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The Parliament of the Commonwealth of Australia

House of Representatives

Courts and Tribunals Administration Amendment Bill 1989

Explanatory Memorandum

(Circulated by the authority of the
Honourable Lionel Bowen, Attorney-General)

Courts and Tribunals Administration Amendment Bill 1989
General Outline

The Courts and Tribunals Administration Amendment Bill 1989 gives effect to the Government's intention to confer administrative independence on the Administrative Appeals Tribunal, the Family Court of Australia and the Federal Court of Australia.

The necessary administrative changes are achieved by amendments to the Administrative Appeals Tribunal Act 1975, and similar amendments to the Family Law Act 1975 and the Federal Court of Australia Act 1976.

These amendments make the Chief Judge of the Family Court of Australia and the Chief Judge of the Federal Court of Australia responsible for managing the administrative affairs of these Courts. The President of the Administrative Appeals Tribunal becomes responsible for managing the administrative affairs of the Administrative Appeals Tribunal. The Chief Judge of the Federal Court and the President of the Tribunal are to be assisted in the management of the administrative affairs of the Court and Tribunal by the Registrars of the Court and the Tribunal, respectively. Those Registrars, who are presently officers of the Australian Public Service, will become statutory office-holders holding appointments from the Governor-General. The Chief Judge of the Family Court is to be assisted by a Chief Executive Officer, which is to be a new office. The Chief Executive Officer will also be appointed by the Governor-General.

The Courts and Tribunals Administration Amendment Bill also includes amendments to the Australian Security Intelligence Organization Act 1975, the Judiciary Act 1903 and the High Court of Australia Act 1979.

The amendment to the Australian Security Intelligence Organization Act is consequential upon the creation of the statutory office of Registrar of the Administrative Appeals Tribunal, and enables the holder of that office to be included amongst the class of persons who are eligible to be appointed as Registrar of the Security Appeals Tribunal.

The amendments to the Judiciary Act 1903 remove responsibility for the setting of High Court fees (namely, the power to fix court fees and fees for the execution of process) from the High Court Rules making power. The setting of High Court fees will now be dealt with by regulations.

The amendment to the High Court of Australia Act 1979 increases the limit on contracts that can be entered into by the Court, without the Minister's approval, from \$100,000 to \$250,000 or such higher amount as is fixed by regulation.

Financial Impact Statement

The changes to the administrative arrangements of the Courts and Tribunal are to be budget neutral. Some administrative services that are currently provided by the Attorney-General's Department will continue to be provided at no cost to the Courts and the Administrative Appeals Tribunal.

PART 1 - PRELIMINARY

CLAUSE 1: SHORT TITLE

1. This clause sets out the short title to the Bill.

CLAUSE 2: COMMENCEMENT

2. This clause provides for different commencement dates for Parts of the Bill. The provisions in Part 1 (Preliminary provisions) and the amendment in Part 6 (Amendment of the High Court of Australia Act) will come into operation on Royal Assent. All the remaining provisions of the Bill are to come into operation on a day or days to be fixed by Proclamation. In the event that all provisions of the Act are not proclaimed within 6 months of Royal Assent, subclause (3) provides for an automatic commencement of the unproclaimed provisions from the end of that 6 month period.

PART 2 - AMENDMENTS OF THE ADMINISTRATIVE
APPEALS TRIBUNAL ACT 1975

CLAUSE 3: PRINCIPAL ACT

3. This defines the reference to the Principal Act in this Part as the Administrative Appeals Tribunal Act 1975.

CLAUSE 4: INTERPRETATION

4. This clause amends the definition of "officer of the Tribunal" in section 3 of the Principal Act. Currently, there are no officers of the Tribunal other than the Registrar and Deputy Registrars, although provision exists in section 65 of the Principal Act for other officers. In consequence of the amendment to repeal section 65 and the insertion of new section 24N, which makes clear that the officers of the Tribunal are the Registrar and the Deputy Registrars, the definition in section 3 has been amended.

