



Federal Magistrates Act 1999

No. 193, 1999

**An Act relating to Federal Magistrates, and for
other purposes**

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Federal Magistrates Act 1999

No. 193, 1999

An Act relating to Federal Magistrates, and for other purposes

[Assented to 23 December 1999]

The Parliament of Australia enacts:

Part 1—Introduction

1 Short title

This Act may be cited as the *Federal Magistrates Act 1999*.

2 Commencement

- (1) This Act commences on the day on which it receives the Royal Assent.

Section 3

- (2) Proceedings are not to be instituted in, or transferred to, the Federal Magistrates Court before the earlier of the following days:
 - (a) a day fixed by Proclamation as the day on which the Federal Magistrates Court is to commence to exercise its jurisdiction;
 - (b) the last day of the period of 6 months beginning on the day on which this Act receives the Royal Assent.

3 Objects

- (1) The main object of this Act is to create the Federal Magistrates Court under Chapter III of the Constitution.
- (2) The other objects of this Act are:
 - (a) to enable the Federal Magistrates Court to operate as informally as possible in the exercise of judicial power; and
 - (b) to enable the Federal Magistrates Court to use streamlined procedures; and
 - (c) to encourage the use of a range of appropriate dispute resolution processes.

4 Simplified outline

The following is a simplified outline of this Act:

- | |
|--|
| <ul style="list-style-type: none">• The Federal Magistrates Court is created as a federal court under Chapter III of the Constitution.• The Federal Magistrates Court may also be known as the Federal Magistrates Service.• The Federal Magistrates Court consists of a Chief Federal Magistrate and other Federal Magistrates.• Jurisdiction is conferred on the Federal Magistrates Court by other laws of the Commonwealth. |
| <ul style="list-style-type: none">• The Federal Magistrates Court is to promote the use of primary dispute resolution processes that are likely to assist people to resolve disputes away from the courts. |

- Proceedings in the Federal Magistrates Court may be transferred to the Federal Court or the Family Court.
- Provision is made for the practice and procedure of the Federal Magistrates Court. The Court will be able to use streamlined procedures and operate without undue formality.
- The Federal Magistrates Court is to administer its own affairs.
- There is to be a Chief Executive Officer, who is to assist the Federal Magistrates Court in managing its administrative affairs.
- In addition to the Chief Executive Officer, there are to be Registrars and other officers of the Federal Magistrates Court.
- Officers of the Federal Magistrates Court may hold dual appointments as officers of the Federal Court or the Family Court.
- Arrangements will be made for the Federal Magistrates Court to share facilities with other courts.

5 Definitions

In this Act, unless the contrary intention appears:

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

Australia, when used in a geographical sense, includes the external Territories.

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

Chief Executive Officer means the Chief Executive Officer of the Federal Magistrates Court.

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

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

family and child counsellor has the same meaning as in the *Family Law Act 1975*.

Family Court means the Family Court of Australia.

Family Law Act 1975 includes regulations under that Act.

family law or child support proceedings means proceedings under:

- (a) the *Family Law Act 1975*; or
- (b) the *Child Support (Assessment) Act 1989*; or
- (c) the *Child Support (Registration and Collection) Act 1988*.

Federal Court means the Federal Court of Australia.

Federal Magistrate:

- (a) means a Federal Magistrate (including the Chief Federal Magistrate) who holds office under this Act; and
- (b) when used in the expression ***the Federal Magistrates Court or a Federal Magistrate***, means a Federal Magistrate sitting in Chambers.

judgment means a judgment, decree or order, whether final or interlocutory, or a sentence, and includes a decree within the meaning of the *Family Law Act 1975*.

proceeding means a proceeding in a court, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding, and also includes an appeal.

Registrar means a Registrar of the Federal Magistrates Court.

Rules of Court means Rules of Court made under this Act.

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

welfare officer has the same meaning as in the *Family Law Act 1975*.

6 Crown to be bound

- (1) This Act binds the Crown in each of its capacities.
- (2) This Act does not make the Crown liable to be prosecuted for an offence.

7 External Territories

This Act extends to every external Territory.

Part 2—Federal Magistrates Court

8 Creation of Federal Magistrates Court

- (1) A federal court, to be known as the Federal Magistrates Court, is created by this Act.
- (2) The Federal Magistrates Court may also be known as:
 - (a) the Federal Magistrates Service; or
 - (b) the Federal Magistrates Court of Australia;or both.
- (3) The Federal Magistrates Court is a court of record and is a court of law and equity.
- (4) The Federal Magistrates Court consists of the following justices:
 - (a) a Chief Federal Magistrate;
 - (b) such other Federal Magistrates as from time to time hold office in accordance with this Act.

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

9 Personnel provisions relating to Federal Magistrates

Schedule 1 has effect.

Part 3—Jurisdiction of the Federal Magistrates Court

10 Jurisdiction

- (1) The Federal Magistrates Court has such original jurisdiction as is vested in it by laws made by the Parliament:
 - (a) by express provision; or
 - (b) by the application of section 15C of the *Acts Interpretation Act 1901* to a provision that, whether expressly or by implication, authorises a civil proceeding to be instituted in the Federal Magistrates Court in relation to a matter.
- (2) The original jurisdiction of the Federal Magistrates Court includes any jurisdiction vested in it to hear and determine appeals from decisions of persons, authorities or tribunals other than courts.
- (3) The process of the Federal Magistrates Court runs, and the judgments of the Federal Magistrates Court have effect and may be executed, throughout Australia.

11 Exercise of jurisdiction by single Federal Magistrate

- (1) For the purposes of the exercise of the jurisdiction of the Federal Magistrates Court, the Federal Magistrates Court is to be constituted by a single Federal Magistrate.
- (2) The Federal Magistrates Court constituted by a Federal Magistrate may sit and exercise the jurisdiction of the Federal Magistrates Court even if the Federal Magistrates Court constituted by another Federal Magistrate is at the same time sitting and exercising the jurisdiction of the Federal Magistrates Court.

12 Arrangement of business of the Federal Magistrates Court

- (1) The Chief Federal Magistrate is responsible for ensuring the orderly and expeditious discharge of the business of the Federal Magistrates Court.

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- (2) In discharging his or her responsibility under subsection (1), the Chief Federal Magistrate must promote the objects of this Act.
- (3) Subject to such consultation with the Federal Magistrates as is appropriate and practicable, the Chief Federal Magistrate may make arrangements as to the Federal Magistrate who is to constitute the Federal Magistrates Court in particular matters or classes of matters.
- (4) The Chief Federal Magistrate may, by written instrument, assign a particular Federal Magistrate to a particular location or registry.
- (5) An instrument under subsection (4) has no effect unless it is approved, in writing, by the Minister.
- (6) Subsection (4) does not prevent a Federal Magistrate from performing his or her duties at one or more other locations or registries on a temporary basis (whether on circuit or otherwise).
- (7) In addition to the powers and functions conferred on the Chief Federal Magistrate by this Act, the Chief Federal Magistrate has such other functions and powers in relation to the Federal Magistrates Court as are specified in the regulations.

13 Exercise of jurisdiction in open court and in Chambers

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

Note: See section 97 of the *Family Law Act 1975*.

Open court

- (2) The jurisdiction of the Federal Magistrates Court must be exercised in open court. However, this rule does not apply where, as authorised by this Act or another law of the Commonwealth, the jurisdiction of the Federal Magistrates Court is exercised by a Federal Magistrate sitting in Chambers.

Federal Magistrate sitting in Chambers

- (3) The jurisdiction of the Federal Magistrates Court may be exercised by a Federal Magistrate sitting in Chambers in:
 - (a) a proceeding on an application relating to the conduct of a proceeding; and
-

- (b) a proceeding on an application for orders or directions as to any matter which, by this Act or any other law of the Commonwealth, is made subject to the direction of a Federal Magistrate sitting in Chambers; and
 - (c) a proceeding on any other application authorised by the Rules of Court to be made to a Federal Magistrate sitting in Chambers.
- (4) The jurisdiction of the Federal Magistrates Court is to be exercised by a Federal Magistrate sitting in Chambers in a proceeding where:
- (a) under the Rules of Court, the Federal Magistrates Court is authorised to make a decision relating to the proceeding without an oral hearing; and
 - (b) the parties to the proceeding have consented to the Federal Magistrates Court making a decision in relation to the proceeding without an oral hearing.

Proceeding in Chambers may be adjourned into court

- (5) A Federal Magistrate may order a proceeding in Chambers to be adjourned into court.

Proceeding in open court may be adjourned into Chambers

- (6) The Federal Magistrates Court may order a proceeding in open court to be adjourned into Chambers if, apart from this subsection, the jurisdiction of the Federal Magistrates Court may be exercised by a Federal Magistrate sitting in Chambers in that proceeding.

Closed court etc.

- (7) The Federal Magistrates Court may order the exclusion of the public or of persons specified by the Federal Magistrates Court from a sitting of the Federal Magistrates Court if the Federal Magistrates Court is satisfied that the presence of the public or of those persons, as the case may be, would be:
- (a) contrary to the interests of justice; or
 - (b) prejudicial to the security of the Commonwealth.

Section 14

14 Determination of matter completely and finally

In every matter before the Federal Magistrates Court, the Federal Magistrates Court must grant, either:

- (a) absolutely; or
- (b) on such terms and conditions as the Federal Magistrates Court thinks just;

all remedies to which any of the parties appears to be entitled in respect of a legal or equitable claim properly brought forward by him or her in the matter, so that, as far as possible:

- (c) all matters in controversy between the parties may be completely and finally determined; and
- (d) all multiplicity of proceedings concerning any of those matters may be avoided.

15 Making of orders and issue of writs

The Federal Magistrates Court has power, in relation to matters in which it has jurisdiction, to:

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

16 Declarations of right

- (1) The Federal Magistrates Court may, in relation to a matter in which it has original jurisdiction, make binding declarations of right, whether or not any consequential relief is or could be claimed.
- (2) A proceeding is not open to objection on the ground that a declaratory order only is sought.

17 Contempt of court

- (1) The Federal Magistrates Court has the same power to punish contempts of its power and authority as is possessed by the High Court in respect of contempts of the High Court.
- (2) Subsection (1) has effect subject to any other Act.

- (3) The jurisdiction of the Federal Magistrates Court to punish a contempt of the Federal Magistrates Court committed in the face or hearing of the Federal Magistrates Court may be exercised by the Federal Magistrates Court as constituted at the time of the contempt.

