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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Access to Justice (Federal Jurisdiction) Amendment Bill 2011

No. , 2011

(Attorney-General)

**A Bill for an Act to amend the law relating to
courts and tribunals, and for related purposes**

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1 **A Bill for an Act to amend the law relating to**
2 **courts and tribunals, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Access to Justice (Federal*
6 *Jurisdiction) Amendment Act 2011*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	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.	
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	
3. Schedule 3	A single day to be fixed by Proclamation. However, if the provision(s) 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.	
4. Schedule 4	The day after this Act receives the Royal Assent.	
5. Schedule 5	A single day to be fixed by Proclamation. However, if the provision(s) 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.	

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

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

Schedule 1—Discovery

Federal Court of Australia Act 1976

1 Section 4 (at the end of the definition of *proceeding*)

Add:

Example: Discovery is an example of an incidental proceeding.

2 After paragraph 43(3)(g)

Insert:

; (h) do any of the following in proceedings in relation to discovery:

- (i) order the party requesting discovery to pay in advance for some or all of the estimated costs of discovery;
- (ii) order the party requesting discovery to give security for the payment of the cost of discovery;
- (iii) make an order specifying the maximum cost that may be recovered for giving discovery or taking inspection.

3 At the end of section 46

Add:

Note: Proceedings include incidental proceedings, such as discovery (see the definition of *proceeding* in section 4).

4 Application of amendments

The amendments of the *Federal Court of Australia Act 1976* made by this Schedule apply in relation to proceedings in the Federal Court of Australia:

- (a) that are instituted in, or transferred to, that court on or after the commencement of this Schedule; or
- (b) that are pending in that court immediately before that commencement.

Schedule 2—Suppression and non-publication orders

Part 1—Main amendments

Family Law Act 1975

1 After Part XI

Insert:

Part XIA—Suppression and non-publication orders

Division 1—Preliminary

102P Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to proceedings includes the complainant or victim (or alleged victim) in criminal proceedings and any person named in evidence given in proceedings and, in relation to proceedings that have concluded, means a person who was a party to the proceedings before the proceedings concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or
- (c) public exhibition; or

(d) broadcast or publication by means of the internet.

suppression order means an order that prohibits or restricts the disclosure of information (by publication or otherwise).

102PA Powers of a court not affected

This Part does not limit or otherwise affect any powers that a court has apart from this Part to regulate its proceedings or to deal with a contempt of the court.

102PB Other laws not affected

This Part does not limit or otherwise affect the operation of a provision made by or under any Act (other than this Act) that prohibits or restricts, or authorises a court to prohibit or restrict, the publication or other disclosure of information in connection with proceedings.

102PC Relationship with section 121

This Part and section 121 do not limit each other.

Division 2—Suppression and non-publication orders

102PD Safeguarding public interest in open justice

In deciding whether to make a suppression order or non-publication order, the court concerned must take into account that a primary objective of the administration of justice is to safeguard the public interest in open justice.

102PE Power to make orders

(1) A court exercising jurisdiction in proceedings under this Act may, by making a suppression order or non-publication order on grounds permitted by this Part, prohibit or restrict the publication or other disclosure of:

(a) information tending to reveal the identity of or otherwise concerning any party to or witness in the proceedings or any person who is related to or otherwise associated with any party to or witness in the proceedings; or

- 1 (b) information that relates to the proceedings and is:
2 (i) information that comprises evidence or information
3 about evidence; or
4 (ii) information obtained by the process of discovery; or
5 (iii) information produced under a subpoena; or
6 (iv) information lodged with or filed in the court.
- 7 (2) The court may make such orders as it thinks appropriate to give
8 effect to an order under subsection (1).

9 **102PF Grounds for making an order**

- 10 (1) The court may make a suppression order or non-publication order
11 on one or more of the following grounds:
12 (a) the order is necessary to prevent prejudice to the proper
13 administration of justice;
14 (b) the order is necessary to prevent prejudice to the interests of
15 the Commonwealth or a State or Territory in relation to
16 national or international security;
17 (c) the order is necessary to protect the safety of any person;
18 (d) the order is necessary to avoid causing undue distress or
19 embarrassment to a party to or witness in criminal
20 proceedings involving an offence of a sexual nature
21 (including an act of indecency).
- 22 (2) A suppression order or non-publication order must specify the
23 ground or grounds on which the order is made.

24 **102PG Procedure for making an order**

- 25 (1) The court may make a suppression order or non-publication order
26 on its own initiative or on the application of:
27 (a) a party to the proceedings concerned; or
28 (b) any other person considered by the court to have a sufficient
29 interest in the making of the order.
- 30 (2) Each of the following persons is entitled to appear and be heard by
31 the court on an application for a suppression order or
32 non-publication order:
33 (a) the applicant for the order;
34 (b) a party to the proceedings concerned;

- 1 (c) the Government (or an agency of the Government) of the
2 Commonwealth or a State or Territory;
3 (d) a news publisher;
4 (e) any other person who, in the court's opinion, has a sufficient
5 interest in the question of whether a suppression order or
6 non-publication order should be made.
- 7 (3) A suppression order or non-publication order may be made at any
8 time during proceedings or after proceedings have concluded.
- 9 (4) A suppression order or non-publication order may be made subject
10 to such exceptions and conditions as the court thinks fit and
11 specifies in the order.
- 12 (5) A suppression order or non-publication order must specify the
13 information to which the order applies with sufficient particularity
14 to ensure that the court order is limited to achieving the purpose for
15 which the order is made.

16 **102PH Interim orders**

- 17 (1) If an application is made to the court for a suppression order or
18 non-publication order, the court may, without determining the
19 merits of the application, make the order as an interim order to
20 have effect, subject to revocation by the court, until the application
21 is determined.
- 22 (2) If an order is made as an interim order, the court must determine
23 the application as a matter of urgency.

24 **102PI Duration of orders**

- 25 (1) A suppression order or non-publication order operates for the
26 period decided by the court and specified in the order.
- 27 (2) In deciding the period for which an order is to operate, the court is
28 to ensure that the order operates for no longer than is reasonably
29 necessary to achieve the purpose for which it is made.
- 30 (3) The period for which an order operates may be specified by
31 reference to a fixed or ascertainable period or by reference to the
32 occurrence of a specified future event.

102PJ Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of proceedings or the recovery or enforcement of any penalty imposed in proceedings; or
- (b) in compliance with any procedure adopted by the court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the court.

102PK Contravention of order

(1) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes an order made by a court under section 102PE.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.
- (5) Part XIII A does not apply in relation to a contravention of an order made by a court under section 102PE.

Federal Court of Australia Act 1976

2 Subsection 23HC(1) (note)

Repeal the note, substitute:

Note: Part VAA deals with suppression and non-publication orders.

3 At the end of subsection 24(1D)

Add:

- ; (c) an order made by the Court under section 37AF;
- (d) an order made by the Federal Magistrates Court under section 88F of the *Federal Magistrates Act 1999*.

4 After Part V

Insert:

Part VAA—Suppression and non-publication orders

Division 1—Preliminary

37AA Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or
- (b) broadcast by radio or television; or

- 1 (c) public exhibition; or
2 (d) broadcast or publication by means of the internet.

3 **suppression order** means an order that prohibits or restricts the
4 disclosure of information (by publication or otherwise).

5 **37AB Powers of the Court not affected**

6 This Part does not limit or otherwise affect any powers that the
7 Court has apart from this Part to regulate its proceedings or to deal
8 with a contempt of the Court.

9 **37AC Other laws not affected**

10 This Part does not limit or otherwise affect the operation of a
11 provision made by or under any Act (other than this Act) that
12 prohibits or restricts, or authorises a court to prohibit or restrict, the
13 publication or other disclosure of information in connection with
14 proceedings.

15 **37AD No limit on section 23HC**

16 This Part does not limit section 23HC (about protecting witnesses).

17 **Division 2—Suppression and non-publication orders**

18 **37AE Safeguarding public interest in open justice**

19 In deciding whether to make a suppression order or
20 non-publication order, the Court must take into account that a
21 primary objective of the administration of justice is to safeguard
22 the public interest in open justice.

23 **37AF Power to make orders**

- 24 (1) The Court may, by making a suppression order or non-publication
25 order on grounds permitted by this Part, prohibit or restrict the
26 publication or other disclosure of:
27 (a) information tending to reveal the identity of or otherwise
28 concerning any party to or witness in a proceeding before the
29 Court or any person who is related to or otherwise associated

- 1 with any party to or witness in a proceeding before the Court;
2 or
3 (b) information that relates to a proceeding before the Court and
4 is:
5 (i) information that comprises evidence or information
6 about evidence; or
7 (ii) information obtained by the process of discovery; or
8 (iii) information produced under a subpoena; or
9 (iv) information lodged with or filed in the Court.
- 10 (2) The Court may make such orders as it thinks appropriate to give
11 effect to an order under subsection (1).

