



Access to Justice (Federal Jurisdiction) Amendment Act 2012

No. 186, 2012

**An Act to amend the law relating to courts and
tribunals, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Access to Justice (Federal Jurisdiction) Amendment Act 2012

No. 186, 2012

An Act to amend the law relating to courts and tribunals, and for related purposes

[Assented to 11 December 2012]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Access to Justice (Federal Jurisdiction) Amendment Act 2012*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	11 December 2012
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	12 December 2012
3. Schedule 3	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	11 June 2013
4. Schedule 4	The day after this Act receives the Royal Assent.	12 December 2012
5. Schedule 5	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	11 June 2013

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Discovery

Federal Court of Australia Act 1976

1 Section 4 (at the end of the definition of *proceeding*)

Add:

Example: Discovery is an example of an incidental proceeding.

2 After paragraph 43(3)(g)

Insert:

- ; (h) do any of the following in proceedings in relation to discovery:
 - (i) order the party requesting discovery to pay in advance for some or all of the estimated costs of discovery;
 - (ii) order the party requesting discovery to give security for the payment of the cost of discovery;
 - (iii) make an order specifying the maximum cost that may be recovered for giving discovery or taking inspection.

3 At the end of section 46

Add:

Note: Proceedings include incidental proceedings, such as discovery (see the definition of *proceeding* in section 4).

4 Application of amendments

The amendments of the *Federal Court of Australia Act 1976* made by this Schedule apply in relation to proceedings in the Federal Court of Australia:

- (a) that are instituted in, or transferred to, that court on or after the commencement of this Schedule; or
- (b) that are pending in that court immediately before that commencement.

Schedule 2—Suppression and non-publication orders

Part 1—Main amendments

Family Law Act 1975

1 After Part XI

Insert:

Part XIA—Suppression and non-publication orders

Division 1—Preliminary

102P Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or

- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

102PA Powers of a court not affected

This Part does not limit or otherwise affect any powers that a court has apart from this Part to regulate its proceedings or to deal with a contempt of the court.

102PB Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

102PC Relationship with section 121

This Part and section 121 do not limit each other.

Division 2—Suppression and non-publication orders

102PD Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the court concerned must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

102PE Power to make orders

- (1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any

person who is related to or otherwise associated with any party to or witness in the proceedings; or

- (b) information that relates to the proceedings and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the court.
- (2) The court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

102PF Grounds for making an order

- (1) The court may make a suppression order or non-publication order on one or more of the following grounds:
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in criminal proceedings involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

102PG Procedure for making an order

- (1) The court may make a suppression order or non-publication order on its own initiative or on the application of:
 - (a) a party to the proceedings concerned; or
 - (b) any other person considered by the court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the court on an application for a suppression order or non-publication order:

- (a) the applicant for the order;
 - (b) a party to the proceedings concerned;
 - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during proceedings or after proceedings have concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

102PH Interim orders

- (1) If an application is made to the court for a suppression order or non-publication order, the court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the court, until the application is determined.
- (2) If an order is made as an interim order, the court must determine the application as a matter of urgency.

102PI Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the court and specified in the order.
- (2) In deciding the period for which an order is to operate, the court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.

- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

102PJ Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or
- (b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

102PK Contravention of order

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by a court under section 102PE.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.
- (5) Part XIII A does not apply in relation to a contravention of an order made by a court under section 102PE.

Federal Court of Australia Act 1976

2 Subsection 23HC(1) (note)

Repeal the note, substitute:

Note: Part VAA deals with suppression and non-publication orders.

3 At the end of subsection 24(1D)

Add:

- ; (c) an order made by the Court under section 37AF;
- (d) an order made by the Federal Magistrates Court under section 88F of the *Federal Magistrates Act 1999*.

4 After Part V

Insert:

Part VAA—Suppression and non-publication orders

Division 1—Preliminary

37AA Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

37AB Powers of the Court not affected

This Part does not limit or otherwise affect any powers that the Court has apart from this Part to regulate its proceedings or to deal with a contempt of the Court.

