

2002-2003-2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**JURISDICTION OF THE FEDERAL MAGISTRATES COURT LEGISLATION
AMENDMENT BILL 2004**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,
the Honourable Philip Ruddock MP)

JURISDICTION OF THE FEDERAL MAGISTRATES COURT LEGISLATION AMENDMENT BILL 2004

OUTLINE

The purpose of the Bill is to confer jurisdiction on the Federal Magistrates Court (FMC) in less complex corporate insolvency matters under the *Corporations Act 2001* (Corporations Act), to extend the jurisdiction of the FMC under the *Trade Practices Act 1974* (TP Act) and to confer jurisdiction on the FMC in consumer protection matters in relation to financial services under the *Australian Securities and Investments Commission Act 2001* (ASIC Act).

A review of the first two years of operation of the FMC was concluded in 2003. The review found that the FMC was operating successfully in dealing with less complex family law and other general federal law disputes, and was enabling the Family Court and the Federal Court to focus on more complex and lengthy matters. The outcome of the review provides a sound basis for expanding the jurisdiction of the FMC.

The FMC currently has jurisdiction to deal with most family law and child support matters. That jurisdiction is conferred under the *Family Law Act 1975* and relevant child support legislation and is concurrent with the jurisdiction of the Family Court.

The FMC also has jurisdiction in various areas of general federal law, including consumer protection matters under the TP Act (Divisions 1 (unfair practices) and 1A (product safety and product information) of Part V of the TP Act), bankruptcy matters, civil matters under the *Copyright Act 1968*, matters arising under federal anti-discrimination laws and matters arising under Part 8 of the *Migration Act 1958*. Jurisdiction in general federal law matters is conferred on the FMC under subject-specific legislation and is concurrent with the jurisdiction of the Federal Court.

It was always the Government's intention that the FMC would deal with a wide range of lower level work of the Family Court and Federal Court, including suitable corporations law matters. Conferral of Corporations Act jurisdiction was not pursued in 1999 when the FMC was being established because of the uncertainty concerning the corporate law regulatory scheme which resulted from the High Court's decision in *Re Wakim*. With the reestablishment of the constitutional foundations of the corporations law regime in 2001, it was again possible to consider conferral of the jurisdiction on the FMC.

Chapter 5 (External administration) of the Corporations Act deals with the external administration of bodies corporate. It includes Divisions on various kinds of administration, most of which involve dealing with corporations in financial difficulty or insolvency, for example, receivership and liquidation.

The proposed amendments to the Corporations Act do not remove any State/Territory jurisdiction and the transfer provisions under the Corporations Act will apply to facilitate transfers of matters between the FMC and other courts with jurisdiction under the Act, to ensure that corporate insolvency matters are dealt with in the most appropriate forum.

The Bill will provide further opportunities for litigants to take advantage of the streamlined and accessible forum offered by the FMC to resolve disputes in less complex corporate insolvency and other general federal law matters.

FINANCIAL IMPACT STATEMENT

The amendments made by the Jurisdiction of the Federal Magistrates Court Legislation Amendment Bill 2004 are not expected to have any significant financial impact.

NOTES ON CLAUSES

Clause 1: Short title

1. The short title of the Act will be the *Jurisdiction of the Federal Magistrates Court Legislation Amendment Act 2004*.

Clause 2: Commencement

2. This clause provides that ss 1-3 of the Act will commence on the day on which the Act receives the Royal Assent. Schedules 1, 2 and 3 of the Act will commence on the 28th day after the day on which the Act receives the Royal Assent.

Clause 3: Schedule(s)

3. This clause provides that each Act that is specified in a Schedule is amended as set out in that Schedule.

Schedule 1 – Jurisdiction over consumer protection

Australian Securities and Investments Commission Act 2001

Item 1

4. Item 1 inserts two new provisions into s 12GJ of the ASIC Act. The first provision (12GJ(1A)) confers jurisdiction on the FMC in matters arising under Subdivision D, Division 2 of Part 2 of the ASIC Act, which deals with consumer claims in relation to financial services. The provisions in Subdivision D are modelled on the equivalent provisions of the TP Act (Division 1 of Part V) in respect of which the FMC currently has jurisdiction.
5. At present the FMC can hear consumer protection matters in respect of non-financial services, but does not have jurisdiction to hear such matters in relation to financial services. The amendment will enable the FMC to hear consumer claims raising issues under both the TP Act and the corresponding provisions of the ASIC Act.
6. Clause 12GJ(1A) also confers jurisdiction on the FMC in matters arising under Part 3 of the ASIC Act (Investigations and information-gathering) in its application in relation to an investigation of a contravention of Subdivision D, Division 2 of Part 2.
7. Clause 12GJ(1B) provides for a monetary limit on awards of damages by the FMC under the consumer protection provisions of the ASIC Act. That limit is \$750,000. This is equivalent to the proposed increased monetary limit on awards of damages by the FMC under the TP Act (see notes on item 3 of Schedule 2 below).

