

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

**COURTS AND TRIBUNALS ADMINISTRATION AMENDMENT
BILL 1989**

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1987-88-89

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 1 November 1989

(*Attorney-General*)

A BILL

FOR

**An Act to amend various Acts relating to the administration
of certain courts and tribunals, and for related purposes**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART 1—PRELIMINARY

Short title

- 5 1. This Act may be cited as the *Courts and Tribunals Administration Amendment Act 1989*.

Commencement

- 10 2. (1) Parts 1 and 6 of this Act commence on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (3) If a provision referred to in subsection (2) does not commence under that subsection within the period of 6 months beginning on the day on

which this Act receives the Royal Assent, it commences on the first day after the end of that period.

PART 2—AMENDMENTS OF THE ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

Principal Act

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3. In this Part, “Principal Act” means the *Administrative Appeals Tribunal Act 1975*¹.

Interpretation

4. Section 3 of the Principal Act is amended by omitting “includes the Registrar and” from the definition of “officer of the Tribunal” in subsection (1) and substituting “means the Registrar or”.

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5. After Part III of the Principal Act the following Part is inserted:

“PART IIIA—MANAGEMENT OF THE TRIBUNAL

“Division 1—Management responsibilities of President and Registrar

Management of administrative affairs of Tribunal

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“24A. (1) The President is responsible for managing the administrative affairs of the Tribunal.

“(2) For that purpose, the President has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

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- (a) entering into contracts; and
- (b) acquiring or disposing of personal property.

“(3) The powers given to the President by subsection (2) are in addition to any powers given to the President by any other provision of this Act or by any other Act.

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“(4) Subsection (2) does not authorise the President to:

- (a) acquire any interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or
- (b) enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Minister.

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Registrar of the Tribunal

“24B. In the management of the administrative affairs of the Tribunal, the President is assisted by the Registrar of the Tribunal.

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“Division 2—Appointment, powers etc. of Registrar

Appointment of Registrar

“24C. The Registrar is appointed by the Governor-General on the nomination of the President.

5 **Powers of the Registrar**

“24D. (1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the President under section 24B.

10 “(2) In particular, the Registrar may act on behalf of the President in relation to the administrative affairs of the Tribunal.

“(3) The President may give the Registrar directions regarding the exercise of his or her powers under this Part.

Remuneration of Registrar

15 “24E. (1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

“(2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

“(3) The Registrar is to be paid such other allowances as are prescribed.

20 “(4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Tribunal.

Terms and conditions of appointment of Registrar

25 “24F. (1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

“(2) A person who has reached 65 cannot be appointed as Registrar.

“(3) A person cannot be appointed as Registrar for a period extending beyond the date on which he or she will reach 65.

30 “(4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the President.

Leave of absence

“24G. (1) The President may grant leave of absence to the Registrar.

35 “(2) Leave of absence is to be granted on terms and conditions determined by the President with the approval of the Minister.

Resignation

“24H. The Registrar may resign by giving a signed notice of resignation to the Governor-General.

Outside employment of Registrar

“24J. (1) Except with the consent of the President, the Registrar must not engage in paid employment outside the duties of his or her office. 5

“(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

Termination of appointment

“24K. (1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity. 10

“(2) The Governor-General is required to terminate the appointment of the Registrar if the Registrar:

- (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or 15
- (b) is absent from duty, except on leave of absence granted by the President, for 14 consecutive days or for 28 days in any 12 months; or
- (c) engages in paid employment contrary to section 24J; or 20
- (d) fails, without reasonable excuse, to comply with section 24L.

“(3) If the Registrar is an eligible employee for the purposes of the *Superannuation Act 1976* the Governor-General may, with the Registrar’s consent, retire the Registrar from office on the ground of incapacity.

Disclosure of interests by Registrar 25

“24L. The Registrar must give written notice to the President of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

Acting Registrar

“24M. (1) The President may, in writing, appoint a person to act in the office of Registrar: 30

- (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office. 35

“(2) A person appointed to act in the office of Registrar during a vacancy may not continue to act in that office for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

- 5 (a) the occasion for the appointment had not arisen; or
(b) there was a defect or irregularity in connection with the appointment;
or
(c) the appointment had ceased to have effect; or
(d) the occasion for the person to act had not arisen or had ceased.

“Division 3—Other officers and staff of Tribunal

Deputy Registrars and staff of the Tribunal

10 “24N. (1) In addition to the Registrar, there are to be such Deputy Registrars and staff of the Tribunal as are necessary.

