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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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

SUPPLEMENTARY EXPLANATORY MEMORANDUM

(Amendments and new clauses to be moved on
behalf of the Government)

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

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OUTLINE

The Government amendments to the Bill now being moved seek to improve provisions in the Bill and to amend the Family Law Act 1975 and the Family Law Amendment Act 1987 so as:

- a) to strengthen the administration of the Court by creating the judicial offices of Deputy Chief Judge and Judge Administrator to assist the Chief Judge in the performance of the discharge of the business of the Court;
- b) to restructure the Appeal Division of the Court;
- c) to provide for seniority of the Judges of the Court and as between each of the categories of Judges;
- d) to allow the making of regulations to prescribe those courts of summary jurisdiction which are to have jurisdiction to hear undefended applications for dissolution of marriage;

- e) to specify the amount of \$20,000 as the gross value of matrimonial property, disregarding any mortgage, lien, charge or other security, below which proceedings for a property order may be heard by a court of summary jurisdiction without the need for the consent of the parties.

2. The proposal in Clause 16 of the Bill to allow the hearing of undefended applications for dissolution of marriage in courts of summary jurisdiction on transfer from the Court is to be amended to allow for such an application to be filed in a court of summary jurisdiction rather than the Court. The amendment will provide greater convenience to applicants in initiating such proceedings and achieve greater efficiency in court administration.

3. The provisions contained in section 20 of the Family Law Amendment Act 1987 and clause 18 of the Bill, which increased the jurisdictional limit of a court of summary jurisdiction in property proceedings to the ordinary debt recovery limit of the relevant court, are to be amended to specify the gross monetary value of \$20,000 for matrimonial property below which proceedings for a property order may be heard without need for the consent of both parties. This amendment ensures a common level of jurisdiction throughout Australia, rather than substantial variation as between the States and Territories. The amount specified will, in most cases, exclude disputes involving a family home.

Financial Impact Statement

4. The proposals are expected to be substantially revenue neutral. In the first year some additional expenditure will be incurred in the provision of facilities for the Deputy

Chief Judge, whose office will be based in Melbourne. The Remuneration Tribunal will be requested to indicate appropriate levels of salary and allowances for the offices of Deputy Chief Judge and Judge Administrator.

Abbreviations

5. The following abbreviations are used in this explanatory memorandum:

Principal Act	Family Law Act 1975
Amendment Act	Family Law Amendment Act 1987
Court	Family Court of Australia
the Bill	Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Bill 1987

NOTES ON CLAUSES

Amendment 1

6. This amendment inserts new sub-clause 2(1A) to provide that the repeal of subsections 22(2AD) and 22(2AE) being made by paragraphs 8A(a) and (d) will commence on 1 January 1990. All existing temporary assignments to the Appeal Division cease on or before 31 December 1989.

Amendment 2

7. This amendment inserts new clause 6A to amend section 20 of the Principal Act to include definitions of Deputy Chief Judge and Judge Administrator and to make consequential amendments to the definitions of 'Chief Judge' and 'Judge'.

Amendment 3

8. This amendment inserts new clauses 7A and 7B. Clause 7A amends subsection 21(3) of the Principal Act to include the offices of Deputy Chief Judge and Judge Administrator in the composition of the Court. It also provides that the Chief Judge and the Deputy Chief Judge be called Chief Justice and Deputy Chief Justice respectively.

9. Clause 7B inserts new subsections 21B(2) and 21B(3) in the Principal Act. New subsection 21B(2) prescribes the duties of the Deputy Chief Judge.

10. New subsection 21B(3) provides that a Judge Administrator shall assist in the exercise, within a part of Australia, of such of the Chief Judge's functions as are assigned to him or her by the Chief Judge.

Amendment 4

11. This amendment inserts new clauses 8A, 8B, 8C, 8D and 8E in the Bill. Paragraph (a) of clause 8A makes a drafting change to subsection 22(2AA) of the Principal Act as a result of the repeal of subsection 22(2AE).
12. Paragraphs (b) and (e) of clause 8A amend subsections 22(2AA) of the Principal Act dealing with the membership of the Appeal Division of the Court and 22(2AF) of the Principal Act dealing with the membership of the General Division of the Court as a consequence of the creation of the office of Deputy Chief Judge.
13. Paragraph (c) of clause 8A amends subsection 22(2AC) of the Principal Act to increase the number of Judges of the Appeal Division, other than the Chief Judge and the Deputy Chief Judge from 5 to 6. This will allow for a permanent Appeal Division of the Court and will enhance that Division's operation.
14. Paragraph (d) of clause 8A omits from the Principal Act subsections 22(2AD) and 22(2AE) which provide for the making of temporary assignments to the Appeal Division for a period of 2 years.
15. Paragraph (f) of clause 8A inserts new subsection 22(2AFA) to enable a judge appointed as Deputy Chief Judge or as a Judge Administrator to resign such office without also resigning his or her primary judicial appointment.
16. Clause 8B amends section 23 of the Principal Act by omitting subsections 23(2) and 23(3) and substituting new subsections 23(2) to 23(8) inclusive. New subsection 23(2) provides that the Deputy Chief Judge is senior to all other Judges except the Chief Judge.

