief Executive Officer must consult with the following persons in relation to the Chief Executive Officer's performance of functions, or exercise of powers, under this section:
  - (a) the Chief Justice;
  - (b) the Chief Justice of the Family Court of Australia;
  - (c) the Chief Judge of the Federal Circuit Court;
  - (d) the Family Court Chief Executive Officer;
  - (e) the Federal Circuit Court Chief Executive Officer.
- (4) A failure to comply with subsection (3) in relation to a decision does not affect the validity of the decision.
- (5) When performing functions, or exercising powers, under this section, the Chief Executive Officer must not make a decision that has the effect of imposing an expenditure obligation on:
  - (a) the Court in relation to the administrative affairs of the Court;  
or
  - (b) the Family Court of Australia in relation to the administrative affairs of that Court (within the meaning of the *Family Law Act 1975*); or

(c) the Federal Circuit Court in relation to the administrative affairs of that Court (within the meaning of the *Federal Circuit Court of Australia Act 1999*);

unless:

(d) both:

- (i) the Chief Executive Officer consults the relevant Chief Justice or Chief Judge about the decision; and
- (ii) the relevant Chief Justice or Chief Judge consents to the decision; or

(e) the Attorney-General consents to the decision after consulting the relevant Chief Justice or Chief Judge about it.

#### *Delegation*

- (6) The Chief Executive Officer may, in writing, delegate to the holder of an office or position referred to in subparagraph 18ZB(a)(ii) or (iii) all or any of his or her functions or powers under this section.
- (7) If the Chief Executive Officer delegates a function or power to a person (the *delegate*) under subsection (6), the Chief Executive Officer may give written directions to the delegate in relation to the performance of the function or the exercise of the power.
- (8) The delegate must comply with any directions given under subsection (7).

### **18ZA Proceedings in relation to corporate services**

Any judicial or other proceeding relating to a matter arising out of the Chief Executive Officer's performance of functions, or exercise of powers, under section 18Z may be instituted by or against the Commonwealth, as the case requires.

## **Division 2—Application of the finance law**

### **18ZB Application of the finance law**

For the purposes of the finance law:

- (a) the following group of persons is a listed entity:
  - (i) the Chief Executive Officer;

- (ii) the officers of the Court referred to in subsection 18N(1);
  - (iii) the staff of the Registries referred to in subsection 18N(7);
  - (iv) the Family Court Chief Executive Officer;
  - (v) the officers of the Family Court of Australia referred to in subsection 38N(1) of the *Family Law Act 1975*;
  - (vi) the staff of the Registries referred to in subsection 38N(7) of the *Family Law Act 1975*;
  - (vii) the Federal Circuit Court Chief Executive Officer;
  - (viii) the officers of the Federal Circuit Court referred to in subsection 99(1) of the *Federal Circuit Court of Australia Act 1999*;
  - (ix) the staff of the Federal Circuit Court referred to in section 112 of the *Federal Circuit Court of Australia Act 1999*; and
  - (x) the Native Title Registrar;
  - (xi) the Deputy Registrars of the National Native Title Tribunal;
  - (xii) the staff assisting the National Native Title Tribunal referred to in subsection 130(1) of the *Native Title Act 1993*;
  - (xiii) consultants engaged under section 18ZI for the purposes of the National Native Title Tribunal; and
- (b) the listed entity is to be known as the Federal Court of Australia; and
  - (c) the Chief Executive Officer is the accountable authority of the listed entity; and
  - (d) the persons referred to in paragraph (a) are officials of the listed entity; and
  - (e) the purposes of the listed entity include the following:
    - (i) the functions of the Chief Executive Officer under sections 18B and 18Z of this Act;
    - (ii) the functions of the Family Court Chief Executive Officer under sections 38B and 38BA of the *Family Law Act 1975*;
    - (iii) the functions of the Federal Circuit Court Chief Executive Officer under sections 93A and 96 of the *Federal Circuit Court of Australia Act 1999*;
-

- (iv) the function of the Chief Executive Officer under subsection 129(1) of the *Native Title Act 1993*.

### **18ZC Delegation of powers etc. under the finance law**

Section 110 of the *Public Governance, Performance and Accountability Act 2013* applies as if:

- (a) for the delegation of a matter that relates to the administrative affairs of the Family Court of Australia (within the meaning of the *Family Law Act 1975*)—a reference to an official were a reference to:
  - (i) the Family Court Chief Executive Officer; or
  - (ii) the holder of an office or position referred to in subparagraph 18ZB(a)(v) or (vi), being an office or position that, at the time the delegation is made, is nominated in writing by the Family Court Chief Executive Officer; and
- (b) for the delegation of a matter that relates to the administrative affairs of the Federal Circuit Court (within the meaning of the *Federal Circuit Court of Australia Act 1999*)—a reference to an official were a reference to:
  - (i) the Federal Circuit Court Chief Executive Officer; or
  - (ii) the holder of an office or position referred to in subparagraph 18ZB(a)(viii) or (ix), being an office or position that, at the time the delegation is made, is nominated in writing by the Federal Circuit Court Chief Executive Officer.

### **18ZD Managing appropriations**

- (1) This section applies if, in an Appropriation Act for the ordinary annual services of the Government:
  - (a) there is a departmental item (within the meaning of that Act) for the listed entity referred to in section 18ZB; and
  - (b) there is an outcome for the listed entity that relates to:
    - (i) the administrative affairs of the Court; or
    - (ii) the administrative affairs of the Family Court of Australia (within the meaning of the *Family Law Act 1975*); or

- (iii) the administrative affairs of the Federal Circuit Court (within the meaning of the *Federal Circuit Court of Australia Act 1999*); or
  - (iv) the corporate services of the Court, the Family Court of Australia and the Federal Circuit Court, as referred to in subsection 18Z(1); and
  - (c) there is an amount (the **outcome amount**) set out, above the departmental item and opposite the outcome, under the heading “Departmental”.
- (2) Before spending a part of the outcome amount for another outcome for the listed entity, the Chief Executive Officer must:
- (a) both:
    - (i) consult the relevant Chief Justice or Chief Judge about the spending; and
    - (ii) obtain the consent of the relevant Chief Justice or Chief Judge to the spending; or
  - (b) obtain the consent of the Attorney-General to the spending.
- (3) Before giving consent under paragraph (2)(b), the Attorney-General must consult the relevant Chief Justice or Chief Judge about the spending.
- (4) This section does not affect the operation of the Appropriation Act in relation to the listed entity’s departmental item.

Note: For example, the Appropriation Act provides that the listed entity’s departmental item may be applied for the departmental expenditure of the listed entity.

### **Division 3—Application of the Public Service Act 1999 etc.**

#### **18ZE Statutory Agency etc. for purposes of the *Public Service Act 1999***

- (1) For the purposes of the *Public Service Act 1999*:
- (a) the persons referred to in subsection (2) together constitute a Statutory Agency; and
  - (b) the Chief Executive Officer is the Head of that Statutory Agency.
- (2) The persons are the following:
-

- (a) the Chief Executive Officer;
- (b) the APS employees referred to in the following provisions:
  - (i) section 18N of this Act;
  - (ii) section 38N of the *Family Law Act 1975*;
  - (iii) section 101, subsection 106(1), subsection 107(1), subsection 109(1), subsection 110(1), section 111A and section 112 of the *Federal Circuit Court of Australia Act 1999*;
  - (iv) subsection 130(3) of the *Native Title Act 1993*.