Note: See also section 112AP of the *Family Law Act 1975*, which deals with family law or child support proceedings.

18 Jurisdiction in associated matters

To the extent that the Constitution permits, jurisdiction is conferred on the Federal Magistrates Court in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Federal Magistrates Court is invoked.

19 Proceedings not to be instituted in the Federal Magistrates Court if an associated matter is before the Federal Court or the Family Court

- (1) Proceedings must not be instituted in the Federal Magistrates Court in respect of a particular matter if proceedings in respect of an associated matter are pending in the Family Court or the Federal Court.
- (2) Subsection (1) does not apply to proceedings instituted in the Federal Magistrates Court under:
- (a) Division 13A of Part VII of the *Family Law Act 1975*; or
 - (b) Part XIII A of that Act.
- (3) If:
- (a) proceedings are instituted in the Federal Magistrates Court in contravention of subsection (1); and
 - (b) the proceedings are subsequently transferred to the Federal Court or the Family Court;
- the proceedings are taken to be as valid as they would have been if subsection (1) had not been enacted.

20 Appeals

- (1) An appeal must not be brought directly to the High Court from a judgment of the Federal Magistrates Court.

Section 20

- (2) Subsection (1) has effect despite anything in:
- (a) section 95 of the *Family Law Act 1975*; and
 - (b) section 104 of the *Child Support (Assessment) Act 1989*; and
 - (c) section 109 of the *Child Support (Registration and Collection) Act 1988*.

Note: For appeals from the Federal Magistrates Court, see:

- (a) section 94 of the *Family Law Act 1975*; and
 - (b) section 102A of the *Child Support (Assessment) Act 1989*; and
 - (c) section 107A of the *Child Support (Registration and Collection) Act 1988*; and
 - (d) section 24 of the *Federal Court of Australia Act 1976*.
- (3) If, apart from this subsection, subsection (1) is to any extent inconsistent with section 73 of the Constitution, this Act has effect as if the words “, except by special leave of the High Court” were added at the end of subsection (1).

Part 4—Primary dispute resolution

Division 1—General

21 Primary dispute resolution processes

In this Part:

primary dispute resolution processes means procedures and services for the resolution of disputes otherwise than by way of the exercise of the judicial power of the Commonwealth, and includes:

- (a) counselling; and
- (b) mediation; and
- (c) arbitration; and
- (d) neutral evaluation; and
- (e) case appraisal; and
- (f) conciliation.

22 Federal Magistrates Court to consider whether to advise people to use primary dispute resolution processes

The Federal Magistrates Court must consider whether or not to advise the parties to proceedings before it about the primary dispute resolution processes that could be used to resolve any matter in dispute.

23 Federal Magistrates Court to advise people to use primary dispute resolution processes

- (1) If the Federal Magistrates Court considers that a primary dispute resolution process may help the parties to a dispute before it to resolve that dispute, the Federal Magistrates Court must advise the parties to use that primary dispute resolution process.
- (2) If the Federal Magistrates Court does so advise the parties, it may, if it considers it desirable to do so, adjourn any proceedings before it to enable attendance in connection with the primary dispute resolution process.

Section 24

Note: See also Part III of the *Family Law Act 1975*, which deals with primary dispute resolution in family law and child support matters.

24 Duty of legal practitioners to consider whether to advise people to use primary dispute resolution processes

A legal practitioner acting in proceedings in the Federal Magistrates Court, or consulted by a person considering instituting such proceedings, must consider whether or not to advise:

- (a) the parties to the proceedings; or
- (b) the person considering instituting proceedings;

about the primary dispute resolution processes that could be used to resolve any matter in dispute.

25 Duty of officers of the Federal Magistrates Court to advise people about primary dispute resolution processes

- (1) A designated officer of the Federal Magistrates Court must, as far as practicable, on request by:

- (a) a party to proceedings in the Federal Magistrates Court; or
- (b) a person considering instituting proceedings in the Federal Magistrates Court;

advise the party or person about the primary dispute resolution processes that could be used to resolve any matter in dispute.

- (2) For the purposes of this section, a member of the staff of the Federal Magistrates Court is taken to be an officer of the Federal Magistrates Court.

- (3) For the purposes of this section, a *designated officer* of the Federal Magistrates Court is an officer of the Federal Magistrates Court specified in writing by the Chief Executive Officer for the purposes of this subsection.

26 Conciliation

- (1) The Federal Magistrates Court may, by order, refer proceedings in the Federal Magistrates Court, or any part of them or any matter arising out of them, for conciliation in accordance with the Rules of Court.

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

- (3) Referrals under subsection (1) to a conciliator may be made with or without the consent of the parties to the proceedings.

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

- (1) If the Federal Magistrates Court makes an order, or gives a direction, under this Act or any other law of the Commonwealth:
- (a) referring any or all of the matters in dispute in proceedings before it for a primary dispute resolution process (other than arbitration); or
 - (b) referring any proceedings before it, or any part of them or any matters arising out of them, for a primary dispute resolution process (other than arbitration); or
 - (c) requiring either or both of the parties to a proceeding before it to attend a primary dispute resolution process (other than arbitration);
- a party to the primary dispute resolution process may make an application to the Federal Magistrates Court for determination of a question of law arising out of the proceedings.
- (2) An application under subsection (1) must be accompanied by a statement that:
- (a) is signed by the person (the *eligible person*) conducting the primary dispute resolution process; and
 - (b) states that the eligible person consents to the making of the application; and
 - (c) states that the eligible person is of the opinion that the determination of the question of law by the Federal Magistrates Court is likely to assist the parties in reaching agreement about any or all of the matters in dispute in the proceedings.
- (3) If an application is made under subsection (1), the Federal Magistrates Court may determine the question of law.
- (4) If the Federal Magistrates Court determines a question of law under subsection (3), the determination is binding on the parties to the proceedings concerned.

Section 28

28 Rules of Court about primary dispute resolution processes

- (1) The Rules of Court may make provision for or in relation to primary dispute resolution processes carried out under an order made, or direction given, by the Federal Magistrates Court under this Act or another law of the Commonwealth.
- (2) In particular, Rules of Court made for the purposes of subsection (1) may make provision for or in relation to the procedure to be followed when any primary dispute resolution process ends.

29 Regulations about primary dispute resolution processes

- (1) The regulations may make provision for or in relation to primary dispute resolution processes carried out under an order made, or direction given, by the Federal Magistrates Court under this Act or another law of the Commonwealth.
- (2) In particular, regulations made for the purposes of subsection (1) may make provision for or in relation to:
 - (a) the procedures to be followed by a person conducting a primary dispute resolution process in carrying out that process; and
 - (b) the attendance by persons at:
 - (i) a primary dispute resolution process; or
 - (ii) a conference conducted for the purpose of carrying out a primary dispute resolution process; and
 - (c) the kinds of persons who are eligible to conduct particular kinds of primary dispute resolution processes.

30 Rules of Court about costs of primary dispute resolution processes

The Rules of Court may make provision for or in relation to the costs of primary dispute resolution processes and the assessment or taxation of those costs, where:

- (a) the primary dispute resolution process was carried out under an order made, or direction given, by the Federal Magistrates Court under this Act or another law of the Commonwealth; or
 - (b) the primary dispute resolution process was carried out for the purpose of settling a dispute about a matter with respect to
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which proceedings have been instituted in the Federal Magistrates Court.

31 Rules of Court about primary dispute resolution processes under the *Family Law Act 1975*

The Rules of Court may make provision for or in relation to the making of applications under the *Family Law Act 1975* for mediation or arbitration and for orders under section 19E of that Act.

32 Consent orders

- (1) If the parties to proceedings in the Federal Magistrates Court have reached agreement about a matter in dispute in the proceedings, the Federal Magistrates Court or a Federal Magistrate may, on application by the parties, make an order in the terms of the agreement.
- (2) This section has effect subject to the Rules of Court.

Division 2—Proceedings other than family law or child support proceedings

33 Scope of Division

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

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

34 Mediation

- (1) The Federal Magistrates Court may, by order, refer proceedings in the Federal Magistrates Court, or any part of them or any matter arising out of them, to a mediator for mediation in accordance with the Rules of Court.
- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) Referrals under subsection (1) to a mediator may be made with or without the consent of the parties to the proceedings.
- (4) Evidence of anything said, or of any admission made, at a conference conducted by a mediator in the course of mediating anything referred under subsection (1) is not admissible:
 - (a) in any court (whether exercising federal jurisdiction or not);
or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (5) A mediator has, in mediating anything referred under subsection (1), the same protection and immunity as a Federal Magistrate has in performing the functions of a Federal Magistrate.

35 Arbitration

- (1) The Federal Magistrates Court may, by order, refer proceedings in the Federal Magistrates Court, or any part of them or any matter arising out of them, to an arbitrator for arbitration in accordance with the Rules of Court.

- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) Referrals under subsection (1) to an arbitrator may be made only with the consent of the parties.
- (4) The Rules of Court may make provision for the registration of awards made in an arbitration carried out under an order made under subsection (1).
- (5) An arbitrator has, in arbitrating anything referred under subsection (1), the same protection and immunity as a Federal Magistrate has in performing the functions of a Federal Magistrate.

36 Power of arbitrator to refer question of law to the Federal Magistrates Court

- (1) If:
 - (a) any proceedings in the Federal Magistrates Court, or any part of them or any matter arising out of them, has been referred under subsection 35(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has not made an award in respect of the arbitration; and
 - (c) a party to the arbitration has requested the arbitrator to apply to the Federal Magistrates Court for leave to refer to the Federal Magistrates Court a question of law arising in the arbitration;the arbitrator may apply to the Federal Magistrates Court or a Federal Magistrate for leave to refer the question to the Federal Magistrates Court.
- (2) The Federal Magistrates Court or a Federal Magistrate must not grant leave unless satisfied that the determination of the question of law by the Federal Magistrates Court might result in substantial savings in costs to the parties to the arbitration.
- (3) If:
 - (a) the Federal Magistrates Court or a Federal Magistrate grants leave; and
 - (b) the arbitrator refers the question of law to the Federal Magistrates Court;the Federal Magistrates Court must determine the question of law.

