

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2013 No. 51**

Issued by Authority of the Attorney-General

Subject - *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)*

The *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)* (the Regulation) is made under numerous Acts under which the Governor-General has the authority to make regulations. The specific provisions of these Acts are outlined at Attachment A.

The Regulation will update Commonwealth regulations to reflect the new name of the Federal Magistrates Court as the 'Federal Circuit Court of Australia', and the change in title of Chief Federal Magistrate to 'Chief Judge' and Federal Magistrate to 'Judge'.

The Regulation will operate together with the *Federal Circuit Court of Australia Legislation Amendment Act 2012* (Federal Circuit Court Act) and the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* (Consequential Amendments Act). These Acts and the Regulation will implement the new name for the Court and titles for Federal Magistrates.

Changing the name of the Federal Magistrates Court is not intended to create a new, separate federal court, or to change existing entitlements for Federal Magistrates. The Acts and the Regulation will continue the Court in existence under the new name and will not alter its jurisdiction or status as a court of record.

The new name of the Court more accurately reflects its modern role by highlighting the valuable service provided to regional Australians. The Court is the only federal court with a program of regular circuits (court sittings) to occur in regional locations.

The new titles 'Chief Judge' and 'Judge' reflect the status of Federal Magistrates as Chapter III judicial officers and the increasingly complex work being undertaken by judicial officers within the Court.

The Federal Circuit Court Act amends the *Federal Magistrates Act 1999* and legislation directly affecting Federal Magistrates' entitlements to rename the Federal Magistrates Court and change the titles of its judicial officers. The Act includes transitional and saving arrangements to clarify that existing arrangements for the Court, such as judicial appointments, Court staffing, Rules of Court, and entitlements for Federal Magistrates, will continue without being affected by the transition to the new Court name and titles.

The Consequential Amendments Act updates references to the Federal Magistrates Court or Federal Magistrates in remaining Commonwealth legislation to reflect the new Court name and titles.

To ensure a smooth and consistent transition to the new terminology, sections 1 to 4 and Schedule 1 to the Regulation, which contain the amendments to current regulations, will commence at the same time as Schedules 1 and 2 to the Federal Circuit Court Act, expected to occur by Proclamation on 12 April 2013. Schedules 1 and 2 to the Consequential Amendments Act will commence at the same time as Schedules 1 and 2 to the Federal Circuit Court Act.

Schedule 2 to the Regulation, which contains amendments contingent upon commencement of the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2)*, will commence immediately after the *Agreement Between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement* has entered into force for Australia and New Zealand.

Details of the Regulation are set out in Attachment B.

The Chief Justice of the Federal Court of Australia, the Hon James Allsop AO, the Chief Justice of the Family Court of Australia, the Hon Diana Bryant AO, and the Chief Federal Magistrate, Mr John Pascoe AO CVO, were consulted on the content of the Regulation.

The following Departments were also consulted on the content of the Regulation:

- Attorney-General's Department
- Department of Education, Employment and Workplace Relations
- Department of Finance and Deregulation
- Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, and
- the Treasury.

Consultation involved the exchange of correspondence and discussions.

The following ministers approved the text of amendments to regulations within their portfolio:

- the Hon Jason Clare MP, Minister for Home Affairs and Minister for Justice
- the Hon Bill Shorten MP, Minister for Employment and Workplace Relations, Minister for Financial Services and Superannuation
- Senator the Hon Penny Wong, Minister for Finance and Deregulation, and
- the Hon Greg Combet AM MP, Minister for Climate Change, Industry and Innovation.

In accordance with the National Credit Law Agreement (2009), made between the Commonwealth and States and Territories, consultation on amendments to the *National Consumer Credit Protection Regulations 2010* was undertaken with States and Territories by the Treasury.

In accordance with the Inter-Governmental Agreement for a National Workplace Relations System (2008), made between the Commonwealth and States and Territories, consultation on amendments to the *Fair Work Regulations 2009*, *Fair Work (Building Industry) Regulations 2005* and the *Fair Work Transitional Provisions and Consequential Amendments Regulations 2009* was undertaken with States and Territories by the Department of Education, Employment and Workplace Relations.

The authorising Acts contain no conditions that need to be fulfilled before the Regulation can be made.