#### **18ZF Making arrangements relating to APS employees**

- (1) The Chief Executive Officer must make the services of APS employees who are officers of the Family Court of Australia, or staff of the Registries of the Family Court of Australia, available for the purposes of assisting the Family Court Chief Executive Officer in the performance of his or her functions under sections 38B and 38BA of the *Family Law Act 1975*.
- (2) While a person is performing services made available under subsection (1), that person must do so in accordance with the directions of the Chief Justice of the Family Court of Australia and the Family Court Chief Executive Officer.
- (3) The Chief Executive Officer must make the services of APS employees who are officers or staff of the Federal Circuit Court available for the purposes of assisting the Federal Circuit Court Chief Executive Officer in the performance of his or her functions under sections 93A and 96 of the *Federal Circuit Court of Australia Act 1999*.
- (4) While a person is performing services made available under subsection (3), that person must do so in accordance with the directions of the Chief Judge of the Federal Circuit Court and the Federal Circuit Court Chief Executive Officer.

#### **18ZG Delegation of powers etc. under the *Public Service Act 1999***

Subsection 78(7) of the *Public Service Act 1999* applies as if:

- (a) for a matter that relates to the administrative affairs of the Family Court of Australia (within the meaning of the *Family*

- Law Act 1975*)—a reference to another person were a reference to the Family Court Chief Executive Officer; and
- (b) for a matter that relates to the administrative affairs of the Federal Circuit Court (within the meaning of the *Federal Circuit Court of Australia Act 1999*)—a reference to another person were a reference to the Federal Circuit Court Chief Executive Officer.

## **Division 4—Other powers of the Chief Executive Officer**

### **18ZH Appointment of other court officers**

- (1) The following officers are to be appointed by the Chief Executive Officer:
- (a) the officers of the Court referred to in paragraphs 18N(1)(aa) to (e) of this Act;
  - (b) the officers of the Family Court of Australia referred to in paragraphs 38N(1)(a) to (f) of the *Family Law Act 1975*;
  - (c) the officers of the Federal Circuit Court referred to in paragraphs 99(1)(a) to (f) of the *Federal Circuit Court of Australia Act 1999*;
  - (d) the Deputy Registrars of the National Native Title Tribunal.
- (2) The Chief Executive Officer may delegate his or her powers under paragraph (1)(b) to appoint any or all of the officers to the Family Court Chief Executive Officer.
- (3) The Chief Executive Officer may delegate his or her powers under paragraph (1)(c) to appoint any or all of the officers to the Federal Circuit Court Chief Executive Officer.

### **18ZI Engagement of consultants, family counsellors and family dispute resolution practitioners**

- (1) The Chief Executive Officer may engage persons having suitable qualifications and experience as consultants to, or to perform services for:
- (a) the Court; or
  - (b) the Family Court of Australia; or
  - (c) the Federal Circuit Court; or
  - (d) the National Native Title Tribunal.

- (2) The Chief Executive Officer may engage persons to perform:
  - (a) family counselling services under the *Family Law Act 1975*;  
or
  - (b) family dispute resolution services under the *Family Law Act 1975*.
- (3) An engagement under subsection (1) or (2) is to be made:
  - (a) on behalf of the Commonwealth; and
  - (b) by written agreement.
- (4) The Chief Executive Officer may delegate his or her powers under subsections (1) and (2) in relation to the Family Court of Australia to the Family Court Chief Executive Officer.
- (5) The Chief Executive Officer may delegate his or her powers under subsections (1) and (2) in relation to the Federal Circuit Court to the Federal Circuit Court Chief Executive Officer.

### **18ZJ Subdelegation of powers under this Division**

- (1) If, under subsection 18ZH(2) or 18ZI(4), the Chief Executive Officer delegates any powers to the Family Court Chief Executive Officer, the Family Court Chief Executive Officer may, in writing, delegate all or any of those powers to the holder of an office or position referred to in subparagraph 18ZB(a)(v) or (vi).
- (2) If, under subsection 18ZH(3) or 18ZI(5), the Chief Executive Officer delegates any powers to the Federal Circuit Court Chief Executive Officer, the Federal Circuit Court Chief Executive Officer may, in writing, delegate all or any of those powers to the holder of an office or position referred to in subparagraph 18ZB(a)(viii) or (ix).
- (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a delegation under this section in the same way as they apply to a delegation under section 18ZH or 18ZI.

## **Division 5—Other matters**

### **18ZK Officers of the Court, the Family Court of Australia and the Federal Circuit Court**

- (1) A person may be an officer of one or more of the following courts:
  - (a) the Court;
  - (b) the Family Court of Australia;
  - (c) the Federal Circuit Court.
- (2) Subsection (1) has effect despite anything in this Act, the *Family Law Act 1975* and the *Federal Circuit Court of Australia Act 1999*.

#### **44 Subsection 23CQ(1)**

Omit “the Registrar, a Deputy Registrar,”, substitute “the Chief Executive Officer, a Registrar,”.

#### **45 Subsection 23HA(2)**

Omit “the Registrar or any Deputy Registrar,”, substitute “the Chief Executive Officer or any Registrar,”.

#### **46 Subsection 34(3)**

Omit “The Registrar”, substitute “The Chief Executive Officer”.

#### **47 Subsection 35A(8)**

Omit “the Registrar, a Deputy Registrar,”, substitute “the Chief Executive Officer, a Registrar,”.

#### **48 Subsection 36(3)**

Omit “Registrar”, substitute “Chief Executive Officer”.

#### **49 Section 37**

Omit “the Registrar” (wherever occurring), substitute “the Chief Executive Officer”.

#### **50 Paragraph 37AO(3)(b)**

Omit “Registrar of the Court”, substitute “Chief Executive Officer”.

**51 Subsection 37AP(1)**

Omit “Registrar of the Court”, substitute “Chief Executive Officer”.

**52 Subsection 37AP(2)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**53 Paragraph 37AQ(4)(b)**

Omit “Registrar of the Court”, substitute “Chief Executive Officer”.

**54 Subsection 41(2)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**55 Subsection 44(2)**

Omit “The Registrar”, substitute “The Chief Executive Officer”.

**56 Paragraph 44(2)(a)**

Omit “Deputy Registrar,”, substitute “Registrar,”.

**57 Paragraph 45(1)(a)**

Omit “the Registrar, a Deputy Registrar,”, substitute “the Chief Executive Officer, a Registrar,”.

**58 Subsection 58DD(5)**

Omit “the Registrar or any Deputy Registrar,”, substitute “the Chief Executive Officer or any Registrar,”.

**59 Subsection 58DE(4)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**60 Subsection 58FB(2)**

Omit “Registrar” (wherever occurring), substitute “Chief Executive Officer”.

**61 Subsection 58FD(3)**

Omit “Registrar”, substitute “Chief Executive Officer”.