Section 37

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

- (1) If:
 - (a) any proceedings in the Federal Magistrates Court, or any part of them or any matter arising out of them, has been referred under subsection 35(1) to an arbitrator for arbitration; and
 - (b) the arbitrator has made an award in respect of the arbitration; and
 - (c) the award has been registered with the Federal Magistrates Court under the Rules of Court;the following provisions have effect.
- (2) A party to the award may apply to the Federal Magistrates Court for a review, on a question of law, of the award.
- (3) On a review of an award on a question of law, the Federal Magistrates Court may:
 - (a) determine the question of law; and
 - (b) make such orders as it thinks appropriate, including:
 - (i) an order affirming the award; or
 - (ii) an order varying the award; or
 - (iii) an order setting aside the award and remitting the award to the arbitrator for reconsideration in accordance with the directions of the Federal Magistrates Court; or
 - (iv) an order setting aside the award and determining the matter to which the award related.
- (4) A party to the award may apply to the Federal Magistrates Court or a Federal Magistrate for an order that the costs payable by the party in respect of the arbitration be taxed in accordance with the Rules of Court.
- (5) The person who made the application is not liable to pay in respect of the costs of the arbitration an amount that is more than the amount of the costs as taxed under an order made under subsection (4).

38 Arbitration awards

- (1) The Federal Magistrates Court may, on application by a party to an award made in an arbitration (whether carried out under an order made under section 35 or otherwise) in relation to a matter in
-

which the Federal Magistrates Court has original jurisdiction, make an order in the terms of the award.

- (2) Subsection (1) does not apply to an award made in an arbitration carried out under an order made under subsection 35(1) unless the award has been registered with the Federal Magistrates Court under the Rules of Court.
- (3) An order so made is enforceable in the same manner as if it had been made in an action in the Federal Magistrates Court. This subsection has effect subject to subsection (4).
- (4) A writ of attachment must not be issued to enforce payment of money under an order made in accordance with this section.

Part 5—Transfer of proceedings to the Federal Court or the Family Court

39 Discretionary transfer of proceedings to the Federal Court or the Family Court

- (1) If a proceeding is pending in the Federal Magistrates Court, the Federal Magistrates Court may, by order, transfer the proceeding from the Federal Magistrates Court to the Federal Court or the Family Court.
- (2) The Federal Magistrates Court may transfer a proceeding under this section:
 - (a) on the application of a party to the proceeding; or
 - (b) on its own initiative.
- (3) In deciding whether to transfer a proceeding to the Federal Court under subsection (1), the Federal Magistrates Court must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 40(2); and
 - (b) whether proceedings in respect of an associated matter are pending in the Federal Court; and
 - (c) whether the resources of the Federal Magistrates Court are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.
- (4) In deciding whether to transfer a proceeding to the Family Court under subsection (1), the Federal Magistrates Court must have regard to:
 - (a) any Rules of Court made for the purposes of subsection 40(4); and
 - (b) whether proceedings in respect of an associated matter are pending in the Family Court; and
 - (c) whether the resources of the Federal Magistrates Court are sufficient to hear and determine the proceeding; and
 - (d) the interests of the administration of justice.

- (5) If an order is made under subsection (1), the Federal Magistrates Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Court or the Family Court, as the case requires.
- (6) An appeal does not lie from a decision of the Federal Magistrates Court in relation to the transfer of a proceeding under subsection (1).
- (7) A reference in subsection (1) to a proceeding pending in the Federal Magistrates Court includes a reference to a proceeding that was instituted in contravention of subsection 19(1).
- (8) This section does not apply to proceedings of a kind specified in the regulations.

40 Rules of Court about discretionary transfer of proceedings

- (1) The Rules of Court may make provision in relation to transfers of proceedings to the Federal Court under subsection 39(1).
- (2) In particular, the Rules of Court may set out factors that are to be taken into account by the Federal Magistrates Court in deciding whether to transfer a proceeding to the Federal Court under subsection 39(1).
- (3) The Rules of Court may make provision in relation to transfers of proceedings to the Family Court under subsection 39(1).
- (4) In particular, the Rules of Court may set out factors that are to be taken into account by the Federal Magistrates Court in deciding whether to transfer a proceeding to the Family Court under subsection 39(1).
- (5) In making Rules of Court for the purposes of this section, the Federal Magistrates, or a majority of them, must have regard to:
 - (a) whether particular matters could be more appropriately dealt with in the Federal Court or the Family Court; and
 - (b) whether the resources of the Federal Magistrates Court are sufficient to deal with particular matters; and
 - (c) the interests of the administration of justice; and
 - (d) anything else that the Federal Magistrates, or a majority of them, considers relevant.

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- (6) Before Rules of Court are made for the purposes of subsection (1) or (2), the Federal Magistrates Court must consult the Federal Court.
- (7) Before Rules of Court are made for the purposes of subsection (3) or (4), the Federal Magistrates Court must consult the Family Court.

41 Mandatory transfer of proceedings to the Federal Court or the Family Court

- (1) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Federal Magistrates Court, the Federal Magistrates Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Court.
- (2) If a proceeding of a kind specified in regulations made for the purposes of this subsection is pending in the Federal Magistrates Court, the Federal Magistrates Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Family Court.
- (3) If a proceeding is transferred under subsection (1), the Federal Magistrates Court may make such orders as it considers necessary pending the disposal of the proceeding by the Federal Court.
- (4) If a proceeding is transferred under subsection (2), the Federal Magistrates Court may make such orders as it considers necessary pending the disposal of the proceeding by the Family Court.
- (5) An appeal does not lie from a decision of the Federal Magistrates Court in relation to the transfer of a proceeding under subsection (1) or (2).
- (6) A reference in subsections (1) and (2) to a proceeding pending in the Federal Magistrates Court includes a reference to a proceeding that was instituted in contravention of subsection 19(1).
- (7) The Minister must cause a copy of regulations (*transfer regulations*) made for the purposes of subsection (1) or (2) to be tabled in each House of the Parliament.

- (8) Either House may, following a motion upon notice, pass a resolution disallowing the transfer regulations. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the transfer regulations was tabled in the House.
- (9) If neither House passes such a resolution, the transfer regulations take effect on the day immediately after the last day upon which such a resolution could have been passed.
- (10) Subsections (7), (8) and (9) have effect despite anything in:
 - (a) the *Acts Interpretation Act 1901*; or
 - (b) the *Legislative Instruments Act 1999*.

Part 6—Practice and procedure

Division 1—General

42 Federal Magistrates Court to operate informally

In proceedings before it, the Federal Magistrates Court must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted.

43 Practice and procedure

- (1) The practice and procedure of the Federal Magistrates Court is to be in accordance with Rules of Court made under this Act. However, this subsection is subject to any provision made by or under this or any other Act with respect to practice and procedure.

Note: Rules of Court are made under section 81.

- (2) In so far as the provisions applicable in accordance with subsection (1) are insufficient:

- (a) the Rules of Court made under the *Family Law Act 1975* apply, with necessary modifications, so far as they are capable of application and subject to any directions of the Federal Magistrates Court or a Federal Magistrate, to the practice and procedure of the Federal Magistrates Court in relation to the jurisdiction of the Federal Magistrates Court under:
- (i) the *Family Law Act 1975*; or
 - (ii) the *Child Support (Assessment) Act 1989*; or
 - (iii) the *Child Support (Registration and Collection) Act 1988*; and
- (b) the Rules of Court made under the *Federal Court of Australia Act 1976* apply, with necessary modifications, so far as they are capable of application and subject to any directions of the Federal Magistrates Court or a Federal Magistrate, to the practice and procedure of the Federal Magistrates Court in relation to the jurisdiction of the Federal Magistrates Court under laws of the Commonwealth other than:

- (i) the *Family Law Act 1975*; or
- (ii) the *Child Support (Assessment) Act 1989*; or
- (iii) the *Child Support (Registration and Collection) Act 1988*.

(3) In this section:

practice and procedure includes all matters in relation to which Rules of Court may be made under this Act.

44 Representation

A party to a proceeding before the Federal Magistrates Court is not entitled to be represented by another person unless:

- (a) under the *Judiciary Act 1903*, the other person is entitled to practise as a barrister or solicitor, or both, in a federal court; or
- (b) under the regulations, the other person is taken to be an authorised representative; or
- (c) another law of the Commonwealth authorises the other person to represent the party.

45 Interrogatories and discovery

- (1) Interrogatories and discovery are not allowed in relation to proceedings in the Federal Magistrates Court unless the Federal Magistrates Court or a Federal Magistrate declares that it is appropriate, in the interests of the administration of justice, to allow the interrogatories or discovery.
- (2) In deciding whether to make a declaration under subsection (1), the Federal Magistrates Court or a Federal Magistrate must have regard to:
 - (a) whether allowing the interrogatories or discovery would be likely to contribute to the fair and expeditious conduct of the proceedings; and
 - (b) such other matters (if any) as the Federal Magistrates Court or the Federal Magistrate considers relevant.

Division 2—Documents filed with the Federal Magistrates Court

46 Filing of documents in the Federal Magistrates Court

- (1) If a document is required or permitted to be filed in the Federal Magistrates Court:
 - (a) the document is to be filed:
 - (i) at a registry of the Federal Magistrates Court; or
 - (ii) in accordance with an arrangement under section 90 or 91; and
 - (b) the document is to be filed in accordance with the Rules of Court.
- (2) The Rules of Court may provide that the requirements of subsection (1) are taken to have been met in relation to a document:
 - (a) if the document, or its contents, is or are given to the Federal Magistrates Court, in accordance with specified software requirements, by way of a specified kind of electronic transmission; or
 - (b) in such other circumstances (if any) as are ascertained in accordance with the Rules of Court.

47 Seal of the Federal Magistrates Court

- (1) The Federal Magistrates Court is to have a seal, and the design of the seal is to be determined by the Minister.
- (2) The seal of the Federal Magistrates Court must be kept in such custody as the Chief Federal Magistrate directs.
- (3) The seal of the Federal Magistrates Court must be affixed to documents as provided by this or any other Act or by the Rules of Court.

48 Federal Magistrates Court stamps

- (1) There are to be one or more Federal Magistrates Court stamps. For this purpose, a *Federal Magistrates Court stamp* is a stamp the

design of which is, as nearly as practicable, the same as the design of the seal of the Federal Magistrates Court.

- (2) A document or a copy of a document marked with a Federal Magistrates Court stamp is as valid and effectual as if it had been sealed with a seal of the Federal Magistrates Court.
- (3) A Federal Magistrates Court stamp must be affixed to documents as provided by this or any other Act or by the Rules of Court.

49 Writs etc.

- (1) All writs, commissions and process issued from the Federal Magistrates Court must be:
 - (a) under the seal of the Federal Magistrates Court; and
 - (b) signed by a Federal Magistrate, a Registrar or an officer acting with the authority of the Chief Executive Officer.
- (2) Subsection (1) does not apply to writs, commissions and process signed and issued in accordance with an arrangement under section 90.