37AC Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

37AD No limit on section 23HC

This Part does not limit section 23HC (about protecting witnesses).

Division 2—Suppression and non-publication orders

37AE Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

37AF Power to make orders

- (1) The Court may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in a proceeding before the Court or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Court; or
 - (b) information that relates to a proceeding before the Court and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the Court.
- (2) The Court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

37AG Grounds for making an order

- (1) The Court may make a suppression order or non-publication order on one or more of the following grounds:
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

37AH Procedure for making an order

- (1) The Court may make a suppression order or non-publication order on its own initiative or on the application of:
 - (a) a party to the proceeding concerned; or
 - (b) any other person considered by the Court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the Court on an application for a suppression order or non-publication order:
 - (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the Court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during a proceeding or after a proceeding has concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the Court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

37AI Interim orders

- (1) If an application is made to the Court for a suppression order or non-publication order, the Court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the Court, until the application is determined.
- (2) If an order is made as an interim order, the Court must determine the application as a matter of urgency.

37AJ Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the Court and specified in the order.
- (2) In deciding the period for which an order is to operate, the Court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

37AK Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
- (b) in compliance with any procedure adopted by the Court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Court.

37AL Contravention of order

- (1) A person commits an offence if:
 - (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by the Court under section 37AF.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.

- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

5 Section 50

Repeal the section.

Federal Magistrates Act 1999

6 Section 61

Repeal the section.

7 After Part 6

Insert:

Part 6A—Suppression and non-publication orders

Division 1—Preliminary

88A Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

Schedule 2 Suppression and non-publication orders

Part 1 Main amendments

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

88B Powers of Federal Magistrates Court not affected

This Part does not limit or otherwise affect any powers that the Federal Magistrates Court has apart from this Part to regulate its proceedings or to deal with a contempt of the Federal Magistrates Court.

88C Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

88D This Part does not apply to proceedings under the *Family Law Act 1975*

This Part applies to proceedings in the Federal Magistrates Court other than proceedings under the *Family Law Act 1975*.

Note: Part XIA of the *Family Law Act 1975* deals with suppression and non-publication orders in proceedings under that Act.

Division 2—Suppression and non-publication orders

88E Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the Federal Magistrates Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

88F Power to make orders

- (1) The Federal Magistrates Court may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in a proceeding before the Federal Magistrates Court or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Federal Magistrates Court; or
 - (b) information that relates to a proceeding before the Federal Magistrates Court and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the Federal Magistrates Court.
- (2) The Federal Magistrates Court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

88G Grounds for making an order

- (1) The Federal Magistrates Court may make a suppression order or non-publication order on one or more of the following grounds:
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

88H Procedure for making an order

- (1) The Federal Magistrates Court may make a suppression order or non-publication order on its own initiative or on the application of:
 - (a) a party to the proceeding concerned; or
 - (b) any other person considered by the Federal Magistrates Court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the Federal Magistrates Court on an application for a suppression order or non-publication order:
 - (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the Federal Magistrates Court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during a proceeding or after a proceeding has concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the Federal Magistrates Court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

88J Interim orders

- (1) If an application is made to the Federal Magistrates Court for a suppression order or non-publication order, the Federal Magistrates Court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the Federal Magistrates Court, until the application is determined.

- (2) If an order is made as an interim order, the Federal Magistrates Court must determine the application as a matter of urgency.

88K Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the Federal Magistrates Court and specified in the order.
- (2) In deciding the period for which an order is to operate, the Federal Magistrates Court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

88L Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
- (b) in compliance with any procedure adopted by the Federal Magistrates Court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Federal Magistrates Court.

88M Contravention of order

- (1) A person commits an offence if:
- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes an order made by the Federal Magistrates Court under section 88F.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Judiciary Act 1903

8 After Part XA

Insert:

Part XAA—Suppression and non-publication orders

Division 1—Preliminary

77RA Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

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.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or
- (d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

77RB Powers of High Court not affected

This Part does not limit or otherwise affect any powers that the High Court has apart from this Part to regulate its proceedings or to deal with a contempt of the Court.