12 **37AG Grounds for making an order**

- 13 (1) The Court may make a suppression order or non-publication order
14 on one or more of the following grounds:
15 (a) the order is necessary to prevent prejudice to the proper
16 administration of justice;
17 (b) the order is necessary to prevent prejudice to the interests of
18 the Commonwealth or a State or Territory in relation to
19 national or international security;
20 (c) the order is necessary to protect the safety of any person;
21 (d) the order is necessary to avoid causing undue distress or
22 embarrassment to a party to or witness in a criminal
23 proceeding involving an offence of a sexual nature (including
24 an act of indecency).
- 25 (2) A suppression order or non-publication order must specify the
26 ground or grounds on which the order is made.

27 **37AH Procedure for making an order**

- 28 (1) The Court may make a suppression order or non-publication order
29 on its own initiative or on the application of:
30 (a) a party to the proceeding concerned; or
31 (b) any other person considered by the Court to have a sufficient
32 interest in the making of the order.

- 1 (2) Each of the following persons is entitled to appear and be heard by
2 the Court on an application for a suppression order or
3 non-publication order:
4 (a) the applicant for the order;
5 (b) a party to the proceeding concerned;
6 (c) the Government (or an agency of the Government) of the
7 Commonwealth or a State or Territory;
8 (d) a news publisher;
9 (e) any other person who, in the Court's opinion, has a sufficient
10 interest in the question of whether a suppression order or
11 non-publication order should be made.
- 12 (3) A suppression order or non-publication order may be made at any
13 time during a proceeding or after a proceeding has concluded.
- 14 (4) A suppression order or non-publication order may be made subject
15 to such exceptions and conditions as the Court thinks fit and
16 specifies in the order.
- 17 (5) A suppression order or non-publication order must specify the
18 information to which the order applies with sufficient particularity
19 to ensure that the court order is limited to achieving the purpose for
20 which the order is made.

21 **37AI Interim orders**

- 22 (1) If an application is made to the Court for a suppression order or
23 non-publication order, the Court may, without determining the
24 merits of the application, make the order as an interim order to
25 have effect, subject to revocation by the Court, until the application
26 is determined.
- 27 (2) If an order is made as an interim order, the Court must determine
28 the application as a matter of urgency.

29 **37AJ Duration of orders**

- 30 (1) A suppression order or non-publication order operates for the
31 period decided by the Court and specified in the order.
- 32 (2) In deciding the period for which an order is to operate, the Court is
33 to ensure that the order operates for no longer than is reasonably
34 necessary to achieve the purpose for which it is made.

- 1 (3) The period for which an order operates may be specified by
2 reference to a fixed or ascertainable period or by reference to the
3 occurrence of a specified future event.

4 **37AK Exception for court officials**

5 A suppression order does not prevent a person from disclosing
6 information if the disclosure is not by publication and is in the
7 course of performing functions or duties or exercising powers in a
8 public official capacity:

- 9 (a) in connection with the conduct of a proceeding or the
10 recovery or enforcement of any penalty imposed in a
11 proceeding; or
12 (b) in compliance with any procedure adopted by the Court for
13 informing a news publisher of the existence and content of a
14 suppression order or non-publication order made by the
15 Court.

16 **37AL Contravention of order**

- 17 (1) A person commits an offence if:
18 (a) the person does an act or omits to do an act; and
19 (b) the act or omission contravenes an order made by the Court
20 under section 37AF.

21 Penalty: Imprisonment for 12 months, 60 penalty units or both.

- 22 (2) An act or omission that constitutes an offence under this section
23 may be punished as a contempt of court even though it could be
24 punished as an offence.
25 (3) An act or omission that constitutes an offence under this section
26 may be punished as an offence even though it could be punished as
27 a contempt of court.
28 (4) If an act or omission constitutes both an offence under this section
29 and a contempt of court, the offender is not liable to be punished
30 twice.

31 **5 Section 50**

32 Repeal the section.

1 ***Federal Magistrates Act 1999***

2 **6 Section 61**

3 Repeal the section.

4 **7 After Part 6**

5 Insert:

6 **Part 6A—Suppression and non-publication orders**

7 **Division 1—Preliminary**

8 **88A Definitions**

9 In this Part:

10 ***information*** includes any document.

11 ***news publisher*** means a person engaged in the business of
12 publishing news or a public or community broadcasting service
13 engaged in the publishing of news through a public news medium.

14 ***non-publication order*** means an order that prohibits or restricts the
15 publication of information (but that does not otherwise prohibit or
16 restrict the disclosure of information).

17 ***party*** to a proceeding includes the complainant or victim (or
18 alleged victim) in a criminal proceeding and any person named in
19 evidence given in a proceeding and, in relation to a proceeding that
20 has concluded, means a person who was a party to the proceeding
21 before the proceeding concluded.

22 ***publish*** means disseminate or provide access to the public or a
23 section of the public by any means, including by:

- 24 (a) publication in a book, newspaper, magazine or other written
25 publication; or
26 (b) broadcast by radio or television; or
27 (c) public exhibition; or
28 (d) broadcast or publication by means of the internet.

1 ***suppression order*** means an order that prohibits or restricts the
2 disclosure of information (by publication or otherwise).

3 **88B Powers of Federal Magistrates Court not affected**

4 This Part does not limit or otherwise affect any powers that the
5 Federal Magistrates Court has apart from this Part to regulate its
6 proceedings or to deal with a contempt of the Federal Magistrates
7 Court.

8 **88C Other laws not affected**

9 This Part does not limit or otherwise affect the operation of a
10 provision made by or under any Act (other than this Act) that
11 prohibits or restricts, or authorises a court to prohibit or restrict, the
12 publication or other disclosure of information in connection with
13 proceedings.

14 **88D This Part does not apply to proceedings under the *Family Law***
15 ***Act 1975***

16 This Part applies to proceedings in the Federal Magistrates Court
17 other than proceedings under the *Family Law Act 1975*.

18 Note: Part XIA of the *Family Law Act 1975* deals with suppression and
19 non-publication orders in proceedings under that Act.

20 **Division 2—Suppression and non-publication orders**

21 **88E Safeguarding public interest in open justice**

22 In deciding whether to make a suppression order or
23 non-publication order, the Federal Magistrates Court must take into
24 account that a primary objective of the administration of justice is
25 to safeguard the public interest in open justice.

26 **88F Power to make orders**

- 27 (1) The Federal Magistrates Court may, by making a suppression order
28 or non-publication order on grounds permitted by this Part, prohibit
29 or restrict the publication or other disclosure of:
30 (a) information tending to reveal the identity of or otherwise
31 concerning any party to or witness in a proceeding before the

- 1 Federal Magistrates Court or any person who is related to or
2 otherwise associated with any party to or witness in a
3 proceeding before the Federal Magistrates Court; or
4 (b) information that relates to a proceeding before the Federal
5 Magistrates Court and is:
6 (i) information that comprises evidence or information
7 about evidence; or
8 (ii) information obtained by the process of discovery; or
9 (iii) information produced under a subpoena; or
10 (iv) information lodged with or filed in the Federal
11 Magistrates Court.
- 12 (2) The Federal Magistrates Court may make such orders as it thinks
13 appropriate to give effect to an order under subsection (1).

14 **88G Grounds for making an order**

- 15 (1) The Federal Magistrates Court may make a suppression order or
16 non-publication order on one or more of the following grounds:
17 (a) the order is necessary to prevent prejudice to the proper
18 administration of justice;
19 (b) the order is necessary to prevent prejudice to the interests of
20 the Commonwealth or a State or Territory in relation to
21 national or international security;
22 (c) the order is necessary to protect the safety of any person;
23 (d) the order is necessary to avoid causing undue distress or
24 embarrassment to a party to or witness in a criminal
25 proceeding involving an offence of a sexual nature (including
26 an act of indecency).
- 27 (2) A suppression order or non-publication order must specify the
28 ground or grounds on which the order is made.

29 **88H Procedure for making an order**

- 30 (1) The Federal Magistrates Court may make a suppression order or
31 non-publication order on its own initiative or on the application of:
32 (a) a party to the proceeding concerned; or
33 (b) any other person considered by the Federal Magistrates Court
34 to have a sufficient interest in the making of the order.