Note: See paragraph 90(1)(b).

- (3) To avoid doubt, subsection (1) does not apply to an order of the Federal Magistrates Court.

Note: For orders, see section 74.

50 Proceedings may be instituted by application

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

51 Limits on length of documents

- (1) The Federal Magistrates Court or a Federal Magistrate may give directions about limiting the length of documents required or permitted to be filed in the Federal Magistrates Court.
- (2) Subsection (1) has effect subject to the Rules of Court.

Division 3—Conduct of proceedings

52 Venue

- (1) The Federal Magistrates Court may sit at any place in Australia.
- (2) The Federal Magistrates Court or a Federal Magistrate may, at any stage of a proceeding in the Federal Magistrates Court, order that:
 - (a) the proceeding; or
 - (b) a part of the proceeding;be conducted or continued at a place specified in the order, subject to such conditions (if any) as the Federal Magistrates Court or Federal Magistrate imposes.

53 Determination of proceedings without a jury

A civil proceeding between parties in the Federal Magistrates Court is to be determined without a jury.

54 Decisions without oral hearing

The Rules of Court may authorise the Federal Magistrates Court or a Federal Magistrate to make decisions in proceedings without an oral hearing if the parties to the proceedings have consented to the making of such decisions without an oral hearing.

55 Limits on the length of oral argument

- (1) The Federal Magistrates Court or a Federal Magistrate may give directions about limiting the time for oral argument in proceedings before the Federal Magistrates Court.
- (2) Subsection (1) has effect subject to the Rules of Court.

56 Written submissions

- (1) The Federal Magistrates Court or a Federal Magistrate may give directions about the use of written submissions in proceedings before the Federal Magistrates Court.

- (2) The Federal Magistrates Court or a Federal Magistrate may give directions limiting the length of written submissions in proceedings before the Federal Magistrates Court.
- (3) Subsections (1) and (2) have effect subject to the Rules of Court.

57 Formal defects not to invalidate

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

Division 4—Evidence

58 Oaths and affirmations

- (1) A Federal Magistrate may require and administer all necessary oaths and affirmations for the purposes of the Federal Magistrates Court.
- (2) A Federal Magistrate may cause to be administered all necessary oaths and affirmations for the purposes of the Federal Magistrates Court. For this purpose, the Federal Magistrates Court may, either orally or in writing, authorise any person (whether in or outside Australia) to administer oaths and affirmations.
- (3) The Chief Executive Officer may, by written instrument, authorise:
 - (a) a Registrar; or
 - (b) a member of the staff of the Federal Magistrates Court;to administer oaths and affirmations for the purposes of the Federal Magistrates Court.

Note: See also paragraph 90(1)(d).

59 Swearing of affidavits etc.

- (1) An affidavit to be used in a proceeding in the Federal Magistrates Court may be sworn or affirmed within Australia before:
 - (a) a Federal Magistrate; or
 - (b) a Registrar; or
 - (c) a justice of the peace; or
 - (d) a commissioner for affidavits; or
 - (e) a commissioner for declarations; or
 - (f) a person who is authorised to administer oaths or affirmations for the purposes of:
 - (i) the Federal Magistrates Court; or
 - (ii) the High Court; or
 - (iii) the Federal Court; or
 - (iv) the Family Court; or
 - (v) the Supreme Court of a State or Territory; or

- (g) a person before whom affidavits can be sworn or affirmed under the *Evidence Act 1995*.
- (2) An affidavit to be used in a proceeding in the Federal Magistrates Court may be sworn or affirmed at a place outside Australia before:
- (a) a commissioner of the High Court who is authorised to administer oaths or affirmations in that place for the purposes of the High Court; or
 - (b) a commissioner of the Supreme Court of a State or Territory for taking affidavits who is empowered and authorised to act in that place; or
 - (c) an Australian Diplomatic Officer or an Australian Consular Officer, as defined by the *Consular Fees Act 1955*, who is exercising his or her function in that place; or
 - (d) an employee of the Commonwealth who is:
 - (i) authorised under paragraph 3(c) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place; or
 - (e) an employee of the Australian Trade Commission who is:
 - (i) authorised under paragraph 3(d) of the *Consular Fees Act 1955*; and
 - (ii) exercising his or her function in that place; or
 - (f) a notary public who is exercising his or her function in that place; or
 - (g) a person who is:
 - (i) qualified to administer an oath or affirmation in that place; and
 - (ii) certified by the person mentioned in any of paragraphs (b), (c), (d), (e) and (f), or by the superior court of that place, to be so qualified.
- (3) An affidavit sworn or affirmed outside Australia otherwise than before a person referred to in subsection (2) may be used in a proceeding in the Federal Magistrates Court in circumstances provided by the Rules of Court.

Note: See also paragraph 90(1)(d).

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60 Orders and commissions for examination of witnesses

The Federal Magistrates Court or a Federal Magistrate may, for the purposes of any proceeding before it or him or her:

- (a) order the examination of a person upon oath or affirmation before the Federal Magistrates Court, a Federal Magistrate, an officer of the Federal Magistrates Court or other person, at any place within Australia; or
- (b) order that a commission issue to a person, either within or beyond Australia, authorising him or her to take the testimony on oath or affirmation of a person;

and the Federal Magistrates Court or a Federal Magistrate may:

- (c) by the same or a subsequent order, give any necessary directions concerning the time, place and manner of the examination; and
- (d) empower any party to the proceeding to give in evidence in the proceeding the testimony so taken on such terms (if any) as the Federal Magistrates Court or Federal Magistrate directs.

61 Prohibition of publication of evidence etc.

The Federal Magistrates Court may, at any time during or after the hearing of a proceeding in the Federal Magistrates Court, make such order forbidding or restricting:

- (a) the publication of particular evidence; or
- (b) the publication of the name of a party or witness; or
- (c) the publication of information that is likely to enable the identification of a party or witness; or
- (d) access to documents obtained through discovery; or
- (e) access to documents produced under a subpoena;

as appears to the Federal Magistrates Court to be necessary in order to prevent prejudice to:

- (f) the administration of justice; or
- (g) the security of the Commonwealth.

Note: See also section 121 of the *Family Law Act 1975* in relation to family law or child support proceedings.

62 Time limits on giving of testimony

- (1) The Federal Magistrates Court or a Federal Magistrate may give directions about limiting the time for the giving of testimony in proceedings before the Federal Magistrates Court.
- (2) Subsection (1) has effect subject to the Rules of Court.

63 Federal Magistrates Court may question witnesses

- (1) The Federal Magistrates Court may:
 - (a) put a question to a person giving testimony in a proceeding if, in the opinion of the Federal Magistrates Court, the question is likely to assist in:
 - (i) the resolution of a matter in dispute in the proceeding;
or
 - (ii) the expeditious and efficient conduct of the proceeding;
and
 - (b) require the person to answer the question.
- (2) Subsection (1) has effect subject to the Rules of Court.
- (3) This section has effect in addition to, and not instead of, any other powers that the Federal Magistrates Court may have to ask questions.

64 Evidence may be given orally or by affidavit

- (1) Testimony in a proceeding in the Federal Magistrates Court is to be given orally or by affidavit.
- (2) However, the Federal Magistrates Court or a Federal Magistrate may:
 - (a) direct that particular testimony is to be given orally; or
 - (b) direct that particular testimony is to be given by affidavit.
- (3) Subsections (1) and (2) have effect subject to:
 - (a) any other provision of this Act; and
 - (b) the Rules of Court; and
 - (c) any other law of the Commonwealth.

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Cross-examination of person who makes an affidavit

- (4) If:
- (a) a person makes an affidavit; and
 - (b) a party to a proceeding in the Federal Magistrates Court adduces, or proposes to adduce, evidence by the affidavit;
- a party to the proceeding may request the person to appear as a witness to be cross-examined with respect to the matters in the affidavit.
- (5) Subsection (4) has effect subject to the Rules of Court.
- (6) If:
- (a) a request under subsection (4) is given to a person who has made an affidavit; and
 - (b) the person does not appear as a witness to be cross-examined with respect to the matters in the affidavit;
- the Federal Magistrates Court is to give the matters in the affidavit such weight as the Federal Magistrates Court thinks fit in the circumstances.

65 Offences by witness

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

Penalty: Imprisonment for 6 months.

- (2) A person is guilty of an offence if the person, while appearing as a witness before the Federal Magistrates Court:
- (a) refuses or fails to be sworn or to make an affirmation; or
 - (b) refuses or fails to answer a question that he or she is required by the Federal Magistrates Court to answer; or

- (c) refuses or fails to produce a document that he or she is required by the Federal Magistrates Court or by a subpoena or summons issued from the Federal Magistrates Court to produce.

Penalty: Imprisonment for 6 months.

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

Note: See also Division 13A of Part VII, and Part XIII A, of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (4) Chapter 2 of the *Criminal Code* applies to all offences against this section.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Division 5—Use of video links or audio links

66 Testimony by video link or audio link

- (1) The Federal Magistrates Court or a Federal Magistrate may, for the purposes of any proceeding, direct or allow testimony to be given by video link or audio link.

Note: See also section 69.

- (2) The testimony must be given on oath or affirmation unless:
- (a) the person giving the testimony is in a foreign country; and
 - (b) either:
 - (i) the law in force in that country does not permit the person to give testimony on oath or affirmation for the purposes of the proceeding; or
 - (ii) the law in force in that country would make it inconvenient for the person to give testimony on oath or affirmation for the purposes of the proceeding; and
 - (c) the Federal Magistrates Court or a Federal Magistrate is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.
- (3) If the testimony is given otherwise than on oath or affirmation, the Federal Magistrates Court or the Federal Magistrate is to give the testimony such weight as the Federal Magistrates Court or the Federal Magistrate thinks fit in the circumstances.
- (4) The power conferred on the Federal Magistrates Court or a Federal Magistrate by subsection (1) may be exercised:
- (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Magistrates Court's own initiative or on the Federal Magistrate's own initiative, as the case may be.
- (5) This section applies whether the person giving testimony is in or outside Australia, but does not apply if the person giving testimony is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

67 Appearance of persons by video link or audio link

- (1) The Federal Magistrates Court or a Federal Magistrate may, for the purposes of any proceeding, direct or allow a person to appear before the Federal Magistrates Court or the Federal Magistrate by way of video link or audio link.

Note: See also section 69.