Item 2

8. Item 2 amends subsection 12GJ(4) of the ASIC Act, which provides that the jurisdiction of the Federal Court under subsection 12GJ(1) is exclusive of the jurisdiction of any other court other than the jurisdiction of the several courts of the State and Territories under subsection 12GJ(2) and the jurisdiction of the High Court under s 75 of the Constitution. Item 2 recognises that jurisdiction is also conferred on the FMC under cl 12GJ(1A).

Item 3

9. Item 3 provides that the amendments to the ASIC Act conferring jurisdiction on the FMC apply in relation to all matters, including matters arising before the commencement of the Schedule.

Schedule 2 – Jurisdiction over trade practices

Trade Practices Act 1974

Item 1

10. Item 1 confers jurisdiction on the FMC in any matter arising under Part VA of the TP Act (Liability of manufacturers and importers for defective goods) in respect of which a civil proceeding is instituted by a person other than the Minister or the Australian Competition and Consumer Commission.

11. Under Part VA of the TP Act, a person who is injured, who suffers loss, or whose property is damaged as a result of a defective product may have a right to compensation by the manufacturer of the product.

12. State and Territory courts have jurisdiction to hear matters under Part VA of the TP Act, subject to their general jurisdictional limits. Jurisdiction in these matters is also considered suitable for the FMC.

Item 2

13. Item 2 provides that the amendment to the TP Act conferring jurisdiction on the FMC under Part VA of the TP Act applies in relation to all matters, including matters arising before the commencement of the Schedule

Item 3

14. Item 3 increases the monetary limit on damages that can be awarded by the FMC under Divisions 1 (unfair practices) and 1A (product safety and product information) of Part V of the TP Act from \$200,000 to \$750,000. This is the equivalent jurisdictional limit of the New South Wales District Court.

Item 4

15. Item 4 provides that the increase in the jurisdictional limit of the FMC in Item 3 will apply to proceedings instituted in or transferred to the FMC after the commencement of the amendment.

Schedule 3 – Jurisdiction over corporations

Corporations Act 2001

Item 1

16. Item 1 inserts a reference to the FMC in paragraph (c) of the definition of “Corporations legislation” in s 9 of the Corporations Act. Corporations legislation is defined in s 9 to include rules of court. Clause 1337V specifically confers power on the FMC to make rules of court for the purposes of the exercise of its jurisdiction under the Corporations Act (see Item 40 below).

Items 2 and 3

17. Items 2 and 3 insert a reference to the FMC in the definition of “rules” in s 9 of the Corporations Act.

Item 4

18. Item 4 inserts a Note at the end of the definition of “court” and “Court” in s 58AA of the Corporations Act indicating that the FMC is included in the definition of “Court” for the purpose of certain provisions of Chapter 5 (External administration) and Part 9.5 (Powers of courts) of the Act.

Item 5

19. Item 5 extends the definition of “Court” in s 58AA(1) to include the FMC for the purposes of Part 5.2 (Receivers, and other controllers, of property of corporations) of Chapter 5 of the Corporations Act. Note 2 in Item 5 refers to cl 1337B(1A)(a) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.2 of the Act in a proceeding or application that is transferred to the FMC from the Federal Court, or that relates to a corporation or body that is the subject of a proceeding or application that concerns a civil matter arising under Part 5.2 that has been transferred to the FMC from the Federal Court.

20. Matters arising under Part 5.2 of the Act are potentially complex or may otherwise be unsuitable for the FMC. Therefore, in these matters the FMC will only exercise jurisdiction where the matter has first been filed in the Federal Court and the Federal Court considers that the matter is suitable for the FMC.