77RC Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

Division 2—Suppression and non-publication orders

77RD Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the High Court must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

77RE Power to make orders

- (1) The High Court may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:
 - (a) information tending to reveal the identity of or otherwise concerning any party to or witness in a proceeding before the Court or any person who is related to or otherwise associated with any party to or witness in a proceeding before the Court; or
 - (b) information that relates to a proceeding before the Court and is:
 - (i) information that comprises evidence or information about evidence; or
 - (ii) information obtained by the process of discovery; or
 - (iii) information produced under a subpoena; or
 - (iv) information lodged with or filed in the Court.
- (2) The High Court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

77RF Grounds for making an order

- (1) The High Court may make a suppression order or non-publication order on one or more of the following grounds:
 - (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

77RG Procedure for making an order

- (1) The High Court may make a suppression order or non-publication order on its own initiative or on the application of:
 - (a) a party to the proceeding concerned; or
 - (b) any other person considered by the Court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the High Court on an application for a suppression order or non-publication order:
 - (a) the applicant for the order;
 - (b) a party to the proceeding concerned;
 - (c) the Government (or an agency of the Government) of the Commonwealth or a State or Territory;
 - (d) a news publisher;
 - (e) any other person who, in the Court's opinion, has a sufficient interest in the question of whether a suppression order or non-publication order should be made.
- (3) A suppression order or non-publication order may be made at any time during a proceeding or after a proceeding has concluded.
- (4) A suppression order or non-publication order may be made subject to such exceptions and conditions as the High Court thinks fit and specifies in the order.
- (5) A suppression order or non-publication order must specify the information to which the order applies with sufficient particularity to ensure that the court order is limited to achieving the purpose for which the order is made.

77RH Interim orders

- (1) If an application is made to the High Court for a suppression order or non-publication order, the Court may, without determining the merits of the application, make the order as an interim order to have effect, subject to revocation by the Court, until the application is determined.
- (2) If an order is made as an interim order, the High Court must determine the application as a matter of urgency.

77RI Duration of orders

- (1) A suppression order or non-publication order operates for the period decided by the High Court and specified in the order.
- (2) In deciding the period for which an order is to operate, the High Court is to ensure that the order operates for no longer than is reasonably necessary to achieve the purpose for which it is made.
- (3) The period for which an order operates may be specified by reference to a fixed or ascertainable period or by reference to the occurrence of a specified future event.

77RJ Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
- (b) in compliance with any procedure adopted by the High Court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Court.

77RK Contravention of order

- (1) A person commits an offence if:
 - (a) the person does an act or omits to do an act; and
 - (b) the act or omission contravenes an order made by the High Court under section 77RE.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.

- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Part 2—Consequential amendments

Australian Crime Commission Act 2002

9 Schedule 1

Omit:

Federal Court of Australia Act 1976, section 50

Federal Magistrates Act 1999, section 61

substitute:

Family Law Act 1975, Part XIA

Federal Court of Australia Act 1976, Part VAA

Federal Magistrates Act 1999, Part 6A

10 Schedule 1

After:

Inspector-General of Taxation Act 2003, section 37

insert:

Judiciary Act 1903, Part XAA

Part 3—Application, saving and transitional provisions

11 Application of amendments

The amendments made by Part 1 apply in relation to proceedings (including interlocutory proceedings):

- (a) that are instituted in, or transferred to, a court on or after the commencement of that Part; or
- (b) that are pending in a court immediately before that commencement.

12 Saving—proceedings already heard

- (1) Despite the amendment made by item 5, section 50 of the *Federal Court of Australia Act 1976*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a proceeding heard by the Court before that commencement.
- (2) Despite the amendment made by item 5, the *Federal Court of Australia Act 1976*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an order made under section 50 of that Act before, on or after that commencement.
- (3) Despite the amendment made by item 6, section 61 of the *Federal Magistrates Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a proceeding heard by the Federal Magistrates Court before that commencement.
- (4) Despite the amendment made by item 6, the *Federal Magistrates Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to an order made under section 61 of that Act before, on or after that commencement.