- (2) The power conferred on the Federal Magistrates Court or a Federal Magistrate by subsection (1) may be exercised:
 - (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Magistrates Court's own initiative or on the Federal Magistrate's own initiative, as the case may be.
- (3) This section applies whether the person appearing is in or outside Australia, but does not apply if the person appearing is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

68 Making of submissions by video link or audio link

- (1) The Federal Magistrates Court or a Federal Magistrate may, for the purposes of any proceeding, direct or allow a person to make a submission to the Federal Magistrates Court or the Federal Magistrate by way of video link or audio link.

Note: See also section 69.

- (2) The power conferred on the Federal Magistrates Court or a Federal Magistrate by subsection (1) may be exercised:
 - (a) on the application of a party to the proceedings concerned; or
 - (b) on the Federal Magistrates Court's own initiative or on the Federal Magistrate's own initiative, as the case may be.
- (3) This section applies whether the person making the submission is in or outside Australia, but does not apply if the person making the submission is in New Zealand.

Note: See the *Evidence and Procedure (New Zealand) Act 1994*.

69 Conditions for use of video links and audio links

Video link

- (1) The Federal Magistrates Court or a Federal Magistrate must not exercise the power conferred by subsection 66(1), 67(1) or 68(1) in relation to a video link unless the Federal Magistrates Court or the Federal Magistrate is satisfied that the following conditions are met in relation to the video link:
 - (a) the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting is equipped with facilities (for example, television monitors) that enable all eligible persons present in that courtroom or place to see and hear the person (the *remote person*) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;as the case may be, by way of the video link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, television monitors) that enable all eligible persons present in that place to see and hear each eligible person who is present in the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting;
 - (c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the video link;
 - (d) such other conditions (if any) as are imposed by the Federal Magistrates Court or the Federal Magistrate.
- (2) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (1)(c) include conditions relating to:
 - (a) the form of the video link; and
 - (b) the equipment, or class of equipment, used to establish the link; and
 - (c) the layout of cameras; and
 - (d) the standard of transmission; and
 - (e) the speed of transmission; and
 - (f) the quality of communication.

Audio link

- (3) The Federal Magistrates Court or a Federal Magistrate must not exercise the power conferred by subsection 66(1), 67(1) or 68(1) in relation to an audio link unless the Federal Magistrates Court or the Federal Magistrate is satisfied that the following conditions are met in relation to the audio link:
- (a) the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that courtroom or place to hear the person (the **remote person**) who is:
 - (i) giving the testimony; or
 - (ii) appearing; or
 - (iii) making the submission;as the case may be, by way of the audio link;
 - (b) the place at which the remote person is located is equipped with facilities (for example, loudspeakers) that enable all eligible persons present in that place to hear each eligible person who is present in the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting;
 - (c) such other conditions (if any) as are prescribed by the Rules of Court in relation to the audio link;
 - (d) such other conditions (if any) as are imposed by the Federal Magistrates Court or the Federal Magistrate.
- (4) The conditions that may be prescribed by the Rules of Court in accordance with paragraph (3)(c) include conditions relating to:
- (a) the form of the audio link; and
 - (b) the equipment, or class of equipment, used to establish the audio link; and
 - (c) the standard of transmission; and
 - (d) the speed of transmission; and
 - (e) the quality of communication.

Eligible persons

- (5) For the purposes of the application of this section to a particular proceeding, **eligible persons** are such persons as the Federal

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Magistrates Court or a Federal Magistrate considers should be treated as eligible persons for the purposes of that proceeding.

70 Putting documents to a person by video link or audio link

If, in the course of an examination or appearance of a person by video link or audio link in accordance with this Division, it is necessary to put a document to the person, the Federal Magistrates Court or a Federal Magistrate may direct or allow the document to be put to the person:

- (a) if the document is physically present in the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting:
 - (i) by causing a copy of the document to be transmitted to the place where the person is located; and
 - (ii) by causing the transmitted copy to be put to the person; or
- (b) if the document is physically present in the place where the person is located:
 - (i) by causing the document to be put to the person; and
 - (ii) by causing a copy of the document to be transmitted to the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting.

71 Administration of oaths and affirmations

An oath to be sworn, or an affirmation to be made, by a person (the *remote person*) who is to give testimony by video link or audio link in accordance with this Division may be administered:

- (a) by means of the video link or audio link, as the case may be, in a way that, as nearly as practicable, corresponds to the way in which the oath or affirmation would be administered if the remote person were to give testimony in the courtroom or other place where the Federal Magistrates Court or the Federal Magistrate is sitting; or
- (b) if the Federal Magistrates Court or the Federal Magistrate allows another person who is present at the place where the remote person is located to administer the oath or affirmation—by that other person.

72 Expenses

- (1) The Federal Magistrates Court or a Federal Magistrate may make such orders as the Federal Magistrates Court or the Federal Magistrate thinks just for the payment of expenses incurred in connection with:
 - (a) the giving of testimony by video link or audio link in accordance with this Division; or
 - (b) the appearance of a person by video link or audio link in accordance with this Division; or
 - (c) the making of submissions by video link or audio link in accordance with this Division.
- (2) Subsection (1) has effect subject to the regulations.

73 New Zealand proceedings

This Division does not affect the operation of the *Evidence and Procedure (New Zealand) Act 1994*.

Division 6—Orders and judgments

74 Orders

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

75 Reserved judgments etc.

- (1) If:
 - (a) the Federal Magistrates Court reserves judgment in a proceeding; and
 - (b) the Federal Magistrate who heard the proceeding subsequently prepares orders and reasons, but is not available to publish those orders and reasons;those orders and reasons may be made public by another Federal Magistrate on behalf of the Federal Magistrate who heard the proceeding.
- (2) If:
 - (a) the Federal Magistrates Court reserves reasons for its decision in a proceeding; and
 - (b) the Federal Magistrate who heard the proceeding has prepared reasons, but is not available to publish those reasons;those reasons may be made public by another Federal Magistrate on behalf of the Federal Magistrate who heard the proceeding.

76 Interest up to judgment

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

Note: See section 117B of the *Family Law Act 1975* in relation to family law or child support proceedings.

Application for interest order

- (2) A party to proceedings that are:
- (a) in the Federal Magistrates Court; and
 - (b) for the recovery of any money (including any debt or damages or the value of any goods) in respect of a particular cause of action;
- may apply to the Federal Magistrates Court or a Federal Magistrate for an order under subsection (3).

Interest order

- (3) If:
- (a) an application is made under subsection (2); and
 - (b) the Federal Magistrates Court or the Federal Magistrate is not satisfied that good cause has been shown for not making an order under this subsection;
- the Federal Magistrates Court or the Federal Magistrate must either:
- (c) order that there be included in the sum for which judgment is given interest at such rate as the Federal Magistrates Court or the Federal Magistrate thinks fit on the whole or any part of the money for the whole or any part of the period between:
 - (i) the date when the cause of action arose; and
 - (ii) the date as of which judgment is entered; or
 - (d) without proceeding to calculate interest in accordance with paragraph (c), order that there be included in the sum for which judgment is given a lump sum in lieu of any such interest.

Exceptions

- (4) Subsection (3) does not:
- (a) authorise the giving of interest upon interest or of a sum in lieu of such interest; or
 - (b) apply in relation to any debt upon which interest is payable as of right, whether by virtue of an agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange; or

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- (d) limit the operation of any enactment or rule of law which, apart from this section, provides for the award of interest; or
 - (e) authorise the giving of interest, or a sum in lieu of interest, otherwise than by consent, upon any sum for which judgment is given by consent.
- (5) If:
- (a) the sum for which judgment is given (the *relevant sum*) includes; or
 - (b) the Federal Magistrates Court in its absolute discretion, or a Federal Magistrate in that Federal Magistrate's absolute discretion, determines that the relevant sum includes;
any amount for:
 - (c) compensation in respect of liabilities incurred which do not carry interest as against the person claiming interest or claiming a sum in lieu of interest; or
 - (d) compensation for loss or damage to be incurred or suffered after the date on which judgment is given; or
 - (e) exemplary or punitive damages;interest, or a sum in lieu of interest, must not be given under subsection (3) in respect of:
 - (f) any such amount; or
 - (g) so much of the relevant sum as, in the opinion of the Federal Magistrates Court or the Federal Magistrate, represents any such amount.
- (6) Subsection (5) does not preclude:
- (a) interest; or
 - (b) a sum in lieu of interest;
- being given, under this section, upon compensation in respect of a liability of the kind referred to in paragraph (5)(c), where that liability has been met by the applicant, as from the date upon which that liability was so met.

77 Interest on judgment

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

Note: See section 117B of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) A judgment debt under a judgment of the Federal Magistrates Court carries interest from the date as of which the judgment is entered.
- (3) Interest is payable:
 - (a) at such rate as is fixed by the Rules of Court; or
 - (b) if the Federal Magistrates Court, in a particular case, thinks that justice so requires—at such lower rate as the Federal Magistrates Court determines.

78 Enforcement of judgment

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

Note: See Division 13A of Part VII, and Part XIII, of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) A person in whose favour a judgment of the Federal Magistrates Court is given is entitled to the same remedies for enforcement of the judgment in a State or Territory, by execution or otherwise, as are allowed in like cases by the laws of that State or Territory to persons in whose favour a judgment of the Supreme Court of that State or Territory is given.
- (3) Subsection (2) has effect subject to the Rules of Court.
- (4) This section does not affect the operation of any provision made by or under any other Act, or by the Rules of Court, for the execution and enforcement of judgments of the Federal Magistrates Court.

Division 7—Costs

79 Costs

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

Note: See section 117 of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) The Federal Magistrates Court or a Federal Magistrate has jurisdiction to award costs in all proceedings before the Federal Magistrates Court (including proceedings dismissed for want of jurisdiction) other than proceedings in respect of which any other Act provides that costs must not be awarded.
- (3) Except as provided by the Rules of Court or any other Act, the award of costs is in the discretion of the Federal Magistrates Court or Federal Magistrate.

80 Security for costs

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

Note: See section 117 of the *Family Law Act 1975* in relation to family law or child support proceedings.

- (2) The Federal Magistrates Court or a Federal Magistrate may order an applicant in a proceeding in the Federal Magistrates Court to give security for the payment of costs that may be awarded against him or her.
- (3) The security is to be of such amount, and given at such time and in such manner and form, as the Federal Magistrates Court or Federal Magistrate directs.
- (4) The Federal Magistrates Court or a Federal Magistrate may:
- (a) reduce or increase the amount of security ordered to be given; and
 - (b) vary the time at which, or manner or form in which, the security is to be given.