“(2) The Deputy Registrars are appointed by the Registrar.

“(3) The Deputy Registrars and the staff of the Tribunal are to be persons appointed or employed under the *Public Service Act 1922*.

15 “(4) The Registrar may, on behalf of the President, arrange with the Secretary of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department or of the authority to be made available for the purposes of the Tribunal.

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

Powers of Registrar regarding Deputy Registrars and Tribunal staff

25 “24P. In relation to the branch of the Australian Public Service consisting of the Deputy Registrars and the staff of the Tribunal, the Registrar has the same powers as if that branch were a Department of the Australian Public Service and the Registrar were the Secretary of that Department.

Engagement of consultants etc.

“24Q. (1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar.

30 “(2) An engagement under subsection (1) is to be made:

- (a) on behalf of the Commonwealth; and
(b) by written agreement.

“Division 4—Miscellaneous administrative matters

Annual report

35 “24R. (1) As soon as practicable after the end of each financial year, the President is to submit to the Minister:

- (a) a report of the management of the administrative affairs of the Tribunal during the financial year; and

(b) financial statements in respect of that financial year.

“(2) The financial statements are to be in a form approved by the Minister for Finance.

“(3) Before submitting the financial statements to the Minister, the President must submit them to the Auditor-General who will report to the Minister: 5

(a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records; and

(b) whether the statements are in agreement with the accounts and records; and 10

(c) whether, in his or her opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, during the year have been in accordance with this Act; and

(d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister. 15

“(4) The Minister will cause a copy of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Minister.

Proper accounts to be kept 20

“24S. (1) The President is to ensure that proper accounts and records of the transactions and affairs relating to the administration of the Tribunal under section 24A are kept.

“(2) The President is to do all things necessary to ensure that:

(a) all payments out of money appropriated by the Parliament for the purposes of the Tribunal are correctly made and properly authorised; and 25

(b) adequate control is maintained over assets held by, or in the custody of, the President on behalf of the Commonwealth and over the incurring of liabilities on behalf of the Commonwealth under this Part. 30

Audit

“24T. (1) The Auditor-General is, at least once in each financial year, to inspect and audit the accounts and records of financial transactions relating to the administration of the affairs of the Tribunal under section 24A and the records relating to assets held by, or in the custody of, the President on behalf of the Commonwealth and must immediately draw the attention of the Minister to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his or her so doing. 35 40

“(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

5 “(3) The Auditor-General is to report to the Minister the results of the inspection and audit carried out under subsection (1).

“(4) The Auditor-General or a person authorised by him or her is entitled at all reasonable times to full and free access to all accounts and records maintained under section 24S and relating directly or indirectly to the receipt or payment of money, or to the acquisition, receipt, custody or disposal of assets, by the President on behalf of the Commonwealth.

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“(5) The Auditor-General or a person authorised by him or her may make copies of, or take extracts from, any such accounts and records.

“(6) The Auditor-General or a person authorised by him or her may require any person to give him or her information in the person’s possession or to which the person has access which the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person must comply with the requirement.

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“(7) A person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$1,000.

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Estimates

“24U. (1) The President is required to submit to the Minister estimates of receipts and expenditure:

- 25 (a) for each financial year; and
(b) for any other period, if so requested by the Minister;
in respect of the administration of the Tribunal.

“(2) The estimates are to be in a form approved by the Minister.

“(3) The estimates are to be submitted to the Minister no later than the date fixed by the Minister.

30 “(4) Money appropriated by the Parliament for the purposes of the Tribunal may not be expended except in accordance with estimates approved by the Minister.

Delegation of administrative powers of President

35 “24V. The President may, in writing, delegate all or any of his or her powers under section 24A to any one or more of the members of the Tribunal.

Proceedings arising out of administration of Tribunal

40 “24W. Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Tribunal under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.”

Public interest questions under sections 36, 36A and 36C

6. Section 36D of the Principal Act is amended:

- (a) by inserting in subsection (5) “or to the Registrar or a Deputy Registrar” after “Tribunal” (first occurring);
- (b) by adding at the end of subsection (5) “or as Registrar or Deputy Registrar”.

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7. Section 65 of the Principal Act is repealed and the following section is substituted:

Officers of Tribunal

“65. (1) In relation to a proceeding under this Act, the Registrar has such duties, powers and functions as are given by this Act or by the President.

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“(2) In relation to a proceeding under this Act, the Deputy Registrars have such duties, powers and functions as are given by this Act or by the President.”.

