

2008

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

**Federal Justice System Amendment  
(Efficiency Measures) Bill (No. 1) 2008**

**No.     , 2008**

*(Attorney-General)*

**A Bill for an Act to amend various Acts relating to  
law and justice, and for related purposes**



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1     **A Bill for an Act to amend various Acts relating to**  
2     **law and justice, and for related purposes**

3     The Parliament of Australia enacts:

4     **1 Short title**

5                     This Act may be cited as the *Federal Justice System Amendment*  
6                     (*Efficiency Measures*) Act (No. 1) 2008.

7     **2 Commencement**

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

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**Commencement information**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	
2. Schedules 1, 2, 3 and 4	The day on which this Act receives the Royal Assent.	
3. Schedule 5, item 1	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i> .	
4. Schedule 5, items 2 to 8	The day after this Act receives the Royal Assent.	
5. Schedule 5, Part 2	The later of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008</i> .	

1 Note: This table relates only to the provisions of this Act as originally  
2 passed by both Houses of the Parliament and assented to. It will not be  
3 expanded to deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not  
5 part of this Act. Information in this column may be added to or  
6 edited in any published version of this Act.

### 7 **3 Schedule(s)**

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

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2  
3  
**Schedule 1—Federal Court powers**

4  
*Federal Court of Australia Act 1976*

5  
**1 Section 4**

6 Insert:

7 *referee* means a person to whom a question is referred for inquiry  
8 and report under section 54A.

9  
**2 After paragraph 20(5)(a)**

10 Insert:

11 (aa) make an interlocutory order pending, or after, the  
12 determination of the matter by a Full Court; or

13  
**3 Paragraph 20(5)(da)**

14 After “paragraph”, insert “(aa),”.

15  
**4 After paragraph 25(2B)(aa)**

16 Insert:

17 (ab) make an interlocutory order pending, or after, the  
18 determination of an appeal to the Court; or

19  
**5 Paragraph 25(2B)(bc)**

20 After “paragraph”, insert “(ab),”.

21  
**6 After section 54**

22 Insert:

23  
**54A Referral of questions to a referee**

- 24 (1) Subject to the Rules of Court, the Court may by order refer:  
25 (a) a proceeding in the Court; or  
26 (b) one or more questions arising in a proceeding in the Court;  
27 to a referee for inquiry and report in accordance with the Rules of  
28 Court.

- 1 (2) A referral under subsection (1) may be made at any stage of a  
2 proceeding.
- 3 (3) If a report of a referee under subsection (1) is provided to the  
4 Court, the Court may deal with the report as it thinks fit, including  
5 by doing the following:
- 6 (a) adopting the report in whole or in part;  
7 (b) varying the report;  
8 (c) rejecting the report;  
9 (d) making such orders as the Court thinks fit in respect of any  
10 proceeding or question referred to the referee.

#### 11 **54B Protection of referees**

12 A referee has, in inquiring or reporting on a proceeding or question  
13 referred under section 54A, the same protection and immunity as a  
14 Judge has in performing the functions of a Judge.

#### 15 **7 After subsection 59(2B)**

16 Insert:

- 17 (2C) Without limiting subsections (2), (2A) and (2B), the Rules of Court  
18 may make provision for, or with respect to, the following matters  
19 in relation to referrals of proceedings or questions to a referee  
20 under section 54A:
- 21 (a) the cases in which a proceeding, or a question arising in a  
22 proceeding, may be referred by the Court to a referee for  
23 inquiry and report to the Court;
- 24 (b) the appointment of a Judge, the Registrar or other officer of  
25 the Court or other person as a referee;
- 26 (c) the procedures to be followed by a referee in inquiring into  
27 and reporting on a proceeding, or a question arising in a  
28 proceeding, that has been referred to the referee;
- 29 (d) the participation (including attendance) of persons in an  
30 inquiry by a referee;
- 31 (e) the procedures to be followed by a referee after an inquiry by  
32 the referee has ended (whether or not a report has been  
33 provided to the Court);
- 34 (f) the manner in which a report by a referee may be called in  
35 question;



- 1 (g) the provision of the services of officers of the Court and the
- 2 provision of court rooms and other facilities for the purpose
- 3 of an inquiry by a referee;
- 4 (h) the fees payable to a referee;
- 5 (i) time limits to be observed by the parties to the proceeding to
- 6 which an inquiry by a referee relates, in relation to any matter
- 7 connected with the inquiry;
- 8 (j) any other matters associated with an inquiry or report by a
- 9 referee.