- (5) If security, or further security, is not given in accordance with an order under this section, the Federal Magistrates Court or a Federal Magistrate may order that the proceeding be:
- (a) dismissed; or
 - (b) stayed until security or further security is given in accordance with the first-mentioned order.
- (6) This section does not affect the operation of any provision made by or under any other Act or by the Rules of Court for or in relation to the giving of security.

Division 8—Rules of Court

81 Rules of Court

- (1) The Federal Magistrates, or a majority of them, may make Rules of Court:
 - (a) making provision for or in relation to the practice and procedure to be followed in the Federal Magistrates Court (including the practice and procedure to be followed in registries of the Federal Magistrates Court); or
 - (b) making provision for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Federal Magistrates Court; or
 - (c) prescribing matters required or permitted by:
 - (i) any other provision of this Act; or
 - (ii) any other law of the Commonwealth;to be prescribed by the Rules of Court.
- (2) Rules of Court have effect subject to any provision made by another Act, or by rules or regulations under another Act, with respect to the practice and procedure in particular matters.
- (3) Rules of Court are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

82 Documents

- (1) The Rules of Court may make provision for or in relation to:
 - (a) pleading; and
 - (b) appearance under protest; and
 - (c) interrogatories; and
 - (d) discovery, production and inspection of documents; and
 - (e) the making of applications for dissolution of marriage jointly by both parties to the marriage; and
 - (f) the forms to be used for the purposes of proceedings in the Federal Magistrates Court.
 - (2) The Rules of Court may make provision for:
-

- (a) the amendment of a document in a proceeding; or
 - (b) leave to amend a document in a proceeding;
- even if the effect of the amendment would be to allow a person to seek a remedy in respect of a legal or equitable claim that would have been barred because of the expiry of a period of limitation if the remedy had originally been sought at the time of the amendment.

83 Service

The Rules of Court may make provision for or in relation to:

- (a) the service and execution of the process of the Federal Magistrates Court, including:
 - (i) the manner in which and the extent to which the process of the Federal Magistrates Court, or notice of any such process, may be served out of the jurisdiction of the Federal Magistrates Court; and
 - (ii) dispensing with service; and
- (b) the issue by the Federal Magistrates Court of letters of request for the service in another country of any process of the Federal Magistrates Court; and
- (c) the service by officers of the Federal Magistrates Court, in Australia, of the process of a court of another country or of a part of another country, in accordance with:
 - (i) a request of that court or of an authority of that country or of that part of that country; or
 - (ii) an arrangement in force between Australia and the government of that other country or of that part of that other country.

84 Evidence

The Rules of Court may make provision for or in relation to:

- (a) subpoenas; and
- (b) summonses; and
- (c) the attendance of witnesses; and
- (d) the administration of oaths and affirmations; and
- (e) the means by which particular facts may be proved and the mode in which evidence of particular facts may be given; and

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- (f) the reception from New Zealand of copies of documents reproduced by facsimile telegraphy; and
- (g) the reception from New Zealand of evidence or submissions by video link or audio link; and
- (h) issuing subpoenas for service in New Zealand and the service of such subpoenas; and
- (i) the form to accompany a subpoena for service in New Zealand.

85 Orders and judgments

The Rules of Court may make provision for or in relation to:

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

86 Costs

The Rules of Court may make provision for or in relation to:

- (a) the giving of security; and
- (b) the costs of proceedings in the Federal Magistrates Court; and
- (c) the fees to be charged by practitioners practising in the Federal Magistrates Court for the work done by them in relation to proceedings in the Federal Magistrates Court and the taxation of their bills of costs, either as between party and party or as between solicitor and client; and
- (d) the kinds of proceedings or circumstances in which each party is required to bear his or her own costs.

87 General

- (1) The Rules of Court may make provision for or in relation to:
- (a) trial management; and
 - (b) the custody of convicted persons; and
 - (c) the prevention or termination of vexatious proceedings; and
 - (d) the summary disposal of proceedings; and
 - (e) authorising the Federal Magistrates Court to refer to an officer of the court, for:
 - (i) investigation; and
 - (ii) report; and
 - (iii) recommendation;claims or applications for, or relating to, any matters before the Federal Magistrates Court; and
 - (f) authorising an officer making an investigation referred to in paragraph (e) to:
 - (i) take evidence on oath or affirmation; and
 - (ii) obtain and receive in evidence a report from a family and child counsellor or welfare officer;and enabling the summoning of witnesses before an officer making such an investigation for the purpose of giving evidence or producing documents; and
 - (g) the procedure of the Federal Magistrates Court on receiving a report of an officer who has made an investigation referred to in paragraph (e); and
 - (h) the appointment, by the Minister, of a guardian *ad litem* for a party in proceedings; and
 - (i) both:
 - (i) the forfeiture of recognisances; and
 - (ii) the recovery of any money that may be due to the Commonwealth under such recognisances or from any person who has become a surety; and
 - (j) the attachment of money payable by:
 - (i) the Commonwealth, a State, a Territory or the Administration of a Territory; or
 - (ii) an authority of the Commonwealth, of a State or of a Territory;

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(other than money as to which it is provided by any law of the Commonwealth, of a State or of a Territory that the money is not liable to attachment); and

- (k) the death of parties; and
 - (l) the duties of officers of the Federal Magistrates Court.
- (2) The Rules of Court may make provision for or in relation to:
- (a) the attendance, by parties to family law or child support proceedings, at conferences conducted by family and child counsellors or welfare officers; and
 - (b) the use by:
 - (i) the Federal Magistrates Court exercising jurisdiction under the *Family Law Act 1975*, the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988*; and
 - (ii) officers of the Federal Magistrates Court for the purposes of such proceedings;of reports that:
 - (iii) are prepared by family and child counsellors or welfare officers in relation to conferences attended by parties to the proceedings in accordance with Rules of Court made under paragraph (a); and
 - (iv) relate to the future conduct of the proceedings.

88 Incidental matters

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

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

Part 7—Management of the Federal Magistrates Court

Division 1—Administration of the Federal Magistrates Court

89 Management of administrative affairs of the Federal Magistrates Court

- (1) The Federal Magistrates Court is to administer its own affairs subject to, and in accordance with, this Act.
- (2) Subsection (1) has effect subject to:
 - (a) section 12 (which deals with the Chief Federal Magistrate’s responsibilities in relation to the arrangement of the business of the Federal Magistrates Court); and
 - (b) section 47 (which deals with the Chief Federal Magistrate’s responsibilities in relation to the seal of the Federal Magistrates Court); and
 - (c) sections 90, 91 and 92 (which deal with the Chief Federal Magistrate’s responsibilities in relation to arrangements with other courts and agencies); and
 - (d) section 117 (which deals with the Chief Federal Magistrate’s responsibilities in relation to annual reports); and
 - (e) Schedule 2 (which deals with the Chief Federal Magistrate’s responsibilities in relation to the Chief Executive Officer).
- (3) The Federal Magistrates Court has power to do all things that are necessary or convenient to be done for or in connection with the administration of its affairs, including, on behalf of the Commonwealth:
 - (a) entering into contracts; and
 - (b) acquiring or disposing of real and personal property.
- (4) The Federal Magistrates Court must not enter into a contract under which the Commonwealth is to pay or receive an amount exceeding:
 - (a) \$1 million; or

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- (b) if a higher amount is prescribed—that higher amount; except with the approval of the Minister.

90 Arrangements with other courts

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

91 Arrangements with agencies or organisations

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

92 Arrangements for sharing courtrooms and other facilities

The Chief Federal Magistrate may, on behalf of the Federal Magistrates Court, make arrangements with the chief judicial officer (however described) of another Australian court for:

- (a) the Federal Magistrates Court to sit in rooms of the other court; and
- (b) the Federal Magistrates Court to share registry facilities and other facilities with the other court.

93 Advisory committees

The Federal Magistrates Court may appoint committees consisting of Federal Magistrates, or of Federal Magistrates and other

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persons, for the purpose of advising the Federal Magistrates Court in relation to:

- (a) the exercise of the powers of the Federal Magistrates Court under this Act; or
- (b) the making of the Rules of Court.

Division 2—Chief Executive Officer

94 Chief Executive Officer

There is to be a Chief Executive Officer of the Federal Magistrates Court.

95 Personnel provisions relating to the Chief Executive Officer

Schedule 2 has effect.

96 Functions of the Chief Executive Officer

- (1) In the management of its administrative affairs, the Federal Magistrates Court is assisted by the Chief Executive Officer.
- (2) The Chief Executive Officer has the power to do all things necessary or convenient to be done for the purpose of assisting the Federal Magistrates Court under subsection (1).
- (3) In particular, the Chief Executive Officer may act on behalf of the Federal Magistrates Court in relation to the administrative affairs of the Federal Magistrates Court.
- (4) The Federal Magistrates Court may give the Chief Executive Officer directions relating to the exercise of his or her powers under this Act.

97 Staff powers

- (1) In relation to the branch of the Australian Public Service consisting of the officers of the Federal Magistrates Court and the staff of the Federal Magistrates Court, the Chief Executive Officer has the same powers:
 - (a) as if that branch were a Department of the Australian Public Service; and
 - (b) the Chief Executive Officer were the Secretary of that Department.

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- (2) Subsection (1) does not apply to an officer of the Federal Magistrates Court, or a member of the staff of the Federal Magistrates Court, who is also:
 - (a) an officer of the Federal Court or the Family Court; or
 - (b) a member of the staff of the Federal Court or the Family Court.

Division 3—Registries

98 Registries

The Minister must cause to be established such Registries of the Federal Magistrates Court as the Minister thinks fit.

Division 4—Other officers and staff

99 Officers of the Federal Magistrates Court

- (1) In addition to the Chief Executive Officer, there are to be the following officers of the Federal Magistrates Court:
 - (a) such Registrars as are necessary;
 - (b) the Sheriff of the Federal Magistrates Court;
 - (c) such Deputy Sheriffs as are necessary;
 - (d) the Marshal of the Federal Magistrates Court;
 - (e) such Deputy Marshals as are necessary.
- (2) A person may be an officer of both the Federal Magistrates Court and the Federal Court.
- (3) Subsection (2) has effect despite anything in this Act or the *Federal Court of Australia Act 1976*.
- (4) A person may be an officer of both the Federal Magistrates Court and the Family Court.
- (5) Subsection (4) has effect despite anything in this Act or the *Family Law Act 1975*.
- (6) The officers of the Federal Magistrates Court, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by this Act or the Rules of Court or by the Federal Magistrates Court.
- (7) The officers of the Federal Magistrates Court are to be appointed by the Chief Executive Officer.

