



Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022

No. 3, 2022

**An Act to amend the law relating to courts and
tribunals, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022

No. 3, 2022

An Act to amend the law relating to courts and tribunals, and for related purposes

[Assented to 17 February 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022*.

No. 3, 2022

*Courts and Tribunals Legislation Amendment (2021 Measures No. 1)
Act 2022*

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2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 February 2022
2. Schedule 1, Part 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 1, Parts 2 to 15	The day after this Act receives the Royal Assent.	18 February 2022
4. Schedule 2, Part 1	The day after this Act receives the Royal Assent.	18 February 2022
5. Schedule 2, Part 2	At the same time as the provisions covered by table item 4. However, the provisions do not commence at all if the <i>Federal Circuit and Family Court of Australia Act 2021</i> commences after the commencement of the provisions covered by table item 4.	18 February 2022
6. Schedule 2, Part 3, Division 1	At the same time as the provisions covered by table item 4. However, the provisions do not commence at all if the <i>Federal Circuit and Family Court of Australia Act 2021</i> commences before the commencement of the provisions covered by table item 4.	18 February 2022

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
7. Schedule 2, Part 3, Division 2	Immediately after the commencement of the <i>Federal Circuit and Family Court of Australia Act 2021</i> . However, the provisions do not commence at all if the <i>Federal Circuit and Family Court of Australia Act 2021</i> commences before the commencement of the provisions covered by table item 4.	1 September 2021
8. Schedule 3	The day after this Act receives the Royal Assent.	18 February 2022

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

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

Schedule 1—Main amendments

Part 1—Powers to require giving of information or evidence or production of documents

Administrative Appeals Tribunal Act 1975

1 Subsection 40A(1) (note)

Repeal the note.

2 Subsection 40B(1) (note)

Repeal the note.

A New Tax System (Family Assistance) (Administration) Act 1999

3 Sections 117 and 118

Repeal the sections.

4 Subsection 119(1)

Repeal the subsection, substitute:

- (1) If the AAT reasonably believes that a person has information that is relevant to an AAT first review and the person is not a party to that review, the AAT may, by written notice given to the person, require the person to give to the AAT, within the period and in the manner specified in the notice, any such information.

Note: Section 40A of the AAT Act deals with the AAT's power to summon a person to give evidence or produce documents.

Child Support (Registration and Collection) Act 1988

5 Sections 95F and 95G

Repeal the sections.

6 Subsection 95H(1)

Repeal the subsection, substitute:

- (1) If the AAT reasonably believes that a person has information that is relevant to an AAT first review and the person is not a party to that review, the AAT may, by written notice given to the person, require the person to give to the AAT, within the period and in the manner specified in the notice, any such information.

Note: Section 40A of the AAT Act deals with the AAT's power to summon a person to give evidence or produce documents.

Paid Parental Leave Act 2010

7 Sections 228 and 229

Repeal the sections.

8 Subsection 230(1)

Repeal the subsection, substitute:

- (1) If the AAT reasonably believes that a person has information that is relevant to an AAT first review and the person is not a party to that review, the AAT may, by written notice given to the person, require the person to give to the AAT, within the period and in the manner specified in the notice, any such information.

Note: Section 40A of the AAT Act deals with the AAT's power to summon a person to give evidence or produce documents.

Social Security (Administration) Act 1999

9 Section 147 (table item 3)

Repeal the item.

10 Section 165

Repeal the section.

11 Section 165A (heading)

Repeal the heading, substitute:

165A AAT's power to obtain information for AAT first review

12 Subsection 165A(1)

Repeal the subsection, substitute:

- (1) If the AAT reasonably believes that a person has information that is relevant to an AAT first review and the person is not a party to that review, the AAT may, by written notice given to the person, require the person to give to the AAT, within the period and in the manner specified in the notice, any such information.

Note: Section 40A of the AAT Act deals with the AAT's power to summon a person to give evidence or produce documents.

13 Subsection 165A(3) (note)

Repeal the note.

14 Saving provisions

- (1) Section 118 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a request made under subsection 118(1) of that Act before that commencement.
- (2) Section 119 of the *A New Tax System (Family Assistance) (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a notice given under subsection 119(1) of that Act before that commencement.
- (3) Section 95G of the *Child Support (Registration and Collection) Act 1988*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a request made under subsection 95G(1) of that Act before that commencement.
- (4) Section 95H of the *Child Support (Registration and Collection) Act 1988*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a notice given under subsection 95H(1) of that Act before that commencement.