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PART 3—AMENDMENT OF THE AUSTRALIAN SECURITY INTELLIGENCE ORGANIZATION ACT 1979

Principal Act

8. In this Part, “Principal Act” means the *Australian Security Intelligence Organization Act 1979*².

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Officers of Tribunal

9. Section 78 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) A person is not eligible to be the Registrar or a Deputy Registrar unless he or she is the Registrar of the Administrative Appeals Tribunal or a person appointed or employed under the *Public Service Act 1922*.”.

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PART 4—AMENDMENTS OF THE FAMILY LAW ACT 1975

Principal Act

10. In this Part, “Principal Act” means the *Family Law Act 1975*³.

Interpretation

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11. Section 4 of the Principal Act is amended:

- (a) by omitting from the definition of “court counsellor” in subsection (1) “section 37” and substituting “section 38N”;
- (b) by omitting from paragraph (a) of the definition of “marriage counsellor” in subsection (1) “section 37” and substituting “section 38N”.

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12. Section 37 of the Principal Act is repealed and the following section is substituted:

Officers of Court

5 “37. (1) In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the Rules of Court or by the Chief Judge.

10 “(2) The Principal Registrar of the Court may, subject to this Act, the regulations, the Rules of Court and any directions of the Chief Judge, give directions to the officers of the Court (other than the court counsellors) in relation to the manner in which the functions and duties of those officers are to be performed and the powers of those officers are to be exercised in relation to proceedings under this Act.”.

13. After Part IV of the Principal Act the following Part is inserted:

“PART IVA—MANAGEMENT OF THE COURT

15 **“Division 1—Management responsibilities of the Chief Judge and the Chief Executive Officer**

Management of administrative affairs of Court

“38A. (1) The Chief Judge is responsible for managing the administrative affairs of the Court.

20 “(2) For that purpose, the Chief Judge has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

- (a) entering into contracts; and
- (b) acquiring or disposing of personal property.

25 “(3) The powers given to the Chief Judge by subsection (2) are in addition to any powers given to the Chief Judge by any other provision of this Act or by any other Act.

“(4) Subsection (2) does not authorise the Chief Judge to:

- 30 (a) acquire any interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or
- (b) enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General.

35 **Chief Executive Officer**

“38B. In the management of the administrative affairs of the Court, the Chief Judge is assisted by a Chief Executive Officer.

“Division 2—Appointment, powers etc of Chief Executive Officer

Appointment of Chief Executive Officer

“38C. The Chief Executive Officer is appointed by the Governor-General on the nomination of the Chief Judge.

Powers of Chief Executive Officer

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“38D. (1) The Chief Executive Officer has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Judge under section 38B.

“(2) In particular, the Chief Executive Officer may act on behalf of the Chief Judge in relation to the administrative affairs of the Court.

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“(3) The Chief Judge may give the Chief Executive Officer directions regarding the exercise of his or her powers.

Remuneration of Chief Executive Officer

“38E. (1) The Chief Executive Officer is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

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“(2) If there is no determination in force, the Chief Executive Officer is to be paid such remuneration as is prescribed.

“(3) The Chief Executive Officer is to be paid such other allowances as are prescribed.

“(4) Remuneration and allowances payable to the Chief Executive Officer under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

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Terms and conditions of appointment of Chief Executive Officer

“38F. (1) The Chief Executive Officer holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

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“(2) A person who has reached 65 cannot be appointed as Chief Executive Officer.

“(3) A person cannot be appointed as Chief Executive Officer for a period extending beyond the date on which he or she will reach 65.

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“(4) The Chief Executive Officer holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Judge.

Leave of absence

“38G. (1) The Chief Judge may grant leave of absence to the Chief Executive Officer.

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“(2) Leave of absence is to be granted on terms and conditions determined by the Chief Judge with the approval of the Attorney-General.

Resignation

“38H. The Chief Executive Officer may resign by giving a signed notice of resignation to the Governor-General.

Outside employment of Chief Executive Officer

5 “38J. (1) Except with the consent of the Chief Judge, the Chief Executive Officer must not engage in paid employment outside the duties of his or her office.

“(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

10 **Termination of appointment**

“38K. (1) The Governor-General may terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity.

“(2) The Governor-General is required to terminate the appointment of the Chief Executive Officer if he or she:

- 15 (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b) is absent from duty, except on leave of absence granted by the Chief Judge, for 14 consecutive days or for 28 days in any 12 months;
- 20 or
- (c) engages in paid employment contrary to section 38J; or
- (d) fails, without reasonable excuse, to comply with section 38L.