100 Arrangements relating to Commonwealth staff

The Chief Executive Officer may, on behalf of the Federal Magistrates Court, arrange with:

- (a) the Secretary of a Department of the Australian Public Service; or
- (b) an authority of the Commonwealth;

for the services of officers or employees of the Department or authority to be made available for the purposes of the Federal Magistrates Court.

101 Registrars

The Registrars of the Federal Magistrates Court are to be persons appointed or employed under the *Public Service Act 1922*.

102 Registrars' powers

- (1) The object of this section is to allow certain powers of the Federal Magistrates Court to be exercised by a Registrar.
- (2) The following powers of the Federal Magistrates Court may, if the Federal Magistrates Court or a Federal Magistrate so directs, be exercised by a Registrar:
 - (a) the power to dispense with the service of any process of the Federal Magistrates Court;
 - (b) the power to make orders in relation to substituted service;
 - (c) the power to make orders in relation to discovery, inspection and production of documents in the possession, power or custody of a party to proceedings in the Federal Magistrates Court or of any other person;
 - (d) the power to make orders in relation to interrogatories;
 - (e) the power, in proceedings in the Federal Magistrates Court, to make an order adjourning the hearing of the proceedings;
 - (f) the power to make an order as to costs;
 - (g) the power to make an order about security for costs;
 - (h) the power to make an order exempting a party to proceedings in the Federal Magistrates Court from compliance with a provision of the Rules of Court;
 - (i) a power of the Federal Magistrates Court prescribed by the Rules of Court;
 - (j) the power, in family law or child support proceedings, to direct a party to the proceedings to answer particular questions;
 - (k) the power to direct the parties to family law or child support proceedings to attend conferences conducted by family and child counsellors or welfare officers;

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- (l) the power, in family law or child support proceedings, to make:
 - (i) an order under section 66Q, 67E or 77 of the *Family Law Act 1975*; or
 - (ii) an order for the payment of maintenance pending the disposal of the proceedings;
- (m) the power to make an order the terms of which have been agreed upon by all the parties to the proceedings;
- (n) the power to make orders (including an order for garnishment, seizure of property or sequestration) for the enforcement of maintenance orders under the *Family Law Act 1975*;
- (o) the power to make an order exempting a party to family law or child support proceedings from compliance with a provision of regulations under the *Family Law Act 1975*.

Costs

- (3) A Registrar must not exercise the powers referred to in paragraph (2)(f) except in relation to costs of, or in connection with, an application heard by a Registrar.

Limitation on exercise of certain powers under the Family Law Act 1975

- (4) Subsection 37A(2) of the *Family Law Act 1975* applies to the exercise of a power by a Registrar under subsection (2) of this section in a corresponding way to the way in which it applies to a delegation under subsection 37A(1) of that Act.
- (5) Subsection 37A(5) of the *Family Law Act 1975* applies to the exercise of a power referred to in paragraph (2)(1) of this section in a corresponding way to the way in which it applies to the power referred to in paragraph 37A(1)(f) of that Act.

Application of laws

- (6) The provisions of this Act, the Rules of Court and any other law of the Commonwealth that relate to the exercise by the Federal Magistrates Court of a power that is, because of subsection (2), exercisable by a Registrar, apply in relation to an exercise of the power by a Registrar under this section as if references in those

provisions to the Federal Magistrates Court were references to the Registrar.

103 Delegation of powers to Registrars

- (1) The Rules of Court may delegate to the Registrars any of the powers of the Federal Magistrates Court, including (but not limited to) all or any of the powers mentioned in subsection 102(2).
- (2) A power delegated by Rules of Court under subsection (1), when exercised by a Registrar, is taken, for all purposes, to have been exercised by the Federal Magistrates Court or a Federal Magistrate, as the case requires.
- (3) The delegation of a power by Rules of Court under subsection (1) does not prevent the exercise of the power by the Federal Magistrates Court or a Federal Magistrate.

Costs

- (4) If the power referred to in paragraph 102(2)(f) is delegated under subsection (1) of this section, a Registrar must not exercise the power except in relation to costs of, or in connection with, an application heard by a Registrar.

Limitation on exercise of certain powers under the Family Law Act 1975

- (5) Subsection 37A(2) of the *Family Law Act 1975* applies to a delegation under subsection (1) of this section in a corresponding way to the way in which it applies to a delegation under subsection 37A(1) of that Act.
- (6) Subsection 37A(5) of the *Family Law Act 1975* applies to the delegation of a power referred to in paragraph 102(2)(1) of this Act in a corresponding way to the way in which it applies to the delegation of power referred to in paragraph 37A(1)(f) of that Act.

Application of laws

- (7) The provisions of this Act, the Rules of Court and any other law of the Commonwealth that relate to the exercise by the Federal Magistrates Court of a power that is, because of a delegation under subsection (1), exercisable by a Registrar, apply in relation to an

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exercise of the power by a Registrar under the delegation as if references in those provisions to the Federal Magistrates Court were references to the Registrar.

104 Registrars—additional provisions

Registrars to act independently

- (1) Despite any other provision of this Act and any provision of the *Public Service Act 1922* or of any other law, a Registrar is not subject to the direction or control of any person or body in relation to the way in which he or she exercises powers under subsection 102(2) or under a delegation under subsection 103(1).

Review of the exercise of Registrars' powers

- (2) A party to proceedings in which a Registrar has exercised any of the powers of the Federal Magistrates Court under subsection 102(2) or under a delegation under subsection 103(1) may:
 - (a) within the time prescribed by the Rules of Court; or
 - (b) within any further time allowed in accordance with the Rules of Court;apply to the Federal Magistrates Court for review of that exercise of power.
- (3) The Federal Magistrates Court may, on application under subsection (2) or on its own initiative, review an exercise of power by a Registrar under subsection 102(2) or under a delegation under subsection 103(1), and may make any order or orders it thinks fit in relation to the matter in respect of which the power was exercised.

Referral to Court by Registrars

- (4) If an application for the exercise of a power referred to in subsection 102(2) or under a delegation under subsection 103(1) is to be, or is being, heard by a Registrar, and:
 - (a) the Registrar considers that it is not appropriate for the application to be determined by a Registrar acting under section 102 or under a delegation under subsection 103(1); or
 - (b) an application is made to the Registrar to arrange for the first-mentioned application to be determined by a Federal Magistrate;

he or she must not hear, or continue to hear, the application and must make appropriate arrangements for the application to be heard by a Federal Magistrate.

105 Registrars—oath or affirmation of office

- (1) Before proceeding to discharge the duties of his or her office, a Registrar must take before a Federal Magistrate an oath or affirmation in accordance with the form set out in whichever of subsection (2) or (3) is applicable.

Oath

- (2) This is the form of oath for the purposes of subsection (1):
I, _____, do swear that I will well and truly serve in the office of Registrar of the Federal Magistrates Court and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God!

Affirmation

- (3) This is the form of affirmation for the purposes of subsection (1):
I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of Registrar of the Federal Magistrates Court and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

106 The Sheriff of the Federal Magistrates Court

- (1) The Sheriff of the Federal Magistrates Court is to be a person appointed or employed under the *Public Service Act 1922*.
- (2) The Sheriff of the Federal Magistrates Court is responsible for the service and execution of all process of the Federal Magistrates Court directed to the Sheriff.
- (3) The Sheriff of the Federal Magistrates Court is also responsible for dealing, on behalf of the Federal Magistrates Court, with:
 - (a) the Australian Federal Police; and
 - (b) the police forces of the States and Territories;

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in relation to the service and execution of process of the Federal Magistrates Court directed to members of any of those police forces.

107 Deputy Sheriffs

- (1) An officer or employee of the Commonwealth, a State or a Territory may be appointed by the Chief Executive Officer as a Deputy Sheriff of the Federal Magistrates Court.
- (2) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

108 Authorised persons to assist the Sheriff or Deputy Sheriffs

The Sheriff or a Deputy Sheriff may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

109 The Marshal of the Federal Magistrates Court

- (1) The Marshal of the Federal Magistrates Court is to be a person appointed or employed under the *Public Service Act 1922*.
- (2) The Marshal is responsible for:
 - (a) the security of the Federal Magistrates Court; and
 - (b) the personal security of the Federal Magistrates and officers and staff of the Federal Magistrates Court.
- (3) The Marshal is also responsible for:
 - (a) taking, receiving and detaining all persons committed to his or her custody by the Federal Magistrates Court; and
 - (b) discharging such persons when so directed by the Federal Magistrates Court or otherwise required by law.

110 Deputy Marshals

- (1) An officer or employee of the Commonwealth, a State or a Territory may be appointed by the Chief Executive Officer as a Deputy Marshal of the Federal Magistrates Court.
 - (2) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers or functions of the Marshal.
-

111 Authorised persons to assist the Marshal or Deputy Marshals

The Marshal or a Deputy Marshal may authorise persons to assist him or her in the exercise of any of his or her powers or the performance of any of his or her functions.

112 Staff of the Federal Magistrates Court

- (1) There are to be such staff of the Federal Magistrates Court as are necessary.
- (2) The staff of the Federal Magistrates Court is to consist of persons appointed or employed under the *Public Service Act 1922*.

113 Actions by or against Sheriff or Marshal

- (1) If the Sheriff or a Deputy Sheriff is a party to a proceeding in the Federal Magistrates Court:
 - (a) all writs, summonses, orders, warrants, precepts, process and commands in the proceeding which should, in the ordinary course, be directed to the Sheriff must be directed to such disinterested person as the Federal Magistrates Court or a Federal Magistrate appoints; and
 - (b) the person so appointed may execute and return them.
- (2) If the Marshal or a Deputy Marshal is a party to a proceeding in the Federal Magistrates Court:
 - (a) all writs, summonses, orders, warrants, precepts, process and commands in the proceeding which should, in the ordinary course, be directed to the Marshal must be directed to such disinterested person as the Federal Magistrates Court or a Federal Magistrate appoints; and
 - (b) the person so appointed may execute and return them.

114 Receivers

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

Section 114

- (2) A receiver of any property appointed by the Federal Magistrates Court may, without the previous leave of the Federal Magistrates Court, be sued in respect of an act or transaction done or entered into by him or her in carrying on the business connected with the property.
- (3) When, in any cause pending in the Federal Magistrates Court, a receiver appointed by the Federal Magistrates Court is in possession of property, the receiver must manage and deal with the property:
 - (a) according to the requirements of the laws of the State or Territory in which the property is situated; and
 - (b) in the same manner as that in which the owner or possessor of the property would be bound to do if in possession of the property.