- 1 (2) Each of the following persons is entitled to appear and be heard by
2 the Federal Magistrates Court on an application for a suppression
3 order or non-publication order:
4 (a) the applicant for the order;
5 (b) a party to the proceeding concerned;
6 (c) the Government (or an agency of the Government) of the
7 Commonwealth or a State or Territory;
8 (d) a news publisher;
9 (e) any other person who, in the Federal Magistrates Court's
10 opinion, has a sufficient interest in the question of whether a
11 suppression order or non-publication order should be made.
- 12 (3) A suppression order or non-publication order may be made at any
13 time during a proceeding or after a proceeding has concluded.
- 14 (4) A suppression order or non-publication order may be made subject
15 to such exceptions and conditions as the Federal Magistrates Court
16 thinks fit and specifies in the order.
- 17 (5) A suppression order or non-publication order must specify the
18 information to which the order applies with sufficient particularity
19 to ensure that the court order is limited to achieving the purpose for
20 which the order is made.

21 **88J Interim orders**

- 22 (1) If an application is made to the Federal Magistrates Court for a
23 suppression order or non-publication order, the Federal Magistrates
24 Court may, without determining the merits of the application, make
25 the order as an interim order to have effect, subject to revocation
26 by the Federal Magistrates Court, until the application is
27 determined.
- 28 (2) If an order is made as an interim order, the Federal Magistrates
29 Court must determine the application as a matter of urgency.

30 **88K Duration of orders**

- 31 (1) A suppression order or non-publication order operates for the
32 period decided by the Federal Magistrates Court and specified in
33 the order.

1 (2) In deciding the period for which an order is to operate, the Federal
2 Magistrates Court is to ensure that the order operates for no longer
3 than is reasonably necessary to achieve the purpose for which it is
4 made.

5 (3) The period for which an order operates may be specified by
6 reference to a fixed or ascertainable period or by reference to the
7 occurrence of a specified future event.

8 **88L Exception for court officials**

9 A suppression order does not prevent a person from disclosing
10 information if the disclosure is not by publication and is in the
11 course of performing functions or duties or exercising powers in a
12 public official capacity:

- 13 (a) in connection with the conduct of a proceeding or the
14 recovery or enforcement of any penalty imposed in a
15 proceeding; or
16 (b) in compliance with any procedure adopted by the Federal
17 Magistrates Court for informing a news publisher of the
18 existence and content of a suppression order or
19 non-publication order made by the Federal Magistrates
20 Court.

21 **88M Contravention of order**

- 22 (1) A person commits an offence if:
23 (a) the person does an act or omits to do an act; and
24 (b) the act or omission contravenes an order made by the Federal
25 Magistrates Court under section 88F.

26 Penalty: Imprisonment for 12 months, 60 penalty units or both.

27 (2) An act or omission that constitutes an offence under this section
28 may be punished as a contempt of court even though it could be
29 punished as an offence.

30 (3) An act or omission that constitutes an offence under this section
31 may be punished as an offence even though it could be punished as
32 a contempt of court.

- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Judiciary Act 1903

8 After Part XA

Insert:

Part XAA—Suppression and non-publication orders

Division 1—Preliminary

77RA Definitions

In this Part:

information includes any document.

news publisher means a person engaged in the business of publishing news or a public or community broadcasting service engaged in the publishing of news through a public news medium.

non-publication order means an order that prohibits or restricts the publication of information (but that does not otherwise prohibit or restrict the disclosure of information).

party to a proceeding includes the complainant or victim (or alleged victim) in a criminal proceeding and any person named in evidence given in a proceeding and, in relation to a proceeding that has concluded, means a person who was a party to the proceeding before the proceeding concluded.

proceeding means a proceeding in a court, whether between parties or not, and includes an incidental proceeding in the course of, or in connection with, a proceeding, and also includes an appeal.

publish means disseminate or provide access to the public or a section of the public by any means, including by:

- (a) publication in a book, newspaper, magazine or other written publication; or

- 1 (b) broadcast by radio or television; or
2 (c) public exhibition; or
3 (d) broadcast or publication by means of the internet.

4 **suppression order** means an order that prohibits or restricts the
5 disclosure of information (by publication or otherwise).

6 **77RB Powers of High Court not affected**

7 This Part does not limit or otherwise affect any powers that the
8 High Court has apart from this Part to regulate its proceedings or to
9 deal with a contempt of the Court.

10 **77RC Other laws not affected**

11 This Part does not limit or otherwise affect the operation of a
12 provision made by or under any Act (other than this Act) that
13 prohibits or restricts, or authorises a court to prohibit or restrict, the
14 publication or other disclosure of information in connection with
15 proceedings.

16 **Division 2—Suppression and non-publication orders**

17 **77RD Safeguarding public interest in open justice**

18 In deciding whether to make a suppression order or
19 non-publication order, the High Court must take into account that a
20 primary objective of the administration of justice is to safeguard
21 the public interest in open justice.

22 **77RE Power to make orders**

- 23 (1) The High Court may, by making a suppression order or
24 non-publication order on grounds permitted by this Part, prohibit or
25 restrict the publication or other disclosure of:
26 (a) information tending to reveal the identity of or otherwise
27 concerning any party to or witness in a proceeding before the
28 Court or any person who is related to or otherwise associated
29 with any party to or witness in a proceeding before the Court;
30 or
31 (b) information that relates to a proceeding before the Court and
32 is:
-

- (i) information that comprises evidence or information about evidence; or
- (ii) information obtained by the process of discovery; or
- (iii) information produced under a subpoena; or
- (iv) information lodged with or filed in the Court.

(2) The High Court may make such orders as it thinks appropriate to give effect to an order under subsection (1).

77RF Grounds for making an order

- (1) The High Court may make a suppression order or non-publication order on one or more of the following grounds:
- (a) the order is necessary to prevent prejudice to the proper administration of justice;
 - (b) the order is necessary to prevent prejudice to the interests of the Commonwealth or a State or Territory in relation to national or international security;
 - (c) the order is necessary to protect the safety of any person;
 - (d) the order is necessary to avoid causing undue distress or embarrassment to a party to or witness in a criminal proceeding involving an offence of a sexual nature (including an act of indecency).
- (2) A suppression order or non-publication order must specify the ground or grounds on which the order is made.

77RG Procedure for making an order

- (1) The High Court may make a suppression order or non-publication order on its own initiative or on the application of:
- (a) a party to the proceeding concerned; or
 - (b) any other person considered by the Court to have a sufficient interest in the making of the order.
- (2) Each of the following persons is entitled to appear and be heard by the High Court on an application for a suppression order or non-publication order:
- (a) the applicant for the order;
 - (b) a party to the proceeding concerned;

- 1 (c) the Government (or an agency of the Government) of the
2 Commonwealth or a State or Territory;
3 (d) a news publisher;
4 (e) any other person who, in the Court's opinion, has a sufficient
5 interest in the question of whether a suppression order or
6 non-publication order should be made.
- 7 (3) A suppression order or non-publication order may be made at any
8 time during a proceeding or after a proceeding has concluded.
- 9 (4) A suppression order or non-publication order may be made subject
10 to such exceptions and conditions as the High Court thinks fit and
11 specifies in the order.
- 12 (5) A suppression order or non-publication order must specify the
13 information to which the order applies with sufficient particularity
14 to ensure that the court order is limited to achieving the purpose for
15 which the order is made.

16 **77RH Interim orders**

- 17 (1) If an application is made to the High Court for a suppression order
18 or non-publication order, the Court may, without determining the
19 merits of the application, make the order as an interim order to
20 have effect, subject to revocation by the Court, until the application
21 is determined.
- 22 (2) If an order is made as an interim order, the High Court must
23 determine the application as a matter of urgency.

24 **77RI Duration of orders**

- 25 (1) A suppression order or non-publication order operates for the
26 period decided by the High Court and specified in the order.
- 27 (2) In deciding the period for which an order is to operate, the High
28 Court is to ensure that the order operates for no longer than is
29 reasonably necessary to achieve the purpose for which it is made.
- 30 (3) The period for which an order operates may be specified by
31 reference to a fixed or ascertainable period or by reference to the
32 occurrence of a specified future event.

77RJ Exception for court officials

A suppression order does not prevent a person from disclosing information if the disclosure is not by publication and is in the course of performing functions or duties or exercising powers in a public official capacity:

- (a) in connection with the conduct of a proceeding or the recovery or enforcement of any penalty imposed in a proceeding; or
- (b) in compliance with any procedure adopted by the High Court for informing a news publisher of the existence and content of a suppression order or non-publication order made by the Court.

77RK Contravention of order

(1) A person commits an offence if:

- (a) the person does an act or omits to do an act; and
- (b) the act or omission contravenes an order made by the High Court under section 77RE.

Penalty: Imprisonment for 12 months, 60 penalty units or both.

- (2) An act or omission that constitutes an offence under this section may be punished as a contempt of court even though it could be punished as an offence.
- (3) An act or omission that constitutes an offence under this section may be punished as an offence even though it could be punished as a contempt of court.
- (4) If an act or omission constitutes both an offence under this section and a contempt of court, the offender is not liable to be punished twice.