Item 6

21. Item 6 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.3A (Administration of a company’s affairs with a view to executing a deed of company arrangement) of Chapter 5 of the

Corporations Act. Note 2 in Item 6 refers to cl 1337B(1A)(a) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.3A of the Act in a proceeding or application that is transferred to the FMC from the Federal Court, or that relates to a corporation or body that is the subject of a proceeding or application that concerns a civil matter arising under Part 5.2 that has been transferred to the FMC from the Federal Court.

22. Matters arising under Part 5.3A of the Act are potentially complex or may otherwise be unsuitable for the FMC. Therefore, in these matters the FMC will only exercise jurisdiction where the matter has first been filed in the Federal Court and the Federal Court considers that the matter is suitable for the FMC.

Item 7

23. Item 7 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.4 (Winding up in insolvency) of Chapter 5 of the Corporations Act. Item 25 of Schedule 3 confers jurisdiction on the FMC with respect to civil matters arising under Part 5.4 (except s 459B, which relates to orders made under other provisions of the Act where the FMC does not have jurisdiction).

Item 8

24. Item 8 provides that s 459B (which relates to applications under ss 234, 462 or 464 of the Act) does not apply to the FMC (see explanation of Item 7 above).

Item 9

25. Item 9 inserts a Note at the end of subsection 459C(2), which deals with presumptions to be made in certain proceedings. The Note indicates that the provision only applies to the FMC in so far as an application is made to that Court under s 459P or an application for leave to make an application under that section is made to that Court. Section 459C also relates to applications under other provisions of the Act where the FMC does not have jurisdiction.

Item 10

26. Item 10 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.4B (Winding up in insolvency or by the Court) of Chapter 5 of the Corporations Act. Note 2 in Item 10 refers to cl 1337B(1A)(c) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.4B of the Act in proceedings or applications where the FMC is exercising jurisdiction under cl 1337B(1A)(a) or (b) ie where the winding up is being dealt with by the FMC – see Item 25 below.

Item 11

27. Item 11 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.5 (Voluntary winding up) of Chapter 5 of the Corporations Act. Item 25 of Schedule 3 confers jurisdiction on the FMC with respect to civil matters arising under Part 5.5.

Item 12

28. Item 12 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.6 (Winding up generally) of Chapter 5 of the Corporations Act. Note 2 in Item 12 refers to cl 1337B(1A)(c) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.6 of the Act in proceedings or applications where the FMC is exercising jurisdiction under cl 1337B(1A)(a) or (b) ie where the winding up is being dealt with by the FMC – see Item 25 below.

Item 13

29. Item 13 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.7 (Winding up bodies other than companies) of Chapter 5 of the Corporations Act. Note 2 in Item 13 refers to cl 1337B(1A)(a) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.7 of the Act in a proceeding or application that is transferred to the FMC from the Federal Court, or that relates to a corporation or body that is the subject of a proceeding or application that concerns a civil matter arising under Part 5.7 that has been transferred to the FMC from the Federal Court.

Item 14

30. Item 14 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of s 588J of the Corporations Act. Section 588J makes provision for the Court to order a director to compensate a company in circumstances where there is an application for a civil penalty order in relation to a contravention of s 588G(2) of the Act (Director’s duty to prevent insolvent trading by a company). Item 25 of Schedule 3 confers jurisdiction on the FMC with respect to civil matters arising under Part 5.7B of the Act (which includes s 588J).

Item 15

31. Item 15 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of s 588Z of the Corporations Act. Section 588Z makes provision for the Court to make an order imposing liability on a person for a corporation’s debts where the person managed the corporation while disqualified. Item 25 of Schedule 3 confers jurisdiction on the FMC with respect to civil matters arising under Part 5.7B of the Act (which includes s 588Z).

Item 16

32. Item 16 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of Part 5.9 (Miscellaneous) of Chapter 5 of the Corporations Act. Part 5.9 covers such matters as examinations about a corporation’s examinable affairs and the Court’s powers in relation to the outcome of voting on resolutions at creditors’ meetings. Note 2 in Item 16 refers to cl 1337B(1A)(c) (Item 25 of Schedule 3 to the Bill). That clause will confer jurisdiction on the FMC with respect to civil matters arising under Part 5.9 of the Act in proceedings or applications

where the FMC is exercising jurisdiction under cl 1337B(1A)(a) or (b) ie where the winding up is being dealt with by the FMC – see Item 25 below.

Items 17-23

33. Items 17-23 confer powers on the FMC to facilitate the exercise of the Court’s jurisdiction in corporate insolvency matters. The powers are incidental to the exercise of jurisdiction to be conferred on the FMC by this Bill either directly or on referral from the Federal Court.

