

1987

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FAMILY COURT OF AUSTRALIA (ADDITIONAL  
JURISDICTION AND EXERCISE OF POWERS) BILL 1987

EXPLANATORY MEMORANDUM

(Circulated by authority of the Honourable Lionel Bowen M.P.  
Deputy Prime Minister and Attorney-General)



FAMILY COURT OF AUSTRALIA (ADDITIONAL JURISDICTION  
AND EXERCISE OF POWERS) BILL 1987

OUTLINE

The purpose of the Bill is -

- (a) to provide for the Family Court of Australia to exercise jurisdiction in certain proceedings under the Administrative Decisions (Judicial Review) Act, the Bankruptcy Act, the consumer protection provisions of the Trade Practices Act and in taxation appeals under the Income Tax Assessment Act;
- (b) to create an office of Judicial Registrar in the Family Court of Australia;
- (c) to empower the Judges of the Court to delegate functions to Judicial Registrars and to extend the range of functions which may now be delegated by the Judges to Registrars of the Court; and
- (d) to extend the jurisdiction which may be exercised by courts of summary jurisdiction under the Family Law Act.

2. Parts II, IV, V, VI and VII of the Bill provide for the additional jurisdiction to be conferred on the Family Court. Broadly speaking, the Family Court will exercise jurisdiction in the additional areas only in respect of matters which are transferred to the Family Court by the Federal Court of Australia. The amendments would not permit proceedings in these areas of jurisdiction to be initiated in the Family

Court. The purpose of conferring the additional jurisdiction is to extend the range of matters which may be dealt with by the Judges of the Family Court.

3. The amendments of the Family Law Act made by Part III of the Bill give effect to the proposals for appointment of Judicial Registrars, for delegation of powers to Judicial Registrars and Registrars by the Judges of the Court and the additional jurisdiction to be exercised by courts of summary jurisdiction. The purpose of these provisions is to allow matters of a minor or procedural character to be dealt with by officers of the Court or by courts of summary jurisdiction, leaving the Judges of the Court to concentrate on the more important or complex matters, as well as the additional jurisdiction to be conferred by the Bill.

4. The jurisdiction which courts of summary jurisdiction already have under the Family Law Act is to be extended to enable courts of summary jurisdiction to hear undefended applications for divorce and to extend the existing jurisdiction in property matters. That jurisdiction in property proceedings is limited to \$1,000 unless the parties consent to the matter being dealt with by a court of summary jurisdiction. That limit was set in 1975 having regard to the general level of the civil jurisdiction of courts of summary jurisdiction at that time. The civil jurisdiction of courts of summary jurisdiction generally has been increased substantially. The present proposal would allow courts of summary jurisdiction to exercise property jurisdiction, without the need for the consent of the parties, to the limits of the ordinary civil jurisdiction which they now exercise under the law of the State or Territory concerned.

#### Financial Impact Statement

5. The proposals are expected to be substantially revenue neutral, being in essence a re-arrangement of the present judicial workload of the Federal Court and the Family Court

of Australia. Some additional expenditure will be involved in payment to the States in respect of the additional jurisdiction conferred on courts of summary jurisdiction. This will be partly offset by reduced workload in the Registries of the Family Court. The additional cost would depend on the number of matters brought in courts of summary jurisdiction, and this cannot be predicted. Additional expenditure may be of the order of \$250,000 in a full year.

NOTES ON CLAUSES

Clauses 1 and 2

These clauses provide for the short title and commencement of the legislation. The provisions for the exercise by the Family Court of jurisdiction in respect of matters transferred by the Federal Court, the provisions conferring additional jurisdiction in courts of summary jurisdiction and the provision repealing the prohibition on robing are to come into effect on a day or days to be fixed by proclamation. The remaining provisions are to come into force on assent.

PART II - FEDERAL COURT OF AUSTRALIA ACT 1976

Clause 3: Principal Act

2. This clause provides that the Federal Court of Australia Act 1976 is, in Part II of the Bill, referred to as the Principal Act.