“(3) If the Chief Executive Officer is an eligible employee for the purposes of the *Superannuation Act 1976* the Governor-General may, with the Chief Executive Officer’s consent, retire the Chief Executive Officer from office on the ground of incapacity.

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Disclosure of interests by Chief Executive Officer

30 “38L. The Chief Executive Officer must give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Chief Executive Officer has or acquires in any business or in any body corporate carrying on a business.

Acting Chief Executive Officer

“38M. (1) The Chief Judge may, in writing, appoint a person to act in the office of Chief Executive Officer:

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

“(2) A person appointed to act in the office of Chief Executive Officer during a vacancy may not continue to act in that office for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that: 5

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased. 10

“Division 3—Other officers and staff of Registries

Personnel other than Chief Executive Officer

“38N. (1) In addition to the Chief Executive Officer, there are the following officers of the Court:

- (a) a Principal Registrar of the Court; 15
- (b) such Registrars and Deputy Registrars of the Court as are necessary;
- (c) a Principal Director of Court Counselling;
- (d) such Directors of Court Counselling and other court counsellors as are necessary;
- (e) the Marshal of the Court; 20
- (f) such Deputy Marshals of the Court as are necessary.

“(2) The officers of the Court, other than the Chief Executive Officer, have such duties, powers and functions as are given to them by this Act or by the Chief Judge.

“(3) The officers of the Court are appointed by the Chief Executive Officer. 25

“(4) The officers of the Court, other than the Chief Executive Officer and the Deputy Marshals, are to be persons appointed or employed under the *Public Service Act 1922*.

“(5) The Deputy Marshals may be persons appointed or employed under the *Public Service Act 1922*. 30

“(6) The Chief Executive Officer may, on behalf of the Chief Judge, arrange with the Secretary of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department or authority to be made available for the purposes of the Court. 35

“(7) There are to be such staff of the Registries as are necessary.

“(8) The staff of the Registries is to consist of persons appointed or employed under the *Public Service Act 1922*.

Marshal

“38P. (1) The Marshal of the Court is responsible for the service and execution of all process of the Court directed to the Marshal.

“(2) The Marshal is also responsible for:

- 5 (a) dealing, on behalf of the Court, with the Australian Federal Police and the police forces of the States and Territories in relation to the service and execution of process of the Court directed to members of any of those police forces; and
- 10 (b) the security of the Court and the personal security of the Judges and officers of the Court; and
- (c) taking, receiving and detaining all persons committed to his or her custody by the Court; and
- (d) discharging such persons when so directed by the Court or otherwise required by law.

15 “(3) A Deputy Marshal may, subject to any directions of the Marshal, exercise or perform any of the powers and functions of the Marshal.

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

20 **Powers of Chief Executive Officer regarding Court officers and Registry staff**

“38Q. In relation to the branch of the Australian Public Service consisting of the officers of the Court (other than the Chief Executive Officer and any Deputy Marshals who are not persons appointed or employed under the *Public Service Act 1922*) and the staff of the Registries, the Chief Executive Officer has the same powers as if that Branch were a Department of the Australian Public Service and the Chief Executive Officer were the Secretary of that Department.

Engagement of consultants etc.

30 “38R. (1) The Chief Executive Officer may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Chief Executive Officer.

“(2) An engagement under subsection (1) is to be made:

- 35 (a) on behalf of the Commonwealth; and
- (b) by written agreement.

“Division 4—Miscellaneous administrative matters

Annual report

“38S. (1) As soon as practicable after the end of each financial year, the Chief Judge is to submit to the Attorney-General:

- 40 (a) a report of the management of the administrative affairs of the Court during the financial year; and

(b) financial statements in respect of that financial year.

“(2) The financial statements are to be in a form approved by the Minister for Finance.

“(3) Before submitting the financial statements to the Attorney-General, the Chief Judge must submit them to the Auditor-General who will report to the Attorney-General: 5

- (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records; and 10
- (c) whether, in his or her opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Attorney-General. 15

“(4) The Attorney-General will cause a copy of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Attorney-General.

Proper accounts to be kept 20

“38T. (1) The Chief Judge is to ensure that proper accounts and records of the transactions and affairs relating to the administration of the Court under section 38A are kept.