Division 5—Miscellaneous administrative matters

115 Engagement of consultants etc.

- (1) The Chief Executive Officer may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Federal Magistrates Court.
- (2) An engagement under subsection (1) is to be made:
 - (a) on behalf of the Commonwealth; and
 - (b) by written agreement.

116 Procedural information to be given to unrepresented parties

The Chief Executive Officer may give directions and issue guidelines to officers and staff of the Federal Magistrates Court in relation to the procedural information to be given to parties (and, in particular, unrepresented parties) in order to enable them to formulate and present their cases.

117 Annual report

- (1) As soon as practicable after 30 June in each financial year, the Chief Federal Magistrate must prepare and give to the Minister a report of the management of the administrative affairs of the Federal Magistrates Court during the financial year.
- (2) The report must include:
 - (a) the financial statements required by section 49 of the *Financial Management and Accountability Act 1997*; and
 - (b) an audit report on those statements under section 57 of the *Financial Management and Accountability Act 1997*.
- (3) The Minister must cause a copy of the report to be tabled in each House of the Parliament as soon as practicable.

118 Proceedings arising out of administration of the Federal Magistrates Court

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

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Magistrates Court under this Part, including any proceeding relating to anything done by the Chief Executive Officer under this Part, may be instituted by or against the Commonwealth, as the case requires.

Part 8—Miscellaneous

119 References in other laws to a Federal Magistrate

Unless the contrary intention appears, a reference in a law of the Commonwealth other than this Act to a *Federal Magistrate* includes a reference to the Chief Federal Magistrate.

Note: For the interpretation of this Act, see section 5.

120 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 10 penalty units, for offences against the regulations.
- (3) The regulations may make provision for or in relation to the following:
 - (a) fees to be paid in respect of either or both of the following:
 - (i) proceedings in the Federal Magistrates Court;
 - (ii) the service or the execution of the process of the Federal Magistrates Court by officers of the Federal Magistrates Court;
 - (b) exemptions from fees covered by paragraph (a);
 - (c) the waiver, remission or refund of fees covered by paragraph (a).

Clause 1

Schedule 1—Personnel provisions relating to Federal Magistrates

Note: See section 9.

1 Appointment of Federal Magistrates

- (1) A Federal Magistrate is to be appointed by the Governor-General by commission.
- (2) A person is not to be appointed as a Federal Magistrate unless he or she has been enrolled as a legal practitioner (however described) of:
 - (a) the High Court; or
 - (b) a Supreme Court of a State or Territory;for at least 5 years.
- (3) A person must not be appointed as a Federal Magistrate if he or she has attained the age of 70 years.
- (4) The appointment of a Federal Magistrate is to be for a term expiring upon his or her attaining the age of 70 years.
- (5) The Chief Federal Magistrate holds office on a full-time basis.
- (6) A Federal Magistrate (other than the Chief Federal Magistrate) holds office on a full-time basis unless the Federal Magistrate's commission of appointment specifies that the Federal Magistrate holds office on a part-time basis.
- (7) A reference in this clause to the *appointment* of a Federal Magistrate is to be read as including:
 - (a) a reference to the appointment of a person who holds office as a Federal Magistrate (other than the Chief Federal Magistrate) to the office of Chief Federal Magistrate; and
 - (b) a reference to the appointment of a person who holds office as Chief Federal Magistrate to an office of Federal Magistrate (other than the Chief Federal Magistrate); and
 - (c) a reference to the appointment of a person who holds office as a Federal Magistrate on a part-time basis to another office of Federal Magistrate on a full-time basis; and

- (d) a reference to the appointment of a person who holds office as a Federal Magistrate on a full-time basis to another office of Federal Magistrate on a part-time basis.

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

2 Style

Chief Federal Magistrate

- (1) The Chief Federal Magistrate is to be styled “Chief Federal Magistrate *(name)*” or “*(name)* CFM”.

Other Federal Magistrates

- (2) A Federal Magistrate (other than the Chief Federal Magistrate) is to be styled “Federal Magistrate *(name)*” or “*(name)* FM”.

3 Oath or affirmation of office

- (1) Before proceeding to discharge the duties of his or her office, a Federal Magistrate must take an oath or affirmation in accordance with the form set out in whichever of subclause (3) or (4) is applicable.
- (2) The oath or affirmation must be taken before:
- (a) the Governor-General; or
 - (b) a Justice of the High Court; or
 - (c) a Judge of the Family Court; or
 - (d) a Judge of the Federal Court; or
 - (e) another Federal Magistrate.

Oath

- (3) This is the form of oath for the purposes of subclause (1):
- I, _____, do swear that I will well and truly serve in the office of (*Chief Federal Magistrate or Federal Magistrate, as the case requires*) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will. So help me God!

Clause 4

Affirmation

- (4) This is the form of affirmation for the purposes of subclause (1):
I, _____, do solemnly and sincerely promise and declare that I will well and truly serve in the office of (*Chief Federal Magistrate or Federal Magistrate, as the case requires*) and that I will do right to all manner of people according to law without fear or favour, affection or ill-will.

4 Outside work

- (1) A Federal Magistrate must not engage in paid work outside the duties of the Federal Magistrate's office if that work is incompatible with the holding of a judicial office under Chapter III of the Constitution.
- (2) A Federal Magistrate must not:
- (a) engage in work as a legal practitioner; or
 - (b) engage in work as an employee of, or consultant to, a legal practice.
- (3) This clause does not, by implication, limit the application to a Federal Magistrate of any doctrine of constitutional incompatibility.
- (4) In this clause:
paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

5 Remuneration

- (1) A Federal Magistrate is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) Subclause (1) has effect subject to the *Remuneration Tribunal Act 1973*.
- (3) To avoid doubt, for the purposes of paragraph 7(5B)(a) of the *Remuneration Tribunal Act 1973*, a Federal Magistrate is the holder of an office of Justice of a federal court.
- (4) In this clause:

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

Note 1: Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that a reference in Part II of that Act to **remuneration** is to be read as including a reference to annual allowances.

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

6 Leave

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

7 Resignation from office

- (1) A Federal Magistrate may resign his or her office by writing under his or her hand delivered to the Governor-General.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

8 Other terms and conditions

- (1) A Federal Magistrate holds office on such terms and conditions (if any) in relation to matters not covered by this Act as are specified in a written determination made by the Governor-General for the purposes of this subclause.
- (2) The Minister must cause a copy of a determination under subclause (1) to be tabled in each House of the Parliament.
- (3) Either House may, following a motion upon notice, pass a resolution disallowing the determination. To be effective, the resolution must be passed within 15 sittings days of the House after the copy of the determination was tabled in the House.
- (4) If neither House passes such a resolution, the determination takes effect on the day immediately after the last day upon which such a resolution could have been passed.

Clause 9

9 Removal from office

A Federal Magistrate must not be removed from office except by the Governor-General, on an address from both Houses of the Parliament in the same session, praying for his or her removal on the ground of proved misbehaviour or incapacity.

10 Acting Chief Federal Magistrate

- (1) The Minister may appoint a Federal Magistrate to act as Chief Federal Magistrate:
 - (a) during a vacancy in the office of Chief Federal Magistrate; or
 - (b) during any period, or all periods, when the Chief Federal Magistrate is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*.

- (2) Anything done by or in relation to a person purporting to act under such an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

11 Remuneration of a Federal Magistrate not to be diminished

- (1) The remuneration of a Federal Magistrate is not to be diminished during his or her continuance in office.
- (2) In subclause (1):

remuneration has the same meaning as in paragraph 72(iii) of the Constitution.

diminished has the same meaning as in paragraph 72(iii) of the Constitution.

Schedule 2—Personnel provisions relating to the Chief Executive Officer of the Federal Magistrates Court

Note: See section 95.

1 Appointment of Chief Executive Officer

- (1) The Chief Executive Officer is to be appointed by the Governor-General.
- (2) The Chief Executive Officer holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

2 Disclosure of interests

The Chief Executive Officer must give written notice to the Chief Federal Magistrate 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.

3 Outside employment

The Chief Executive Officer must not engage in paid employment outside the duties of the Chief Executive Officer's office without the Chief Federal Magistrate's approval.

4 Remuneration

- (1) The Chief Executive Officer is to be paid such remuneration as is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid such remuneration as is prescribed.
- (2) The Chief Executive Officer is to be paid such allowances as are prescribed.
- (3) This clause has effect subject to the *Remuneration Tribunal Act 1973*.

Clause 5

- (4) In this clause:

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

Note 1: Subsection 3(2) of the *Remuneration Tribunal Act 1973* provides that a reference in Part II of that Act to **remuneration** is to be read as including a reference to annual allowances.

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

5 Leave

- (1) Subject to section 87E of the *Public Service Act 1922*, the Chief Executive Officer has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chief Federal Magistrate may grant the Chief Executive Officer leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise, that the Chief Federal Magistrate determines in writing.

6 Resignation

- (1) A Chief Executive Officer may resign his or her appointment by giving the Governor-General a written resignation.
- (2) The resignation takes effect on the day it is received by the Governor-General or, if a later day is specified in the resignation, on that later day.

7 Termination of appointment

- (1) The Governor-General may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.
- (2) The Governor-General may terminate the appointment of the Chief Executive Officer if:
 - (a) the Chief Executive Officer:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

- (iii) compounds with his or her creditors; or
- (iv) makes an assignment of his or her remuneration for the benefit 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, except with the Chief Federal Magistrate's approval, in paid employment outside the duties of his or her office; or
- (d) the Chief Executive Officer fails, without reasonable excuse, to comply with clause 2.

8 Other terms and conditions

The Chief Executive Officer holds office on such terms and conditions (if any) in relation to matters not covered by this Act as are determined by the Chief Federal Magistrate.

9 Acting Chief Executive Officer

- (1) The Chief Federal Magistrate may appoint a person to act as Chief Executive Officer:
 - (a) during a vacancy in the office of Chief Executive Officer; or
 - (b) during any period, or all periods, when the Chief Executive Officer is absent from duty or from Australia, or is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*.

- (2) Anything done by or in relation to a person purporting to act under such an appointment is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.

[Minister's second reading speech made in—

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

Clause 9

*House of Representatives on 24 June 1999
Senate on 20 October 1999]*

(118/99