**62 Paragraph 59(2C)(b)**

Omit “Registrar”, substitute “Chief Executive Officer”.

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## **Part 2—Amendments commencing 1 January 2018**

### *Federal Court of Australia Act 1976*

#### **63 Section 4 (definition of *Family Court Chief Executive Officer*)**

After “Officer” (second occurring), insert “and Principal Registrar”.

#### **64 Paragraph 18ZH(1)(b)**

Omit “paragraphs 38N(1)(a) to (f)”, substitute “paragraphs 38N(1)(b) to (f)”.

## Schedule 2—Amendments relating to the Family Court of Australia

### Part 1—Amendments commencing 1 July 2016

#### *Family Law Act 1975*

##### **1 Subsection 4(1)**

Insert:

*administrative affairs* of the Family Court has a meaning affected by subsection 38A(1A).

##### **2 Subsection 4(1) (definition of *appropriate officer*)**

Repeal the definition.

##### **3 Subsection 4(1)**

Insert:

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

##### **4 Subsection 4(1) (definition of *Chief Executive Officer*)**

Omit “and the Federal Circuit Court”.

##### **5 Subsection 4(1)**

Insert:

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

##### **6 Subsection 4(1) (definition of *complaint handler*)**

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

##### **7 Subsection 4(1)**

Insert:

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*corporate services* of the Family Court has the meaning given by subsection 38A(1B).

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

*Federal Circuit Court Chief Executive Officer* means the Chief Executive and Principal Registrar of the Federal Circuit Court of Australia.

**8 Paragraph 10C(1)(c)**

Omit “, or engaged under subsection 38R(1A),”.

**9 Paragraph 10C(1)(d)**

Omit “, or engaged under subsection 115(1A) of that Act,”.

**10 After paragraph 10C(1)(d)**

Insert:

- (da) a person who is engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976* as a family counsellor; or

**11 Paragraph 10G(1)(c)**

Omit “, or engaged under subsection 38R(1A),”.

**12 Paragraph 10G(1)(d)**

Omit “, or engaged under subsection 115(1A) of that Act,”.

**13 After paragraph 10G(1)(d)**

Insert:

- (da) a person who is engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976* as a family dispute resolution practitioner; or

**14 Paragraphs 11B(a) and (b)**

Repeal the paragraphs, substitute:

- (a) appointed as a family consultant under section 18ZH of the *Federal Court of Australia Act 1976*; or

**15 Section 11B (note)**

Omit “and Division 1A of Part 7 of the *Federal Circuit Court of Australia Act 1999*”.

**16 Subparagraph 11E(1)(e)(i)**

Repeal the subparagraph, substitute:

- (i) if the court is the Family Court—a family consultant nominated by the Chief Executive Officer; or
- (ia) if the court is the Federal Circuit Court of Australia—a family consultant nominated by the Federal Circuit Court Chief Executive Officer; or

**17 Subparagraph 11E(1)(e)(iii)**

Omit “subparagraph (i) or (ii)”, substitute “subparagraph (i), (ia) or (ii)”.

**18 Section 20 (definition of *Chief Judge*)**

Repeal the definition.

**19 Section 20 (definition of *Deputy Chief Judge*)**

Repeal the definition.

**20 Section 20 (definition of *Judge*)**

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator”, substitute “Chief Justice, the Deputy Chief Justice”.

**21 Section 20 (definition of *Judge Administrator*)**

Repeal the definition.

**22 Paragraphs 21(3)(a) and (b)**

Repeal the paragraphs, substitute:

- (a) a Chief Justice; and
- (b) a Deputy Chief Justice; and

**23 Paragraph 21(3)(c)**

Omit “Judge Administrators,”.

**24 Subsections 21B(1), (1A), (1B) and (2)**

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

**25 Subsection 21B(3)**

Repeal the subsection.

**26 Subsection 21B(3A)**

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

**27 Subsection 21B(3B)**

Repeal the subsection, substitute:

(3B) To avoid doubt, the Chief Justice may authorise under subsection (3A):

- (a) the Deputy Chief Justice; or
- (b) a body that includes the Deputy Chief Justice.

**28 Subsections 21B(4) and (5)**

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

**29 Subsections 22(2AAA), (2AAB), (2AAC), (2AA) and (2AF)**

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

**30 Subsection 22(2AFA) (heading)**

Repeal the heading, substitute:

*Appointment of Deputy Chief Justice*

**31 Subsection 22(2AFA)**

Repeal the subsection, substitute:

(2AFA) If a person holding office as a Senior Judge or Judge of the Court is appointed Deputy Chief Justice, the person retains that office as Senior Judge or Judge, as the case may be, and may resign the office of Deputy Chief Justice without resigning that first-mentioned office.

**32 Subsections 23(1) and (2)**

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

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**33 Subsection 23(3)**

Omit “appointed as Judge Administrators or”.

**34 Subsection 23(3)**

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

**35 Subsection 23(4)**

Repeal the subsection, substitute:

- (4) The remaining Judges assigned to the Appeal Division have seniority next to the Judges to whom subsection (3) applies according to the days on which their assignments to the Appeal Division took effect.

**36 Subsection 23(5)**

Omit “appointments as Judge Administrator and”.

**37 Subsection 23(8)**

Omit “Judge Administrators or”.

**38 Section 24 (heading)**

Repeal the heading, substitute:

**24 Absence or illness of Chief Justice**

**39 Section 24**

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

**40 Subsection 25(1)**

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

**41 Section 26**

Omit “*Chief Judge, Deputy Chief Judge, Judge Administrator,*”, substitute “*Chief Justice, Deputy Chief Justice,*”.

**42 Paragraph 26E(b)**

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

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**43 Subsection 26JA(2)**

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

**44 Section 26M**

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

**45 Subsection 27(2) (note)**

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

**46 Paragraph 30(b)**

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

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

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

**48 Paragraph 37A(14)(b)**

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

**49 Section 37B**

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

**50 Section 37C**

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

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

Repeal the heading, substitute:

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

**52 Subsection 38A(1)**

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

**53 After subsection 38A(1)**

Insert:

(1A) The *administrative affairs* of the Court do not include the corporate services of the Court.

(1B) The following matters relating to the Court are the *corporate services* of the Court:

- (a) communications;
- (b) finance;
- (c) human resources;
- (d) information technology;
- (e) libraries;
- (f) procurement and contract management;
- (g) property;
- (h) risk oversight and management;
- (i) statistics;
- (j) any other matter prescribed by a determination under subsection (5).

**54 Subsection 38A(2)**

Omit “For that purpose, the Chief Judge”, substitute “For the purpose referred to in subsection (1), the Chief Justice”.

**55 Subsection 38A(3)**

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

**56 Subsection 38A(4)**

Omit “Chief Judge to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000”, substitute “Chief Justice to enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$1,000,000”.

**57 At the end of section 38A**

Add:

- (5) The Attorney-General may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (1B)(j)).