“(2) The Chief Judge is to do all things necessary to ensure that:

- (a) all payments out of money appropriated by the Parliament for the purposes of the Tribunal are correctly made and properly authorised; and 25
- (b) adequate control is maintained over assets held by, or in the custody of, the Chief Judge on behalf of the Commonwealth and over the incurring of liabilities on behalf of the Commonwealth under this Part. 30

Audit

“38U. (1) The Auditor-General is, at least once in each financial year, to inspect and audit the accounts and records of financial transactions relating to the administration of the affairs of the Court under section 38A and the records relating to assets held by, or in the custody of, the Chief Judge on behalf of the Commonwealth and must immediately draw the attention of the Attorney-General to any irregularity disclosed by the inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his or her so doing. 35 40

“(2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

5 “(3) The Auditor-General is to report to the Attorney-General the results of the inspection and audit carried out under subsection (1).

“(4) The Auditor-General or a person authorised by him or her is entitled at all reasonable times to full and free access to all accounts and records maintained under section 38T and relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Chief Judge on behalf of the Commonwealth.

10

“(5) The Auditor-General or a person authorised by him or her may make copies of, or take extracts from, any such accounts and records.

“(6) The Auditor-General or a person authorised by him or her may require any person to give him or her information in the person’s possession or to which the person has access which the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person must comply with the requirement.

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“(7) A person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$1,000.

20

Estimates

“38v. (1) The Chief Judge is required to submit to the Attorney-General estimates of receipts and expenditure:

- (a) for each financial year; and
- 25 (b) for any other period, if so requested by the Attorney-General; in respect of the administration of the Court.

“(2) The estimates are to be in a form approved by the Attorney-General.

“(3) The estimates are to be submitted to the Attorney-General no later than the date fixed by the Attorney-General.

30

“(4) Money appropriated by the Parliament for the purposes of the Court may not be expended except in accordance with estimates approved by the Attorney-General.

Delegation of administrative powers of Chief Judge

35 “38w. The Chief Judge may, in writing, delegate all or any of his or her powers under section 38A to any one or more of the Judges.

Proceedings arising out of administration of Court

40 “38x. Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Chief Executive Officer under this Part, may be instituted by or against the Commonwealth, as the case requires.”

PART 5—AMENDMENTS OF THE FEDERAL COURT OF AUSTRALIA ACT 1976

Principal Act

14. In this Part, “Principal Act” means the *Federal Court of Australia Act 1976*. 5

15. After Part II of the Principal Act the following Part is inserted:

“PART IIA—MANAGEMENT OF THE COURT

“Division 1—Management responsibilities of Chief Judge and Registrar

Management of administrative affairs of Court

“18A. (1) The Chief Judge is responsible for managing the administrative affairs of the Court. 10

“(2) For that purpose, the Chief Judge has power to do all things that are necessary or convenient to be done, including, on behalf of the Commonwealth:

- (a) entering into contracts; and 15
- (b) acquiring or disposing of personal property.

“(3) The powers given to the Chief Judge by subsection (2) are in addition to any powers given to the Chief Judge by any other provision of this Act or by any other Act.

“(4) Subsection (2) does not authorise the Chief Judge to: 20

- (a) acquire any interest or right that would constitute an interest in land for the purposes of the *Lands Acquisition Act 1989*; or
- (b) enter into a contract under which the Commonwealth is to pay or receive an amount exceeding \$250,000 or, if a higher amount is prescribed, that higher amount, except with the approval of the Attorney-General. 25

Registrar

“18B. In the management of the administrative affairs of the Court, the Chief Judge is assisted by the Registrar of the Court.

“Division 2—Appointment, powers etc. of Registrar 30

Appointment of Registrar

“18C. The Registrar is appointed by the Governor-General on the nomination of the Chief Judge.

Powers of Registrar

“18D. (1) The Registrar has power to do all things necessary or convenient to be done for the purpose of assisting the Chief Judge under section 18B.

5 “(2) In particular, the Registrar may act on behalf of the Chief Judge in relation to the administrative affairs of the Court.

“(3) The Chief Judge may give the Registrar directions regarding the exercise of his or her powers under this Part.

Remuneration of Registrar

10 “18E. (1) The Registrar is to be paid the remuneration and allowances determined by the Remuneration Tribunal.

“(2) If there is no determination in force, the Registrar is to be paid such remuneration as is prescribed.

“(3) The Registrar is to be paid such other allowances as are prescribed.

15 “(4) Remuneration and allowances payable to the Registrar under this section are to be paid out of money appropriated by the Parliament for the purposes of the Court.

Terms and conditions of appointment of Registrar

20 “18F. (1) The Registrar holds office for the period (not longer than 5 years) specified in the instrument of his or her appointment, but is eligible for re-appointment.

“(2) A person who has reached 65 cannot be appointed as Registrar.