The Office of Best Practice Regulation was consulted on the measures and advised that no Regulation Impact Statement was required.

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

Authority: See Attachment A

## **Statement of Compatibility with Human Rights**

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

### **Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (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**

The *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)* will make consequential amendments to Commonwealth regulations to reflect the new name of the Federal Magistrates Court and the title of Federal Magistrates.

#### **Human rights implications**

The Regulation will operate together with the *Federal Circuit Court of Australia Legislation Amendment Act 2012* and the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013*. These Acts and the Regulation will implement the new name for the Court and title for Federal Magistrates.

The Regulation preserves the existing jurisdiction and status of the Court. The Regulation is not expected to affect the continuity of the Federal Magistrates Court, Federal Magistrates and Court personnel, or existing entitlements for Federal Magistrates.

The Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

The Regulation is compatible with human rights and does not raise any human rights issues.

**Mark Dreyfus QC MP, Attorney-General**

**AUTHORISING ACTS**

***Administrative Decisions (Judicial Review) Act 1977***

Section 20 of the *Administrative Decisions (Judicial Review) Act 1977* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Australian Crime Commission Act 2002***

Section 62 of the *Australian Crime Commission Act 2002* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Automotive Transformation Scheme Act 2009***

Section 29 of the *Automotive Transformation Scheme Act 2009* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Bankruptcy Act 1966***

Section 315 of the *Bankruptcy Act 1966* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Extradition Act 1988***

Section 55 of the *Extradition Act 1988* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Fair Work Act 2009***

Section 796 of the *Fair Work Act 2009* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

***Fair Work (Building Industry) Act 2012***

Section 78 of the *Fair Work (Building Industry) Act 2012* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Fair Work (Registered Organisations) Act 2009***

Section 359 of the *Fair Work (Registered Organisations) Act 2009* provides that the Governor-General may make regulations prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Family Law Act 1975***

Section 125 of the *Family Law Act 1975* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Federal Circuit Court of Australia Act 1999***

Section 120 of the *Federal Circuit Court of Australia Act 1999* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Federal Court of Australia Act 1976***

Section 60 of the *Federal Court of Australia Act 1976* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Jury Exemption Act 1965***

Section 4(2) of the *Jury Exemption Act 1965* provides that the Governor-General may make regulations for or in relation to exempting a Commonwealth employee, or a person included within a class of Commonwealth employees, from liability to serve as a juror in Federal courts, Federal courts exercising jurisdiction in a specified State or Territory, courts of a specified Territory, courts of the States or in the courts of a specified State.

### ***Legislative Instruments Act 2003***

Section 62 of the *Legislative Instruments Act 2003* provides that the Governor-General may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Mutual Assistance in Criminal Matters Act 1987***

Section 44 of the *Mutual Assistance in Criminal Matters Act 1987* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***National Consumer Credit Protection Act 2009***

Section 329 of the *National Consumer Credit Protection Act 2009* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Privacy Act 1988***

Section 100 of the *Privacy Act 1988* provides that the Governor-General may make regulations, not inconsistent with this Act, prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Public Order (Protection of Persons and Property) Act 1971***

Section 13H of the *Public Order (Protection of Persons and Property) Act 1971* provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed for the purposes of Part IIA of the Act, or necessary or convenient to be prescribed for carrying out or giving effect to Part IIA of the Act.

### ***Road Safety Remuneration Act 2012***

Section 121 of the *Road Safety Remuneration Act 2012* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Superannuation Act 1976***

Section 168 of the *Superannuation Act 1976* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Trans-Tasman Proceedings Act 2010***

Section 110 of the *Trans-Tasman Proceedings Act 2010* provides that the Governor-General may make regulations prescribing matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### ***Workplace Relations Amendment (Work Choices) Act 2005***

Item 1 of Schedule 4 to the *Workplace Relations Amendment (Work Choices) Act 2005* provides that the Governor-General may make regulations prescribing matters of a transitional, saving or application nature relating to amendments made by this Act.

Details of the Regulation are as follows:

**Part 1 – Preliminary**

**Section 1 – Name of regulations**

This section provides that the name of the Regulation is the *Federal Circuit Court of Australia Legislation (Consequential Amendments) Regulation 2013 (No. 1)*.