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

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Chief Executive Officer, the officers of the Court and the staff of the

Registries are officials of the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees referred to in section 38N are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

## **58 Section 38B**

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

## **59 At the end of Division 1 of Part IVA**

Add:

### **38BAA Arrangements with other courts**

- (1) The Chief Justice may arrange with the chief judicial officer (however described) of another Australian court for an officer or officers of that court to perform on behalf of the Court any or all of the following functions:
  - (a) the receipt of documents to be lodged with or filed in the Court;
  - (b) the signing and issuing of writs, commissions and process for the purposes of any proceedings in the Court;
  - (c) the authentication of orders of the Court;
  - (d) the administration of oaths and affirmations, and the witnessing of affidavits, for the purposes of any proceedings in the Court;
  - (e) such other non-judicial functions as are permitted by the Rules of Court to be performed under such an arrangement;
  - (f) such other non-judicial functions as the Chief Justice considers appropriate.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an officer of an Australian court of a function on behalf of the Court, the officer may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.

- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.
- (5) For the purposes of this section, a member of the staff of an Australian court is taken to be an officer of that court.

### **38BAB Arrangements with agencies or organisations**

- (1) The Chief Justice may arrange with the chief executive officer (however described) of:
  - (a) an agency of the Commonwealth, a State or a Territory; or
  - (b) another organisation;for an employee or employees of the agency or organisation to:
  - (c) receive, on behalf of the Court, documents to be lodged with or filed in the Court; or
  - (d) perform, on behalf of the Court, other non-judicial functions of the Court.
- (2) If an arrangement under subsection (1) is in force in relation to the performance by an employee of an agency or organisation of a function on behalf of the Court, the employee may perform that function despite any other provision of this Act or any other law of the Commonwealth.
- (3) A function performed on behalf of the Court in accordance with an arrangement under subsection (1) has effect as if the function had been performed by the Court.
- (4) Copies of an arrangement under subsection (1) are to be made available for inspection by members of the public.

### **60 Division 1AA of Part IVA**

Repeal the Division.

### **61 Subsection 38C(1)**

Omit “and the Federal Circuit Court”.

### **62 Subsection 38C(2)**

Omit “joint nomination of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court”, substitute “nomination of the Chief Justice”.

**63 Section 38D**

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

**64 Subsection 38F(4)**

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

**65 Subsection 38G(2)**

Repeal the subsection, substitute:

- (2) The Chief Justice may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as the Chief Justice, with the approval of the Attorney-General, determines.

**66 Subsection 38J(1)**

Omit “Chief Judge and the Chief Judge of the Federal Circuit Court”, substitute “Chief Justice”.

**67 At the end of subsection 38K(2)**

Add:

- ; or (e) fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

**68 Subsection 38L(1)**

Omit “Chief Judge and the Chief Judge of the Federal Circuit Court”, substitute “Chief Justice”.

**69 Subsections 38L(2) and (3)**

Repeal the subsections, substitute:

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

**70 Section 38M**

Omit “Chief Judge and the Chief Judge of the Federal Circuit Court may, in writing, jointly”, substitute “Chief Justice may, in writing”.

**71 Subsection 38N(2)**

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

**72 Subsection 38N(3)**

Repeal the subsection.

**73 Subsection 38N(6)**

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

**74 Subsection 38N(6)**

After “the purposes of”, insert “the administrative affairs of”.

**75 Sections 38Q and 38R**

Repeal the sections.

**76 Subsection 38S(1)**

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

**77 Subsection 38S(1) (note)**

Repeal the note.

**78 At the end of section 38S**

Add:

- (4) A report prepared under this section may be included in a report prepared and given to the Attorney-General under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

**79 Section 38W (heading)**

Repeal the heading, substitute:

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**38W Delegation of administrative powers of Chief Justice**

**80 Section 38W**

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

**81 Subsection 38Y(2)**

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

**82 Subsection 94AAA(3)**

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

**83 Subsection 102Q(1) (paragraph (b) of the definition of *appropriate court official*)**

After “Officer”, insert “and Principal Registrar”.

**84 Subparagraphs 123(1)(sda)(i) and (sdb)(i)**

Omit “or engaged under subsection 38R(1A)”, substitute “of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*”.

**85 Paragraphs 123(1)(sea) and (seb)**

Omit “or engaged under subsection 38R(1A)”, substitute “of this Act or engaged under subsection 18ZI(2) of the *Federal Court of Australia Act 1976*”.

**86 Paragraph 123(2)(b)**

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

**87 Subsection 123(2A)**

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

**88 Subsection 124(3)**

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

## Part 2—Amendments commencing 1 January 2018

### *Family Law Act 1975*

**89 Subsection 4(1) (definition of *Chief Executive Officer*)**

After “Officer” (second occurring), insert “and Principal Registrar”.

**90 Subsection 4(1) (paragraph (a) of the definition of *Registrar*)**

Omit “Principal Registrar”, substitute “Chief Executive Officer”.

**91 Section 20 (definition of *Principal Registrar*)**

Repeal the definition.

**92 Subsection 37(2)**

Omit “Principal Registrar of the Court”, substitute “Chief Executive Officer”.

**93 Subsection 37(3)**

Repeal the subsection.

**94 Subsection 37A(15)**

Omit “Principal Registrar”, substitute “Chief Executive Officer”.

**95 Paragraph 37B(1)(a)**

Omit “Principal Registrar”, substitute “Chief Executive Officer”.

**96 Subparagraphs 37B(1)(b)(iii) and (c)(iii)**

Omit “Principal Registrar”, substitute “Chief Executive Officer”.

**97 Subsections 37B(2) and (3)**

Omit “Principal Registrar”, substitute “Chief Executive Officer”.

**98 Subsections 37B(4) and (4A)**

Omit “the Principal Registrar, a Registrar or a Deputy Registrar (or a former Principal Registrar.”, substitute “a Registrar or a Deputy Registrar (or a former”.

**99 Section 37C**

Omit “A Principal Registrar,”, substitute “The Chief Executive Officer or a”.

**100 Section 37C**

Before “*Principal*”, insert “*Chief Executive Officer and*”.

**101 Section 38C**

Repeal the section, substitute:

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

- (1) There is to be a Chief Executive Officer and Principal Registrar of the Family Court.
- (2) The Chief Executive Officer is to be appointed by the Governor-General by written instrument on the nomination of the Chief Justice.

**102 Paragraph 38N(1)(a)**

Repeal the paragraph.

**103 Subsection 102Q(1) (paragraph (a) of the definition of *appropriate court official*)**

Omit “or Principal Registrar”.

## Schedule 3—Amendments relating to the Federal Circuit Court of Australia

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

#### 1 Section 5

Insert:

*administrative affairs* of the Federal Circuit Court of Australia has a meaning affected by subsection 89(2).

#### 2 Section 5 (definition of *Chief Executive Officer*)

Repeal the definition, substitute:

*Chief Executive Officer* means the Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia.

Note: The Chief Executive Officer is appointed under section 96A. A person is appointed to act as the Chief Executive Officer under section 96J.

#### 3 Section 5

Insert:

*corporate services* of the Federal Circuit Court of Australia has the meaning given by subsection 89(2A).