Part 2—Consequential amendments

Australian Crime Commission Act 2002

9 Schedule 1

Omit:

Federal Court of Australia Act 1976, section 50

Federal Magistrates Act 1999, section 61

substitute:

Family Law Act 1975, Part XIA

Federal Court of Australia Act 1976, Part VAA

Federal Magistrates Act 1999, Part 6A

10 Schedule 1

After:

Inspector-General of Taxation Act 2003, section 37

insert:

Judiciary Act 1903, Part XAA

1 **Part 3—Application, saving and transitional**
2 **provisions**

3 **11 Application of amendments**

4 The amendments made by Part 1 apply in relation to proceedings
5 (including interlocutory proceedings):

- 6 (a) that are instituted in, or transferred to, a court on or after the
7 commencement of that Part; or
8 (b) that are pending in a court immediately before that
9 commencement.

10 **12 Saving—proceedings already heard**

- 11 (1) Despite the amendment made by item 5, section 50 of the *Federal*
12 *Court of Australia Act 1976*, as in force immediately before the
13 commencement of this item, continues to apply on and after that
14 commencement in relation to a proceeding heard by the Court before
15 that commencement.
- 16 (2) Despite the amendment made by item 5, the *Federal Court of Australia*
17 *Act 1976*, as in force immediately before the commencement of this
18 item, continues to apply on and after that commencement in relation to
19 an order made under section 50 of that Act before, on or after that
20 commencement.
- 21 (3) Despite the amendment made by item 6, section 61 of the *Federal*
22 *Magistrates Act 1999*, as in force immediately before the
23 commencement of this item, continues to apply on and after that
24 commencement in relation to a proceeding heard by the Federal
25 Magistrates Court before that commencement.
- 26 (4) Despite the amendment made by item 6, the *Federal Magistrates Act*
27 *1999*, as in force immediately before the commencement of this item,
28 continues to apply on and after that commencement in relation to an
29 order made under section 61 of that Act before, on or after that
30 commencement.

31 **13 Transitional—Australian Crime Commission Act 2002**

32 Schedule 1 to the *Australian Crime Commission Act 2002* applies on
33 and after the commencement of this item:

Schedule 2 Suppression and non-publication orders
Part 3 Application, saving and transitional provisions

- 1 (a) as if a reference in that Schedule to Part VAA of the *Federal*
2 *Court of Australia Act 1976* included a reference to
3 section 50 of that Act as in force at any time; and
4 (b) as if a reference in that Schedule to Part 6A of the *Federal*
5 *Magistrates Act 1999* included a reference to section 61 of
6 that Act as in force at any time.
7

Schedule 3—Vexatious proceedings

Part 1—Amendments

Family Law Act 1975

1 Subsection 97(1)

Omit “subsections (1A) and (2)”, substitute “this Act”.

2 Before Part XII

Insert:

Part XIB—Vexatious proceedings

Division 1—Preliminary

102Q Definitions

(1) In this Part:

appropriate court official means:

- (a) in relation to the Family Court of Australia—the Chief Executive Officer or Principal Registrar of the Court; and
- (b) in relation to the Federal Magistrates Court—the Chief Executive Officer of the Court; and
- (c) in relation to the Family Court of Western Australia—the Principal Registrar of the Court; and
- (d) in relation to any other court—the chief executive officer or principal registrar (however described) of the court.

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and

- 1 (b) for proceedings before a tribunal—the taking of a step or the
2 making of an application that may be necessary before
3 proceedings can be started before the tribunal; and
4 (c) for criminal proceedings—the making of a complaint or the
5 obtaining of a warrant for the arrest of an alleged offender;
6 and
7 (d) for civil or criminal proceedings or proceedings before a
8 tribunal—the taking of a step or the making of an application
9 that may be necessary to start an appeal in relation to the
10 proceedings or to a decision made in the course of the
11 proceedings.

12 ***proceedings:***

- 13 (a) in relation to a court—has the meaning given by subsection
14 4(1); and
15 (b) in relation to a tribunal—means a proceeding in the tribunal,
16 whether between parties or not, and includes an incidental
17 proceeding in the course of, or in connection with, a
18 proceeding.

19 ***proceedings of a particular type*** includes:

- 20 (a) proceedings in relation to a particular matter; and
21 (b) proceedings against a particular person.

22 ***vexatious proceedings*** includes:

- 23 (a) proceedings that are an abuse of the process of a court or
24 tribunal; and
25 (b) proceedings instituted in a court or tribunal to harass or
26 annoy, to cause delay or detriment, or for another wrongful
27 purpose; and
28 (c) proceedings instituted or pursued in a court or tribunal
29 without reasonable ground; and
30 (d) proceedings conducted in a court or tribunal in a way so as to
31 harass or annoy, cause delay or detriment, or achieve another
32 wrongful purpose.

33 ***vexatious proceedings order*** means an order made under
34 subsection 102QB(2).

- 35 (2) A reference in this Part to a person acting in concert with another
36 person in instituting or conducting proceedings does not include a

1 reference to a person who is so acting as a lawyer or representative
2 of the other person.

3 **102QA Powers of a court not affected**

4 This Part does not limit or otherwise affect any powers that a court
5 has apart from this Part to deal with vexatious proceedings.

6 Note: For example, section 118 allows a court to dismiss particular
7 proceedings if it is satisfied that the proceedings are frivolous or
8 vexatious.

9 **Division 2—Vexatious proceedings orders**

10 **102QB Making vexatious proceedings orders**

11 (1) This section applies if a court exercising jurisdiction in
12 proceedings under this Act is satisfied:

13 (a) a person has frequently instituted or conducted vexatious
14 proceedings in Australian courts or tribunals; or

15 (b) a person, acting in concert with another person who is subject
16 to a vexatious proceedings order or who is covered by
17 paragraph (a), has instituted or conducted vexatious
18 proceedings in an Australian court or tribunal.

19 (2) The court may make any or all of the following orders:

20 (a) an order staying or dismissing all or part of any proceedings
21 in the court already instituted by the person;

22 (b) an order prohibiting the person from instituting proceedings,
23 or proceedings of a particular type, under this Act in a court
24 having jurisdiction under this Act;

25 (c) any other order the court considers appropriate in relation to
26 the person.

27 Note: Examples of an order under paragraph (c) are an order directing that
28 the person may only file documents by mail, an order to give security
29 for costs and an order for costs.

30 (3) The court may make a vexatious proceedings order on its own
31 initiative or on the application of any of the following:

32 (a) the Attorney-General of the Commonwealth or of a State or
33 Territory;

34 (b) the appropriate court official;

- 1 (c) a person against whom another person has instituted or
2 conducted vexatious proceedings;
3 (d) a person who has a sufficient interest in the matter.
- 4 (4) The court must not make a vexatious proceedings order in relation
5 to a person without hearing the person or giving the person an
6 opportunity of being heard.
- 7 (5) An order made under paragraph (2)(a) or (b) is a final order.
- 8 (6) For the purposes of subsection (1), the court may have regard to:
9 (a) proceedings instituted (or attempted to be instituted) or
10 conducted in any Australian court or tribunal; and
11 (b) orders made by any Australian court or tribunal; and
12 (c) the person's overall conduct in proceedings conducted in any
13 Australian court or tribunal (including the person's
14 compliance with orders made by that court or tribunal);
15 including proceedings instituted (or attempted to be instituted) or
16 conducted, and orders made, before the commencement of this
17 section.

102QC Notification of vexatious proceedings orders

- 18
- 19 (1) A person may request the appropriate court official of a court for a
20 certificate stating whether a person named in the request is or has
21 been the subject of a vexatious proceedings order made by the
22 court.
- 23 (2) If a person makes a request under subsection (1) and the person
24 named in the request is or has been the subject of a vexatious
25 proceedings order made by the court, the appropriate court official
26 must issue to the person making the request a certificate:
27 (a) specifying the date of the order; and
28 (b) specifying any other information prescribed by the applicable
29 Rules of Court.
- 30 (3) This section is subject to any law of the Commonwealth, or order
31 of the court, restricting the publication or disclosure of the name of
32 a party to proceedings in the court.
- 33 Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of
34 Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

102QD Proceedings in contravention of vexatious proceedings order

- (1) If a person is subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act:
 - (a) the person must not institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the court without the leave of the court under section 102QG.
- (2) If proceedings are instituted in contravention of subsection (1), the proceedings are stayed.
- (3) Without limiting subsection (2), the court may make:
 - (a) an order declaring proceedings are proceedings to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceedings it considers appropriate, including an order for costs.
- (4) The court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the appropriate court official;
 - (c) a person against whom another person has instituted or conducted vexatious proceedings;
 - (d) a person who has a sufficient interest in the matter.