13 Transitional—Australian Crime Commission Act 2002

Schedule 1 to the *Australian Crime Commission Act 2002* applies on and after the commencement of this item:

Schedule 2 Suppression and non-publication orders
Part 3 Application, saving and transitional provisions

- (a) as if a reference in that Schedule to Part VAA of the *Federal Court of Australia Act 1976* included a reference to section 50 of that Act as in force at any time; and
- (b) as if a reference in that Schedule to Part 6A of the *Federal Magistrates Act 1999* included a reference to section 61 of that Act as in force at any time.

Schedule 3—Vexatious proceedings

Part 1—Amendments

Family Law Act 1975

1 Subsection 97(1)

Omit “subsections (1A) and (2)”, substitute “this Act”.

2 Before Part XII

Insert:

Part XIB—Vexatious proceedings

Division 1—Preliminary

102Q Definitions

(1) In this Part:

appropriate court official means:

- (a) in relation to the Family Court of Australia—the Chief Executive Officer or Principal Registrar of the Court; and
- (b) in relation to the Federal Magistrates Court—the Chief Executive Officer of the Court; and
- (c) in relation to the Family Court of Western Australia—the Principal Registrar of the Court; and
- (d) in relation to any other court—the chief executive officer or principal registrar (however described) of the court.

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and

- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceedings:

- (a) in relation to a court—has the meaning given by subsection 4(1); and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

proceedings of a particular type includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

vexatious proceedings includes:

- (a) proceedings that are an abuse of the process of a court or tribunal; and
- (b) proceedings instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) proceedings instituted or pursued in a court or tribunal without reasonable ground; and
- (d) proceedings conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 102QB(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a

reference to a person who is so acting as a lawyer or representative of the other person.

102QA Powers of a court not affected

This Part does not limit or otherwise affect any powers that a court has apart from this Part to deal with vexatious proceedings.

Note: For example, section 118 allows a court to dismiss particular proceedings if it is satisfied that the proceedings are frivolous or vexatious.

Division 2—Vexatious proceedings orders

102QB Making vexatious proceedings orders

- (1) This section applies if a court exercising jurisdiction in proceedings under this Act is satisfied:
 - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
 - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted vexatious proceedings in an Australian court or tribunal.
- (2) The court may make any or all of the following orders:
 - (a) an order staying or dismissing all or part of any proceedings in the court already instituted by the person;
 - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act;
 - (c) any other order the court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.
- (3) The court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the appropriate court official;

- (c) a person against whom another person has instituted or conducted vexatious proceedings;
 - (d) a person who has a sufficient interest in the matter.
- (4) The court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (5) An order made under paragraph (2)(a) or (b) is a final order.
- (6) For the purposes of subsection (1), the court may have regard to:
- (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
 - (b) orders made by any Australian court or tribunal; and
 - (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal);
- including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

102QC Notification of vexatious proceedings orders

- (1) A person may request the appropriate court official of a court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order made by the court.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order made by the court, the appropriate court official must issue to the person making the request a certificate:
- (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by the applicable Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the court, restricting the publication or disclosure of the name of a party to proceedings in the court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

102QD Proceedings in contravention of vexatious proceedings order

- (1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act:
 - (a) the person must not institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.
- (3) Without limiting subsection (2), the court may make:
 - (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the appropriate court official;
 - (c) a person against whom another person has instituted or conducted vexatious proceedings;
 - (d) a person who has a sufficient interest in the matter.

102QE Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or

- (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the court for leave to institute proceedings that are subject to the order.
- (3) The applicant must file an affidavit with the application that:
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and
 - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 102QG(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

102QF Dismissing application for leave

- (1) The court may make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the affidavit does not substantially comply with subsection 102QE(3).
- (2) The court must make an order dismissing an application under section 102QE for leave to institute proceedings if it considers the proceedings are vexatious proceedings.
- (3) The court may dismiss the application without an oral hearing (either with or without the consent of the applicant).
- (4) The court may make an order under this section in Chambers.