- (5) Section 229 of the *Paid Parental Leave Act 2010*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a request made under subsection 229(1) of that Act before that commencement.
- (6) Section 230 of the *Paid Parental Leave Act 2010*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a notice given under subsection 230(1) of that Act before that commencement.
- (7) Section 165 of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a request made under subsection 165(1) of that Act before that commencement.
- (8) Section 165A of the *Social Security (Administration) Act 1999*, as in force immediately before the commencement of this item, continues to apply on and after that commencement in relation to a notice given under subsection 165A(1) of that Act before that commencement.

Part 2—Procedural fairness

Administrative Appeals Tribunal Act 1975

15 Section 34J

Before “If”, insert “(1)”.

16 At the end of section 34J

Add:

- (2) For the purposes of subsection (1), the consent of the agency party to a proceeding in the Social Services and Child Support Division is not required.

17 Section 39 (heading)

Repeal the heading, substitute:

39 Rights of parties to present case—Divisions other than Security Division

18 Paragraph 39(2)(b)

Repeal the paragraph, substitute:

- (b) the agency party to a proceeding in the Social Services and Child Support Division.

19 At the end of subsection 39(2)

Add:

Note: Section 39AA deals with the rights of the agency party to a proceeding in the Social Services and Child Support Division.

20 Section 39AA (heading)

Repeal the heading, substitute:

39AA Submissions by agency party in Social Services and Child Support Division

21 Subsection 39AA(1)

Repeal the subsection.

22 Subsection 39AA(2) (heading)

Repeal the heading.

23 Application provision

The amendments made by this Part apply in relation to the following:

- (a) proceedings that arise in the Tribunal on or after the commencement of this item;
- (b) proceedings that are pending in the Tribunal immediately before that commencement.

Part 3—Alternative dispute resolution processes

Administrative Appeals Tribunal Act 1975

24 Section 34

Repeal the section, substitute:

34 Scope of Division

This Division does not apply to a proceeding in the Security Division to which section 39A applies.

25 After subsection 34A(1)

Insert:

- (1A) However, in relation to a proceeding in the Social Services and Child Support Division:
- (a) the President must not give a direction under subsection (1) unless the alternative dispute resolution process is conferencing; and
 - (b) the agency party to the proceeding is not required to participate in the conferencing.

26 At the end of section 34A

Add:

- (4) However, subsection (3) does not apply to the agency party to a proceeding in the Social Services and Child Support Division if:
- (a) the President gives a direction under subsection (1) that the proceeding, or any part of it or matter arising out of the proceeding, be referred to conferencing; and
 - (b) the agency party is not participating in the conferencing.

27 Paragraph 34D(1)(a)

After “between the parties”, insert “(including the agency party to a proceeding in the Social Services and Child Support Division who did not participate in the alternative dispute resolution process)”.

28 Application provision

The amendments made by this Part apply in relation to an application for review made on or after the commencement of this item.

Part 4—Constitution of the Tribunal

Administrative Appeals Tribunal Act 1975

29 At the end of paragraph 19B(1)(b)

Add “, unless another provision of this Act or another enactment provides otherwise in relation to the proceeding”.

Commonwealth Electoral Act 1918

30 Subsection 141(6A)

Repeal the subsection.

31 Subsection 298H(5)

Omit “to (6A)”, substitute “and (6)”.

32 Application provision

The amendments made by this Part apply in relation to the constituting (or reconstituting) of the Tribunal on or after the commencement of this item.

Part 5—Reconstitution of the Tribunal

Administrative Appeals Tribunal Act 1975

33 Paragraph 19D(5)(b)

Before “has”, insert “where it is reasonably practicable to do so,”.

34 Paragraph 19D(6)(b)

Before “has”, insert “where it is reasonably practicable to do so,”.

35 Application provisions

- (1) The amendment of paragraph 19D(5)(b) of the *Administrative Appeals Tribunal Act 1975* made by this Part applies in relation to the giving of a direction referred to in subparagraph 19D(2)(a)(iii) of that Act on or after the commencement of this item.
- (2) The amendment of paragraph 19D(6)(b) of the *Administrative Appeals Tribunal Act 1975* made by this Part applies in relation to a revocation under subsection 19D(2) of that Act on or after the commencement of this item, whether the direction was given under subsection 19A(1) of that Act before, on or after that commencement.