#### 4 Division 1 of Part 7 (heading)

Repeal the heading, substitute:

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

#### 5 After subsection 89(1)

Insert:

- (2) The *administrative affairs* of the Federal Circuit Court of Australia do not include the corporate services of the Court.
- (2A) The following matters relating to the Federal Circuit Court of Australia are the *corporate services* of the Court:

- (a) communications;
- (b) finance;
- (c) human resources;
- (d) information technology;
- (e) libraries;
- (f) procurement and contract management;
- (g) property;
- (h) risk oversight and management;
- (i) statistics;
- (j) any other matter prescribed by a determination under subsection (5).

### **6 Subsection 89(3)**

Omit “For this purpose,”, substitute “For the purpose mentioned in subsection (1),”.

### **7 At the end of section 89**

Add:

- (5) The Minister may, by legislative instrument, determine matters that are the corporate services of the Court (see paragraph (2A)(j)).

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

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

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees mentioned in section 101, subsection 106(1), subsection 109(1), section 111A and section 112 are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

### **8 Paragraph 90(1)(f)**

Omit “Federal Circuit Court of Australia”, substitute “Chief Judge”.

## **9 After section 96**

Insert:

### **96A Establishment and appointment of Chief Executive Officer**

- (1) There is to be a Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia.
- (2) The Chief Executive Officer is to be appointed by the Governor-General by written instrument on the nomination of the Chief Judge.

### **96B Remuneration of Chief Executive Officer**

- (1) The Chief Executive Officer is to be paid the remuneration and allowances determined by the Remuneration Tribunal.
- (2) If there is no determination in force, the Chief Executive Officer is to be paid such remuneration as is prescribed.
- (3) The Chief Executive Officer is to be paid such other allowances as are prescribed.
- (4) Remuneration and allowances payable to the Chief Executive Officer under this section are to be paid out of money appropriated by the Parliament for the purposes of the Federal Circuit Court of Australia.

### **96C Terms and conditions of appointment of Chief Executive Officer**

- (1) The Chief Executive Officer holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (2) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Judge.

### **96D Leave of absence of Chief Executive Officer**

- (1) The Chief Executive Officer has such recreation leave entitlements as are determined by the Remuneration Tribunal.

- (2) The Chief Judge may grant the Chief Executive Officer leave of absence, other than recreation leave, on such terms and conditions as the Chief Judge, with the approval of the Minister, determines.

#### **96E Resignation of Chief Executive Officer**

The Chief Executive Officer may resign by giving a signed notice of resignation to the Governor-General.

#### **96F Outside employment of Chief Executive Officer**

- (1) Except with the consent of the Chief Judge, the Chief Executive Officer must not engage in paid employment outside the duties of his or her office.
- (2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

#### **96G Termination of appointment of Chief Executive Officer**

- (1) The Governor-General may terminate the appointment of the Chief Executive Officer:
  - (a) for misbehaviour; or
  - (b) if the Chief Executive Officer is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Governor-General is required to terminate the appointment of the Chief Executive Officer if:
  - (a) the Chief Executive Officer:
    - (i) becomes bankrupt; or
    - (ii) takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with one or more of his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of one or more of his or her creditors; or
  - (b) the Chief Executive Officer is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (c) the Chief Executive Officer engages in paid employment contrary to section 96F; or

- (d) the Chief Executive Officer fails, without reasonable excuse, to comply with section 96H; or
- (e) the Chief Executive Officer fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.

#### **96H Disclosure of interests by Chief Executive Officer**

- (1) The Chief Executive Officer must give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.
- (2) The Chief Executive Officer must give written notice to the Chief Judge of all material personal interests that the Chief Executive Officer has that relate to the affairs of the Federal Circuit Court of Australia.
- (3) Subsections (1) and (2) apply in addition to section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests).

#### **96J Acting Chief Executive Officer**

The Chief Judge may, in writing, appoint a person to act in the office of Chief Executive Officer:

- (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chief Executive Officer is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

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

#### **10 Subsections 99(2), (3), (4), (5) and (7)**

Repeal the subsections.

**11 Section 100**

After “the purposes of”, insert “the administrative affairs of”.

**12 Subsection 107(1)**

Repeal the subsection, substitute:

- (1) The Deputy Sheriffs of the Federal Circuit Court of Australia may be persons engaged under the *Public Service Act 1999*.

**13 Subsection 110(1)**

Repeal the subsection, substitute:

- (1) The Deputy Marshals of the Federal Circuit Court of Australia may be persons engaged under the *Public Service Act 1999*.

**14 Sections 112A and 115**

Repeal the sections.

**15 Subsection 117(1) (note)**

Repeal the note.

**16 At the end of section 117**

Add:

- (4) A report prepared under this section may be included in a report prepared and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* in relation to the listed entity mentioned in section 18ZB of the *Federal Court of Australia Act 1976*.

**17 Section 118 (heading)**

Repeal the heading, substitute:

**118 Proceedings arising out of administrative affairs of the Federal Circuit Court of Australia**

## **Schedule 4—Amendments relating to the National Native Title Tribunal**

### *Native Title Act 1993*

#### **1 Section 63**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

#### **2 Subsection 64(4) (heading)**

Repeal the heading, substitute:

*Federal Court Chief Executive Officer to give copy of amended application to Native Title Registrar*

#### **3 Subsection 64(4)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

#### **4 Paragraphs 66(2)(b) and (2A)(b)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

#### **5 Subsection 66B(3) (heading)**

Repeal the heading, substitute:

*Federal Court Chief Executive Officer to notify Native Title Registrar*

#### **6 Subsections 66B(3) and 66C(1) and (2)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

#### **7 Subsection 84C(3) (heading)**

Repeal the heading, substitute:

*Federal Court Chief Executive Officer to advise Native Title Registrar of application etc.*

**8 Subsection 84C(3)**

Omit “Registrar of the Court”, substitute “Federal Court Chief Executive Officer”.

**9 Subsections 86B(2A) and (5B)**

Omit “the Registrar, a Deputy Registrar, a District Registrar or a Deputy District Registrar of the Court”, substitute “a Federal Court Registrar”.

**10 Paragraph 86B(6)(b)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Registrar”.

**11 Subsection 87(9)**

Omit “Registrar of the Court”, substitute “Federal Court Chief Executive Officer”.

**12 Subsection 87A(3)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**13 Subsection 87A(10)**

Omit “Registrar of the Court”, substitute “Federal Court Chief Executive Officer”.

**14 Subdivision A of Division 4 of Part 6 (heading)**

Repeal the heading, substitute:

**Subdivision A—Management responsibilities etc. of President of Tribunal and Federal Court Chief Executive Officer**

**15 Subsection 128(2) (notes 1 and 2)**

Repeal the notes, substitute:

Note 1: See Part IIB of the *Federal Court of Australia Act 1976* for provisions relating to the administrative affairs of the Tribunal.

Note 2: For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*), the Native Title Registrar, the Deputy Registrars and the staff assisting the Tribunal are officials of the listed entity referred to in section 18ZB of the *Federal Court of Australia Act 1976*.

Note 3: For the purposes of the *Public Service Act 1999*, the APS employees referred to in subsection 130(3) are part of the Statutory Agency declared under section 18ZE of the *Federal Court of Australia Act 1976*.

