

Courts and Tribunals Legislation Amendment (Administration) Act 2013

No. 7, 2013

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

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Courts and Tribunals Legislation Amendment (Administration) Act 2013

No. 7, 2013

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

[*Assented to 12 March 2013*]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Courts and Tribunals Legislation Amendment (Administration) Act 2013*.

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. | 12 March 2013 |
| 2. Schedule 1 | The day this Act receives the Royal Assent. | 12 March 2013 |
| 3. Schedule 2 | The later of:  (a) the start of 1 July 2013; and  (b) immediately after the commencement of Schedule 2 to the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013*.  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur. | 1 July 2013  (paragraph (a) applies) |

Note: This table relates only to the provisions of this Act as originally enacted.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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—National Native Title Tribunal

Part 1—Administration of the Tribunal

Native Title Act 1993

1 Section 96

Repeal the section, substitute:

96 President may give directions to Registrar

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

2 Subdivision A of Division 4 of Part 6

Repeal the Subdivision, substitute:

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

128 Management of administrative affairs of Tribunal

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

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

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

(b) the *Public Service Act 1999*;

relating to the Tribunal.

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

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

129 Registrar of the Federal Court

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

Powers, when assisting President

(2) The Registrar of the Federal Court may do all things necessary or convenient to be done for the purpose of assisting the President under subsection (1).

(3) In particular, the Registrar of the Federal Court may act for the President in relation to the administrative affairs of the Tribunal for which the President is responsible in accordance with section 128.

President may give directions

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

129A Delegation by Registrar of the Federal Court

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

(a) the Native Title Registrar;

(b) a Deputy Registrar of the Tribunal;

(c) a member of the staff assisting the Tribunal.

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

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

Repeal the heading, substitute:

Subdivision B—Other officers, staff and consultants

4 Section 130 (heading)

Repeal the heading, substitute:

130 Deputy Registrars and staff etc.

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

Repeal the subsections, substitute:

Deputy Registrars and staff

(1) There are to be such Deputy Registrars of the Tribunal, and staff assisting the Tribunal, as are necessary.

(2) The Deputy Registrars are to be appointed by the Registrar of the Federal Court.

(3) The Deputy Registrars and the staff assisting the Tribunal are to be persons engaged under the *Public Service Act 1999* and made available for the purpose by the Registrar of the Federal Court.

Statutory Agency

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

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

6 Subsection 130(4)

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

7 Subsection 130(5)

Repeal the subsection, substitute:

Powers etc.

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

8 Section 131

Repeal the section.

9 Section 131A (heading)

Repeal the heading, substitute:

131A President may arrange for consultants to be engaged

10 Subsection 131A(1)

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

11 At the end of subsection 131A(1)

Add:

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

12 Subsection 131A(2)

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

13 Section 132 (heading)

Repeal the heading, substitute:

132 Registrar of the Federal Court may engage consultants

14 Subsection 132(1)

Repeal the subsection, substitute:

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

15 Section 136

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

Part 2—Reporting and financial matters

Native Title Act 1993

16 Subsection 133(1)

Omit “and give to the Commonwealth Minister”.

17 Subsection 133(2)

Repeal the subsection.

18 Subsection 133(3)

Repeal the subsection, substitute:

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

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

19 Subsection 203BK(3)

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

Part 3—References to staff

Native Title Act 1993

20 Paragraph 94D(3)(a)

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

21 Section 99

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

22 Subsection 136GC(5)

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

23 Subsection 150(2) (heading)

Repeal the heading, substitute:

Member, officer or staff assisting to preside

24 Subsection 150(2)

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

25 Subsection 181(1)

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

Part 4—Saving and transitional provisions

26 Transitional—Deputy Registrars

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

27 Transitional—consultants

(1) This item applies to a person if:

(a) before the commencement of this item, the person was engaged as a consultant under subsection 132(1) of the *Native Title Act 1993*; and

(b) the engagement was in effect immediately before that commencement.

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

28 Saving—agreements for NNTT to provide assistance to representative bodies

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

29 Transitional regulations

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

Schedule 2—Family Court and Federal Circuit Court

Part 1—Main amendments

Family Law Act 1975

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

Omit “of the Family Court”.

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

Add “and the Federal Circuit Court”.

3 Subsection 4(1)

Insert:

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

4 Section 11B (note)

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

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

Omit “of that court”.

6 Section 38B

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

7 Division 2 of Part IVA (heading)

Repeal the heading, substitute:

Division 2—Chief Executive Officer

8 Section 38C

Repeal the section, substitute:

38C Establishment and appointment of Chief Executive Officer

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

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

9 At the end of subsection 38D(3)

Add “under this Act”.

10 Subsection 38F(4)

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

11 Subsection 38G(2)

Repeal the subsection, substitute:

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

12 Subsection 38J(1)

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

13 Section 38L

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

14 Section 38M

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

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

15 At the end of section 38Q

Add:

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

16 Subsection 38S(2)

Repeal the subsection.

Federal Circuit Court of Australia Act 1999

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

Repeal the definition, substitute:

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

18 Sections 94 and 95

Repeal the sections.

19 Section 97

Repeal the section.

20 Section 100

Omit “officer”, substitute “officers”.

21 After section 112

Insert:

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

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

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

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

22 Subsection 117(2)

Repeal the subsection.

23 Schedule 2

Repeal the Schedule.

Ombudsman Act 1976

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

Repeal the paragraphs, substitute:

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

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

Part 2—Saving and transitional provisions

25 Saving—existing Chief Executive Officer

(1) This item applies to the person who, immediately before the commencement of this item (the ***commencement time***), held office as the Chief Executive Officer of the Family Court under section 38C of the *Family Law Act 1975*.

(2) After the commencement time, the person holds office as the Chief Executive Officer of the Family Court and the Federal Circuit Court as if the person had been appointed to that office under subsection 38C(2) of the *Family Law Act 1975*, as in force after the commencement time, on the joint nomination of the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court.

(3) The person holds office as the Chief Executive Officer of the Family Court and the Federal Circuit Court:

(a) for the balance of the person’s term of appointment as the Chief Executive Officer of the Family Court that remained immediately before the commencement time; and

(b) on the same terms and conditions as applied to the person immediately before the commencement time.

(4) If a determination under subsection 38F(4) of the *Family Law Act 1975* (additional terms and conditions of appointment) is in force immediately before the commencement time, the determination continues in force after the commencement time as if it had been made by the Chief Judge of the Family Court and the Chief Judge of the Federal Circuit Court acting jointly under subsection 38F(4) of that Act, as in force after the commencement time.

26 References in instruments to Chief Executive Officer of the Family Court or Chief Executive Officer of the Federal Circuit Court

(1) If:

(a) an instrument is in force immediately before the commencement of this item; and

(b) the instrument contains a reference to the Chief Executive Officer of the Family Court of Australia or the Chief Executive Officer of the Federal Circuit Court of Australia;

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

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

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

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

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

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

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

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

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

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

28 Transitional regulations

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

[*Minister’s second reading speech made in—*

*House of Representatives on 31 October 2012*

*Senate on 28 February 2013*]

(193/12)