102QE Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, under this Act in a court having jurisdiction under this Act; or

- 1 (b) acting in concert with another person who is subject to an
2 order mentioned in paragraph (a).
- 3 (2) The applicant may apply to the court for leave to institute
4 proceedings that are subject to the order.
- 5 (3) The applicant must file an affidavit with the application that:
6 (a) lists all the occasions on which the applicant has applied for
7 leave under this section; and
8 (b) lists all other proceedings the applicant has instituted in any
9 Australian court or tribunal, including proceedings instituted
10 before the commencement of this section; and
11 (c) discloses all relevant facts about the application, whether
12 supporting or adverse to the application, that are known to
13 the applicant.
- 14 (4) The applicant must not serve a copy of the application or affidavit
15 on a person unless an order is made under paragraph 102QG(1)(a).
16 If the order is made, the applicant must serve the copy in
17 accordance with the order.

102QF Dismissing application for leave

- 18
- 19 (1) The court may make an order dismissing an application under
20 section 102QE for leave to institute proceedings if it considers the
21 affidavit does not substantially comply with subsection 102QE(3).
- 22 (2) The court must make an order dismissing an application under
23 section 102QE for leave to institute proceedings if it considers the
24 proceedings are vexatious proceedings.
- 25 (3) The court may dismiss the application without an oral hearing
26 (either with or without the consent of the applicant).
- 27 (4) The court may make an order under this section in Chambers.

102QG Granting application for leave

- 28
- 29 (1) Before the court makes an order granting an application under
30 section 102QE for leave to institute proceedings, it must:
31 (a) order that the applicant serve:
32 (i) the person against whom the applicant proposes to
33 institute the proceedings; and
-

- 1 (ii) any other person specified in the order;
2 with a copy of the application and affidavit and a notice that
3 the person is entitled to be heard on the application; and
4 (b) give the applicant and each person described in
5 subparagraph (a)(i) or (ii), on appearance, an opportunity to
6 be heard at the hearing of the application.
- 7 (2) At the hearing of the application, the court may receive as evidence
8 any record of evidence given, or affidavit filed, in any proceedings
9 in any Australian court or tribunal in which the applicant is, or at
10 any time was, involved either as a party or as a person acting in
11 concert with a party.
- 12 (3) The court may make an order granting the application. The order
13 may be made subject to the conditions the court considers
14 appropriate.
- 15 (4) The court may grant leave only if it is satisfied the proceedings are
16 not vexatious proceedings.

17 **3 Section 118**

18 Repeal the section, substitute:

19 **118 Frivolous or vexatious proceedings**

20 The court may, at any stage of proceedings under this Act, if it is
21 satisfied that the proceedings are frivolous or vexatious:

- 22 (a) dismiss the proceedings; and
23 (b) make such order as to costs as the court considers just.

24 **4 After paragraph 123(1)(d)**

25 Insert:

- 26 (e) providing for and in relation to the prevention or termination
27 of vexatious proceedings; and

28 ***Federal Court of Australia Act 1976***

29 **5 Subsection 17(1)**

30 Omit “section”, substitute “Act”.

31 **6 Paragraph 24(1D)(c)**

After “section 37AF”, insert “, 37AS or 37AT”.

7 Paragraph 24(1D)(d)

After “section 88F”, insert “, 88U or 88V”.

8 Before Part VA

Insert:

Part VAAA—Vexatious proceedings

Division 1—Preliminary

37AM Definitions

(1) In this Part:

Australian court or tribunal means a court or tribunal of the Commonwealth, a State or a Territory.

institute, in relation to proceedings, includes:

- (a) for civil proceedings—the taking of a step or the making of an application that may be necessary before proceedings can be started against a party; and
- (b) for proceedings before a tribunal—the taking of a step or the making of an application that may be necessary before proceedings can be started before the tribunal; and
- (c) for criminal proceedings—the making of a complaint or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) for civil or criminal proceedings or proceedings before a tribunal—the taking of a step or the making of an application that may be necessary to start an appeal in relation to the proceedings or to a decision made in the course of the proceedings.

proceeding:

- (a) in relation to a court—has the meaning given by section 4; and
- (b) in relation to a tribunal—means a proceeding in the tribunal, whether between parties or not, and includes an incidental

1 proceeding in the course of, or in connection with, a
2 proceeding.

3 ***proceedings of a particular type*** includes:

- 4 (a) proceedings in relation to a particular matter; and
5 (b) proceedings against a particular person.

6 ***vexatious proceeding*** includes:

- 7 (a) a proceeding that is an abuse of the process of a court or
8 tribunal; and
9 (b) a proceeding instituted in a court or tribunal to harass or
10 annoy, to cause delay or detriment, or for another wrongful
11 purpose; and
12 (c) a proceeding instituted or pursued in a court or tribunal
13 without reasonable ground; and
14 (d) a proceeding conducted in a court or tribunal in a way so as
15 to harass or annoy, cause delay or detriment, or achieve
16 another wrongful purpose.

17 ***vexatious proceedings order*** means an order made under
18 subsection 37AO(2).

- 19 (2) A reference in this Part to a person acting in concert with another
20 person in instituting or conducting proceedings does not include a
21 reference to a person who is so acting as a lawyer or representative
22 of the other person.

23 **37AN Powers of the Court not affected**

24 This Part does not limit or otherwise affect any powers that the
25 Court has apart from this Part to deal with vexatious proceedings.

26 **Division 2—Vexatious proceedings orders**

27 **37AO Making vexatious proceedings orders**

- 28 (1) This section applies if the Court is satisfied:
29 (a) a person has frequently instituted or conducted vexatious
30 proceedings in Australian courts or tribunals; or
31 (b) a person, acting in concert with another person who is subject
32 to a vexatious proceedings order or who is covered by

- 1 paragraph (a), has instituted or conducted a vexatious
2 proceeding in an Australian court or tribunal.
- 3 (2) The Court may make any or all of the following orders:
4 (a) an order staying or dismissing all or part of any proceedings
5 in the Court already instituted by the person;
6 (b) an order prohibiting the person from instituting proceedings,
7 or proceedings of a particular type, in the Court;
8 (c) any other order the Court considers appropriate in relation to
9 the person.
- 10 Note: Examples of an order under paragraph (c) are an order directing that
11 the person may only file documents by mail, an order to give security
12 for costs and an order for costs.
- 13 (3) The Court may make a vexatious proceedings order on its own
14 initiative or on the application of any of the following:
15 (a) the Attorney-General of the Commonwealth or of a State or
16 Territory;
17 (b) the Registrar of the Court;
18 (c) a person against whom another person has instituted or
19 conducted a vexatious proceeding;
20 (d) a person who has a sufficient interest in the matter.
- 21 (4) The Court must not make a vexatious proceedings order in relation
22 to a person without hearing the person or giving the person an
23 opportunity of being heard.
- 24 (5) An order made under paragraph (2)(a) or (b) is a final order.
- 25 (6) For the purposes of subsection (1), the Court may have regard to:
26 (a) proceedings instituted (or attempted to be instituted) or
27 conducted in any Australian court or tribunal; and
28 (b) orders made by any Australian court or tribunal; and
29 (c) the person's overall conduct in proceedings conducted in any
30 Australian court or tribunal (including the person's
31 compliance with orders made by that court or tribunal);
32 including proceedings instituted (or attempted to be instituted) or
33 conducted, and orders made, before the commencement of this
34 section.

1 **37AP Notification of vexatious proceedings orders**

- 2 (1) A person may request the Registrar of the Court for a certificate
3 stating whether a person named in the request is or has been the
4 subject of a vexatious proceedings order.
- 5 (2) If a person makes a request under subsection (1) and the person
6 named in the request is or has been the subject of a vexatious
7 proceedings order, the Registrar must issue to the person making
8 the request a certificate:
9 (a) specifying the date of the order; and
10 (b) specifying any other information prescribed by the Rules of
11 Court.
- 12 (3) This section is subject to any law of the Commonwealth, or order
13 of the Court, restricting the publication or disclosure of the name of
14 a party to proceedings in the Court.

15 Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of
16 Commonwealth records.