Part 6—Dismissal powers

Administrative Appeals Tribunal Act 1975

36 After subsection 42A(4)

Insert:

- (4A) For a proceeding in the Social Services and Child Support Division, an authorised officer may dismiss an application without the Tribunal proceeding to review the decision if the officer is satisfied that the decision is not reviewable by the Tribunal.

37 Subsections 42A(8) and (8A)

Omit “subsection (8B)”, substitute “subsection (11)”.

38 Subsection 42A(8B)

Repeal the subsection.

39 Subsection 42A(10)

After “party to the proceeding”, insert “made within the period referred to in subsection (11)”.

40 At the end of section 42A

Add:

- (11) For the purposes of subsections (8), (8A) and (10), the period is:
- (a) 28 days after the party receives notification that the application has been dismissed, unless paragraph (b) applies; or
 - (b) if the party requests an extension—such longer period as the Tribunal, in special circumstances, allows.

41 Subsection 69BA(1)

Omit “subsection 42A(4)”, substitute “subsections 42A(4) and (4A)”.

42 Application provisions

- (1) Subsection 42A(4A) of the *Administrative Appeals Tribunal Act 1975*, as inserted by this Part, applies in relation to an application for review made on or after the commencement of this item.
- (2) The amendments of subsections 42A(8), (8A) and (10) of the *Administrative Appeals Tribunal Act 1975* made by this Part, the repeal of subsection 42A(8B) of that Act made by this Part and subsection 42A(11) of that Act as added by this Part apply in relation to the notification of a dismissal, where the notification is given on or after the commencement of this item (whether the dismissal was made, or taken to have been made, before, on or after that commencement).

Part 7—Correction of errors

Administrative Appeals Tribunal Act 1975

43 Subsection 43AA(4)

Repeal the subsection, substitute:

Exercise of powers

- (4) The powers of the Tribunal under this section may be exercised by:
- (a) either:
 - (i) the member who constituted the Tribunal for the purposes of the proceeding to which the decision relates; or
 - (ii) if the Tribunal was constituted by more than one member for the purposes of the proceeding to which the decision relates—the member who presided at that proceeding; or
 - (b) if that member has stopped being a member or is for any reason unavailable—the President or an authorised member.

44 Application provision

The amendment made by this Part applies in relation to the exercise of the powers of the Tribunal on or after the commencement of this item.

Part 8—Appointments, authorisations and assignments

Administrative Appeals Tribunal Act 1975

46 At the end of subsection 10(2)

Add “Subject to this section, a person so appointed must not continue to act in that appointment for more than 12 months.”.

47 After subsection 10(2)

Insert:

(2A) The Minister may, by written instrument, appoint a person to act as a Deputy President during any period, or during all periods, when there are no Deputy Presidents. A person so appointed must not continue to act in that appointment for more than 12 months.

48 Subsection 10(3)

Omit “subsection (1) or (2)”, substitute “subsection (2) or (2A)”.

49 Subsection 10(7)

After “subsection (2)”, insert “or (2A)”.

50 Subsections 17L(1) and (3)

Omit “be the”, substitute “be a”.

51 Subsection 17L(6)

Omit “The”, substitute “A”.

52 Subsection 17L(7)

Omit “as the”, substitute “as a”.

53 Subsection 17L(7)

Omit “when the”, substitute “when a”.

54 Subsection 17L(7)

After “from Australia”, insert “or when there is no deputy head of the Division”.

55 Section 24P (heading)

Repeal the heading, substitute:

24P Functions of officers and staff members of the Tribunal

56 Section 24P

Omit “The Registrar”, substitute “The officers of the Tribunal”.

57 Section 24PA

Repeal the section, substitute:

24PA Officers of the Tribunal

- (1) The Registrar may, by writing, appoint a person to be an officer of the Tribunal if the person is:
 - (a) a member of the staff of the Tribunal referred to in subsection 24N(1); or
 - (b) an APS employee made available to the Tribunal; or
 - (c) an officer of the Supreme Court of Norfolk Island.
- (2) An appointment under subsection (1) may be expressed to be limited to specified decisions or proceedings or to specified functions or powers.

58 At the end of subsection 59A(2)

Add “or to specified functions or powers”.

59 At the end of subsection 59B(2)

Add “or to specified functions or powers”.