“(3) A person cannot be appointed as Registrar for a period extending beyond the date on which he or she will reach 65.

25 “(4) The Registrar holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Chief Judge.

Leave of absence

“18G. (1) The Chief Judge may grant leave of absence to the Registrar.

30 “(2) Leave of absence is to be granted on terms and conditions determined by the Chief Judge with the approval of the Attorney-General.

Resignation

“18H. The Registrar may resign by giving a signed notice of resignation to the Governor-General.

35 **Outside employment of Registrar**

“18J. (1) Except with the consent of the Chief Judge, the Registrar must not engage in paid employment outside the duties of his or her office.

“(2) The reference in subsection (1) to paid employment does not include service in the Defence Force.

Termination of appointment

“18K. (1) The Governor-General may terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity.

“(2) The Governor-General is required to terminate the appointment of the Registrar if the Registrar:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

(b) is absent from duty, except on leave of absence granted by the Chief Judge, for 14 consecutive days or for 28 days in any 12 months; or

(c) engages in paid employment contrary to section 18J; or

(d) fails, without reasonable excuse, to comply with section 18L.

“(3) If the Registrar is an eligible employee for the purposes of the *Superannuation Act 1976* the Governor-General may, with the Registrar’s consent, retire the Registrar from office on the ground of incapacity.

Disclosure of interests by Registrar

“18L. The Registrar must give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or in any body corporate carrying on a business.

Acting Registrar

“18M. (1) The Chief Judge may, in writing, appoint a person to act in the office of Registrar:

(a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Registrar is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

“(2) A person appointed to act in the office of Registrar during a vacancy may not continue to act in that office for more than 12 months.

“(3) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid on the ground that:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in connection with the appointment; or

(c) the appointment had ceased to have effect; or

(d) the occasion for the person to act had not arisen or had ceased.

“Division 3—Other officers and staff of Registries

Personnel other than the Registrar

“18N. (1) In addition to the Registrar, there are the following officers of the Court:

- 5 (a) a District Registrar of the Court for each District Registry;
(b) such Deputy Registrars and Deputy District Registrars as are necessary;
(c) the Sheriff of the Court;
(d) such Deputy Sheriffs as are necessary.

10 “(2) The officers of the Court, other than the Registrar, have such duties, powers and functions as are given to them by this Act or by the Chief Judge.

“(3) The officers of the Court are appointed by the Registrar.

15 “(4) The officers of the Court, other than the Registrar and the Deputy Sheriffs, are to be persons appointed or employed under the *Public Service Act 1922*.

“(5) The Deputy Sheriffs may be persons appointed or employed under the *Public Service Act 1922*.

20 “(6) The Registrar may, on behalf of the Chief Judge, arrange with the Secretary of a Department of the Australian Public Service, or with an authority of the Commonwealth, for the services of officers or employees of the Department or authority to be made available for the purposes of the Court.

“(7) There are to be such staff of the Registries as are necessary.

25 “(8) The staff of the Registries is to consist of persons appointed or employed under the *Public Service Act 1922*.

Sheriff

“18P. (1) The Sheriff of the Court is responsible for the service and execution of all process of the Court directed to the Sheriff.

30 “(2) The Sheriff is also responsible for:

- (a) taking, receiving and detaining all persons committed to his or her custody by the Court; and
(b) discharging such persons when so directed by the Court or otherwise required by law.

35 “(3) A Deputy Sheriff may, subject to any directions of the Sheriff, exercise or perform any of the powers or functions of the Sheriff.

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

Powers of Registrar regarding Court officers and Registry staff

“18Q. In relation to the branch of the Australian Public Service consisting of the officers of the Court (other than the Registrar and any Deputy Sheriffs who are not persons appointed or employed under the *Public Service Act 1922*) and the staff of the Registries, the Registrar has the same powers as if that Branch were a Department of the Australian Public Service and the Registrar were the Secretary of that Department. 5

Engagement of consultants etc.

“18R. (1) The Registrar may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Registrar. 10

“(2) An engagement under subsection (1) is to be made:

- (a) on behalf of the Commonwealth; and
- (b) by written agreement.

“Division 4—Miscellaneous administrative matters

Annual report 15

“18S. (1) As soon as practicable after the end of each financial year, the Chief Judge is to submit to the Attorney-General:

- (a) a report of the management of the administrative affairs of the Court during the financial year; and
- (b) financial statements in respect of that financial year. 20

“(2) The financial statements are to be in a form approved by the Minister for Finance.