**Section 2 – Commencement**

This section provides that the Regulation commences as outlined in column 2 to the table:

- sections 1 to 4, and anything in the Regulation not otherwise covered by the table in section 2, commence immediately after the commencement of Schedules 1 and 2 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012*
- Schedule 1 to the Regulation commences immediately after the commencement of Schedules 1 and 2 to the *Federal Circuit Court of Australia Legislation Amendment Act 2012*, and
- Schedule 2 to the Regulation commences immediately after the commencement of the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2)*.

**Section 3 – Authority**

This section lists the Acts under which the Regulation is made. The Regulation is made under numerous Acts, outlined in Attachment A.

**Section 4 – Schedules**

This section provides that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the items of the relevant Schedule. Any other item in a Schedule to the Regulations has effect according to its terms.

**Schedule 1 – Amendments**

***Administrative Decisions (Judicial Review) Regulations 1985***

**Item [1] - Subregulation 2(1) (definition of Court)**

This item will update the reference to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in the definition of ‘Court’ in subregulation 2(1). ‘Court’ is defined to mean the Federal Court of Australia or the Federal Magistrates Court. This consequential amendment will update subregulation 2(1) to reflect the new name of the Court.



## ***Australian Crime Commission Regulations 2002***

### **Item [2] – Subregulation 8A(3)**

This item will update the reference to ‘Federal Magistrate’ to be ‘Judge of the Federal Circuit Court’ in subregulation 8A(3). Subregulation 8A(3) provides that duties, functions or powers conferred by a law of a State under subparagraphs 55A(5B)(b)(ii) and 55A(5C)(b)(ii) of the *Australian Crime Commission Act 2002* may be conferred on a Judge of the Federal Court or a Federal Magistrate. This consequential amendment will update subregulation 8A(3) to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

### **Item [3] – Schedule 5 (heading)**

This item will update the reference to ‘Federal Magistrate’ to be ‘Federal Circuit Court Judge’ in the heading to Schedule 5. This consequential amendment will update the heading to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

### **Item [4] – Part 2 of Schedule 5 (heading to table column 5)**

This item will update the reference to ‘Federal Magistrate’ to be ‘Federal Circuit Court Judge’ in the heading to table column 5 in Part 2 of Schedule 5. This consequential amendment will update the heading to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

### **Item [5] – Part 2 of Schedule 5 (table item 203)**

This item will update the reference to ‘Federal Magistrate’ to be ‘Judge of the Federal Circuit Court’ in table item 203, Part 2 of Schedule 5. Table item 203 identifies duties, functions and powers conferred on Federal Court Judges or Federal Magistrates by regulation 7 of the *Australian Crime Commission (State Provisions) Regulations 2004* (Victoria). This consequential amendment will update table item 203 to reflect the new title of Federal Magistrate as ‘Judge’.

### **Item [6] – Part 4 of Schedule 5 (heading to table column 5)**

This item will update ‘Federal Magistrate’ to be ‘Federal Circuit Court Judge’ in the heading to table column 5 in Part 4 of Schedule 5. Part 4 of Schedule 5 outlines duties, functions or powers conferred on Federal Court Judges or Federal Magistrates under laws of Western Australia. This consequential amendment will update the heading to table column 5 to reflect the new title of Federal Magistrate as ‘Judge’.

## ***Automotive Transformation Scheme Regulations 2010***

### **Item [7] – Subparagraph 5.4(1)(a)(i)**

This item will update ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ in subparagraph 5.4(1)(a)(i). Subregulation 5.4(1) provides for limitations to the implementation of a court’s decision when an application is made for review. This consequential amendment will update subparagraph 5.4(1)(a)(i) to reflect the new name of the Court.

## ***Bankruptcy Regulations 1996***

### **Item [8] – Subregulation 1.03(1)**

This item will insert a definition of ‘FCC (Bankruptcy) Rules’ in subregulation 1.03(1). ‘FCC (Bankruptcy) Rules’ will be defined to mean the *Federal Circuit Court (Bankruptcy) Rules 2006*. This consequential amendment will insert a new definition to reflect the new name of the Court.