102QG Granting application for leave

- (1) Before the court makes an order granting an application under section 102QE for leave to institute proceedings, it must:
 - (a) order that the applicant serve:
 - (i) the person against whom the applicant proposes to institute the proceedings; and

- (ii) any other person specified in the order;
with a copy of the application and affidavit and a notice that
the person is entitled to be heard on the application; and
 - (b) give the applicant and each person described in
subparagraph (a)(i) or (ii), on appearance, an opportunity to
be heard at the hearing of the application.
- (2) At the hearing of the application, the court may receive as evidence
any record of evidence given, or affidavit filed, in any proceedings
in any Australian court or tribunal in which the applicant is, or at
any time was, involved either as a party or as a person acting in
concert with a party.
- (3) The court may make an order granting the application. The order
may be made subject to the conditions the court considers
appropriate.
- (4) The court may grant leave only if it is satisfied the proceedings are
not vexatious proceedings.

3 Section 118

Repeal the section, substitute:

118 Frivolous or vexatious proceedings

The court may, at any stage of proceedings under this Act, if it is
satisfied that the proceedings are frivolous or vexatious:

- (a) dismiss the proceedings; and
- (b) make such order as to costs as the court considers just.

4 After paragraph 123(1)(d)

Insert:

- (e) providing for and in relation to the prevention or termination
of vexatious proceedings; and

Federal Court of Australia Act 1976

5 Subsection 17(1)

Omit “section”, substitute “Act”.

6 Paragraph 24(1D)(c)

After “section 37AF”, insert “, 37AS or 37AT”.

7 Paragraph 24(1D)(d)

After “section 88F”, insert “, 88U or 88V”.

8 Before Part VA

Insert:

Part VAAA—Vexatious proceedings

Division 1—Preliminary

37AM Definitions

(1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

- (a) in relation to a court—has the meaning given by section 4; and

- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

proceedings of a particular type includes:

- (a) proceedings in relation to a particular matter; and
(b) proceedings against a particular person.

vexatious proceeding includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
(b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
(c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and
(d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 37AO(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a lawyer or representative of the other person.

37AN Powers of the Court not affected

This Part does not limit or otherwise affect any powers that the Court has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

37AO Making vexatious proceedings orders

- (1) This section applies if the Court is satisfied:
- (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or

(b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.

(2) The Court may make any or all of the following orders:

- (a) an order staying or dismissing all or part of any proceedings in the Court already instituted by the person;
- (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court;
- (c) any other order the Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

(3) The Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:

- (a) the Attorney-General of the Commonwealth or of a State or Territory;
- (b) the Registrar of the Court;
- (c) a person against whom another person has instituted or conducted a vexatious proceeding;
- (d) a person who has a sufficient interest in the matter.

(4) The Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

(5) An order made under paragraph (2)(a) or (b) is a final order.

(6) For the purposes of subsection (1), the Court may have regard to:

- (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
 - (b) orders made by any Australian court or tribunal; and
 - (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal);
- including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

37AP Notification of vexatious proceedings orders

- (1) A person may request the Registrar of the Court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order, the Registrar must issue to the person making the request a certificate:
 - (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by the Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the Court, restricting the publication or disclosure of the name of a party to proceedings in the Court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

37AQ Proceedings in contravention of vexatious proceedings order

- (1) If the Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 37AT; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the Court without the leave of the Court under section 37AT.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the Court may make:
 - (a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and

- (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The Court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Registrar of the Court;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.

37AR Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Court; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that:
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and
 - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 37AT(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

37AS Dismissing application for leave

- (1) The Court or a Judge may make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the affidavit does not substantially comply with subsection 37AR(3).
- (2) The Court or a Judge must make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the proceeding is a vexatious proceeding.
- (3) The Court or a Judge may dismiss the application without an oral hearing (either with or without the consent of the applicant).