CLAUSE 5: PART IIIA - MANAGEMENT OF THE TRIBUNAL

**Division 1 - Management responsibilities of
President and Registrar**

5. New Section 24A: Management of administrative affairs of Tribunal. New subsection 24A(1) vests the responsibility for the management of the administrative affairs of the Tribunal in the President of the Tribunal. The Principal Act already confers powers on the President in relation to the work of the Tribunal, in particular, in subsection 20(1) in relation to the arrangement of the business of the Tribunal and the constitution of the Tribunal for the purposes of particular proceedings.
6. Under new subsection 24A(2) the President of the Tribunal is given the power to do all things that are necessary or convenient to be done to manage the administrative affairs of the Tribunal, including entering into contracts and acquiring or disposing of personal property on behalf of the Commonwealth, but excluding the acquisition of any interest or right that would constitute an interest in land for the purposes of the Lands Acquisition Act 1989 and the power to enter into contracts of more than \$250,000 in value, or such higher amount as is prescribed, without the approval of the Minister (subsection (4)). The exception in relation to the acquiring of interests in land means that the President's powers do not include an ability to acquire interests in land for the Tribunal, for example, by purchasing or leasing or other rights or restrictions over land, for example, easements. New subsection 24A(3) makes clear that the powers given to the President by new subsection 24A(2) are in addition to other powers which are given to the President by legislation.
7. New section 24B: Registrar of the Tribunal. The President is to be assisted in the management of the administrative affairs of the Tribunal by the Registrar.

Division 2 - Appointment, powers etc. of Registrar

8. New section 24C: Appointment of Registrar. The position of Registrar is a new statutory office to replace the existing position of Registrar which, by virtue of subsection 65(3) of the Principal Act, is a person appointed or employed under the Public Service Act 1922. This new position would include all the duties of the previous Registrar, as the amendments make no change in this regard, but would add increased administrative responsibilities. The change from a public service to a statutory appointment reflects the greater independence of the Tribunal and the increased administrative responsibilities of the position of Registrar.
9. New section 24D: Powers of the Registrar. The Registrar is granted all the powers necessary for the purpose of assisting the President, under any directions of the President which may be given to the Registrar. The Registrar can also act on behalf of the President.
10. New section 24E: Remuneration of Registrar. This section provides that the Remuneration Tribunal is to determine the remuneration and allowances of the Registrar or, if no remuneration is set by the Tribunal, the remuneration shall be set by regulation. Subsection (3) provides that the Registrar is to be entitled to receive such other allowances as are set by regulation. All remuneration and allowances paid to the Registrar are to be paid out of the Administrative Appeals Tribunal's own funds. (New section 24E(4)).
11. New section 24F: Terms and conditions of appointment of Registrar. The position of Registrar is a term appointment for a maximum of 5 years, but with provision for reappointment. The maximum age for appointees is 65. The President has the power to set the terms and conditions upon which the Registrar holds office in respect of matters not provided by the Act.

12. New section 24G: Leave of absence. The President may grant leave of absence to the Registrar on such terms and conditions as are determined by the President with the approval of the Minister.
13. New section 24H: Resignation. The Registrar may resign at any time by delivering to the Governor-General a signed notice of resignation.
14. New section 24J: Outside employment of Registrar. The Registrar may not engage in paid employment (except in the Defence Force) without the consent of the President.
15. New section 24K: Termination of employment. This is a standard termination provision for statutory office holders which stipulates the grounds on which the Registrar's appointment may be terminated.

The Governor-General has a discretion to terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity. If the Registrar becomes bankrupt, is absent from duty for 14 consecutive days or for 28 days in any 12 months without the consent of the President, or engages in paid employment contrary to the provisions in the Bill, or fails to comply with the requirement to disclose direct or indirect pecuniary interests, the Governor-General is required to terminate the Registrar's appointment. There is also a provision for the Governor-General, with the Registrar's consent, and if the Registrar is an eligible employee for the purposes of the Superannuation Act 1976, to retire the Registrar on the ground of incapacity (New section 24K(3)).

16. New section 24L: Disclosure of interests by Registrar. This section requires the Registrar to give written notice to the President of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or body corporate carrying on a business.