## **16 Section 129 (heading)**

Repeal the heading, substitute:

## **129 Federal Court Chief Executive Officer**

## **17 Section 129**

Omit “Registrar of the Federal Court” (wherever occurring), substitute “Federal Court Chief Executive Officer”.

## **18 Section 129A (heading)**

Repeal the heading, substitute:

## **129A Delegation by Federal Court Chief Executive Officer**

## **19 Section 129A**

Omit “Registrar of the Federal Court” (wherever occurring), substitute “Federal Court Chief Executive Officer”.

## **20 Subsection 130(2)**

Repeal the subsection.

## **21 Subsection 130(3)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

## **22 Subsection 130(3A)**

Repeal the subsection.

**23 Subsections 130(4) and (5)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**24 Subsection 131A(1)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**25 Subsection 131A(1) (note)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**26 Subsection 131A(2)**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**27 Section 132**

Repeal the section.

**28 Section 136 (heading)**

Repeal the heading, substitute:

**136 Proceedings arising out of administrative affairs of Tribunal**

**29 Section 136**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**30 Section 189A (heading)**

Repeal the heading, substitute:

**189A Federal Court Chief Executive Officer to notify Native Title Registrar**

**31 Section 189A**

Omit “Registrar of the Federal Court”, substitute “Federal Court Chief Executive Officer”.

**32 Section 191**

Before “Registrar”, insert “The”.

**33 Section 222 (table)**

Insert:

|  |     |
|--|-----|
| <b>Federal Court Chief Executive Officer</b> | 253 |
| <b>Federal Court Registrar</b>               | 253 |

**34 Section 253**

Insert:

*Federal Court Chief Executive Officer* means the Chief Executive Officer and Principal Registrar of the Federal Court.

*Federal Court Registrar* means the Federal Court Chief Executive Officer or a Registrar, District Registrar or Deputy District Registrar of the Federal Court.

## **Schedule 5—Consequential amendments**

### **Part 1—Family Court Chief Justice, Deputy Chief Justice and Judge Administrators**

#### *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”, substitute “Chief Justice, the Deputy Chief Justice”.

##### **2 Subparagraphs (zd)(i) and (ii) of Schedule 1**

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

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

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

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator”, substitute “Chief Justice, the Deputy Chief Justice”.

#### *Bankruptcy Act 1966*

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

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator”, substitute “Chief Justice, the Deputy Chief Justice”.

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

##### **5 Subsection 102A(2)**

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

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

##### **6 Subsection 4(1) (definition of *Judge*)**

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

**7 Subsection 107A(2)**

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

***Competition and Consumer Act 2010***

**8 Section 130 (definition of *Family Court Judge*)**

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator”, substitute “Chief Justice, the Deputy Chief Justice”.

***Court Security Act 2013***

**9 Section 5 (paragraph (a) of the definition of *member*)**

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

***Judicial and Statutory Officers (Remuneration and Allowances) Act 1984***

**10 Part 2 of the Schedule (table item dealing with Judge Administrator of the Family Court of Australia)**

Repeal the item.

***Remuneration and Allowances Act 1990***

**11 Part 2 of Schedule 1 (table item dealing with Judge Administrator of the Family Court)**

Repeal the item.

***Taxation Administration Act 1953***

**12 Section 14ZQ (definition of *Family Court Judge*)**

Omit “Chief Judge, the Deputy Chief Judge, a Judge Administrator”, substitute “Chief Justice, the Deputy Chief Justice”.

## **Part 2—Chief Executive Officers—amendments commencing 1 July 2016**

### ***Aboriginal and Torres Strait Islander Act 2005***

#### **13 Clause 4 of Schedule 4**

Omit “the Registrar, a Deputy Registrar”, substitute “the Chief Executive Officer and Principal Registrar, a Registrar”.

#### **14 Clauses 13 and 22 of Schedule 4**

Before “Registrar”, insert “Chief Executive Officer and Principal”.

### ***Bankruptcy Act 1966***

#### **15 Subsection 5(1) (paragraph (a) of the definition of *Registrar*)**

Omit “Registrar, a Deputy Registrar”, substitute “Chief Executive Officer and Principal Registrar, a Registrar”.

#### **16 Subsection 5(1) (paragraph (b) of the definition of *Registrar*)**

Before “a Registrar”, insert “the Chief Executive Officer and Principal Registrar or”.

### ***Copyright Act 1968***

#### **17 Paragraph 169B(5)(c)**

Omit “Registrar of”, substitute “Chief Executive Officer and Principal Registrar of”.

### ***Court Security Act 2013***

#### **18 Section 5 (table items 2, 3 and 4 in the definition of *administrative head*)**

Repeal the items, substitute:

|   |                            |   |
|---|----------------------------|---|
| 2 | Federal Court of Australia | Chief Executive Officer and Principal Registrar of the Federal Court of Australia |
| 3 | Family Court of Australia  | Chief Executive Officer of the Family Court of Australia                          |

**19 Section 5 (table item 6 in the definition of *administrative head*)**

Repeal the item, substitute:

|   |                                    |   |
|---|------------------------------------|---|
| 6 | Federal Circuit Court of Australia | Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia |
|---|------------------------------------|---|

**20 Section 5 (after paragraph (b) of the definition of *member*)**

Insert:

(ba) the chief executive officer (however described) of a court; or

**21 Section 51 (table item 1, column headed “Persons to whom administrative head of the court may delegate”)**

Omit “, appointed under section 18N of the *Federal Court of Australia Act 1976*”.

**22 Section 51 (table item 2, column headed “Persons to whom administrative head of the court may delegate”)**

Omit “appointed under section 38N of the *Family Law Act 1975*”.

**23 Section 51 (table item 3)**

Repeal the item.

**24 Section 51 (table item 5, column headed “Persons to whom administrative head of the court may delegate”)**

Omit “appointed under section 99 of the *Federal Circuit Court of Australia Act 1999*”.

***Ombudsman Act 1976***

**25 Subsection 3(1) (paragraph (a) of the definition of *chief executive officer of a court or tribunal*)**

Omit “Clerk”, substitute “Chief Executive and Principal Registrar”.

**26 Subsection 3(1) (paragraph (b) of the definition of *chief executive officer of a court or tribunal*)**

Before “Registrar”, insert “Chief Executive Officer and Principal”.

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

Repeal the paragraphs, substitute:

- (c) Chief Executive Officer of the Family Court of Australia;
- (ca) Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia;

***Privacy Act 1988***

**28 Section 37 (table item 4, column 2)**

Omit “registrar or”.

***Public Interest Disclosure Act 2013***

**29 Paragraph 73(2)(b)**

Before “Registrar”, insert “Chief Executive Officer and Principal”.

**30 Paragraph 73(2)(c)**

Repeal the paragraph, substitute:

- (c) the Chief Executive Officer of the Family Court of Australia is the *chief executive officer* of the Family Court of Australia; and
- (ca) the Chief Executive Officer and Principal Registrar of the Federal Circuit Court is the *chief executive officer* of the Federal Circuit Court; and

**Part 3—Chief Executive Officers—amendments  
commencing 1 January 2018**

***Court Security Act 2013***

**31 Section 5 (table item 3 in the definition of *administrative head*, column headed “Administrative head”)**

After “Officer”, insert “and Principal Registrar”.