37AT Granting application for leave

- (1) Before the Court makes an order granting an application under section 37AR for leave to institute a proceeding, it must:
 - (a) order that the applicant serve:
 - (i) the person against whom the applicant proposes to institute the proceeding; and
 - (ii) any other person specified in the order;with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and
 - (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Court may make an order granting the application. The order may be made subject to the conditions the Court considers appropriate.
- (4) The Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

Federal Magistrates Act 1999

9 Before Part 7

Insert:

Part 6B—Vexatious proceedings

Division 1—Preliminary

88N Definitions

(1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

- (a) in relation to a court—has the meaning given by section 5; and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

proceedings of a particular type includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

vexatious proceeding includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and
- (d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 88Q(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a legal practitioner or representative of the other person.

88P Powers of the Federal Magistrates Court not affected

This Part does not limit or otherwise affect any powers that the Federal Magistrates Court has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

88Q Making vexatious proceedings orders

- (1) This section applies if the Federal Magistrates Court is satisfied:
 - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
 - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.

- (2) The Federal Magistrates Court may make any or all of the following orders:
- (a) an order staying or dismissing all or part of any proceedings in the Federal Magistrates Court already instituted by the person;
 - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court;
 - (c) any other order the Federal Magistrates Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

- (3) Subsection (2) applies in relation to proceedings in the Federal Magistrates Court other than proceedings under the *Family Law Act 1975*.

Note: Part XIB of the *Family Law Act 1975* deals with vexatious proceedings under that Act.

- (4) The Federal Magistrates Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
- (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive Officer;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.
- (5) The Federal Magistrates Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.
- (6) An order made under paragraph (2)(a) or (b) is a final order.
- (7) For the purposes of subsection (1), the Federal Magistrates Court may have regard to:
- (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
 - (b) orders made by any Australian court or tribunal; and

(c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal); including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

88R Notification of vexatious proceedings orders

- (1) A person may request the Chief Executive Officer for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order, the Chief Executive Officer must issue to the person making the request a certificate:
 - (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by the Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the Federal Magistrates Court, restricting the publication or disclosure of the name of a party to proceedings in the Federal Magistrates Court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

88S Proceedings in contravention of vexatious proceedings order

- (1) If the Federal Magistrates Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the Federal Magistrates Court without the leave of the Federal Magistrates Court under section 88V; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the

Federal Magistrates Court without the leave of the Federal Magistrates Court under section 88V.

- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the Federal Magistrates Court may make:
 - (a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The Federal Magistrates Court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive Officer;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.

88T Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the Federal Magistrates Court; or
 - (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the Federal Magistrates Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that:
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and

- (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 88V(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

88U Dismissing application for leave

- (1) The Federal Magistrates Court or a Federal Magistrate may make an order dismissing an application under section 88T for leave to institute a proceeding if the Federal Magistrates Court or Federal Magistrate considers the affidavit does not substantially comply with subsection 88T(3).
- (2) The Federal Magistrates Court or a Federal Magistrate must make an order dismissing an application under section 88T for leave to institute a proceeding if the Federal Magistrates Court or Federal Magistrate considers the proceeding is a vexatious proceeding.
- (3) The Federal Magistrates Court or a Federal Magistrate may dismiss the application without an oral hearing (either with or without the consent of the applicant).

88V Granting application for leave

- (1) Before the Federal Magistrates Court makes an order granting an application under section 88T for leave to institute a proceeding, it must:
 - (a) order that the applicant serve:
 - (i) the person against whom the applicant proposes to institute the proceeding; and
 - (ii) any other person specified in the order;with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and
 - (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.