17. New section 24M: Acting Registrar. The President has the power to appoint a person to act in the office of Registrar during a vacancy in the office (whether or not an appointment has been made to the office) or when the Registrar is absent or unable to perform the duties of the office. Where there is a vacancy in the office of Registrar, there is a 12 month limit on the period for which a person can be appointed to act in that vacancy. Reference may also be had to section 33A of the Acts Interpretation Act 1901 which covers additional matters such as resignation and the duration of acting appointments where the office becomes vacant during the period of acting. New subsection 24M(2) provides standard provisions to protect the validity of the actions of the person acting in the event that, at some stage, there is found to be a defect in the appointment or appointment process.

Division 3 – Other officers and staff of Tribunal

18. New section 24N: Deputy Registrars and staff of the Tribunal. This section provides for the officers (ie. the Registrar and Deputy Registrars) and the staff of the Tribunal. All Deputy Registrars and Tribunal staff are to be Commonwealth public servants and, in addition, Deputy Registrars are appointed as such by the Registrar.
19. New section 24P: Powers of Registrar regarding Deputy Registrars and Tribunal staff. This section places the Registrar in the same position as a Departmental Secretary in his or her relationship with Deputy Registrars and staff of the Tribunal.
20. New section 24Q: Engagement of consultants etc. This section gives the Registrar the power to engage persons as consultants to the Registrar, or to engage persons to perform services for the Registrar. This provides increased flexibility to the Registrar, for example, to ensure a capability to handle particular work for the Tribunal where specialist expertise is required which may not be otherwise available to the Tribunal.

Division 4 - Miscellaneous administrative matters

21. New Section 24R: Annual Report. New section 24R specifies the form of reporting required under the new administrative arrangements. These reporting requirements are similar to those required of the High Court under the High Court of Australia Act 1979 and ensure that the Tribunal is accountable to Parliament for its financial and administrative independence. A report is to be submitted annually, consisting of 2 parts - a report of the management of the administrative affairs of the Tribunal and financial statements in a form approved by the Minister for Finance. The financial statements are to be submitted to the Auditor-General who is to report to the Minister administering the Principal Act, currently the Attorney-General, on a number of issues. The Minister is required to table the report and financial statements and a copy of the Auditor-General's report before each House of the Parliament.
22. New section 24S: Proper accounts to be kept. This new section requires the President to ensure that proper accounts and records of the transactions and affairs, relating to the administration of the Tribunal, are kept and that all payments of money appropriated for the purposes of the Tribunal are correctly made and properly authorised. The President must also ensure that adequate control is maintained over assets held by the President on behalf of the Commonwealth.
23. New section 24T: Audit. This new section defines the powers and responsibilities of the Auditor-General to inspect and report on the financial affairs of the Tribunal.
24. New Section 24U: Estimates. Under this provision the Minister will receive and approve estimates of proposed expenditure of the Tribunal. No money appropriated by the Parliament for the purposes of the Tribunal may be expended except in accordance with estimates approved by the Minister.

25. New Section 24V: Delegation of administrative powers of President. While the President remains responsible for the overall administration of the Tribunal, he or she may delegate, in writing, to any one or more of the members of the Tribunal, any of the powers given to the President under section 24A for managing the administrative affairs of the Tribunal.

26. New Section 24W: Proceedings arising out of administration of Tribunal. This new section would allow for proceedings (judicial or other) relating to a matter arising out of the management of the Tribunal to be instituted by or against the Commonwealth. This includes any proceeding relating to anything done by the Registrar under Part IIIA.

CLAUSE 6: PUBLIC INTEREST QUESTIONS UNDER SECTIONS 36, 36A AND 36C

27. This is a consequential amendment.

CLAUSE 7: REPEAL OF SECTION 65 AND INSERTION OF NEW SECTION

28. New Section 65: Officers of Tribunal. Section 65 of the Principal Act is deleted in consequence of the insertion of similar provisions in the new Part IIIA. New section 65 is a matching provision to new subsection 24N(5) but deals with proceedings before the Tribunal rather than administrative matters. The other matters formerly dealt with in deleted section 65 of the Principal Act have picked up by other provisions in Parts IIIA.