Item 17

34. Item 17 operates to confer power on the FMC under s 1318 in Part 9.5 (Powers of Courts) of the Corporations Act to grant relief from liability in prospective proceedings against a person in respect of negligence, default, breach of trust or breach of duty.

35. Item 17 provides that when a person, to whom s 1318 of the Corporations Act applies, has reason to apprehend that any claim will or might be made against the person in respect of any negligence, default, breach of trust or breach of duty and the FMC would have jurisdiction in proceedings against the person for such a claim, that person may apply to the FMC for relief. Subsections 1318(4) and (5) define the persons to whom s 1318 applies.

36. Item 17 provides that the FMC has the same power to relieve the person from liability under s 1318(1) of the Corporations Act as if it had been a court before which proceedings against the person for negligence, default, breach of trust or breach of duty had been brought.

Item 18

37. Item 18 extends the definition of “Court” in s 1318(4)(d) of the Corporations Act to include the FMC for the purposes of the operation of s 1318. Paragraph 1318(4)(d) provides that s 1318 applies to a person who is a receiver, receiver and manager, liquidator or other person appointed or directed by the Court to carry out any duty under the Act in relation to a corporation.

Item 19

38. Item 19 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of s 1319 in Part 9.5 (Powers of Courts) of the Corporations Act. Section 1319 provides that where the Court orders a meeting to be convened, the Court may, subject to the Act, give such directions with respect to the convening, holding or conduct of the meeting, and such ancillary or consequential directions in relation to the meeting as it thinks fit.

Item 20

39. Item 20 operates to confer power on the FMC under s 1321 (Appeals from decisions of receivers, liquidators etc) in Part 9.5 (Powers of Courts) of the

Corporations Act, but not so as to extend the jurisdiction of the FMC beyond the jurisdiction conferred on the Court by cl 1337B(1A) (Item 25 of Schedule 3 to the Bill). Clause 1337B(1A) will confer jurisdiction on the FMC with respect to certain matters arising under certain Parts of Chapter 5 of the Corporations Act (see Item 25 below).

40. Under s 1321, persons who are aggrieved by any act, omission or decision of a person referred to in s 1321 (a) - (d), may appeal to the Court in respect of the act, omission or decision, and the Court may confirm, reverse or modify the act or decision, or remedy the omission, and make such orders and give such directions as it thinks fit.

41. Item 20 specifically excludes s 1321(a) from the operation of cl 1321(2) because the FMC does not have jurisdiction in matters arising under Part 5.1 of the Corporations Act.

Item 21

42. Item 21 operates to confer power on the FMC under s 1322 (Irregularities) of Part 9.5 (Powers of Courts) of the Corporations Act, but not so as to extend the jurisdiction of the FMC beyond the jurisdiction conferred on the Court by cl 1337B(1A) (Item 25 of Schedule 3 to the Bill). Clause 1337B(1A) will confer jurisdiction on the FMC with respect to certain matters arising under certain Parts of Chapter 5 of the Corporations Act (see Item 25 below).

43. Section 1322 confers certain powers on the Court to deal with procedural irregularities arising in proceedings under the Act, including powers to declare proceedings, meetings, or resolutions valid or invalid.

44. Item 21 specifically excludes s 1322(3B) from the operation of cl 1322(7) because the FMC does not have jurisdiction in matters arising under s 259D(3) (Part 2J.2) of the Corporations Act.

Item 22

45. Item 22 operates to confer power on the FMC under s 1324 (Injunctions) of Part 9.5 (Powers of Courts) of the Corporations Act, but not so as to extend the jurisdiction of the FMC beyond the jurisdiction conferred on the Court by cl 1337B(1A) (Item 25 of Schedule 3 to the Bill). Clause 1337B(1A) will confer jurisdiction on the FMC with respect to certain matters arising under certain Parts of Chapter 5 of the Corporations Act (see Item 25 below).

46. Item 22 specifically excludes s 1324(1A)(b) and (c) and s 1324(1B) from the operation of cl 1324(11) because the FMC does not have jurisdiction in matters arising under Chapter 2J (Transactions affecting share capital) of the Corporations Act. Item 22 also specifically excludes s 1324(9) from the operation of cl 1324(11) because the FMC will not exercise powers under s 1323 (Power of Court to prohibit payment or transfer of money, financial products or other property) of the Corporations Act.