10 (2D) Without limiting subsection (2C), the Rules of Court may  
11 empower:

- 12 (a) the Court or a referee to require that evidence be given on
- 13 oath or affirmation in an inquiry by a referee; or
- 14 (b) a referee to administer an oath or affirmation.

## 15 **8 Application of amendments**

16 The amendments made by this Schedule apply to matters commenced  
17 before, on or after the commencement of this Schedule.

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## Schedule 2—International arbitration

### *International Arbitration Act 1974*

#### **1 Subsection 3(1) (definition of court)**

Omit all the words after “including”, substitute “, but not limited to, the Federal Court of Australia and a court of a State or Territory.”.

#### **2 After subsection 8(2)**

Insert:

- (3) Subject to this Part, a foreign award may, with the leave of the Federal Court of Australia, be enforced in the Federal Court of Australia as if the award had been made by the Federal Court of Australia.

#### **3 At the end of section 18**

Add:

- ; (c) in any case—the Federal Court of Australia.

#### **4 At the end of section 35**

Add:

- (3) The Federal Court of Australia is designated for the purposes of Article 54.
- (4) An award may, with the leave of the Federal Court of Australia, be enforced in the Federal Court of Australia as if the award had been made by the Federal Court of Australia.

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**Schedule 3—Land acquisition**

4 *Administrative Appeals Tribunal Act 1975*

5 **1 Subsection 24A(4)**

6 Repeal the subsection, substitute:

- 7 (4) Subsection (2) does not authorise the President to enter into a  
8 contract under which the Commonwealth is to pay or receive an  
9 amount exceeding \$250,000 or, if a higher amount is prescribed,  
10 that higher amount, except with the approval of the Minister.

11 *Family Law Act 1975*

12 **2 Subsection 38A(4)**

13 Repeal the subsection, substitute:

- 14 (4) Subsection (2) does not authorise the Chief Judge to enter into a  
15 contract under which the Commonwealth is to pay or receive an  
16 amount exceeding \$250,000 or, if a higher amount is prescribed,  
17 that higher amount, except with the approval of the  
18 Attorney-General.

19 *Federal Court of Australia Act 1976*

20 **3 Subsection 18A(4)**

21 Repeal the subsection, substitute:

- 22 (4) Subsection (2) does not authorise the Chief Justice to enter into a  
23 contract under which the Commonwealth is to pay or receive an  
24 amount exceeding \$250,000 or, if a higher amount is prescribed,  
25 that higher amount, except with the approval of the  
26 Attorney-General.

27 *Native Title Act 1993*

28 **4 Subsection 128(4)**

29 Repeal the subsection, substitute:

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1 (4) Subsection (2) does not authorise the President to enter into a  
 2 contract under which the Commonwealth is to pay or receive an  
 3 amount exceeding \$250,000 or, if a higher amount is prescribed,  
 4 that higher amount, except with the approval of the  
 5 Commonwealth Minister.

## 6 5 Saving of regulations

7 (1) Despite the repeal of a provision that is specified in column 2 of the  
 8 following table, as in force immediately before commencement,  
 9 regulations that:  
 10 (a) were made for the purposes of that provision; and  
 11 (b) were in force immediately before commencement;  
 12 continue to have effect on and after commencement as if those  
 13 regulations had been made for the purposes of the corresponding  
 14 provision, as in force after commencement, that is specified in column 3  
 15 of the table in relation to that provision:  
 16

Saving of regulations		
Column 1	Column 2	Column 3
Item	Provision	Corresponding provision
1	paragraph 24A(4)(b) of the <i>Administrative Appeals Tribunal Act 1975</i>	subsection 24A(4) of the <i>Administrative Appeals Tribunal Act 1975</i>
2	paragraph 38A(4)(b) of the <i>Family Law Act 1975</i>	subsection 38A(4) of the <i>Family Law Act 1975</i>
3	paragraph 18A(4)(b) of the <i>Federal Court of Australia Act 1976</i>	subsection 18A(4) of the <i>Federal Court of Australia Act 1976</i>
4	paragraph 128(4)(b) of the <i>Native Title Act 1993</i>	subsection 128(4) of the <i>Native Title Act 1993</i>

17 (2) In this item:  
 18 **commencement** means the commencement of this item.