- (2) At the hearing of the application, the Federal Magistrates Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Federal Magistrates Court may make an order granting the application. The order may be made subject to the conditions the Federal Magistrates Court considers appropriate.
- (4) The Federal Magistrates Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

Judiciary Act 1903

10 Before Part XB

Insert:

Part XAB—Vexatious proceedings

Division 1—Preliminary

77RL Definitions

- (1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

Chief Executive and Principal Registrar means the Chief Executive and Principal Registrar of the High Court appointed under section 18 of the *High Court of Australia Act 1979*.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and

- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

- (a) in relation to a court—means a proceeding in the 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; and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding.

proceedings of a particular type includes:

- (a) proceedings in relation to a particular matter; and
- (b) proceedings against a particular person.

vexatious proceeding includes:

- (a) a proceeding that is an abuse of the process of a court or tribunal; and
- (b) a proceeding instituted in a court or tribunal to harass or annoy, to cause delay or detriment, or for another wrongful purpose; and
- (c) a proceeding instituted or pursued in a court or tribunal without reasonable ground; and
- (d) a proceeding conducted in a court or tribunal in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

vexatious proceedings order means an order made under subsection 77RN(2).

- (2) A reference in this Part to a person acting in concert with another person in instituting or conducting proceedings does not include a reference to a person who is so acting as a legal practitioner or representative of the other person.

77RM Powers of the High Court not affected

This Part does not limit or otherwise affect any powers that the High Court has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

77RN Making vexatious proceedings orders

- (1) This section applies if the High Court is satisfied:
 - (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
 - (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.
- (2) The High Court may make any or all of the following orders:
 - (a) an order staying or dismissing all or part of any proceedings in the High Court already instituted by the person;
 - (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the High Court;
 - (c) any other order the High Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.
- (3) The High Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive and Principal Registrar;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.
- (4) The High Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

- (5) An order made under paragraph (2)(a) or (b) is a final order.
- (6) For the purposes of subsection (1), the High Court may have regard to:
 - (a) proceedings instituted (or attempted to be instituted) or conducted in any Australian court or tribunal; and
 - (b) orders made by any Australian court or tribunal; and
 - (c) the person's overall conduct in proceedings conducted in any Australian court or tribunal (including the person's compliance with orders made by that court or tribunal);including proceedings instituted (or attempted to be instituted) or conducted, and orders made, before the commencement of this section.

77RO Notification of vexatious proceedings orders

- (1) A person may request the Chief Executive and Principal Registrar for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.
- (2) If a person makes a request under subsection (1) and the person named in the request is or has been the subject of a vexatious proceedings order, the Chief Executive and Principal Registrar must issue to the person making the request a certificate:
 - (a) specifying the date of the order; and
 - (b) specifying any other information prescribed by Rules of Court.
- (3) This section is subject to any law of the Commonwealth, or order of the High Court, restricting the publication or disclosure of the name of a party to proceedings in the High Court.

Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

77RP Proceedings in contravention of vexatious proceedings order

- (1) If the High Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the High Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the High Court without the leave of the High Court under section 77RS; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the High Court without the leave of the High Court under section 77RS.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the High Court may make:
 - (a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The High Court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive and Principal Registrar;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.

77RQ Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the High Court; or

- (b) acting in concert with another person who is subject to an order mentioned in paragraph (a).
- (2) The applicant may apply to the High Court for leave to institute a proceeding that is subject to the order.
- (3) The applicant must file an affidavit with the application that:
 - (a) lists all the occasions on which the applicant has applied for leave under this section; and
 - (b) lists all other proceedings the applicant has instituted in any Australian court or tribunal, including proceedings instituted before the commencement of this section; and
 - (c) discloses all relevant facts about the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) The applicant must not serve a copy of the application or affidavit on a person unless an order is made under paragraph 77RS(1)(a). If the order is made, the applicant must serve the copy in accordance with the order.

77RR Dismissing application for leave

- (1) The High Court, or a Justice sitting in Chambers, may make an order dismissing an application under section 77RQ for leave to institute a proceeding if the High Court or Justice considers the affidavit does not substantially comply with subsection 77RQ(3).
- (2) The High Court, or a Justice sitting in Chambers, must make an order dismissing an application under section 77RQ for leave to institute a proceeding if the High Court or Justice considers the proceeding is a vexatious proceeding.
- (3) The High Court, or a Justice sitting in Chambers, may dismiss the application without an oral hearing (either with or without the consent of the applicant).