**PART 3 - AMENDMENT OF THE AUSTRALIAN SECURITY
INTELLIGENCE ORGANIZATION ACT 1979**

CLAUSE 8: PRINCIPAL ACT

29. This clause defines Principal Act for the purposes of the amendment in clause 9.

CLAUSE 9: OFFICERS OF TRIBUNAL

30. This amendment is consequential upon the amendments made by Part 2 of the Bill to change the position of Registrar of the Administrative Appeals Tribunal from a public service position to a statutory appointment. Currently, the person who occupies the position of Registrar of the Administrative Appeals Tribunal is also the Registrar of the Security Appeals Tribunal.

PART 4 - AMENDMENTS OF THE FAMILY LAW ACT 1975

CLAUSE 10: PRINCIPAL ACT

31. This defines the reference to the Principal Act in this Part as the Family Law Act 1975.

CLAUSE 11: INTERPRETATION

32. These amendments to the definitions of "court counsellor" and "marriage counsellor" in section 4 of the Principal Act are consequential on the amendment made to repeal section 37 of the Principal Act and to deal with court officers in new section 38N.

CLAUSE 12: REPEAL OF SECTION 37 AND INSERTION OF NEW SECTION

33. New Section 37: Officers of Court. This new section repeals section 37 of the Principal Act. The functions and powers described in section 37 of the Principal Act (other than subsection 37(3A)) are now covered in new Part IVA. New subsection 37(1) is a matching provision to new subsection 38N(2) to deal with legal proceedings. New subsection 37(2) re-enacts existing subsection 37(3A) with a minor amendment to remove the power to give directions to court counsellors.

CLAUSE 13: PART IVA - MANAGEMENT OF THE COURT

**Division 1 - Management responsibilities of the
Chief Judge and the Chief Executive Officer**

34. New Section 38A: Management of administrative affairs of Court. New subsection 38A(1) vests the responsibility for the management of the administrative affairs of the Court in the Chief Judge of the Court. The Principal Act already confers powers on the Chief Judge in relation to the work of the Court, in particular, in section 21B in relation to the discharge of the business of the Court and the constitution of the Court for the purposes of proceedings.
35. Under new subsection 38A(2) the Chief Judge of the Court is given the power to do all things that are necessary or convenient to be done to manage the administrative affairs of the Court, including entering into contracts and acquiring or disposing of personal property on behalf of the Commonwealth, but excluding the acquisition of any interest or right that would constitute an interest in land for the purposes of the Lands Acquisition Act 1989 and the power to enter into contracts of more than \$250,000 in value, or such higher amount as is prescribed, without the approval of the Attorney-General (subsection (4)). The exception in relation to the acquiring of interests in land means that the Chief Judge's powers do not include an ability to acquire interests in land for the Court, for example, by purchasing or leasing, or other rights or restrictions over land, for example, easements. New subsection 38A(3) makes clear that the powers given to the Chief Judge by new subsection 38A(2) are in addition to other powers which are given to the Chief Judge by legislation.
36. New section 38B: Chief Executive Officer. The Chief Judge is to be assisted in the management of the administrative affairs of the Court by the Chief Executive Officer.

Division 2 - Appointment, powers etc. of Chief
Executive Officer

37. New section 38C: Appointment of Chief Executive Officer.
The position of Chief Executive Officer is a new statutory office, analogous to the position of Registrar of the Federal Court and of the Administrative Appeals Tribunal. The main difference between the position of Chief Executive Officer and Registrar is that, unlike a Registrar's position, the Chief Executive Officer would not have functions or powers in relation to proceedings before the Court. Those functions and powers will remain with the Principal Registrar of the Family Court.
38. New section 38D: Powers of Chief Executive Officer. The Chief Executive Officer is granted all the powers necessary for the purpose of assisting the Chief Judge, under any directions of the Chief Judge which may be given to the Chief Executive Officer. The Chief Executive Officer can also act on behalf of the Chief Judge.
39. New section 38E: Remuneration of Chief Executive Officer. This section provides that the Remuneration Tribunal is to determine the remuneration and allowances of the Chief Executive Officer or, if no remuneration is set by that Tribunal, the remuneration shall be set by regulation. Subsection (3) provides that the Chief Executive Officer is to be entitled to receive such other allowances as are set by regulation. All remuneration and allowances paid to the Chief Executive Officer are to be paid out of the Family Court's own funds. (New section 38E(4)).
40. New section 38F: Terms and conditions of appointment of Chief Executive Officer. The position of Chief Executive Officer is a term appointment for a maximum of 5 years, but with provision for reappointment. The maximum age for appointees is 65. The Chief Judge has the power to set the terms and conditions upon which the Chief Executive Officer holds office in respect of matters not provided by the Act.