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## Schedule 4—Court premises

### *Public Order (Protection of Persons and Property) Act 1971*

#### **1 Section 13A (definition of *court premises*)**

Repeal the definition, substitute:

*court premises* means:

- (a) in relation to any court, including the Federal Court—any premises occupied or used (whether permanently or temporarily or under a lease or otherwise) in connection with the sittings, or any other operations, of the court; and
- (b) in relation to the Federal Court—premises in respect of which a court premises order (within the meaning of section 13AA) is in effect.

#### **2 After section 13A**

Insert:

#### **13AA Orders relating to court premises in relation to the Federal Court**

- (1) An authorised court official may make a written order (a *court premises order*) specifying particular premises for the purposes of paragraph (b) of the definition of *court premises*.
- (2) An authorised court official may make a court premises order in respect of particular premises only if the authorised court official is satisfied that the premises are likely to be occupied or used (whether permanently or temporarily or under a lease or otherwise) in connection with a sitting, proceeding or any other operation, of the Federal Court.
- (3) A court premises order:
  - (a) must describe the premises to which it relates; and
  - (b) has effect:
    - (i) for the period specified in the order (unless it is revoked before the end of that period); or
    - (ii) if no period is so specified, until it is revoked.

1 Note: Subsection 33(3) of the *Acts Interpretation Act 1901* deals with  
2 revocation.

3 (4) If an authorised court official makes a court premises order, the  
4 authorised court official must give notice of the order to any person  
5 likely to be directly affected by the order.

6 (5) An authorised court official may give notice of a court premises  
7 order as required by subsection (4):

8 (a) by doing both of the following:

9 (i) ensuring that, before the premises to which the order  
10 relates are occupied or used as mentioned in  
11 subsection (2), a copy of the order is posted in a  
12 prominent place in the vicinity of the premises;

13 (ii) ensuring that, if the premises are occupied or used for  
14 the purposes of a sitting or proceeding, an  
15 announcement is made at the beginning of, or during,  
16 the sitting or proceeding describing the order and the  
17 effect of the order; and

18 (b) if regulations of a kind mentioned in subsection (6) are in  
19 force in relation to the giving of such notice—by complying  
20 with the requirements prescribed by the regulations.

21 (6) The regulations may make provision for one or more of the  
22 following in relation to the giving of notice as required by  
23 subsection (4):

24 (a) the form of the notice;

25 (b) the manner of giving the notice;

26 (c) the content of the notice.

27 (7) A court premises order is not a legislative instrument.

28 (8) In this section:

29 ***authorised court official*** means:

30 (a) the Registrar of the Federal Court; or

31 (b) a Federal Court officer authorised in writing by the Registrar  
32 of the Federal Court for the purposes of this section.

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

1                    ***Federal Court officer*** means an officer of the Federal Court within  
2                    the meaning of subsection 18N(1) of the *Federal Court of*  
3                    *Australia Act 1976*.

1  
2 **Schedule 5—Binding financial agreements**

3 **Part 1—Financial agreements**

4 *Family Law Act 1975*

5 **1 Subsection 4(1) (after paragraph (a) of the definition of**  
6 ***spouse party*)**

7 Insert:

- 8 (aa) in relation to a termination agreement referred to in  
9 paragraph 90J(1)(b)—a party covered by paragraph (a) of  
10 this definition in relation to the financial agreement  
11 concerned; or

12 **2 Paragraphs 90G(1)(b) and (c)**

13 Repeal the paragraphs, substitute:

- 14 (b) before signing the agreement, each spouse party was  
15 provided with:  
16 (i) independent legal advice from a legal practitioner about  
17 the effect of the agreement on the rights of that party  
18 and about the advantages and disadvantages, at the time  
19 that the advice was provided, to that party of making the  
20 agreement; and  
21 (ii) a signed statement by the legal practitioner stating that  
22 this advice was given to that party; and

