**EXPLANATORY STATEMENT**

###### **Select Legislative Instrument 2012 No. 62**

Issued by authority of the Attorney-General

*Federal Magistrates Act 1999*

*Federal Magistrates Amendment Regulation 2012 (No. 1)*

The *Federal Magistrates Act 1999* (the Act) establishes the Federal Magistrates Court (the Court) as a federal court under Chapter III of the Constitution.

Subsection 120(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. In particular, subsection 120(4) of the Act allows the regulations to modify or adapt provisions of the *Legislative Instruments Act 2003* (other than the provisions of Part 5 of that Act or any other provisions whose modifications or adaptation would affect the operation of that Part) in their application to the Court.

The Regulation amends the *Federal Magistrates Regulations 2000* (Principal Regulations) to modify the provisions of the *Legislative Instruments Act 2003* in their application to the Court to allow any rules of the Court to apply, adopt or incorporate, with or without modification, any rules of other courts, as in force from time to time. This adds to the capacity for rules of the Court to apply, adopt or incorporate other court rules as in force or existing at the time when the rules of the Court took effect or were amended.

Paragraph 14(1)(a) of the *Legislative Instruments Act 2003* allows the *Federal Magistrates Court Rules 2001* (the Rules) to incorporate the provisions of any Act or disallowable legislative instrument as amended from time to time. However, court rules are not disallowable legislative instruments.

The amendments are in response to the decision in *Beasley v The Australian National University* [2011] FMCA 792where the Court found that, due to the operation of section 14 of the *Legislative Instruments Act 2003*, the Rules did not incorporate the rules of the Federal Court of Australia as in force from time to time but referenced them in the form they stood at the time they were adopted for application in the Court.

The amendments enable the Rules to incorporate other court rules in any amended and updated form. Where the Rules incorporate other court rules as in force, litigants in proceedings before the Court will be able to consult the current form of the incorporated rules that apply instead of historical versions. This assists in simplifying the application of court rules in proceedings before the Court.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation will commence on the day after registration on the Federal Register of Legislative Instruments.

The Federal Magistrates Court of Australia has been consulted about this Regulation. This level of consultation is appropriate because the amendments are minor and technical in nature.

 Authority: Subsection 120(1) of the *Federal Magistrates Act 1999*

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

***Federal Magistrates Amendment Regulation 2012 (No. 1)***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011.*

**Overview of the Legislative Instrument**

This Legislative Instrument amends the *Federal Magistrates Regulations 2000* by modifying the provisions of the *Legislative Instruments Act 2003* in their application to the Federal Magistrates Court of Australia (Court) to allow any rules of the Court to apply, adopt or incorporate, with or without modification, any rules of other courts, as in force from time to time.

This amendment does not make any substantive changes to the law.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Nicola Roxon**

**Commonwealth Attorney-General**