41. New section 38G: Leave of absence. The Chief Judge may grant leave of absence to the Chief Executive Officer on such terms and conditions as are determined by the Chief Judge with the approval of the Attorney-General.
42. New section 38H: Resignation. The Chief Executive Officer may resign at any time by delivering to the Governor-General a signed notice of resignation.
43. New section 38J: Outside employment of Chief Executive Officer. The Chief Executive Officer may not engage in paid employment (except in the Defence Force) without the consent of the Chief Judge.
44. New section 38K: Termination of employment. This is a standard termination provision for statutory office holders which stipulates the grounds on which the Chief Executive Officer's appointment may be terminated. The Governor-General has a discretion to terminate the appointment of the Chief Executive Officer for misbehaviour or physical or mental incapacity. If the Chief Executive Officer becomes bankrupt, is absent from duty for 14 consecutive days or for 28 days in any 12 months without the consent of the Chief Judge, or engages in paid employment contrary to the provisions in the Bill, or fails to comply with the requirement to disclose direct or indirect pecuniary interests, the Governor-General is required to terminate the Chief Executive Officer's appointment. There is also a provision for the Governor-General, with the Chief Executive Officer's consent, and if the Chief Executive Officer is an eligible employee for the purposes of the Superannuation Act 1976, to retire the Chief Executive Officer on the ground of incapacity (New section 38K(3)).
45. New section 38L: Disclosure of interests by Chief Executive Officer. This section requires the Chief Executive Officer to 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 body corporate carrying on a business.

46. New section 38M: Acting Chief Executive Officer. The Chief Judge has the power to appoint a person to act in the office of Chief Executive Officer during a vacancy in the office (whether or not an appointment has been made to the office) or when the Chief Executive Officer is absent or unable to perform the duties of the office. Where there is a vacancy in the office of Chief Executive Officer, there is a 12 month limit on the period for which a person can be appointed to act in that vacancy. Reference may also be had to section 33A of the Acts Interpretation Act 1901 which covers additional matters such as resignation and the duration of acting appointments where the office becomes vacant during the period of acting. New subsection 38M(2) provides standard provisions to protect the validity of the actions of the person acting in the event that, at some stage, there is found to be a defect in the appointment or appointment process.

Division 3 - Other officers and staff of Registries

46. New section 38N: Personnel other than the Chief Executive Officer.

New Section 38P: Marshal.

New sections 38N and 38P and new section 37 replace the provisions concerning Court staffing currently provided in section 37 of the Principal Act. In addition, new section 38N(6) enables the Chief Executive Officer, on behalf of the Chief Judge, to make arrangements for the services of officers of another Department or Commonwealth authority to be made available to the Court.

48. New section 38Q: Powers of Chief Executive Officer regarding Court officers and Registry staff. This section places the Chief Executive Officer in the same position as a Departmental Secretary in his or her relationship with Court officers and Registry staff.

49. New section 38R: Engagement of consultants etc. This section gives the Chief Executive Officer the power to engage persons as consultants to the Chief Executive Officer, or to engage persons to perform services for the Chief Executive Officer. This provides increased flexibility to the Chief Executive Officer, for example, to ensure a capability to handle particular work for the Court where specialist expertise is required which may not be otherwise available to the Court.