### **Item [9] - Subregulation 1.03(1) (definition of *FMC (Bankruptcy) Rules*)**

This item will repeal the definition of ‘FMC (Bankruptcy) Rules’ in subregulation 1.03(1). This amendment is consequential to Item [8] which will insert a definition of the FCC (Bankruptcy) Rules.

### **Item [10] - Schedule 8 (table)**

This item will update references to the ‘FMC’ to be the ‘FCC’ wherever they occur in the table in Schedule 8. Schedule 8 provides information on the National Personal Insolvency Index and identifies related legislative provisions and timeframes. These consequential amendments will update references in Schedule 8 to reflect the new name of the Court.

## ***Extradition Regulations 1988***

### **Item [11] – Regulation 4 (heading)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘magistrate’ in the heading to regulation 4. This consequential amendment will update the heading to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

The expression ‘eligible Federal Circuit Court Judge’ will be inserted following references to ‘magistrate’ in provisions in the Extradition Regulations under which Federal Magistrates can perform functions. These amendments to regulations reflect amendments to the *Extradition Act 1988* (the Extradition Act) in the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013*, which remove Federal Magistrates from the definition of ‘magistrate’ and insert a separate definition of ‘eligible Federal Circuit Court Judge’. Eligible Federal Circuit Court Judge has been defined in the Extradition Act to mean a Judge of the Federal Circuit Court of Australia in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

The new expression ‘eligible Federal Circuit Court Judge’ will not alter the nature of functions which are conferred under the Extradition Regulations on Federal Magistrates under their new title. Express savings provisions are included in the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* to preserve existing consents, nominations and things done by Federal Magistrates under the new title of ‘Judge’.

### **Item [12] - Subregulation 4(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘A magistrate’ in subregulation 4(1). Subregulation 4(1) provides that a magistrate who is performing functions under the Extradition Act may issue a summons requiring a person to attend as a witness before the magistrate. The addition of a reference to ‘an eligible Federal Circuit

Court Judge’ in subregulation 4(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [13] - Subregulation 4(1)**

This item will insert ‘or Judge’ after ‘the magistrate’ wherever it occurs in subregulation 4(1). The addition of a reference to ‘or Judge’ in subregulation 4(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [14] and [15] - Regulation 5**

These items will insert ‘or an eligible Federal Circuit Court Judge’ after the first and last occurring references to ‘a magistrate’ in regulation 5. Regulation 5 provides that a person summoned under regulation 4 to attend before a magistrate as a witness shall attend in accordance with the summons, and then from day to day unless excused or released from attending. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in regulation 5 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [16] - Subregulation 6(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 6(1). Subregulation 6(1) provides for a magistrate to issue a warrant for the arrest of a person who fails to attend before a magistrate as required under regulation 5. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 6(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [17] - Subregulation 6(1)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 6(1). The addition of a reference to ‘or Judge’ in subregulation 6(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [18] - Subregulation 6(2)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 6(2). Subregulation 6(2) provides that a person named in an arrest warrant issued under subregulation 6(1) may be arrested, brought before a magistrate and detained in custody until released by order of the magistrate. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 6(2) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [19] - Subregulation 6(2)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 6(2). The addition of a reference to ‘or Judge’ in subregulation 6(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [20] - Subregulation 6(4)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘the magistrate’ in subregulation 6(4). Subregulation 6(4) provides that the arrest of a person under regulation 6 does not relieve the person from any liability incurred by the person because of their failure to attend before the magistrate. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 6(4) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [21] - Subregulation 7(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 7(1). Subregulation 7(1) provides that a person who attends as a witness before a magistrate in a State or Territory in accordance with a summons issued under regulation 4 is entitled to be paid certain fees and travelling allowances as the magistrate directs. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 7(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [22] - Subregulation 7(1)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 7(1). The addition of a reference to ‘or Judge’ in subregulation 6(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [23] – Subregulation 8(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘A magistrate’ in subregulation 8(1). Subregulation 8(1) provides that a magistrate performing functions under the Extradition Act may administer an oath or affirmation to any person appearing as a witness before them and may examine the witness on oath or affirmation. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 8(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [24] – Subregulation 8(1)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 8(1). The addition of a reference to ‘or Judge’ in subregulation 8(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