17 **Division 3—Particular consequences of vexatious**
18 **proceedings orders**

19 **37AQ Proceedings in contravention of vexatious proceedings order**

- 20 (1) If the Court makes a vexatious proceedings order prohibiting a
21 person from instituting proceedings, or proceedings of a particular
22 type, in the Court:
23 (a) the person must not institute proceedings, or proceedings of
24 that type, in the Court without the leave of the Court under
25 section 37AT; and
26 (b) another person must not, acting in concert with the person,
27 institute proceedings, or proceedings of that type, in the
28 Court without the leave of the Court under section 37AT.
- 29 (2) If a proceeding is instituted in contravention of subsection (1), the
30 proceeding is stayed.
- 31 (3) Without limiting subsection (2), the Court may make:
32 (a) an order declaring a proceeding is a proceeding to which
33 subsection (2) applies; and

- 1 (b) any other order in relation to the stayed proceeding it
2 considers appropriate, including an order for costs.
- 3 (4) The Court may make an order under subsection (3) on its own
4 initiative or on the application of any of the following:
- 5 (a) the Attorney-General of the Commonwealth or of a State or
6 Territory;
- 7 (b) the Registrar of the Court;
- 8 (c) a person against whom another person has instituted or
9 conducted a vexatious proceeding;
- 10 (d) a person who has a sufficient interest in the matter.

11 **37AR Application for leave to institute proceedings**

- 12 (1) This section applies to a person (the *applicant*) who is:
- 13 (a) subject to a vexatious proceedings order prohibiting the
14 person from instituting proceedings, or proceedings of a
15 particular type, in the Court; or
- 16 (b) acting in concert with another person who is subject to an
17 order mentioned in paragraph (a).
- 18 (2) The applicant may apply to the Court for leave to institute a
19 proceeding that is subject to the order.
- 20 (3) The applicant must file an affidavit with the application that:
- 21 (a) lists all the occasions on which the applicant has applied for
22 leave under this section; and
- 23 (b) lists all other proceedings the applicant has instituted in any
24 Australian court or tribunal, including proceedings instituted
25 before the commencement of this section; and
- 26 (c) discloses all relevant facts about the application, whether
27 supporting or adverse to the application, that are known to
28 the applicant.
- 29 (4) The applicant must not serve a copy of the application or affidavit
30 on a person unless an order is made under paragraph 37AT(1)(a). If
31 the order is made, the applicant must serve the copy in accordance
32 with the order.

37AS Dismissing application for leave

- (1) The Court or a Judge may make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the affidavit does not substantially comply with subsection 37AR(3).
- (2) The Court or a Judge must make an order dismissing an application under section 37AR for leave to institute a proceeding if the Court or Judge considers the proceeding is a vexatious proceeding.
- (3) The Court or a Judge may dismiss the application without an oral hearing (either with or without the consent of the applicant).

37AT Granting application for leave

- (1) Before the Court makes an order granting an application under section 37AR for leave to institute a proceeding, it must:
 - (a) order that the applicant serve:
 - (i) the person against whom the applicant proposes to institute the proceeding; and
 - (ii) any other person specified in the order;with a copy of the application and affidavit and a notice that the person is entitled to be heard on the application; and
 - (b) give the applicant and each person described in subparagraph (a)(i) or (ii), on appearance, an opportunity to be heard at the hearing of the application.
- (2) At the hearing of the application, the Court may receive as evidence any record of evidence given, or affidavit filed, in any proceeding in any Australian court or tribunal in which the applicant is, or at any time was, involved either as a party or as a person acting in concert with a party.
- (3) The Court may make an order granting the application. The order may be made subject to the conditions the Court considers appropriate.
- (4) The Court may grant leave only if it is satisfied the proceeding is not a vexatious proceeding.

1 ***Federal Magistrates Act 1999***

2 **9 Before Part 7**

3 Insert:

4 **Part 6B—Vexatious proceedings**

5 **Division 1—Preliminary**

6 **88N Definitions**

7 (1) In this Part:

8 ***Australian court or tribunal*** means a court or tribunal of the
9 Commonwealth, a State or a Territory.

10 ***institute***, in relation to proceedings, includes:

- 11 (a) for civil proceedings—the taking of a step or the making of
12 an application that may be necessary before proceedings can
13 be started against a party; and
14 (b) for proceedings before a tribunal—the taking of a step or the
15 making of an application that may be necessary before
16 proceedings can be started before the tribunal; and
17 (c) for criminal proceedings—the making of a complaint or the
18 obtaining of a warrant for the arrest of an alleged offender;
19 and
20 (d) for civil or criminal proceedings or proceedings before a
21 tribunal—the taking of a step or the making of an application
22 that may be necessary to start an appeal in relation to the
23 proceedings or to a decision made in the course of the
24 proceedings.

25 ***proceeding***:

- 26 (a) in relation to a court—has the meaning given by section 5;
27 and
28 (b) in relation to a tribunal—means a proceeding in the tribunal,
29 whether between parties or not, and includes an incidental
30 proceeding in the course of, or in connection with, a
31 proceeding.

32 ***proceedings of a particular type*** includes:

- 1 (a) proceedings in relation to a particular matter; and
2 (b) proceedings against a particular person.

3 **vexatious proceeding** includes:

- 4 (a) a proceeding that is an abuse of the process of a court or
5 tribunal; and
6 (b) a proceeding instituted in a court or tribunal to harass or
7 annoy, to cause delay or detriment, or for another wrongful
8 purpose; and
9 (c) a proceeding instituted or pursued in a court or tribunal
10 without reasonable ground; and
11 (d) a proceeding conducted in a court or tribunal in a way so as
12 to harass or annoy, cause delay or detriment, or achieve
13 another wrongful purpose.

14 **vexatious proceedings order** means an order made under
15 subsection 88Q(2).

- 16 (2) A reference in this Part to a person acting in concert with another
17 person in instituting or conducting proceedings does not include a
18 reference to a person who is so acting as a legal practitioner or
19 representative of the other person.

20 **88P Powers of the Federal Magistrates Court not affected**

21 This Part does not limit or otherwise affect any powers that the
22 Federal Magistrates Court has apart from this Part to deal with
23 vexatious proceedings.

24 **Division 2—Vexatious proceedings orders**

25 **88Q Making vexatious proceedings orders**

- 26 (1) This section applies if the Federal Magistrates Court is satisfied:
27 (a) a person has frequently instituted or conducted vexatious
28 proceedings in Australian courts or tribunals; or
29 (b) a person, acting in concert with another person who is subject
30 to a vexatious proceedings order or who is covered by
31 paragraph (a), has instituted or conducted a vexatious
32 proceeding in an Australian court or tribunal.

- 1 (2) The Federal Magistrates Court may make any or all of the
2 following orders:
3 (a) an order staying or dismissing all or part of any proceedings
4 in the Federal Magistrates Court already instituted by the
5 person;
6 (b) an order prohibiting the person from instituting proceedings,
7 or proceedings of a particular type, in the Federal Magistrates
8 Court;
9 (c) any other order the Federal Magistrates Court considers
10 appropriate in relation to the person.
- 11 Note: Examples of an order under paragraph (c) are an order directing that
12 the person may only file documents by mail, an order to give security
13 for costs and an order for costs.
- 14 (3) Subsection (2) applies in relation to proceedings in the Federal
15 Magistrates Court other than proceedings under the *Family Law*
16 *Act 1975*.
- 17 Note: Part XIB of the *Family Law Act 1975* deals with vexatious
18 proceedings under that Act.
- 19 (4) The Federal Magistrates Court may make a vexatious proceedings
20 order on its own initiative or on the application of any of the
21 following:
22 (a) the Attorney-General of the Commonwealth or of a State or
23 Territory;
24 (b) the Chief Executive Officer;
25 (c) a person against whom another person has instituted or
26 conducted a vexatious proceeding;
27 (d) a person who has a sufficient interest in the matter.
- 28 (5) The Federal Magistrates Court must not make a vexatious
29 proceedings order in relation to a person without hearing the
30 person or giving the person an opportunity of being heard.
- 31 (6) An order made under paragraph (2)(a) or (b) is a final order.
- 32 (7) For the purposes of subsection (1), the Federal Magistrates Court
33 may have regard to:
34 (a) proceedings instituted (or attempted to be instituted) or
35 conducted in any Australian court or tribunal; and
36 (b) orders made by any Australian court or tribunal; and
-

1 (c) the person's overall conduct in proceedings conducted in any
2 Australian court or tribunal (including the person's
3 compliance with orders made by that court or tribunal);
4 including proceedings instituted (or attempted to be instituted) or
5 conducted, and orders made, before the commencement of this
6 section.

7 **88R Notification of vexatious proceedings orders**

8 (1) A person may request the Chief Executive Officer for a certificate
9 stating whether a person named in the request is or has been the
10 subject of a vexatious proceedings order.

11 (2) If a person makes a request under subsection (1) and the person
12 named in the request is or has been the subject of a vexatious
13 proceedings order, the Chief Executive Officer must issue to the
14 person making the request a certificate:

15 (a) specifying the date of the order; and

16 (b) specifying any other information prescribed by the Rules of
17 Court.

18 (3) This section is subject to any law of the Commonwealth, or order
19 of the Federal Magistrates Court, restricting the publication or
20 disclosure of the name of a party to proceedings in the Federal
21 Magistrates Court.