23 **3 Paragraph 90G(1)(d)**

24 Omit “court; and”, substitute “court.”.

25 **4 Paragraph 90G(1)(e)**

26 Repeal the paragraph.

27 **5 Paragraphs 90J(2)(b) and (c)**

28 Repeal the paragraphs, substitute:

- 29 (b) before signing the agreement, each spouse party was  
30 provided with:  
31 (i) independent legal advice from a legal practitioner about  
32 the effect of the agreement on the rights of that party
-



1 and about the advantages and disadvantages, at the time  
2 that the advice was provided, to that party of making the  
3 agreement; and

4 (ii) a signed statement by the legal practitioner stating that  
5 this advice was given to that party; and

6 **6 Paragraph 90J(2)(d)**

7 Omit “court; and”, substitute “court.”.

8 **7 Paragraph 90J(2)(e)**

9 Repeal the paragraph.

10 **8 Application**

11 (1) The amendments made by items 2 to 7 apply in relation to financial  
12 agreements, and termination agreements, made on or after 27 December  
13 2000.

14 (2) However, those amendments do not apply in relation to an agreement if,  
15 before the commencement of this item, a court has made an order  
16 setting aside the agreement.

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2 **Part 2—Financial matters relating to de facto**  
3 **relationships**

4 *Family Law Act 1975*

5 **9 Subsection 4(1) (at the end of the definition of *spouse***  
6 ***party*)**

7 Add:

8 ; or (c) in relation to a Part VIIIAB termination agreement—a party  
9 covered by paragraph (b) of this definition in relation to the  
10 Part VIIIAB financial agreement concerned.

11 **10 Paragraphs 90UJ(1)(b) and (c)**

12 Repeal the paragraphs, substitute:

13 (b) before signing the agreement, each spouse party was  
14 provided with:

15 (i) independent legal advice from a legal practitioner about  
16 the effect of the agreement on the rights of that party  
17 and about the advantages and disadvantages, at the time  
18 that the advice was provided, to that party of making the  
19 agreement; and

20 (ii) a signed statement by the legal practitioner stating that  
21 this advice was given to that party; and

22 **11 Paragraph 90UJ(1)(d)**

23 Omit “court; and”, substitute “court.”.

24 **12 Paragraph 90UJ(1)(e)**

25 Repeal the paragraph.

26 **13 Paragraphs 90UL(2)(b) and (c)**

27 Repeal the paragraphs, substitute:

28 (b) before signing the termination agreement, each spouse party  
29 was provided with:

30 (i) independent legal advice from a legal practitioner about  
31 the effect of the termination agreement on the rights of  
32 that party and about the advantages and disadvantages,

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1 at the time that the advice was provided, to that party of  
2 making the termination agreement; and

- 3 (ii) a signed statement by the legal practitioner stating that  
4 this advice was given to that party; and

#### 5 **14 Paragraph 90UL(2)(d)**

6 Omit “court; and”, substitute “court.”.

#### 7 **15 Paragraph 90UL(2)(e)**

8 Repeal the paragraph.

#### 9 **16 Subsection 90UM(5)**

10 Repeal the subsection, substitute:

11 (5) This subsection applies if:

12 (a) at least one of the spouse parties to the agreement was not  
13 provided, before signing the agreement, with independent  
14 legal advice from a legal practitioner about the effect of the  
15 agreement on the rights of that party and about the  
16 advantages and disadvantages to that party of making the  
17 agreement; or

18 (b) if this advice was provided to at least one of the spouse  
19 parties to the agreement—that party was not provided with a  
20 signed statement by the legal practitioner stating that this  
21 advice was given to that party;

22 and it would be unjust and inequitable, having regard to the eligible  
23 agreed matters (within the meaning of section 90UE) for the  
24 agreement, if the court does not set the agreement aside.

#### 25 **17 Application**

26 (1) The amendments made by items 10 to 15 apply in relation to  
27 agreements made under section 90UB, 90UC or 90UD of the *Family*  
28 *Law Act 1975*, and Part VIIIAB termination agreements, made on or  
29 after the day on which item 1 of Schedule 1 to the *Family Law*  
30 *Amendment (De Facto Financial Matters and Other Measures) Act*  
31 *2008* commences.

32 (2) However, those amendments do not apply in relation to an agreement if,  
33 before the commencement of this item, a court has made an order  
34 setting aside the agreement.