17. New subsection 23(3) provides that the Judge Administrators and the Judges of the Appeal Division have seniority next to the Deputy Chief Judge according to the days on which their appointment as Judge Administrator or their assignment to the Appeal Division took effect. If a Judge is both a Judge Administrator and a member of the Appeal Division his seniority operates from the first relevant date.

18. New subsection 23(4) provides a mechanism for determining seniority where, on the same day, two or more Judges have been appointed as Judge Administrators or assigned to the Appeal Division or a combination of appointments and assignments have been made.

19. New subsection 23(5) provides for the seniority of Senior Judges, who have not been assigned to the Appeal Division, to be according to the days on which their appointments as Senior Judge took effect.

20. New subsection 23(6) provides that where the seniority of Senior Judges has not been determined by the previous subsections they have such seniority as is assigned to them by the Governor-General. This provision has the same effect as existing subsection 23(3).

21. New subsection 23(7) provides for the seniority of the remaining Judges of the Court to be according to the days on which their appointment as a Judge took effect.

22. New subsection 23(8) provides that where, after the commencement of the subsection, the appointments of two or more Judges take effect on the same day the seniority of those Judges is as assigned to them by the Governor-General.

23. Clause 8C makes two amendments to section 24 to the Principal Act. Paragraph (a) of clause 8C is consequential on the creation of the offices of Deputy Chief Judge and Judge Administrator to ensure that the Deputy Chief Judge, or if he or she is unavailable the senior available Judge Administrator, will perform the duties of the Chief Judge, if required.

24. Paragraph (b) of clause 8C provides that a Judge performing the duties and exercising the powers of Chief Judge will be called the Acting Chief Justice of the Court.

25. Clause 8D makes a consequential amendment to section 25 of the Principal Act to ensure that appropriation of salary and allowances extends to the office of Deputy Chief Judge, Judge Administrator and Judges assigned to the Appeal Division.

26. Clause 8E consequentially amends the judicial oath or affirmation contained in section 26 of the Principal Act by including a reference to the offices of Deputy Chief Judge and Judge Administrator. The oath or affirmation may be resworn by a Judge who is subsequently appointed to a more senior judicial office in the Court, but need not be.

Amendment 5

27. This amendment adds a new subsection to proposed section 26C in clause 9 of the Bill. New subsection 26C(3) will enable a court hearing an application for review of the decision of a Judicial Registrar to refer that application to a Full Court of the Family Court, either on its own motion or on application by a party.

Amendment 6

28. This amendment substitutes a new section 44A in clause 16 of the Bill. New section 44A provides that the regulations may provide for an application for dissolution of marriage not to be instituted in, or transferred to, a court of summary jurisdiction other than a prescribed court. The previous new section 44A would have enabled a party to request that such an application be heard in a court of summary jurisdiction which was not a full time court and would have caused administrative difficulties for State court authorities. Courts of summary jurisdiction have jurisdiction to hear applications for dissolution of marriage conferred on them by clause 15 of the Bill amending section 39 of the Principal Act.

Amendment 7

29. This amendment of clause 18 of the Bill reverts to providing a fixed monetary jurisdictional limit in contested property proceedings in a court of summary jurisdiction in lieu of tying the jurisdiction to that court's debt recovery jurisdiction. This will ensure Australia wide uniformity of jurisdiction rather than different limits in each State and Territory. The monetary limit has been raised to \$20,000.

Amendment 8

30. This amendment inserts into clause 18 of the Bill new paragraphs (aa) and (ab). Paragraph (aa) inserts new subsection 46(1AB) which provides that in determining the value of property in dispute in any property proceedings in a court of summary jurisdiction, any amount owing under a mortgage, lien, charge or other security is to be disregarded. Paragraph (ab) omits unnecessary words from subsection 46(1B) of the Principal Act.

Amendments 9, 10 and 11

31. These amendments are to clause 18 of the Bill which amends section 46 of the Principal Act. Clause 9 amends new paragraph 46(2A)(a) to also require the transfer to the Family Court of defended applications for dissolution which were instituted in a prescribed court of summary jurisdiction.

32. Clauses 10 and 11 extend the operation of new subsection 46(3A) inserted by the Bill to the Family Court of Western Australia and the Supreme Court of the Northern Territory.

Amendment 12

33. This amendment to proposed new subsection 96(5), being inserted by clause 21 of the Bill, enables the power of referral of an appeal from a court of summary jurisdiction to a Full Court of the Family Court to be exercised on the Court's own motion or on the application of a party.

Amendments 13, 14, 15, and 16

34. Amendments 13, 14, 15 and 16 consequentially amend clauses 24, 27, 30 and 33 of the Bill respectively to include the office of Deputy Chief Judge and Judge Administrator in the definition of Family Court Judge appearing in each of those clauses.

Amendment 17

35. This amendment inserts new Parts VIII and IX of the Bill to make amendments to the Family Law Amendment Act 1987 by new clauses 35, 36 and 37.

36. Clause 35 provides that the Family Law Amendment Act 1987 is, in Part VIII of the Bill, referred to as the Principal Act.

37. Clause 36 makes a similar amendment to section 20 of the Amendment Act as is made by Amendment 6 to the Bill in order to increase the jurisdictional limit of a court of summary jurisdiction in proceedings for property orders from \$1000 to \$20,000.

38. Clause 37 makes 2 consequential drafting amendments to section 65 of the Amendment Act.