22 Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of
23 Commonwealth records.

24 **Division 3—Particular consequences of vexatious** 25 **proceedings orders**

26 **88S Proceedings in contravention of vexatious proceedings order**

27 (1) If the Federal Magistrates Court makes a vexatious proceedings
28 order prohibiting a person from instituting proceedings, or
29 proceedings of a particular type, in the Federal Magistrates Court:

30 (a) the person must not institute proceedings, or proceedings of
31 that type, in the Federal Magistrates Court without the leave
32 of the Federal Magistrates Court under section 88V; and

33 (b) another person must not, acting in concert with the person,
34 institute proceedings, or proceedings of that type, in the

- 1 Federal Magistrates Court without the leave of the Federal
2 Magistrates Court under section 88V.
- 3 (2) If a proceeding is instituted in contravention of subsection (1), the
4 proceeding is stayed.
- 5 (3) Without limiting subsection (2), the Federal Magistrates Court may
6 make:
- 7 (a) an order declaring a proceeding is a proceeding to which
8 subsection (2) applies; and
9 (b) any other order in relation to the stayed proceeding it
10 considers appropriate, including an order for costs.
- 11 (4) The Federal Magistrates Court may make an order under
12 subsection (3) on its own initiative or on the application of any of
13 the following:
- 14 (a) the Attorney-General of the Commonwealth or of a State or
15 Territory;
16 (b) the Chief Executive Officer;
17 (c) a person against whom another person has instituted or
18 conducted a vexatious proceeding;
19 (d) a person who has a sufficient interest in the matter.

88T Application for leave to institute proceedings

- 20
- 21 (1) This section applies to a person (the **applicant**) who is:
- 22 (a) subject to a vexatious proceedings order prohibiting the
23 person from instituting proceedings, or proceedings of a
24 particular type, in the Federal Magistrates Court; or
25 (b) acting in concert with another person who is subject to an
26 order mentioned in paragraph (a).
- 27 (2) The applicant may apply to the Federal Magistrates Court for leave
28 to institute a proceeding that is subject to the order.
- 29 (3) The applicant must file an affidavit with the application that:
- 30 (a) lists all the occasions on which the applicant has applied for
31 leave under this section; and
32 (b) lists all other proceedings the applicant has instituted in any
33 Australian court or tribunal, including proceedings instituted
34 before the commencement of this section; and

1 (c) discloses all relevant facts about the application, whether
2 supporting or adverse to the application, that are known to
3 the applicant.

4 (4) The applicant must not serve a copy of the application or affidavit
5 on a person unless an order is made under paragraph 88V(1)(a). If
6 the order is made, the applicant must serve the copy in accordance
7 with the order.

8 **88U Dismissing application for leave**

9 (1) The Federal Magistrates Court or a Federal Magistrate may make
10 an order dismissing an application under section 88T for leave to
11 institute a proceeding if the Federal Magistrates Court or Federal
12 Magistrate considers the affidavit does not substantially comply
13 with subsection 88T(3).

14 (2) The Federal Magistrates Court or a Federal Magistrate must make
15 an order dismissing an application under section 88T for leave to
16 institute a proceeding if the Federal Magistrates Court or Federal
17 Magistrate considers the proceeding is a vexatious proceeding.

18 (3) The Federal Magistrates Court or a Federal Magistrate may dismiss
19 the application without an oral hearing (either with or without the
20 consent of the applicant).

21 **88V Granting application for leave**

22 (1) Before the Federal Magistrates Court makes an order granting an
23 application under section 88T for leave to institute a proceeding, it
24 must:

25 (a) order that the applicant serve:

26 (i) the person against whom the applicant proposes to
27 institute the proceeding; and

28 (ii) any other person specified in the order;

29 with a copy of the application and affidavit and a notice that
30 the person is entitled to be heard on the application; and

31 (b) give the applicant and each person described in
32 subparagraph (a)(i) or (ii), on appearance, an opportunity to
33 be heard at the hearing of the application.

- 1 (2) At the hearing of the application, the Federal Magistrates Court
2 may receive as evidence any record of evidence given, or affidavit
3 filed, in any proceeding in any Australian court or tribunal in
4 which the applicant is, or at any time was, involved either as a
5 party or as a person acting in concert with a party.
- 6 (3) The Federal Magistrates Court may make an order granting the
7 application. The order may be made subject to the conditions the
8 Federal Magistrates Court considers appropriate.
- 9 (4) The Federal Magistrates Court may grant leave only if it is
10 satisfied the proceeding is not a vexatious proceeding.

11 ***Judiciary Act 1903***

12 **10 Before Part XB**

13 Insert:

14 **Part XAB—Vexatious proceedings**

15 **Division 1—Preliminary**

16 **77RL Definitions**

- 17 (1) In this Part:

18 ***Australian court or tribunal*** means a court or tribunal of the
19 Commonwealth, a State or a Territory.

20 ***Chief Executive and Principal Registrar*** means the Chief
21 Executive and Principal Registrar of the High Court appointed
22 under section 18 of the *High Court of Australia Act 1979*.

23 ***institute***, in relation to proceedings, includes:

- 24 (a) for civil proceedings—the taking of a step or the making of
25 an application that may be necessary before proceedings can
26 be started against a party; and
27 (b) for proceedings before a tribunal—the taking of a step or the
28 making of an application that may be necessary before
29 proceedings can be started before the tribunal; and

- 1 (c) for criminal proceedings—the making of a complaint or the
2 obtaining of a warrant for the arrest of an alleged offender;
3 and
4 (d) for civil or criminal proceedings or proceedings before a
5 tribunal—the taking of a step or the making of an application
6 that may be necessary to start an appeal in relation to the
7 proceedings or to a decision made in the course of the
8 proceedings.

9 ***proceeding:***

- 10 (a) in relation to a court—means a proceeding in the court,
11 whether between parties or not, and includes an incidental
12 proceeding in the course of, or in connection with, a
13 proceeding, and also includes an appeal; and
14 (b) in relation to a tribunal—means a proceeding in the tribunal,
15 whether between parties or not, and includes an incidental
16 proceeding in the course of, or in connection with, a
17 proceeding.

18 ***proceedings of a particular type*** includes:

- 19 (a) proceedings in relation to a particular matter; and
20 (b) proceedings against a particular person.

21 ***vexatious proceeding*** includes:

- 22 (a) a proceeding that is an abuse of the process of a court or
23 tribunal; and
24 (b) a proceeding instituted in a court or tribunal to harass or
25 annoy, to cause delay or detriment, or for another wrongful
26 purpose; and
27 (c) a proceeding instituted or pursued in a court or tribunal
28 without reasonable ground; and
29 (d) a proceeding conducted in a court or tribunal in a way so as
30 to harass or annoy, cause delay or detriment, or achieve
31 another wrongful purpose.

32 ***vexatious proceedings order*** means an order made under
33 subsection 77RN(2).

- 34 (2) A reference in this Part to a person acting in concert with another
35 person in instituting or conducting proceedings does not include a
36 reference to a person who is so acting as a legal practitioner or
37 representative of the other person.

77RM Powers of the High Court not affected

This Part does not limit or otherwise affect any powers that the High Court has apart from this Part to deal with vexatious proceedings.

Division 2—Vexatious proceedings orders

77RN Making vexatious proceedings orders

(1) This section applies if the High Court is satisfied:

- (a) a person has frequently instituted or conducted vexatious proceedings in Australian courts or tribunals; or
- (b) a person, acting in concert with another person who is subject to a vexatious proceedings order or who is covered by paragraph (a), has instituted or conducted a vexatious proceeding in an Australian court or tribunal.

(2) The High Court may make any or all of the following orders:

- (a) an order staying or dismissing all or part of any proceedings in the High Court already instituted by the person;
- (b) an order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the High Court;
- (c) any other order the High Court considers appropriate in relation to the person.

Note: Examples of an order under paragraph (c) are an order directing that the person may only file documents by mail, an order to give security for costs and an order for costs.

(3) The High Court may make a vexatious proceedings order on its own initiative or on the application of any of the following:

- (a) the Attorney-General of the Commonwealth or of a State or Territory;
- (b) the Chief Executive and Principal Registrar;
- (c) a person against whom another person has instituted or conducted a vexatious proceeding;
- (d) a person who has a sufficient interest in the matter.

(4) The High Court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person an opportunity of being heard.

1 (5) An order made under paragraph (2)(a) or (b) is a final order.