***Ombudsman Act 1976***

**32 Subsection 3(1) (paragraph (c) of the definition of *chief executive officer of a court or tribunal*)**

After “Officer”, insert “and Principal Registrar”.

***Public Interest Disclosure Act 2013***

**33 Paragraph 73(2)(c)**

After “Officer”, insert “and Principal Registrar”.

## **Schedule 6—Application and transitional provisions**

### **Part 1—Definitions**

#### **1 Definitions**

In this Schedule:

***applies***, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

***commencement time*** means the commencement of Part 1 of Schedule 1 to this Act.

***covers***, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

***enterprise agreement*** has the same meaning as in the *Fair Work Act 2009*.

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

***Family Court CEO*** means the Chief Executive Officer within the meaning of the Family Law Act (as in force immediately before the commencement time).

***Family Court CEO and Principal Registrar*** means the Chief Executive Officer within the meaning of the Family Law Act (as in force immediately after the second commencement time).

***Family Law Act*** means the *Family Law Act 1975*.

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

***Federal Circuit Court Act*** means the *Federal Circuit Court of Australia Act 1999*.

***Federal Court*** means the Federal Court of Australia.

***Federal Court Act*** means the *Federal Court of Australia Act 1976*.

***Federal Court CEO*** means the Chief Executive Officer within the meaning of the Federal Court Act (as in force immediately after the commencement time).

***Federal Court Statutory Agency*** means the Statutory Agency mentioned in section 18ZE of the Federal Court Act (as in force immediately after the commencement time).

***Native Title Act*** means the *Native Title Act 1993*.

**Schedule 6** Application and transitional provisions  
**Part 1** Definitions

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***old Statutory Agency*** means the Statutory Agency mentioned in section 38Q of the Family Law Act (as in force immediately before the commencement time).

***Public Service Act*** means the *Public Service Act 1999*.

***rules*** means rules made under subitem 13(1).

***second commencement time*** means the commencement of Part 2 of Schedule 2 to this Act.

***transferred agreement***: see paragraph 11(1)(b).

***transferred employee***: see subitem 10(1).

## **Part 2—Names of offices, appointments etc.**

### **2 Continuity of offices after name change**

To avoid doubt, subsection 25B(1) of the *Acts Interpretation Act 1901* applies for the purposes of the alterations made by this Act of the names of the following offices:

- (a) the office of Chief Judge of the Family Court;
- (b) the office of Deputy Chief Judge of the Family Court;
- (c) the office of Registrar of the Federal Court;
- (d) the office of Chief Executive Officer of the Family Court and Federal Circuit Court;
- (e) the office of Chief Executive Officer of the Family Court;
- (f) the office of Deputy Registrar of the Federal Court.

### **3 Continuity of appointment of Federal Court Registrar**

- (1) This item applies to an appointment of a person if:
  - (a) the appointment is made before the commencement time under section 18C of the Federal Court Act; and
  - (b) the appointment is in force immediately before that time.
- (2) The appointment continues in force (and may be dealt with) after that time as if the person had been appointed under section 18C of the Federal Court Act (as in force immediately after the commencement time).

### **4 Continuity of appointment of court officers**

- (1) This item applies to an appointment of a person if:
  - (a) the appointment is made before the commencement time under:
    - (i) subsection 18N(3) of the Federal Court Act; or
    - (ii) subsection 38N(3) of the Family Law Act; or
    - (iii) subsection 99(7), 107(1) or 110(1) of the Federal Circuit Court Act; or
    - (iv) subsection 130(2) of the Native Title Act; and
  - (b) the appointment is in force immediately before that time.

- (2) The appointment continues in force (and may be dealt with) after that time as if it had been made by the Federal Court CEO under subsection 18ZH(1) of the Federal Court Act (as in force immediately after the commencement time).

### **5 Continuity of engagement of consultants etc.**

- (1) This item applies to the engagement of a person if:
- (a) the engagement is made before the commencement time under:
    - (i) section 18R of the Federal Court Act; or
    - (ii) section 38R of the Family Law Act; or
    - (iii) section 115 of the Federal Circuit Court Act; or
    - (iv) section 132 of the Native Title Act; and
  - (b) the engagement is in force immediately before that time.
- (2) The engagement continues in force (and may be dealt with) after that time as if it had been made by the Federal Court CEO under section 18ZI of the Federal Court Act (as in force immediately after the commencement time).

### **6 Things done by or in relation to the Principal Registrar of the Family Court**

- (1) If, before the second commencement time, a thing was done by, or in relation to, the Principal Registrar of the Family Court under the Family Law Act, then the thing is taken, after that time, to have been done by, or in relation to, the Family Court CEO and Principal Registrar under that Act.
- (2) The rules may prescribe that subitem (1) does not apply in relation to a specified thing done by, or in relation to, the Principal Registrar of the Family Court before the second commencement time.

## **Part 3—Matters relating to the finance law**

### **7 Continuity of listed entity**

- (1) The listed entity mentioned in section 18BB of the Federal Court Act (as in force immediately before the commencement time) continues in existence on and after the commencement time as the listed entity mentioned in section 18ZB of the Federal Court Act (as in force immediately after the commencement time) so that its identity is not affected.
- (2) To avoid doubt, the amendments made by this Act do not affect:
  - (a) the continued operation or effect, after the commencement time, of any instruments made before that time by, or on behalf of:
    - (i) the listed entity; or
    - (ii) the accountable authority of the listed entity; or
    - (iii) any other official of the listed entity; or
  - (b) the validity or effect, after the commencement time, of anything done before that time by or in relation to:
    - (i) the listed entity; or
    - (ii) the accountable authority of the listed entity; or
    - (iii) any other official of the listed entity.

### **8 Reporting requirements for old listed entity**

- (1) Despite the listed entity mentioned in section 38BAA of the Family Law Act immediately before the commencement time (the ***old listed entity***) ceasing to exist because of the repeal of that section made by this Act, the reporting requirements in sections 39, 42 and 46 of the *Public Governance, Performance and Accountability Act 2013* apply in relation to:
  - (a) the old listed entity; and
  - (b) the accountable authority of the old listed entity; and
  - (c) the reporting period of the old listed entity that ends on 30 June 2015;as if the old listed entity had not ceased to exist.

**Schedule 6** Application and transitional provisions

**Part 3** Matters relating to the finance law

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- (2) For the purposes of paragraph (1)(b), the accountable authority of the old listed entity is:
- (a) the person who was the accountable authority of the old listed entity immediately before the commencement time; or
  - (b) if the rules prescribe another person—that person.

## **Part 4—Matters relating to APS employment**

### **9 Continuity of Statutory Agency**

- (1) The Statutory Agency mentioned in section 18Q of the Federal Court Act (as in force immediately before the commencement time) continues in existence on and after the commencement time as the Statutory Agency mentioned in section 18ZE of the Federal Court Act (as in force immediately after the commencement time) so that its identity is not affected.
- (2) To avoid doubt, the amendments made by this Act do not affect:
  - (a) the continued operation, after the commencement time, of any instruments made before that time by, or on behalf of:
    - (i) the Statutory Agency; or
    - (ii) the Agency Head of the Statutory Agency; or
    - (iii) an APS employee in the Statutory Agency; or
  - (b) the validity or effect, after the commencement time, of anything done before that time by or in relation to:
    - (i) the Statutory Agency; or
    - (ii) the Agency Head of the Statutory Agency; or
    - (iii) an APS employee in the Statutory Agency.