Clause 4: Consultations between Chief Judge and the Chief Judge of the Family Court

3. Proposed new s.15A provides for consultations between the Chief Judge of the Federal Court and the Chief Judge of the Family Court in relation to the transfer of proceedings pending in the Federal Court to the Family Court.

PART III - FAMILY LAW ACT 1975

Clause 5: Principal Act

4. This clause provides that the Family Law Act 1975 is, in Part III of Bill, referred to as the Principal Act.

Clauses 6 to 8: Insertion of Headings

5. These clauses insert Division headings in Part IV of the Principal Act.

Clause 9:

8. This clause inserts a new Division in Part IV of the Principal Act to provide for the appointment of Judicial Registrars.

9. Proposed s.26A provides for the appointment of Judicial Registrars by the Governor-General.

10. Proposed s.26B provides for the Judges of the Court to make Rules of Court delegating to Judicial Registrars all or any of the powers of the Court. The purpose of the provision is to enable Judicial Registrars to exercise the powers of the Court in minor and procedural matters as delegates of the Judges without the need for the Judicial Registrars to be appointed as Judges under s.72 of the Constitution. The Judicial Registrars will form part of the organisation of the Court as such.

11. Proposed s.26C provides for the review by the Court of the exercise of delegated powers by Judicial Registrars and for the making of orders in respect of such review. This provision is similar to existing s.37A(10) in respect of review of exercise of delegated powers by Registrars.

12. Proposed s.26D(1) provides for a Judicial Registrar to refer a matter which he or she is hearing to the Court if the Judicial Registrar considers that the matter is not appropriate for determination by a Judicial Registrar.

13. Proposed s.26D(2) provides that a party to proceedings in which a Judicial Registrar is proposing to exercise delegated powers may apply to a Judge for an order than the powers be exercised by a Judge. Proposed s.26(D)(3) provides the Judicial Registrar is precluded from exercising the delegated powers until the Judge has determined that application. The provision is similar to existing s.37A(11) in respect of a limitation of the exercise of delegated powers by Registrars.

14. Proposed s.26E makes provision for Rules of Court delegating powers to Judicial Registrars to be scrutinised by the Parliament as if they were regulations under an Act. The provision is similar to existing s.37A(14) in respect of Rules of Court for delegation of powers to Registrars.

15. Proposed s.26F provides that in the exercise of delegated powers a Judicial Registrar is not subject to direction or control by any person or body. The provision is similar to existing s.37A(8) in respect of the exercise of delegated powers by Registrars.

16. Proposed s.26G provides that Judicial Registrars may be appointed on a full-time or part-time basis.

17. Proposed s.26H provides for the qualifications for appointment as a Judicial Registrar as being or having been a Judge of a federal court or of a State or Northern Territory Court or enrolment as a legal practitioner for a period of 5 years and personal qualities of training, experience and personality which make the person suitable to deal with matters of family law. The provision is similar to existing sub-sections 22(2)(a) and (b) in respect of qualifications for appointment as a Judge of the Family Court.



18. Proposed s.26I provides for the term of office of a Judicial Registrar . A Judicial Registrar may be appointed for a term of 7 years but is eligible for re-appointment. It also provides that a full time appointment shall not be made for a period extending beyond the person attaining the age of 65 years but that part-time appointments are not so limited.

19. Proposed s.26J provides for the remuneration of Judicial Registrars to be determined by the Remuneration Tribunal and for allowances payable as are prescribed.

20. Proposed s.26K provides for a Judicial Registrar to resign his or her appointment by delivering a written notice of resignation to the Governor-General.

21. Proposed s.26L provides that the Governor-General may terminate an appointment of a Judicial Registrar for misbehaviour or physical or mental incapacity. The Governor-General shall terminate an appointment of a Judicial Registrar who becomes bankrupt, applies to take the benefit of a law for relief of bankrupt or insolvent debtors or enters into any arrangement for the benefit of his or her creditors.