2 (6) For the purposes of subsection (1), the High Court may have regard
3 to:

4 (a) proceedings instituted (or attempted to be instituted) or
5 conducted in any Australian court or tribunal; and

6 (b) orders made by any Australian court or tribunal; and

7 (c) the person's overall conduct in proceedings conducted in any
8 Australian court or tribunal (including the person's
9 compliance with orders made by that court or tribunal);

10 including proceedings instituted (or attempted to be instituted) or
11 conducted, and orders made, before the commencement of this
12 section.

13 **77RO Notification of vexatious proceedings orders**

14 (1) A person may request the Chief Executive and Principal Registrar
15 for a certificate stating whether a person named in the request is or
16 has been the subject of a vexatious proceedings order.

17 (2) If a person makes a request under subsection (1) and the person
18 named in the request is or has been the subject of a vexatious
19 proceedings order, the Chief Executive and Principal Registrar
20 must issue to the person making the request a certificate:

21 (a) specifying the date of the order; and

22 (b) specifying any other information prescribed by Rules of
23 Court.

24 (3) This section is subject to any law of the Commonwealth, or order
25 of the High Court, restricting the publication or disclosure of the
26 name of a party to proceedings in the High Court.

27 Note: Section 155 of the *Evidence Act 1995* deals with adducing evidence of
28 Commonwealth records.

Division 3—Particular consequences of vexatious proceedings orders

77RP Proceedings in contravention of vexatious proceedings order

- (1) If the High Court makes a vexatious proceedings order prohibiting a person from instituting proceedings, or proceedings of a particular type, in the High Court:
 - (a) the person must not institute proceedings, or proceedings of that type, in the High Court without the leave of the High Court under section 77RS; and
 - (b) another person must not, acting in concert with the person, institute proceedings, or proceedings of that type, in the High Court without the leave of the High Court under section 77RS.
- (2) If a proceeding is instituted in contravention of subsection (1), the proceeding is stayed.
- (3) Without limiting subsection (2), the High Court may make:
 - (a) an order declaring a proceeding is a proceeding to which subsection (2) applies; and
 - (b) any other order in relation to the stayed proceeding it considers appropriate, including an order for costs.
- (4) The High Court may make an order under subsection (3) on its own initiative or on the application of any of the following:
 - (a) the Attorney-General of the Commonwealth or of a State or Territory;
 - (b) the Chief Executive and Principal Registrar;
 - (c) a person against whom another person has instituted or conducted a vexatious proceeding;
 - (d) a person who has a sufficient interest in the matter.

77RQ Application for leave to institute proceedings

- (1) This section applies to a person (the *applicant*) who is:
 - (a) subject to a vexatious proceedings order prohibiting the person from instituting proceedings, or proceedings of a particular type, in the High Court; or

- 1 (b) acting in concert with another person who is subject to an
2 order mentioned in paragraph (a).
- 3 (2) The applicant may apply to the High Court for leave to institute a
4 proceeding that is subject to the order.
- 5 (3) The applicant must file an affidavit with the application that:
6 (a) lists all the occasions on which the applicant has applied for
7 leave under this section; and
8 (b) lists all other proceedings the applicant has instituted in any
9 Australian court or tribunal, including proceedings instituted
10 before the commencement of this section; and
11 (c) discloses all relevant facts about the application, whether
12 supporting or adverse to the application, that are known to
13 the applicant.
- 14 (4) The applicant must not serve a copy of the application or affidavit
15 on a person unless an order is made under paragraph 77RS(1)(a). If
16 the order is made, the applicant must serve the copy in accordance
17 with the order.

18 **77RR Dismissing application for leave**

- 19 (1) The High Court, or a Justice sitting in Chambers, may make an
20 order dismissing an application under section 77RQ for leave to
21 institute a proceeding if the High Court or Justice considers the
22 affidavit does not substantially comply with subsection 77RQ(3).
- 23 (2) The High Court, or a Justice sitting in Chambers, must make an
24 order dismissing an application under section 77RQ for leave to
25 institute a proceeding if the High Court or Justice considers the
26 proceeding is a vexatious proceeding.
- 27 (3) The High Court, or a Justice sitting in Chambers, may dismiss the
28 application without an oral hearing (either with or without the
29 consent of the applicant).

30 **77RS Granting application for leave**

- 31 (1) Before the High Court makes an order granting an application
32 under section 77RQ for leave to institute a proceeding, it must:
33 (a) order that the applicant serve:

- 1 (i) the person against whom the applicant proposes to
2 institute the proceeding; and
3 (ii) any other person specified in the order;
4 with a copy of the application and affidavit and a notice that
5 the person is entitled to be heard on the application; and
6 (b) give the applicant and each person described in
7 subparagraph (a)(i) or (ii), on appearance, an opportunity to
8 be heard at the hearing of the application.
- 9 (2) At the hearing of the application, the High Court may receive as
10 evidence any record of evidence given, or affidavit filed, in any
11 proceeding in any Australian court or tribunal in which the
12 applicant is, or at any time was, involved either as a party or as a
13 person acting in concert with a party.
- 14 (3) The High Court may make an order granting the application. The
15 order may be made subject to the conditions the High Court
16 considers appropriate.
- 17 (4) The High Court may grant leave only if it is satisfied the
18 proceeding is not a vexatious proceeding.
19

Part 2—Application and saving provisions

11 Application of amendments

The power of a court to make a vexatious proceedings order under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903*, as amended by this Schedule, applies in relation to proceedings instituted in, or transferred to, that court on or after the commencement of this item.

12 Saving—pending proceedings etc.

- (1) Despite the amendment made by item 3, section 118 of the *Family Law Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to proceedings that were pending in the court immediately before that commencement.
- (2) Despite the amendment made by item 3, the *Family Law Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to an order made under paragraph 118(1)(a), (b) or (c) of that Act before, on or after that commencement.
- (3) Despite the amendments made by this Schedule, rules of court, in relation to a court, that were in force immediately before the commencement of this item under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings) continue to apply on and after that commencement in relation to proceedings that were pending in the court immediately before that commencement.
- (4) The amendments made by this Schedule do not affect the validity of any orders that were made before the commencement of this item under rules of court made under the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* or the *Judiciary Act 1903* (to the extent the rules relate to vexatious proceedings).

**Schedule 4—Transfer of proceedings from
courts of summary jurisdiction**

Family Law Act 1975

1 Subsection 46(1)

After “instituted in”, insert “or transferred to”.

2 Subsection 46(1)

Omit “the ceiling amount”, substitute “\$20,000”.

3 Subsection 46(1)

Omit “by which the proceedings are instituted”, substitute “by which the proceedings were instituted”.

4 After subparagraphs 46(1)(a)(i) and (b)(i)

Insert:

(ia) a Family Court of a State; or

5 Subsection 46(1AA)

Repeal the subsection, substitute:

(1AA) Subsection (1) does not apply if the court of summary jurisdiction is the Magistrates Court of Western Australia constituted by a Family Law Magistrate of Western Australia.

6 Paragraph 46(1B)(a)

After “instituted in”, insert “or transferred to”.

7 After paragraph 46(1C)(a)

Insert:

(aa) a Family Court of a State; or

8 After paragraph 46(2A)(c)

Insert:

(ca) a Family Court of a State; or

9 Subsection 46(2B)

1 After “the court”, insert “of summary jurisdiction”.

2 **10 After paragraph 46(3A)(a)**

3 Insert:

4 (aa) a Family Court of a State;

5 **11 Paragraph 69N(1)(a)**

6 After “instituted in”, insert “or transferred to”.

7 **12 Application of amendments**

8 The amendments made by this Schedule apply in relation to
9 proceedings instituted, or transferred, on or after the commencement of
10 this Schedule.
11

Schedule 5—Administrative Appeals Tribunal fees

Administrative Appeals Tribunal Act 1975

1 Section 29A

Repeal the section.

2 After section 69B

Insert:

69C Dismissal of application for non-payment of application fee

The Tribunal may dismiss an application to the Tribunal if:

- (a) regulations under section 70 prescribe a fee to be payable in respect of the application; and
- (b) the fee has not been paid by the time worked out under regulations under section 70.

3 At the end of section 70

Add:

- (3) Without limiting the generality of subsection (1), the regulations may make provision:
 - (a) prescribing fees to be payable in respect of proceedings before the Tribunal; and
 - (b) for, or in relation to, the waiver (in whole or in part) of such fees.

4 Application and saving provisions

- (1) Despite the amendment made by item 1, section 29A of the *Administrative Appeals Tribunal Act 1975*, as in force immediately before the commencement of that item, continues to apply on and after that commencement in relation to applications lodged before that commencement.
- (2) The amendment made by item 2 applies in relation to applications lodged on or after the commencement of that item.

- 1 (3) The amendment made by item 3 applies in relation to proceedings
2 before the Tribunal:
3 (a) that commence after the commencement of that item; or
4 (b) that commenced, but were not completed, before the
5 commencement of that item.