Item 23

47. Item 23 extends the definition of “Court” in s 58AA(1) of the Corporations Act to include the FMC for the purposes of s 1327 (Power of Court to punish for contempt of Court) in Part 9.5 (Powers of Courts) of the Corporations Act.

Item 24

48. Item 24 will exclude s 32AB of the *Federal Court of Australia Act 1976* and Part 5 of the *Federal Magistrates Act 1999* from the operation of Division 1 (Civil jurisdiction) of Part 9.6A (Jurisdiction and procedure of Courts) of the Corporations Act.

49. Section 32AB of the Federal Court of Australia Act makes provision for the discretionary transfer of proceedings from the Federal Court to the FMC. Part 5 of the Federal Magistrates Act makes provision for the discretionary transfer of proceedings from the FMC to the Federal Court.

50. Transfers of corporate insolvency matters to and from the FMC will be governed by transfer provisions in the Corporations Act (see Items 30-37 below).

Jurisdiction

Item 25

51. Item 25 confers jurisdiction on the FMC in civil matters arising under certain Parts of Chapter 5 (External administration) of the Corporations Act.

52. The FMC will have jurisdiction in civil matters arising under Part 5.2 (Receivers, and other controllers, of property of corporations), Part 5.3A (Administration of a company’s affairs with a view to executing a deed of company arrangement) and Part 5.7 (Winding up bodies other than companies) of the Corporations Act where such matters are transferred to the FMC from the Federal Court (after having been filed in the Federal Court). The FMC will also have jurisdiction under Parts 5.2, 5.3A and 5.7 where a civil matter relates to a corporation or body that is the subject of a proceeding or application that concerns a civil matter arising under one of those Parts that has been transferred to the FMC from the Federal Court.

53. The FMC will have concurrent jurisdiction with the Federal Court in civil matters arising under Part 5.4 (except s 459B), Part 5.5, Part 5.7B and Part 5.8A of the Corporations Act (that is, such matters will be able to be filed in the FMC). Part 5.4 relates to winding up in insolvency. Section 459B in Part 5.4 relates to orders made under other provisions of the Corporations Act where the FMC does not have jurisdiction. Part 5.5 relates to voluntary winding up, Part 5.7B to recovering property or compensation for the benefit of creditors of an insolvent company and Part 5.8A to employee entitlements.

54. The FMC will also have jurisdiction in civil matters arising under Part 5.4B (which relates to general powers of the Court where a company is being wound up in insolvency or by the Court), Part 5.6 (Winding up generally) and Part 5.9 (Miscellaneous) where the relevant winding up is being dealt with by the FMC.

Item 26

55. Item 26 inserts a reference to the FMC in Note 1 to s 1337B(3). This recognises that the FMC, as well as the Federal Court, has jurisdiction in matters arising under the *Administrative Decisions (Judicial Review) Act 1977* involving or related to decisions made, or proposed or required to be made, under the Corporations legislation by a Commonwealth authority or an officer of the Commonwealth.

Item 27

56. Item 27 inserts a reference to the FMC in s 1337D(1)(a) of the Corporations Act, which relates to matters in which a person seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a decision to prosecute a person for an offence, where the prosecution is proposed to be conducted in a State/Territory court. The FMC will not have jurisdiction in such matters (the Federal Court and the Family Court similarly do not have jurisdiction in such matters – jurisdiction is exercised by State/Territory Supreme Courts).

Item 28

57. Item 28 inserts a reference to the FMC in s 1337D(2)(c) of the Corporations Act, which relates to matters in which a person seeks a writ of mandamus or prohibition or an injunction against an officer or officers of the Commonwealth in relation to a “related criminal justice process decision” where a prosecution for an offence against the Corporations Act, or an appeal arising out of such a prosecution, is before a State/Territory court. A “related criminal justice process decision” is a decision made in the criminal justice process in relation to an offence (other than a decision to prosecute). The FMC will not have jurisdiction in such matters (the Federal Court and the Family Court similarly do not have jurisdiction in such matters – jurisdiction is exercised by State/Territory Supreme Courts).

Item 29

58. Item 29 inserts a reference to the FMC in s 1337D(5)(a) of the Corporations Act, which provides that neither the Corporations Act, nor any other law, has the effect of giving the Federal Court or the Family Court jurisdiction contrary to s 1337D(1) or (2).