“(3) Before submitting the financial statements to the Attorney-General, the Chief Judge must submit them to the Auditor-General who will report to the Attorney-General: 25

- (a) whether, in the opinion of the Auditor-General, the statements are based on proper accounts and records; and
- (b) whether the statements are in agreement with the accounts and records; and
- (c) whether, in his or her opinion, the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, during the year have been in accordance with this Act; and 30
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Attorney-General.

“(4) The Attorney-General will cause a copy of the report and financial statements together with a copy of the report of the Auditor-General to be laid before each House of the Parliament within 15 sitting days of that House after their receipt by the Attorney-General. 35

Proper accounts to be kept

“18T. (1) The Chief Judge is to ensure that proper accounts and records of the transactions and affairs relating to the administration of the Court under section 18A are kept.

5 “(2) The Chief Judge is to do all things necessary to ensure that:

(a) all payments out of money appropriated by the Parliament for the purposes of the Court are correctly made and properly authorised; and

10 (b) adequate control is maintained over assets held by, or in the custody of, the Chief Judge on behalf of the Commonwealth and over the incurring of liabilities on behalf of the Commonwealth under this Part.

Audit

15 “18U. (1) The Auditor-General is, at least once in each financial year, to inspect and audit the accounts and records of financial transactions relating to the administration of the affairs of the Court under section 18A and the records relating to assets held by, or in the custody of, the Chief Judge on behalf of the Commonwealth and must immediately draw the attention of the Attorney-General to any irregularity disclosed by the
20 inspection and audit that, in the opinion of the Auditor-General, is of sufficient importance to justify his or her so doing.

“ (2) The Auditor-General may, at his or her discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in subsection (1).

25 “(3) The Auditor-General is to report to the Attorney-General the results of the inspection and audit carried out under subsection (1).

30 “(4) The Auditor-General or a person authorised by him or her is entitled at all reasonable times to full and free access to all accounts and records maintained under section 18T and relating directly or indirectly to the receipt or payment of moneys, or to the acquisition, receipt, custody or disposal of assets, by the Chief Judge on behalf of the Commonwealth.

“(5) The Auditor-General or a person authorised by him or her may make copies of, or take extracts from, any such accounts and records.

35 “(6) The Auditor-General or a person authorised by him or her may require any person to give him or her information in the person’s possession or to which the person has access which the Auditor-General or authorised person considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person must comply with the requirement.

40 “(7) A person who, without reasonable excuse, contravenes subsection (6) is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$1,000.

Estimates

“18V. (1) The Chief Judge is required to submit to the Attorney-General estimates of receipts and expenditure:

- (a) for each financial year; and
 - (b) for any other period, if so requested by the Attorney-General; 5
- in respect of the administration of the Court.

“(2) The estimates are to be in a form approved by the Attorney-General.

“(3) The estimates are to be submitted to the Attorney-General no later than the date fixed by the Attorney-General. 10

“(4) Money appropriated by the Parliament for the purposes of the Court may not be expended except in accordance with estimates approved by the Attorney-General.

Delegation of administrative powers of Chief Judge

“18W. The Chief Judge may, in writing, delegate all or any of his or her powers under section 18A to any one or more of the Judges. 15

Proceedings arising out of administration of Court

“18X. Any judicial or other proceeding relating to a matter arising out of the management of the administrative affairs of the Court under this Part, including any proceeding relating to anything done by the Registrar under this Part, may be instituted by or against the Commonwealth, as the case requires.”. 20

16. Section 35 of the Principal Act is repealed and the following section is substituted:

Officers of Court 25

“35. In relation to a proceeding under this Act, the officers of the Court have such duties, powers and functions as are given by this Act or the Rules of Court or by the Chief Judge.”.

PART 6—AMENDMENT OF THE HIGH COURT OF AUSTRALIA ACT 1979 30

Principal Act

17. In this Part, “Principal Act” means the *High Court of Australia Act 1979*⁵.

Limitation on contracts

18. Section 40 of the Principal Act is amended: 35

- (a) by omitting “\$100,000” and substituting “\$250,000”;
- (b) by adding at the end “or, if a higher amount is prescribed, that higher amount.”.

PART 7—AMENDMENTS OF THE JUDICIARY ACT 1903

Principal Act

19. In this Part, “Principal Act” means the *Judiciary Act 1903*⁶.

Rules of Court

5 20. Section 86 of the Principal Act is amended by omitting paragraph (f).

Regulations

21. Section 88 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

10 “(ca) prescribing the fees payable in respect of proceedings in the High Court and the execution of the process of the High Court;”.