60 Application, saving and transitional provisions

- (1) The amendment of subsection 10(2) of the *Administrative Appeals Tribunal Act 1975* made by this Part applies in relation to appointments made on or after the commencement of this item.

- (2) An assignment in force under subsection 17L(1) or (7) of the *Administrative Appeals Tribunal Act 1975* immediately before the commencement of this item, being an assignment of a person to be the deputy head of a Division or of a person to act as the deputy head of a Division, continues in force on and after that commencement as if it were an assignment of the person to be a deputy head of that Division or of a person to act as a deputy head of that Division.
- (3) The amendments made by this Part do not affect the validity of:
 - (a) a conferral of a function or power by the President, as mentioned in section 24P of the *Administrative Appeals Tribunal Act 1975*, before the commencement of this item; or
 - (b) an appointment under section 24PA of the *Administrative Appeals Tribunal Act 1975* made before the commencement of this item.
- (4) The amendments of sections 59A and 59B of the *Administrative Appeals Tribunal Act 1975* made by this Part apply in relation to authorisations given on or after the commencement of this item.

Part 9—Taxation of costs

Administrative Appeals Tribunal Act 1975

61 Paragraph 69A(1)(a)

Omit “reasonable”.

62 Application provision

The amendment made by this Part applies in relation to orders made by the Tribunal on or after the commencement of this item.

Part 10—Protection and immunity of Reviewers of Immigration Assessment Authority

Administrative Appeals Tribunal Act 1975

63 Section 60 (heading)

Repeal the heading, substitute:

60 Protection and immunity

65 Before subsection 60(4)

Insert:

Definitions

Part 11—Application for review of child support decisions

Child Support (Registration and Collection) Act 1988

66 Section 89 (table item 2, column headed “Who may apply for review”, paragraph (a))

Before “the person”, insert “in any case—”.

67 Section 89 (table item 2, column headed “Who may apply for review”, paragraph (b))

Before “a person”, insert “if the original decision is not a care percentage decision—”.

68 Section 89 (at the end of the cell at table item 2, column headed “Who may apply for review”)

Add:

; or (c) if the original decision is a care percentage decision—a person who was required to be notified under section 85A of the objection to the care percentage decision.

69 Application provision

The amendments made by this Part apply in relation to a decision made under subsection 87(1) of the *Child Support (Registration and Collection) Act 1988* on or after the commencement of this item (whether the objection was lodged before, on or after that commencement).

Part 13—Admiralty amendments

Admiralty Act 1988

72 At the end of section 41

Add:

- (5) The *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies in relation to the Rules:
 - (a) as if a reference to a legislative instrument (other than in subparagraph 14(1)(a)(ii) and subsection 14(3) of that Act) were a reference to the Rules; and
 - (b) subject to such further modifications or adaptations of that Act (other than the provisions of Part 2 of Chapter 3 of that Act or any other provisions whose modification or adaptation would affect the operation of that Part) as are prescribed by the regulations for the purposes of this paragraph.
- (6) To avoid doubt, the Rules are rules of court.

73 Application provision

Subsection 41(5) of the *Admiralty Act 1988*, as added by this Part, applies in relation to:

- (a) Rules made on or after the commencement of this item; and
- (b) Rules in force immediately before the commencement of this item.

Part 14—Foreign State immunity amendments

Foreign Judgments Act 1991

74 At the end of subsection 6(1)

Add:

Note: For the registration of a foreign judgment against a foreign State, or a separate entity of a foreign State, see the *Foreign States Immunities Act 1985*.

Foreign States Immunities Act 1985

75 Subsection 3(1)

Insert:

foreign award means the following:

- (a) an arbitral award within the meaning of Part II of the *International Arbitration Act 1974*;
- (b) an award within the meaning of Part IV of that Act.

foreign judgment means a judgment to which Part 2 of the *Foreign Judgments Act 1991* applies.

76 Subsection 3(1) (definition of *initiating process*)

Repeal the definition, substitute:

initiating process means an instrument (including a statement of claim, application, summons, writ, order or third party notice):

- (a) by which a proceeding is commenced; or
- (b) by reference to which a person becomes a party to a proceeding.

Note: Examples of an initiating process are:

- (a) a summons for the registration of a foreign judgment; and
- (b) an application for the recognition or enforcement of a foreign award.