### **10 Transfer of APS employees to Federal Court Statutory Agency**

- (1) A person who is an APS employee in the old Statutory Agency immediately before the commencement time (a *transferred employee*) is moved to the Federal Court Statutory Agency at the commencement time.
- (2) To avoid doubt, section 72 of the *Public Service Act 1999* does not apply in relation to a transferred employee who is moved to the Federal Court Statutory Agency under subitem (1).
- (3) However, subsection 72(5A) of the *Public Service Act 1999*, and regulations made for the purposes of that subsection, apply in the same way as they would apply if a transferred employee had been moved to the Federal Court Statutory Agency by a determination made by the

Australian Public Service Commissioner under paragraph 72(1)(a) of that Act.

## 11 Terms and conditions of employment for transferred employees

### *Transferring enterprise agreement*

(1) If:

- (a) a person is a transferred employee; and
- (b) immediately before the commencement time, one of the following enterprise agreements (the **transferred agreement**) applied to the person's employment in the old Statutory Agency:
  - (i) the enterprise agreement known as the *Federal Magistrates Court of Australia and Family Court of Australia Enterprise Agreement 2011—2014*;
  - (ii) if the rules prescribe another enterprise agreement—that agreement;

then:

- (c) after the commencement time, the transferred agreement applies to the Federal Court CEO, on behalf of the Commonwealth, and the transferred employee in relation to the transferred employee's employment in the Federal Court Statutory Agency; and
- (d) written policies or guidelines made by the Family Court CEO for the purposes of the transferred agreement that are in force immediately before the commencement time continue in force (and may be dealt with) after the commencement time as if they had been made by the Federal Court CEO for those purposes; and
- (e) if:
  - (i) another enterprise agreement (the **new agreement**) comes into operation after the commencement time; and
  - (ii) the new agreement is made by the Federal Court CEO on behalf of the Commonwealth; and
  - (iii) the new agreement covers the Federal Court CEO, on behalf of the Commonwealth, and the transferred employee in relation to the transferred employee's employment in the Federal Court Statutory Agency;

then, when the new agreement comes into operation, the transferred agreement ceases to apply to the transferred employee in relation to the transferred employee's employment in the Federal Court Statutory Agency.

*Transferring APS determinations*

- (2) If:
- (a) a person is a transferred employee; and
  - (b) immediately before the commencement time, a determination under subsection 24(1) of the *Public Service Act 1999* applied to the person's employment in the old Statutory Agency;

then the determination (as in force immediately before the commencement time and to the extent to which it relates to the transferred employee) has effect (and may be dealt with) after the commencement time, in relation to the transferred employee's employment in the Federal Court Statutory Agency, as if:

- (c) the determination had been made by the Federal Court CEO; and
- (d) the determination were applicable to the person's employment in the Federal Court Statutory Agency.

## **12 Terms and conditions of employment for new employees**

*Transferred agreement to cover new employees*

- (1) If:
- (a) a person (the ***new employee***) becomes an APS employee in the Federal Court Statutory Agency at a time (the ***employment time***) that is on or after the commencement time; and
  - (b) at the employment time the transferred agreement applies to a transferred employee;

then:

- (c) after the employment time, the transferred agreement covers the Federal Court CEO, on behalf of the Commonwealth, and the new employee in relation to the new employee's employment in the Federal Court Statutory Agency; and
- (d) if:

- (i) another enterprise agreement (the *new agreement*) comes into operation after the employment time; and
  - (ii) the new agreement is made by the Federal Court CEO on behalf of the Commonwealth; and
  - (iii) the new agreement covers the Federal Court CEO, on behalf of the Commonwealth, and the new employee in relation to the new employee's employment in the Federal Court Statutory Agency;
- then, when the new agreement comes into operation, the transferred agreement ceases to cover the new employee in relation to the new employee's employment in the Federal Court Statutory Agency.

Note: Even though the transferred agreement covers the new employee because of paragraph (1)(c), it might not apply to the new employee (for example, because another enterprise agreement applies to the new employee).

***Only one agreement to apply to new employees***

- (2) If, at the employment time, both the transferred agreement and the Federal Court agreement (see subitem (3)) cover the Federal Court CEO, on behalf of the Commonwealth, and the new employee in relation to the new employee's employment in the Federal Court Statutory Agency, then:
- (a) the Federal Court CEO may determine that one of those enterprise agreements applies to the new employee in relation to the new employee's employment in the Federal Court Statutory Agency; and
  - (b) if:
    - (i) another enterprise agreement (the *new agreement*) comes into operation after the employment time; and
    - (ii) the new agreement is made by the Federal Court CEO on behalf of the Commonwealth; and
    - (iii) the new agreement covers the Federal Court CEO, on behalf of the Commonwealth, and the new employee in relation to the new employee's employment in the Federal Court Statutory Agency;
- then, when the new agreement comes into operation, the enterprise agreement determined by the Federal Court CEO under paragraph (a) ceases to apply to the new employee in relation to the new employee's employment in the Federal Court Statutory Agency.

- (3) The ***Federal Court agreement*** is:
- (a) the enterprise agreement known as the *Federal Court of Australia Enterprise Agreement 2011—2014*; or
  - (b) if another enterprise agreement is prescribed by the rules—  
that agreement.

***Rules***

- (4) The rules may prescribe circumstances in which subitem (1) or (2) does not apply.

***Delegation***

- (5) The Federal Court CEO may, in writing, delegate the power conferred by paragraph (2)(a) to:
- (a) an SES employee in the Federal Court Statutory Agency; or
  - (b) an APS employee in the Federal Court Statutory Agency who holds or performs the duties of an Executive Level 2 position or an equivalent position.

***Determination is not a legislative instrument***

- (6) A determination made under paragraph (2)(a) is not a legislative instrument.

## Part 5—Transitional rules

### 13 Transitional rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
  - (a) required or permitted by this Schedule to be prescribed by the rules; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The rules may prescribe matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by this Act.
- (3) To avoid doubt, the rules may not do the following:
  - (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.
- (4) This Act (other than subitem (3)) does not limit the rules that may be made under subitem (1).
- (5) Despite subsection 12(2) of the *Legislative Instruments Act 2003*, a provision of the rules may be expressed to take effect from a day before the rules are registered under that Act (but not before the commencement time).
- (6) If Schedule 1 to the *Acts and Instruments (Framework Reform) Act 2015* commences before this item, then subsection 12(2) (retrospective application of legislative instruments) of the *Legislation Act 2003* (as amended by that Schedule) does not apply in relation to a provision of the rules that commences in the period that:
  - (a) starts at the commencement time; and

(b) ends before the rules are registered under the *Legislation Act 2003*.

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*[Minister's second reading speech made in—  
Senate on 2 December 2015  
House of Representatives on 2 March 2016]*

(231/15)

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