**Item [25] - Subregulation 9(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 9(1). Subregulation 9(1) provides that a person summoned to attend before a magistrate as a witness shall not, without reasonable excuse, fail to attend as required by the summons after payment or tender of a reasonable sum for expenses of attendance. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 9(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [26] - Paragraph 9(1)(b)**

This item will insert ‘or Judge’ after ‘the magistrate’ in paragraph 9(1)(b). Paragraph 9(1)(b) provides that a person summoned to attend before a magistrate as a witness shall not refuse to be sworn or to make an affirmation as a witness or, without reasonable excuse, refuse to answer any question when required to do so by the magistrate. The addition of a reference to ‘or Judge’ in paragraph 9(1)(b) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [27] - Regulation 10 (heading)**

This item will insert ‘or eligible Federal Circuit Court Judges’ after ‘magistrates’ in the heading to regulation 10. This consequential amendment will update the heading to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [28] - Regulation 10**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in regulation 10. Regulation 10 lists offences for a person appearing before a magistrate performing functions under the Extradition Act and the penalty for an offence. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in regulation 10 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [29] - Paragraphs 10(a), (b) and (c)**

This item will insert ‘or Judge’ after ‘the magistrate’ in paragraphs 10(a), (b) and (c). Paragraphs 10(a), (b) and (c), list offences for a person appearing before a magistrate performing functions under the Extradition Act. The addition of a reference to ‘or Judge’ in paragraphs 10(a), (b) and (c) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [30] - Subparagraphs 10(d)(i) and (ii)**

This item will insert ‘or Judge’ after ‘the magistrate’ wherever it occurs in subparagraphs 10(d)(i) and (ii). Subparagraphs 10(d)(i) and (ii) provide that writing or speech calculated to improperly influence a magistrate or witness, or to bring a magistrate into disrepute, is an offence. The addition of a reference to ‘or Judge’ in subparagraphs 10(d)(i) and (ii) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [31] - Subregulation 11(2)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 11(2). Subregulation 11(2) provides that a barrister or solicitor appearing before a magistrate in a State or Territory in connection with the performance by the magistrate of functions under the Extradition Act has the same protection and immunity as if appearing for a party in proceedings in the Supreme Court of that State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 11(2) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [32] - Subregulation 11(2)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 11(2). The addition of a reference to ‘or Judge’ in subregulation 11(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [33] - Subregulation 11(3)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 11(3). Subregulation 11(3) provides that where a person who is not represented by a barrister or solicitor appears before a magistrate in a State or Territory in connection with the performance by the magistrate of functions under the Extradition Act, the person has the same protection and immunity as a party appearing unrepresented in proceedings in the Supreme Court of that State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 11(3) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [34] - Subregulation 11(3)**

This item will insert ‘or Judge’ after ‘the magistrate’ in subregulation 11(3). The addition of a reference to ‘or Judge’ in subregulation 11(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [35] - Subregulation 11(4)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 11(4). Subregulation 11(4) provides that a witness summoned to attend or appearing before a magistrate performing functions under the Extradition Act in a State or Territory has the same protection as a witness appearing in proceedings in the Supreme Court of that State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 11(3) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [36] - Subregulations 12(1) and (2)**

This item will repeal subregulations 12(1) and (2) and insert new subregulations that include references to eligible Federal Circuit Court Judges.

Subregulation 12(1) provides that a magistrate or judge of the Supreme Court of a State or Territory may declare a recognisance to be forfeited if they are satisfied that a person admitted to bail in the State or Territory in relation to a proceeding under the Extradition Act has failed to comply with the conditions of the recognisance on which bail was granted.

Subregulation 12(2) provides that where a magistrate or judge declares a recognisance to be forfeited, payment of any sum due to a person residing in the State or Territory under the forfeited recognisance may be enforced as a fine imposed by a court having jurisdiction in the State or Territory.

The addition of references to ‘eligible Federal Circuit Court Judge’ in subregulation 12(1) will provide that an eligible Federal Circuit Court Judge has the same capacity as a magistrate or judge of a Supreme Court of a State or Territory to declare a recognisance to be forfeited.