22. Proposed s.26M provides for the oath or affirmation that a Judicial Registrar shall take before proceeding to discharge the duties of his or her office.

23. Proposed s.26N provides for a Judicial Registrar to hold office on such terms and conditions as are determined by the Governor-General.

Clauses 10 and 11: Insertion of Headings

24. These clauses insert Division headings in Part IV of the Principal Act.

Clause 12: Delegation of powers to Registrars

25. This clause omits from s.37A the limitation in the Principal Act that the Rules of Court cannot be made delegating powers to Registrars in respect of proceedings for dissolution or nullity of marriage, a declaration as to the validity of a marriage or of the dissolution or nullity of a marriage or the approving of a maintenance agreement under s.87. The extent to which any of these powers may be delegated will be a matter for decision by the Judges in making Rules of Court providing for delegation.

Clause 13: Insertion of Heading

26. This clause inserts a Division heading in Part IV of the Principal Act.

Clause 14: Practice and Procedure

27. The effect of new s.38(2A) inserted by this clause is that the practice and procedures of the Family Court in respect of family law matters do not apply in respect of proceedings transferred from the Federal Court.

Clause 15: Jurisdiction in matrimonial causes

28. This clause amends s.39(2) and s.39(6)(a) and (b) of the Principal Act to remove the present restrictions contained therein in relation to the conferring of jurisdiction on courts of summary jurisdiction in respect of applications for dissolution of marriage.

Clause 16: Proceedings for decree of dissolution of marriage

29. This clause inserts a new s.44A into the Principal Act to provide that proceedings for divorce may not be instituted in a court of summary jurisdiction. The new section further provides that an applicant for divorce may request that the application be heard and determined by a court of summary jurisdiction. Where such a request is made, the papers are to be sent to the court of summary jurisdiction and the proceedings are, by force of the Act, transferred to that court.

Clause 17: Stay and transfer of proceedings

30. This clause amends s.45(2) of the Principal Act to facilitate the transfer of proceedings from the Family Court to courts of summary jurisdiction when the hearing of the proceedings by the court of summary jurisdiction would be of convenience to the parties.

Clause 18: Transfer of Proceedings from court of summary jurisdiction

31. This clause make a number of amendments to s.46 of the Principal Act. The first is to amend paragraph 46(1)(b) to increase the limit of the jurisdiction that a court of summary jurisdiction has in respect of a property proceeding, otherwise than with the consent of the parties, from \$1000 to the amount in respect of which that court has jurisdiction in an action for the recovery of debt. The effect is to apply the ordinary monetary limit of jurisdiction of courts of summary jurisdiction to the jurisdiction in property matters under the Family Law Act, except where the parties consent to the Court exercising jurisdiction. Where the parties consent, there is no limit on the jurisdiction of courts of summary jurisdiction. The second change is to insert new s.46(2A) to

provide that where a court of summary jurisdiction is exercising jurisdiction on an application for dissolution, and a defence is entered, the matter is transferred to the Family Court, the Family Court of Western Australia or the Supreme Court of the Northern Territory as the case may be. Paragraph (d) of clause 18 inserts new s.46(3A) providing that where proceedings have been instituted in a court of summary jurisdiction the Family Court may, on application by a party to the proceedings, or of its own motion, make an order transferring the proceedings to the Family Court.

Clause 19: Powers of court in custodial proceedings

32. This clause inserts new s.64(1AA) into the Principal Act providing that in proceedings for the custody, guardianship or welfare of, or access to, a child the Court may order the parties to attend a conference on the matter with a court counsellor or a welfare officer.

Clause 20: Appeals to Family Court

33. This clause inserts new s.94(3) in the Principal Act to make it clear that appeals on matters transferred from the Federal Court and heard by the Family Court do not lie to the Full Bench of the Family Court but to the Full Court of the Federal Court.