Transfer of proceedings

Item 30

59. Item 30 inserts a Note at the end of s 1337H(1) of the Corporations Act, which applies to the transfer of proceedings by the Federal Court and State/Territory Supreme Courts. The Note indicates that s 1337HA applies instead of s 1337H to certain transfers from the Federal Court to the FMC (see Item 31 below).

Item 31

60. Item 31 inserts a provision into the Corporations Act regulating the transfer of proceedings under Parts 5.2, 5.3A or 5.7 from the Federal Court to the FMC. Item 25

of the Bill (see above) confers jurisdiction on the FMC in civil matters arising under Parts 5.2, 5.3A or 5.7 only upon transfer of such matters from the Federal Court to the FMC.

61. In deciding whether to transfer a proceeding or application in a proceeding to the FMC, the Federal Court is required to have regard to certain matters specified in cl 1337HA, including whether the resources of the FMC are sufficient to hear and determine the appeal and the interests of the administration of justice.

62. Clause 1337HA also makes provision for regulations to be made in relation to transfers of proceedings and applications to the FMC.

Item 32

63. Item 32 inserts a reference to the FMC in s 1337K(1)(b) of the Corporations Act, which relates to the transfer of proceedings in lower courts. Section 1337K makes provision for the transfer of proceedings between lower courts and between lower courts and relevant Supreme Courts.

Item 33

64. Item 33 inserts a reference to the FMC in s 1337K(3) of the Corporations Act, which relates to the transfer of proceedings between lower courts. The effect of this provision is that the FMC will be able to transfer proceedings to a lower court of a State/Territory.

Items 34 and 35

65. Items 34 and 35 make provision for the transfer of matters from the FMC to a superior court. The effect of the provisions is that where the FMC proposes to transfer a matter to a superior court, the transfer will proceed via the Federal Court.

Item 36

66. Item 36 inserts references to the Federal Court into s 1337K(5) and (6). Subsection 1337K(5) provides that the relevant Supreme Court is not bound to comply with a recommendation of a lower court in relation to the transfer of a proceeding and may instead decide to deal with the relevant proceeding itself or to transfer the proceeding to some other court. Subsection 1337K(6) provides that nothing in the section allows the relevant Supreme Court to transfer the relevant proceeding to another court otherwise than in accordance with s 1337H and the other requirements of the Division (Division 1 (Civil jurisdiction) of Part 9.6A (Jurisdiction and procedure of Courts) of the Corporations Act.

67. This amendment recognises that transfers from the FMC to a superior court will proceed via the Federal Court.

Item 37

68. Item 37 inserts references to s 1337HA in ss 1337M and 1337N.

69. Section 1337M provides that a court may transfer a proceeding or application under the transfer provisions (ss 1337H, 1337J or 1337K) on the application of a party or of the court's own motion.

70. Section 1337N makes provision for the transfer of documents between courts where proceedings are transferred under the transfer provisions.

Item 38

71. Item 38 inserts a reference to s 1337V in s 1337P of the Corporations Act.

72. Section 1337P relates to the conduct of proceedings. Subsection 1337(1) provides that, subject to ss 1337S (Rules of the Federal Court), 1337T (Rules of the Supreme Court) and 1337U (Rules of the Family Court), if it appears to a court that, in determining a matter for determination in a proceeding, the court will, or will be likely to, be exercising relevant jurisdiction, the rules of evidence and procedure to be applied in dealing with that matter are to be the rules that are applied in a superior court in Australia or in an external territory and the court considers appropriate to be applied in the circumstances.

73. Clause 1337V specifically confers power on the FMC to make rules of court for the purposes of the exercise of its jurisdiction under the Corporations Act (see Item 40 below).

Item 39

74. Item 39 inserts a reference to the FMC in s 1337P(3) of the Corporations Act, which defines "relevant jurisdiction" for the purposes of s 1337P.

Item 40

75. Item 40 inserts a new provision (cl 1337V) into Subdivision D (Rules of court) of Division 1 (Civil jurisdiction) of Part 9.6A (Jurisdiction and procedure of Courts) of the Corporations Act.

76. Clause 1337V provides that the power to make rules of court conferred by s 81 of the *Federal Magistrates Act 1999* (Rules of court) extends to making rules of court with respect to proceedings and the practice and procedure of the FMC under the Corporations legislation and other matters as set out in cl 1337V.

Item 41

77. Item 41 provides that the amendments to the Corporations Act conferring jurisdiction on the FMC apply in relation to all matters, including matters arising before the commencement of Schedule 3.