Division 4 - Miscellaneous administrative matters

50. New Section 38S: Annual Report. New section 38S specifies the form of reporting required under the new administrative arrangements. These reporting requirements are similar to those required of the High Court under the High Court of Australia Act 1979 and ensure that the Court is accountable to Parliament for its financial and administrative independence. A report is to be submitted annually, consisting of 2 parts - a report of the management of the administrative affairs of the Court and financial statements in a form approved by the Minister for Finance. The financial statements are to be submitted to the Auditor-General who is to report to the Attorney-General on a number of issues.

The Attorney-General is required to table the report and financial statements and a copy of the Auditor-General's report before each House of the Parliament.

51. New section 38T: Proper accounts to be kept. This new section requires the Chief Judge to ensure that proper accounts and records of the transactions and affairs, relating to the administration of the Court, are kept and that all payments of money appropriated for the purposes of the Court are correctly made and properly authorised. The Chief Judge must also ensure that adequate control is maintained over assets held by the Chief Judge on behalf of the Commonwealth.

52. New section 38U: Audit. This new section defines the powers and responsibilities of the Auditor-General to inspect and report on the financial affairs of the Court.
53. New Section 38V: Estimates. Under this provision the Attorney-General will receive and approve estimates of proposed expenditure of the Court. No money appropriated by the Parliament for the purposes of the Court may be expended except in accordance with estimates approved by the Attorney-General.
54. New Section 38W: Delegation of administrative powers of Chief Judge. While the Chief Judge remains responsible for the overall administration of the Court, he or she may delegate, in writing, to any one or more of the members of the Court, any of the powers given to the Chief Judge under section 38A for managing the administrative affairs of the Court.
55. New Section 38X: Proceedings arising out of administration of Court. This new section would allow for proceedings (judicial or other) relating to a matter arising out of the management of the Court to be instituted by or against the Commonwealth. This includes any proceeding relating to anything done by the Chief Executive Officer under new Part IVA of the Principal Act.

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

CLAUSE 14: PRINCIPAL ACT

56. This defines the reference to the Principal Act in this Part as the Federal Court of Australia Act 1975.

CLAUSE 15: PART IIA - MANAGEMENT OF THE COURT

**Division 1 - Management responsibilities of
Chief Judge and Registrar**

57. New Section 18A: Management of administrative affairs of Court. New subsection 18A(1) vests the responsibility for the management of the administrative affairs of the Court in the Chief Judge of the Court. The Principal Act already confers powers on the Chief Judge in relation to the work of the Court, in particular, in section 15 in relation to the arrangement of the business of the Court and the constitution of the Court for the purposes of proceedings.
58. Under new subsection 18A(2) the Chief Judge of the Court is given the power to do all things that are necessary or convenient to be done to manage the administrative affairs of the Court, including entering into contracts and acquiring or disposing of personal property on behalf of the Commonwealth, but excluding the acquisition of any interest or right that would constitute an interest in land for the purposes of the Lands Acquisition Act 1989 and the power to enter into contracts of more than \$250,000 in value, or such higher amount as is prescribed, without the approval of the Attorney-General (subsection (4)). The exception in relation to the acquiring of interests in land means that the Chief Judge's powers do not include an ability to acquire interests in land for the Court, for example, by purchasing or leasing or other rights or restrictions over land, for example, easements. New subsection 18A(3) makes clear that the powers given to the Chief Judge by new subsection 18A(2) are in addition to other powers which are given to the Chief Judge by legislation.
59. New section 18B: Registrar. The Chief Judge is to be assisted in the management of the administrative affairs of the Court by the Registrar.