The addition of the reference to ‘eligible Federal Circuit Court Judge’ in paragraph 12(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Items [37], [38] and [39] - Subregulation 13(1), Regulation 14 and Regulation 15**

These items will insert ‘or an eligible Federal Circuit Court Judge’ after each reference to ‘a magistrate’ in subregulation 13(1), regulation 14 and regulation 15.

Subregulation 13(1) provides for procedures in relation to a person who has been brought before a court in accordance with subsection 49A(2) of the Act as if the person had been brought before a magistrate in accordance with subsection 15(1) of the Act.

Regulation 14 provides for the form of a warrant issued by a magistrate under subparagraph 48(1)(b)(iii) of the Extradition Act in relation to a person being transported in custody through Australia.

Regulation 15 provides that a warrant issued by a magistrate under subparagraph 48(1)(b)(iv) of the Extradition Act may be in accordance with Form 29, provided in the Schedule to the Regulations.

The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 13(1), regulation 14 and regulation 15 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [40] - Schedule (Form 1, paragraph (b) of note)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in paragraph (b) to the note in Form 1. The note to Form 1 provides that if a person who has been served with a summons under the Extradition Regulations, and been paid or tendered for their expenses, then fails to attend as required by the summons, is guilty of an offence. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in the note to Form 1 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [41] - Schedule (Form 2)**

This item will repeal Form 2 and substitute a new form with references to an ‘eligible Federal Circuit Court Judge’, or ‘Judge’, inserted following references to a ‘magistrate’. Form 2 is the form used by a magistrate to issue a warrant of arrest where a witness has failed to attend a hearing after being summoned. This consequential amendment will substitute a new form to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [42] - Schedule (Form 4)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘a magistrate’ in Form 4. Form 4 is the form used to apply to a magistrate under subsection 12(1) of the Extradition Act for an extradition arrest warrant on behalf of an extradition country. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in Form 4 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [43] - Schedule (Forms 5, 6, 7, 8 and 8A)**

This item will repeal forms 5, 6, 7, 8 and 8A and substitute new forms with references to an ‘eligible Federal Circuit Court Judge’, or ‘Judge’, inserted following references to a ‘magistrate’ (see item 11).

Form 5 is the form used by a magistrate as a warrant for arrest under subsection 12(1) of the Extradition Act.

Form 6 is the form used by the Attorney-General to issue a notice directing a magistrate to cancel a warrant issued under subsection 12(1) of the Extradition Act.

Form 7 is the form used by a magistrate to issue a search and seizure warrant under section 14 of the Extradition Act.

Form 8 is the form used by the Attorney-General under subsection 15(4) of the Extradition Act to issue a warrant in relation to transfer of a person on remand.

Form 8A is the form used by a magistrate to issue a warrant in relation to waiver of extradition under subsection 15A(4) of the Extradition Act.

The new forms 5, 6, 7, 8 and 8A will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

#### **Item [44] - Schedule (Forms 8B, 9, 9A and 10)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘a magistrate’ wherever it occurs in forms 8B, 9, 9A and 10.

Form 8B is the form used by the Attorney-General to issue a notice to order release of a person from custody under subsection 15B(4) of the Extradition Act.

Form 9 is the form used by the Attorney-General to issue a notice of receipt of an extradition request under subsection 16(1) of the Extradition Act.

Form 9A is the form used by the Attorney-General to issue an amended notice of receipt of an extradition request under subsection 16A(1) of the Extradition Act.

Form 10 is the form used by the Attorney-General to issue a notice to order the release from remand of a person held under subsection 15(1) of the Act.

The addition of references to ‘an eligible Federal Circuit Court Judge’ in forms 8B, 9, 9A and 10 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).



### **Item [45] - Schedule (Forms 11, 12 and 12A, 16 to 22 and 26)**

This item will repeal forms 11, 12, 12A, 16, 17, 18, 19, 20, 20A, 20B, 21, 22 and 26, and substitute new forms with references to an 'eligible Federal Circuit Court Judge', or 'Judge', inserted following references to a 'magistrate' (see item 11).

Form 11 is the form for a magistrate to issue a warrant in relation to consent being surrendered under subsection 18(2) of the Extradition Act.

Form 12 is the form for a magistrate to issue a warrant ordering committal to prison to await surrender under subsection 19(9) of the Extradition Act.