77 After section 26

Insert:

26A Judgments and orders in ex parte proceedings

Judgments

- (1) A judgment (other than an interlocutory judgment) must not be entered against a foreign State in ex parte proceedings.
- (2) A judgment (other than an interlocutory judgment) must not be entered against a separate entity of a foreign State in ex parte proceedings unless the court is satisfied that, in the proceedings, the separate entity is not immune.

Orders

- (3) An order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, must not be made against a foreign State in ex parte proceedings.
- (4) An order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, must not be made against a separate entity of a foreign State in ex parte proceedings unless the court is satisfied that, in the proceedings, the separate entity is not immune.

78 Section 27 (heading)

Repeal the heading, substitute:

27 Judgments or orders in default of appearance

79 Subsection 27(1)

Omit “shall not be entered against a foreign State”, substitute “must not be entered against a foreign State, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance must not be made against a foreign State,”.

80 Subsection 27(2)

Omit “shall not be entered against a separate entity of a foreign State”, substitute “must not be entered against a separate entity of a foreign State, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance must not be made against a separate entity of a foreign State,”.

81 Section 28 (heading)

Repeal the heading, substitute:

28 Enforcement of judgments and orders in default of appearance

82 Subsection 28(1)

After “a judgment in default of appearance”, insert “, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance,”.

83 Paragraph 28(1)(a)

After “copy of the judgment” (wherever occurring), insert “or order”.

84 Subparagraphs 28(1)(b)(i) and (ii)

After “translation of the judgment”, insert “or order”.

85 Subsection 28(2)

Omit “judgment was given shall give it”, substitute “judgment was given, or the order made, must give the document”.

86 Subsection 28(5)

After “judgment”, insert “or order”.

87 Subsection 28(6)

After “a judgment in default of appearance has been given”, insert “, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance has been made,”.

88 Subsection 28(6)

After “judgment was given”, insert “or order was made”.

89 Subsection 28(6)

After “the judgment” (last occurring), insert “or order”.

90 Schedule (Form 1)

Omit “and it is requested that the initiating process,”, substitute “and it is requested that this Form, the initiating process, the statutory declaration,”.

91 Schedule (Form 2)

Omit “*Request For Service Of Default Judgment On A Foreign State*”, substitute “*Request For Service Of Default Judgment Or Order On A Foreign State*”.

92 Schedule (Form 2)

After “a judgment in default of appearance has been given”, insert “, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance has been made,”.

93 Schedule (Form 2)

After “the judgment” (wherever occurring), insert “or order”.

94 Schedule (Form 2)

Omit “*signature of judgment creditor*”, substitute “*signature of person in whose favour the judgment was given or the order was made*”.

95 Application provisions

- (1) Section 26A of the *Foreign States Immunities Act 1985*, as inserted by this Part, applies in relation to the entering of a judgment, or the making of an order, on or after the commencement of this item.
- (2) The amendment of subsection 27(1) of the *Foreign States Immunities Act 1985* made by this Part applies in relation to the entering of a judgment, or the making of an order, on or after the commencement of this item, where the service of the initiating process was effected on or after that commencement.
- (3) The amendment of subsection 27(2) of the *Foreign States Immunities Act 1985* made by this Part applies in relation to the entering of a

judgment, or the making of an order, on or after the commencement of this item.

- (4) The amendments of section 28 of the *Foreign States Immunities Act 1985* made by this Part apply in relation to an order made on or after the commencement of this item.

International Arbitration Act 1974

96 At the end of subsection 8(3)

Add:

Note: For the enforcement of a foreign award against a foreign State, or a separate entity of a foreign State, see the *Foreign States Immunities Act 1985*.

97 At the end of subsection 35(4)

Add:

Note: For the enforcement of an award against a foreign State, or a separate entity of a foreign State, see the *Foreign States Immunities Act 1985*.

Part 15—Other amendments

Administrative Appeals Tribunal Act 1975

98 Subsection 40A(3)

Omit “attend the hearing of the proceeding”, substitute “appear before the Tribunal”.

99 Paragraph 40A(3)(b)

Omit “attend the hearing”, substitute “appear before the Tribunal”.

100 Application provision

The amendments of section 40A of the *Administrative Appeals Tribunal Act 1975* made by this Part apply in relation to a summons issued under subsection 40A(1) of that Act on or after the commencement of this item.

Judiciary Act 1903

103 Section 16 (heading)

Repeal the heading, substitute:

16 Jurisdiction other than in open court

104 Section 16

Omit “in Chambers” (wherever occurring), substitute “other than in open court”.