77RS Granting application for leave

- (1) Before the High Court makes an order granting an application under section 77RQ for leave to institute a proceeding, it must:
 - (a) order that the applicant serve:

- (i) the person against whom the applicant proposes to institute the proceeding; and
 - (ii) any other person specified in the order;
with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and
 - (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the High Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The High Court may make an order granting the application. The order may be made subject to the conditions the High Court considers appropriate.
- (4) The High Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

Part 2—Application and saving provisions

11 Application of amendments

The power of a court to make a vexatious proceedings order under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903*, as amended by this Schedule, applies in relation to proceedings instituted in, or transferred to, that court on or after the commencement of this item.

12 Saving—pending proceedings etc.

- (1) Despite the amendment made by item 3, section 118 of the *Family Law Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to proceedings that were pending in the court immediately before that commencement.
- (2) Despite the amendment made by item 3, the *Family Law Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to an order made under paragraph 118(1)(a), (b) or (c) of that Act before, on or after that commencement.
- (3) Despite the amendments made by this Schedule, rules of court, in relation to a court, that were in force immediately before the commencement of this item under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings) continue to apply on and after that commencement in relation to proceedings that were pending in the court immediately before that commencement.
- (4) The amendments made by this Schedule do not affect the validity of any orders that were made before the commencement of this item under rules of court made under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings).

Schedule 4—Transfer of proceedings from courts of summary jurisdiction

Family Law Act 1975

1 Subsection 46(1)

After “instituted in”, insert “or transferred to”.

2 Subsection 46(1)

Omit “the ceiling amount”, substitute “\$20,000”.

3 Subsection 46(1)

Omit “by which the proceedings are instituted”, substitute “by which the proceedings were instituted”.

4 After subparagraphs 46(1)(a)(i) and (b)(i)

Insert:

(ia) a Family Court of a State; or

5 Subsection 46(1AA)

Repeal the subsection, substitute:

(1AA) Subsection (1) does not apply if the court of summary jurisdiction is the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

6 Paragraph 46(1B)(a)

After “instituted in”, insert “or transferred to”.

7 After paragraph 46(1C)(a)

Insert:

(aa) a Family Court of a State; or

8 After paragraph 46(2A)(c)

Insert:

(ca) a Family Court of a State; or

9 Subsection 46(2B)

After “the court”, insert “of summary jurisdiction”.

10 After paragraph 46(3A)(a)

Insert:

(aa) a Family Court of a State;

11 Paragraph 69N(1)(a)

After “instituted in”, insert “or transferred to”.

12 Application of amendments

The amendments made by this Schedule apply in relation to proceedings instituted, or transferred, on or after the commencement of this Schedule.

Schedule 5—Administrative Appeals Tribunal fees

Administrative Appeals Tribunal Act 1975

1 Section 29A

Repeal the section.

2 After section 69B

Insert:

69C Dismissal of application for non-payment of application fee

The Tribunal may dismiss an application to the Tribunal if:

- (a) regulations under section 70 prescribe a fee to be payable in respect of the application; and
- (b) the fee has not been paid by the time worked out under regulations under section 70.

3 At the end of section 70

Add:

- (3) Without limiting the generality of subsection (1), the regulations may make provision:
 - (a) prescribing fees to be payable in respect of proceedings before the Tribunal; and
 - (b) for, or in relation to, the waiver (in whole or in part) of such fees.

4 Application and saving provisions

- (1) Despite the amendment made by item 1, section 29A of the *Administrative Appeals Tribunal Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to applications lodged before that commencement.
- (2) The amendment made by item 2 applies in relation to applications lodged on or after the commencement of that item.

- (3) The amendment made by item 3 applies in relation to proceedings before the Tribunal:
- (a) that commence after the commencement of that item; or
 - (b) that commenced, but were not completed, before the commencement of that item.
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*[Minister's second reading speech made in—
House of Representatives on 23 November 2011
Senate on 27 February 2012]*

(245/11)