Form 12A is the form for a Judge of the Federal Court ordering committal to prison to await surrender under paragraph 21(2A)(b) of the Extradition Act.

Form 16 is the form for an application to a magistrate for indorsement of a New Zealand warrant under section 28 of the Extradition Act.

Form 17 is the form for an indorsement of a New Zealand warrant under section 28 of the Extradition Act.

Form 18 is the form for an application for a provisional arrest warrant under section 29 of the Extradition Act.

Form 19 is the form for a magistrate to issue a provisional arrest warrant under section 29 of the Extradition Act.

Form 20 is the form for a magistrate to issue a warrant in relation to search and seizure under subsection 31(1) of the Extradition Act.

Form 20A is the form for a magistrate to issue a surrender warrant under subsection 33A(2) of the Extradition Act.

Form 20B is the form for a magistrate to issue a warrant of committal under subsection 33A(2) of the Extradition Act.

Form 21 is the form for a magistrate to issue a surrender warrant under subsection 34(1) of the Extradition Act.

Form 22 is the form for a magistrate to issue a warrant of committal under subsection 34(1) of the Extradition Act.

Form 26 is the form for a magistrate to issue a certificate in relation to the taking of evidence in Australia under subsection 43(2) of the Extradition Act.

The new forms 11, 12, 12A, 16, 17, 18, 19, 20, 20A, 20B, 21, 22 and 26 will reflect the new name of the Court and the new title of Federal Magistrate as 'Judge' (see item 11).

### **Item [46] - Schedule (Form 27)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘a magistrate’ wherever it occurs in Form 27. Form 27 is the form for an application to a magistrate for transport in custody through Australia. The addition of references to ‘an eligible Federal Circuit Court Judge’ in Form 27 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### **Item [47] - Schedule (Forms 28 and 29)**

This item will repeal forms 28 and 29 and substitute new forms with references to an ‘eligible Federal Circuit Court Judge’, or ‘Judge’, inserted following references to a ‘magistrate’ (see item 11).

Form 28 is the form for a magistrate to issue a warrant to hold in custody a person being transported through Australia under subsection 48(1) of the Extradition Act.

Form 29 is the form for a magistrate to issue a warrant to hold a person in custody for a further period under subsection 48(1) of the Extradition Act.

The new forms 28 and 29 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 11).

### ***Fair Work (Building Industry) Regulations 2005***

#### **Item [48] - Subregulation 7.13(2)**

This item will update the reference to the ‘*Federal Magistrates Court Rules 2001*’ to be ‘*Federal Circuit Court Rules 2001*’ in subregulation 7.13(2). Subregulation 7.13(2) provides that a witness required to attend an examination is entitled to a legal allowance, calculated using the costs set out in the *Federal Magistrates Court Rules 2001*, towards meeting the legal costs and disbursements that the witness reasonably incurs for legal representation at the examination. This consequential amendment will update subregulation 7.13 to reflect the new title of the Court rules.

### ***Fair Work Regulations 2009***

#### **Item [49] - The whole of the regulations**

This item will update references to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ wherever they occur in the *Fair Work Regulations 2009*. These consequential amendments will update the Regulations to reflect the new name of the Court.

### ***Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009***

#### **Item [50] - Regulation 5.06 (table)**

This item will update references to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ wherever they occur in the table in regulation 5.06. Regulation 5.06 provides transitional civil remedy provisions, including reference to the courts with jurisdiction to hear matters in relation to each provision. This consequential amendment will update regulation 5.06 to reflect the new name of the Court.

### **Item [51] - Subregulation 5.13(2)**

This item will update references to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ wherever they occur in subregulation 5.13(2). Subregulation 5.13(2) provides that section 724 of the *Workplace Relations Act 1996* continues to apply under item 11 of Schedule 2 to the Act as modified. This consequential amendment will update subregulation 5.13(2) to reflect the new name of the Court.

### ***Family Law (Fees) Regulation 2012***

#### **Item [52] – Section 1.03 (definitions)**

This item will insert new definitions of ‘Federal Circuit Court’ and ‘Federal Circuit Court Act’ into section 1.03. The new definitions for ‘Federal Circuit Court’ and ‘Federal Circuit Court Act’ in section 1.03 will reflect the new name of the Court.