105 Section 17 (heading)

Repeal the heading, substitute:

17 State Supreme Courts invested with jurisdiction other than in open court

106 Subsection 17(1)

Omit “in Chambers”, substitute “other than in open court”.

107 Subsection 17(2)

After “single Judge of the Supreme Court sitting in Chambers”, insert “or otherwise”.

108 Subsection 17(2)

Omit “High Court sitting in Chambers”, substitute “High Court sitting other than in open court”.

109 Section 18

Omit “in Chambers”, substitute “otherwise”.

110 Section 26

Omit “in Chambers”, substitute “other than in open court”.

111 Subsection 34(1)

Omit “Chambers”, substitute “otherwise”.

112 Subsection 34(2)

Omit “Chambers”, substitute “otherwise”.

113 Subsection 69(3)

Omit “in Chambers”, substitute “sitting other than in open court”.

114 Subsection 76(3)

Omit “in Chambers”, substitute “otherwise”.

115 Subsections 77RR(1), (2) and (3)

Omit “in Chambers”, substitute “other than in open court”.

116 Paragraph 86(1)(d)

Omit “Prescribing the forms”, substitute “making provision for or in relation to the forms”.

117 Saving provision

To avoid doubt, the amendment of section 86 of the *Judiciary Act 1903* made by this Part does not affect the validity of Rules of Court made under paragraph 86(1)(d) of that Act and in force immediately before the commencement of this item.

Social Security (Administration) Act 1999

118 Paragraph 144(s)

Omit “section 182”, substitute “section 181”.

Schedule 2—Remote hearing amendments

Part 1—Amendments

Family Law Act 1975

1 After subsection 97(2)

Insert:

- (2A) For the purposes of subsection (2), a person is taken to be *present in court* during a proceeding if the person accesses the proceeding by way of video link, audio link or any other means.

2 Validation of orders

- (1) This item applies if a court exercising jurisdiction under the *Family Law Act 1975* made, or purported to make, an order under subsection 97(2) of that Act, during the period:
- (a) beginning on 15 March 2020; and
 - (b) ending on the day this item commences.
- (2) The status and rights of all persons are, by force of this item, declared to be, and always to have been, the same as if the *Family Law Act 1975*, as amended by this Part, had been in force at the time the order was made.

Federal Circuit and Family Court of Australia Act 2021

3 After subsection 136(2)

Insert:

- (2A) For the purposes of subsection (2), the circumstances in which the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) is exercised in open court include where the exercise of jurisdiction is made accessible to the public by way of video link, audio link or other appropriate means.

4 At the end of section 136

Add:

- (8) The reference in subsection (7) to a sitting of the Court includes a reference to a sitting of the Court that is conducted by way of video link, audio link or other appropriate means.

Federal Court of Australia Act 1976

5 After subsection 17(1)

Insert:

- (1A) For the purposes of subsection (1), the circumstances in which the jurisdiction of the Court is exercised in open court include where the exercise of jurisdiction is made accessible to the public by way of video link, audio link or other appropriate means.

6 At the end of section 17

Add:

- (5) The reference in subsection (4) to a sitting of the Court includes a reference to a sitting of the Court that is conducted by way of video link, audio link or other appropriate means.

7 Validation of orders

- (1) This item applies if the Federal Court of Australia made, or purported to make, an order under subsection 17(4) of the *Federal Court of Australia Act 1976*, during the period:
- (a) beginning on 15 March 2020; and
 - (b) ending on the day this item commences.
- (2) The status and rights of all persons are, by force of this item, declared to be, and always to have been, the same as if the *Federal Court of Australia Act 1976*, as amended by this Part, had been in force at the time the order was made.

Judiciary Act 1903

8 After subsection 79(1)

Insert:

- (1A) For the purposes of subsection (1), a Court exercising federal jurisdiction in a proceeding is taken to be exercising federal jurisdiction in:
- (a) if the laws of a State or Territory apply to a part of the proceeding because of subsection 68C(5)—that State or Territory; or
 - (b) if paragraph (a) does not apply:
 - (i) if the proceeding is transferred or remitted—the State or Territory to which the proceeding is transferred or remitted; and
 - (ii) otherwise—the State or Territory in which the proceeding is commenced;
- except as otherwise provided by the Constitution or the laws of the Commonwealth.