Division 2 - Appointment, powers etc. of Registrar

60. New section 18C: Appointment of Registrar. The position of Registrar is a new statutory office to replace the existing position of Registrar. This new position would include all the duties of the previous Registrar, as the amendments make no change in this regard, but would add increased administrative responsibilities. The change from a public service to a statutory appointment reflects the greater independence of the Court and the increased administrative responsibilities of the position of Registrar.
61. New section 18D: Powers of the Registrar. The Registrar is granted all the powers necessary for the purpose of assisting the Chief Judge, under any directions of the Chief Judge which may be given to the Registrar. The Registrar can also act on behalf of the Chief Judge.
62. New section 18E: Remuneration of Registrar. This section provides that the Remuneration Tribunal is to determine the remuneration and allowances of the Registrar or, if no remuneration is set by the Tribunal, the remuneration shall be set by regulation. Subsection (3) provides that the Registrar is to be entitled to receive such other allowances as are set by regulation. All remuneration and allowances paid to the Registrar are to be paid out of the Federal Court's own funds. (New section 18E(4)).
63. New section 18F: Terms and conditions of appointment of Registrar. The position of Registrar is a term appointment for a maximum of 5 years, but with provision for reappointment. The maximum age for appointees is 65. The Chief Judge has the power to set the terms and conditions upon which the Registrar holds office in respect of matters not provided by the Act.

64. New section 18G: Leave of absence. The Chief Judge may grant leave of absence to the Registrar on such terms and conditions as are determined by the Chief Judge with the approval of the Attorney-General.
65. New section 18H: Resignation. The Registrar may resign at any time by delivering to the Governor-General a signed notice of resignation.
66. New section 18J: Outside employment of Registrar. The Registrar may not engage in paid employment (except in the Defence Force) without the consent of the Chief Judge.
67. New section 18K: Termination of employment. This is a standard termination provision for statutory office holders which stipulates the grounds on which the Registrar's appointment may be terminated.

The Governor-General has a discretion to terminate the appointment of the Registrar for misbehaviour or physical or mental incapacity. If the Registrar becomes bankrupt, is absent from duty for 14 consecutive days or for 28 days in any 12 months without the consent of the Chief Judge, or engages in paid employment contrary to the provisions in the Bill, or fails to comply with the requirement to disclose direct or indirect pecuniary interests, the Governor-General is required to terminate the Registrar's appointment. There is also a provision for the Governor-General, with the Registrar's consent, and if the Registrar is an eligible employee for the purposes of the Superannuation Act 1976, to retire the Registrar on the ground of incapacity (New section 18K(3)).

68. New section 18L: Disclosure of interests by Registrar. This section requires the Registrar to give written notice to the Chief Judge of all direct or indirect pecuniary interests that the Registrar has or acquires in any business or body corporate carrying on a business.

69. New section 18M: Acting Registrar. The Chief Judge has the power to appoint a person to act in the office of Registrar during a vacancy in the office (whether or not an appointment has been made to the office), or when the Registrar is absent or unable to perform the duties of the office. Where there is a vacancy in the office of Registrar, there is a 12 month limit on the period for which a person can be appointed to act in that vacancy. Reference may also be section 33A of the Acts Interpretation Act 1901 which covers additional matters such as resignation and the duration of acting appointments where the office becomes vacant during the period of acting. New subsection 18M(2) provides standard provisions to protect the validity of the actions of the person acting in the event that, at some stage, there is found to be a defect in the appointment or appointment process.

Division 3 - Other officers and staff of Registries

70. New section 18N: Personnel other than the Registrar.
New Section 18P: Sheriff.

The sections provide for the officers and the Registry staff. All officers of the Court other than the Registrar and the Deputy Sheriffs are to be Commonwealth public servants. Currently Deputy Sheriffs may be either Commonwealth or State Officers. New sections 18N, 18P and 35 replace repealed section 35 of the Principal Act. New section 18N(6) enables the Registrar, on behalf of the Chief Judge, to make arrangements for the services of officers or employees of another Department or Commonwealth authority, to be made available for the purposes of the Court.

71. New section 18Q: Powers of Registrar regarding Court officers and Registry staff. This section places the Registrar in the same position as a Departmental Secretary in his or her relationship with officers of the Court and the staff of Registries.

72. New section 18R: Engagement of consultants etc. This section gives the Registrar the power to engage persons as consultants to the Registrar, or to engage persons to perform services for the Registrar. This provides increased flexibility to the Registrar, for example, to ensure a capability to handle particular work for the Court where specialist expertise is required which may not be otherwise available to the Court.