PART 8—TRANSITIONAL ARRANGEMENTS

Transitional arrangements—Administrative Appeals Tribunal

15 22. Anything done under the *Administrative Appeals Tribunal Act 1975* before the commencement of Part 2 has the same effect, after that commencement, as it would have had if that Part had not been enacted.

Transitional arrangements—Family Court

20 23. Anything done under the *Family Law Act 1975* before the commencement of Part 4 has the same effect, after that commencement, as it would have had if that Part had not been enacted.

Transitional arrangements—Federal Court

24. Anything done under the *Federal Court of Australia Act 1976* before the commencement of Part 5 has the same effect, after that commencement, as it would have had if that Part had not been enacted.

25 Transitional arrangements—Judiciary Act

25. (1) If:

(a) Part 7 commences before regulations have been made under paragraph 88 (ca) of the *Judiciary Act 1903* as amended by this Act; or

30 (b) when Part 7 commences, regulations have been so made but have not commenced;

Rules of Court in force under paragraph 86 (f) of that Act immediately before the commencement of Part 7 continue to have effect, as if that Part had not been enacted, until regulations first commence under paragraph 88 (ca) of the *Judiciary Act 1903* as amended by this Act.

35

(2) Where:

(a) regulations have been made under paragraph 88 (ca) of the *Judiciary Act 1903* as amended by this Act; and

(b) immediately before the commencement of those regulations, Rules of Court made under paragraph 86 (f) of that Act had effect; subsection 48 (7) of the *Acts Interpretation Act 1901* has effect in relation to those Rules of Court as if they were regulations repealed by the regulations referred to in paragraph (a).

NOTES

1. No. 91, 1975, as amended. For previous amendments, see Nos. 37, 60, 89, 91, 157, 162, 163 and 209, 1976; Nos. 30, 57, 58 and 111, 1977; Nos. 65 and 109, 1978; Nos. 19 and 143, 1979; No. 110, 1980; Nos. 19 and 61, 1981; Nos. 26 and 80, 1982; No. 91, 1983; Nos. 63 and 72, 1984; Nos. 65 and 193, 1985; No. 48, 1986; and Nos. 38, 63, 109 and 120, 1988.
2. No. 173, 1979, as amended. For previous amendments, see Nos. 1 and 153, 1981; No. 108, 1983; No. 63, 1984; No. 192, 1985; No. 74, 1986; Nos. 6 and 141, 1987; Nos. 121, 126 and 137, 1988; and No. 63, 1989.
3. No. 53, 1975, as amended. For previous amendments, see Nos. 63, 95 and 209, 1976; No. 102, 1977; No. 23, 1979; No. 2, 1982; Nos. 67 and 72, 1983; Nos. 63, 72 and 165, 1984; Nos. 65, 166 and 193, 1985; Nos. 76 and 168, 1986; No. 141, 1987; No. 181, 1987 (as amended by No. 8, 1988); Nos. 8, 99 and 120, 1988; and No. 124, 1989.
4. No. 156, 1976, as amended. For previous amendments, see Nos. 19 and 87, 1979; No. 61, 1981; No. 26, 1982; No. 191, 1983; Nos. 11, 72 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; No. 141, 1987; and Nos. 8 and 99, 1988.
5. No. 137, 1979, as amended. For previous amendments, see No. 63, 1984; No. 65, 1985; No. 99, 1988; and No. 21, 1989.
6. No. 6, 1903, as amended. For previous amendments, see No. 5, 1906; No. 8, 1907; No. 34, 1910; No. 31, 1912; No. 11, 1914; No. 4, 1915; No. 38, 1920; No. 39, 1926; No. 9, 1927; No. 60, 1932; Nos. 34 and 65, 1933; No. 45, 1934; No. 5, 1937; No. 43, 1939; No. 50, 1940; No. 10, 1946; No. 52, 1947; No. 65, 1948; Nos. 51 and 80, 1950; Nos. 17 and 35, 1955; No. 50, 1959; Nos. 32 and 109, 1960; No. 91, 1965; Nos. 55 and 93, 1966; No. 134, 1968; No. 39, 1969; No. 216, 1973; No. 164, 1976; No. 36, 1978; Nos. 19, 86 and 138, 1979; No. 61, 1981; No. 26, 1982; Nos. 39, 91 and 114, 1983; Nos. 7, 12, 72 and 165, 1984; No. 65, 1985; No. 1, 1986; Nos. 38 and 120, 1988; and No. 108, 1989.

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