Clause 21: Appeals from courts of summary jurisdiction

34. This clause inserts new sections 96(5) and (6) in the Principal Act and makes a formal drafting amendment. Proposed new s.96(5) provides for an appeal from a court of summary jurisdiction to be referred to the Full Court of the Family Court. Proposed new s.96(6) provides the procedure for the handling of a referred matter by the Full Court.

Clause 22: Procedure

35. This clause inserts new section 97(1A) to provide for the regulations or the Rules of Court to authorise the conduct of proceedings in Chambers.

PART IV - ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977

Clause 23 - Principal Act

36. This clause provides that the Administrative Decisions (Judicial Review) Act 1977 is, in Part IV of the Bill, referred to as the Principal Act.

Clause 24: Interpretation

37. This clause inserts into s.3(1) of the Principal Act definitions of Family Court Judge, the Family Court and the Federal Court.

Clause 25: Transfer of Proceedings to Family Court

38. This clause inserts new s.18A into the Principal Act providing for a number of matters in respect of the transfer of proceedings pending in the Federal Court under the Principal Act to the Family Court.

39. Proposed s.18A(1) empowers the Federal Court to transfer proceedings pending in that Court to the Family Court either on the application of a party or of its own motion.

40. Proposed s.18A(2) provides that proceedings pending in the Federal Court on the commencement of the new section may only be transferred with the consent of the parties.

41. Proposed s.18A(3) (a) and (b) confers jurisdiction on the Family Court to hear and determine transferred proceedings. It also gives the Family Court the same accrued jurisdiction as is possessed by the Federal Court to hear and determine matters associated with a transferred proceeding.

42. Proposed s.18A(3) (c) provides the Family Court with the same powers that the Federal Court has in relation to the transferred proceedings to make orders, grant remedies, and issue writs in the transferred proceedings.

43. Proposed s.18A(3) (d) provides that the Family Court has in respect of transferred proceedings the same powers of enforcement as the Federal Court would have had in respect of the transferred proceedings.

44. Proposed s.18A(3) (e) provides that appeals from judgments of the Family Court in transferred proceedings lie only to the Full Court of the Federal Court and not to the Full Court of the Family Court.

45. The effect of s.18A(3) (f) is that, for the purposes of transferred proceedings, references in laws to the Federal Court to Judges of the Federal Court and to Registrars of the Federal Court are to be read as references to the Family Court, to Judges of the Family Court and to Registrars of the Family Court, respectively. Section 18A(3) (f) also applies the Rules of the Federal Court to the conduct of a transferred proceeding.

46. Proposed s.18A(4) provides that the operation of proposed paragraphs 18A(3)(c),(d) and (f) are subject to any directions given or orders made, by the Federal Court at the time of the transfer of the proceedings to the Family Court.

47. Proposed s.18A(5) prohibits any appeal against a decision of the Federal Court to transfer a proceeding to the Family Court.

#### PART V - BANKRUPTCY ACT 1966

48. Clauses 26, 27 and 28 of this Part of the Bill make corresponding amendments, mutatis mutandis to the Bankruptcy Act 1966 as do clauses 23 to 25 in relation to the Administrative Decisions (Judicial Review) Act 1977 to empower the Federal Court to transfer bankruptcy proceedings pending in that Court to the Family Court.

#### PART VI - INCOME TAX ASSESSMENT ACT 1936

49. Clauses 29, 30 and 31 of this Part of the Bill make corresponding amendments, mutatis mutandis, to the Income Tax Assessment Act 1936 as do clauses 23 to 25 in relation to the Administrative Decisions (Judicial Review) Act 1977, to empower the Federal Court to transfer taxation appeals pending in that Court to the Family Court.

#### PART VII - TRADE PRACTICES ACT 1974

50. Clauses 32, 33 and 34 of this Part of the Bill make corresponding amendments, mutatis mutandis, to the Trade Practices Act 1974 as do clauses 23 to 25 in relation to the Administrative Decisions (Judicial Review) Act 1977, to empower the Federal Court to transfer civil proceedings in matters arising under Division 1 or 1A of Part V of the Trade Practices Act pending in that Court to the Family Court.