9 Application of amendments—section 79 of the *Judiciary Act 1903*

The amendment of section 79 of the *Judiciary Act 1903* made by this Schedule applies in relation to a proceeding that is commenced on or after the commencement of this item.

Part 2—Amendments if the Federal Circuit and Family Court of Australia Act 2021 commences first

Division 1—Amendments

Family Law Act 1975

10 After subsection 97(1)

Insert:

- (1AA) For the purposes of subsection (1), the circumstances in which a proceeding in the Federal Circuit and Family Court of Australia, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, is heard in open court include where the proceeding is made accessible to the public by way of video link, audio link or other appropriate means.

Division 2—Validation of orders

11 Validation of orders made by the Federal Circuit and Family Court of Australia (Division 2)

- (1) This item applies if the Federal Circuit and Family Court of Australia (Division 2) made, or purported to make, an order under subsection 136(7) of the *Federal Circuit and Family Court of Australia Act 2021*, during the period:
- (a) beginning on the day the *Federal Circuit and Family Court of Australia Act 2021* commences; and
 - (b) ending on the day this item commences.
- (2) The status and rights of all persons are, by force of this item, declared to be, and always to have been, the same as if the *Federal Circuit and Family Court of Australia Act 2021*, as amended by Part 1 of this Schedule, had been in force at the time the order was made.

12 Validation of orders made by Federal Circuit Court of Australia

- (1) Despite the repeal of the *Federal Circuit Court of Australia Act 1999*, this item applies if an order was made, or purported to be made, under subsection 13(7) of that Act during the period:
 - (a) beginning on 15 March 2020; and
 - (b) ending on the day on which that Act is repealed.
- (2) The status and rights of all persons are, by force of this item, declared to be, and always to have been, the same as if, at the time the order was made, section 13 of the *Federal Circuit Court of Australia Act 1999* expressly provided that:
 - (a) for the purposes of subsection (2) of that section, the circumstances in which the jurisdiction of the Federal Circuit Court of Australia is exercised in open court include where the exercise of jurisdiction is made accessible to the public by way of video link, audio link or other appropriate means; and
 - (b) the reference in subsection (7) of that section to a sitting of the Federal Circuit Court of Australia includes a reference to a sitting of the Court that is conducted by way of video link, audio link or other appropriate means.

Part 3—Amendments if the Federal Circuit and Family Court of Australia Act 2021 does not commence first

Division 1—Amendments before the Federal Circuit and Family Court of Australia Act 2021 commences

Family Law Act 1975

13 Subsection 27(3)

Repeal the subsection.

14 After subsection 97(1)

Insert:

- (1AA) For the purposes of subsection (1), the circumstances in which a proceeding in the Family Court, in the Federal Circuit Court of Australia, or in a court of a Territory (other than the Northern Territory) when exercising jurisdiction under this Act, is heard in open court include where the proceeding is made accessible to the public by way of video link, audio link or other appropriate means.

Federal Circuit Court of Australia Act 1999

15 After subsection 13(2)

Insert:

- (2A) For the purposes of subsection (2), the circumstances in which the jurisdiction of the Federal Circuit Court of Australia is exercised in open court include where the exercise of jurisdiction is made accessible to the public by way of video link, audio link or other appropriate means.

16 At the end of section 13

Add:

- (8) The reference in subsection (7) to a sitting of the Federal Circuit Court of Australia includes a reference to a sitting of the Court that is conducted by way of video link, audio link or other appropriate means.

17 Validation of orders

- (1) This item applies if the Federal Circuit Court of Australia made, or purported to make, an order under subsection 13(7) of the *Federal Circuit Court of Australia Act 1999*, during the period:
- (a) beginning on 15 March 2020; and
 - (b) ending on the day this item commences.
- (2) The status and rights of all persons are, by force of this item, declared to be, and always to have been, the same as if the *Federal Circuit Court of Australia Act 1999*, as amended by this Part, had been in force at the time the order was made.

Division 2—Amendments after the Federal Circuit and Family Court of Australia Act 2021 commences

Family Law Act 1975

18 Subsection 97(1AA)

Omit “Family Court, in the Federal Circuit Court of Australia”, substitute “Federal Circuit and Family Court of Australia”.

Schedule 3—Repeals

Nauru (High Court Appeals) Act 1976

1 The whole of the Act

Repeal the Act.

*[Minister's second reading speech made in—
Senate on 23 June 2021
House of Representatives on 14 February 2022]*

(76/21)