Division 4 - Miscellaneous administrative matters

73. New Section 18S: Annual Report. New section 18S specifies the form of reporting required under the new administrative arrangements. These reporting requirements are similar to those required of the High Court under the High Court of Australia Act 1979 and ensure that the Court is accountable to Parliament for its financial and administrative independence. A report is to be submitted annually, consisting of 2 parts - a report of the management of the administrative affairs of the Court and financial statements in a form approved by the Minister for Finance. The financial statements are to be submitted to the Auditor-General who is to report to the Attorney-General on a number of issues.

The Attorney-General is required to table the report and financial statements and a copy of the Auditor-Generals report before each House of the Parliament.

74. New section 18T: Proper accounts to be kept. This new section requires the Chief Judge to ensure that proper accounts and records of the transactions and affairs, relating to the administration of the Court, are kept and that all payments of money appropriated for the purposes of the Court are currently made and properly authorised. The Chief Judge must also ensure that adequate control is maintained over assets held by the Chief Judge on behalf of the Commonwealth.

75. New section 18U: Audit. This new section defines the powers and responsibilities of the Auditor-General to inspect and report on the financial affairs of the Court.
76. New Section 18V: Estimates. Under this provision the Attorney-General will receive and approve estimates of proposed expenditure of the Court. No money appropriated by the Parliament for the purposes of the Court may be expended except in accordance with estimates approved by the Attorney-General.
77. New Section 18W: Delegation of administrative powers of Chief Judge. While the Chief Judge remains responsible for the overall administration of the Court, he or she may delegate, in writing, to any one or more of the members of the Court, any of the powers given to the Chief Judge under section 18A for managing the administrative affairs of the Court.
78. New Section 18X: Proceedings arising out of administration of Court. This new section would allow for proceedings (judicial or other) relating to a matter arising out of the management of the Court to be instituted by or against the Commonwealth. This includes any proceeding relating to anything done by the Registrar under Part IIA.

CLAUSE 16: REPEAL OF SECTION 35 OF PRINCIPAL ACT

79. New Section 35: Officers of Court. Section 35 of the Principal Act is repealed and replaced by new section 35. New sections 18N and 18P ensure that all of the previous staffing arrangements are maintained. New section 35 is a matching provision to new section 18N(2) to deal with legal proceedings.

**PART 6 - AMENDMENT OF THE HIGH COURT
OF AUSTRALIA ACT 1979**

80. CLAUSE 17: PRINCIPAL ACT

This clause defines the reference to the Principal Act in this Part as the High Court of Australia Act 1979.

81. CLAUSE 18: LIMITATION ON CONTRACTS

The Principal Act is amended by increasing the limit on contracts that can be entered into by the Court, without the Minister's approval, from \$100,000 to \$250,000 or such higher amount as is set by regulation. This is consistent with the maximum set for the Federal and Family Courts and the Administrative Appeals Tribunal.

PART 7 - AMENDMENTS OF THE JUDICIARY ACT 1903

82. CLAUSE 19: PRINCIPAL ACT

This clause defines the reference to the Principal Act in this Part as the Judiciary Act 1903.

83. CLAUSE 20: RULES OF COURT

This clause removes the provision in the Principal Act which states that the prescribing of fees to be collected in respect of proceedings in the Court or in respect of the execution of process is as determined by the Rules of Court. Rules of Court are made by the Justices of the High Court. This is consequence of the amendment made by clause 21.

84. CLAUSE 21: REGULATIONS

This clause gives the Governor-General the power to prescribe fees payable in respect of proceedings in the High Court and the execution of the process of the High Court.

PART 8 - TRANSITIONAL ARRANGEMENTS

85. CLAUSES 22,23 and 24: TRANSITIONAL ARRANGEMENTS

These clauses ensure that anything done under the present provisions of the Administrative Appeals Tribunal Act 1975, the Family Law Act 1975 and the Federal Court of Australia Act 1976 will continue to have the same effect after the commencement of the Courts and Tribunals Administration Amendment Act 1989.

86. CLAUSE 25: TRANSITIONAL ARRANGEMENTS - JUDICIARY ACT

This clause provides transitional arrangements in consequence of the amendments made to the Judiciary Act. The effect of this clause is that the existing rules will continue until regulations are made and, when replaced by regulations, will be revived if these regulations were to be disallowed.