#### **Item [53] – Section 1.03 (Definition of *Federal Magistrates Act*)**

This item will repeal the definition of ‘Federal Magistrates Act’ in section 1.03. The reference to ‘Federal Magistrates Act’ in section 1.03 is no longer necessary due to the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

#### **Items [54] – Section 1.03 (definition of *Federal Magistrates Court*)**

This item will repeal the definition of ‘Federal Magistrates Court’ in section 1.03. The reference to ‘Federal Magistrates Court’ in section 1.03 is no longer necessary due to the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

#### **Item [55] Amendments of listed provisions – Federal Magistrate**

This item will remove ‘, Federal Magistrate’ in paragraphs 2.03(2)(b), 2.11(3), 2.11(5)(a), 2.11(5)(b) and 2.11(5)(c).

Paragraph 2.03(2)(b) provides that a Judge, Federal Magistrate or Registrar may order that another party to the proceeding is liable to pay the court fee or part of the fee instead of the person liable to pay the fee.

Paragraph 2.11(3) provides that a Judge, Federal Magistrate or Registrar, may allow a document to be filed or the service to be provided despite the fee, or part of the fee, not being paid.

Paragraphs 2.11(5)(a), 2.11(5)(b) and 2.11(5)(c) provide that if a court fee, or part of a fee, is not paid in relation to a proceeding, a Judge, Federal Magistrate or Registrar may make specified orders.

Reference to ‘Federal Magistrate’ in paragraphs 2.03(2)(b), 2.11(3), 2.11(5)(a), 2.11(5)(b) and 2.11(5)(c) is no longer necessary due to the new title of Federal Magistrate as ‘Judge’.

### **Item [56] – Schedule 1 (note)**

This item will repeal the note to Schedule 1 and include note 1 and note 2. Note 1 reflects the existing note. Note 2 will include an additional note to refer to the definition of magistrate in section 1.03 to include a judge of the Federal Circuit Court. This amendment will update Schedule 1 to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

### **Item [57] – Amendments of listed provisions**

This item will remove references to Federal Magistrate, Federal Magistrates Court, Federal Magistrates Act, and *Federal Court and Federal Magistrates Court Regulation 2012* contained in sections 1.03, 1.04 (note 2), 2.01 and Schedule 1 (paragraph (c) of table item 2) and substitute references to Judge of the Federal Circuit Court, Federal Circuit Court, Federal Circuit Court Act and *Federal Court and Federal Circuit Court Regulation 2012*. These consequential amendments will update references in listed provisions to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

### ***Family Law Regulations 1984***

#### **Item [58] – Paragraphs 7(b) and 21N(2)(d)**

This item will remove the reference to ‘Federal Magistrates Court’ and substitute ‘Federal Circuit Court’ in paragraphs 7(b) and 21N(2)(d). Paragraph 7(b) provides for when a family consultant may be appointed. Paragraph 21N(2)(d) provides for the listing of laboratories accredited to carry out parentage testing procedures and the nominated reporter for each accredited laboratory to be provided to the Chief Executive Officer of the Federal Magistrates Court. These consequential amendments will update paragraphs 7(b) and 21N(2)(d) to reflect the new name of the Court.

### ***Federal Court and Federal Magistrates Court Regulation 2012***

#### **Item [59] – Regulation 1.01**

This item will update the reference to ‘*Federal Magistrates Court*’ to be ‘*Federal Circuit Court*’ in regulation 1.01. Regulation 1.01 provides that the title of the Regulation is the ‘*Federal Court and Federal Magistrates Court Regulation 2012*’. This amendment will update the title of the Regulation to reflect the new name of the Court. The new title of the Regulation will be the ‘*Federal Court and Federal Circuit Court Regulation 2012*’.

#### **Item [60] – Section 1.03**

This item will insert new definitions of the terms ‘Federal Circuit Court’, ‘Federal Circuit Court Act’ and ‘Federal Circuit Court Rules’. These amendments will reflect the new name of the Court in the title of the Act and the Rules.

**Item [61] – Section 1.03 (definition of *Federal Magistrates Act*)**

This item will repeal the definition of ‘Federal Magistrates Act’. The definition of ‘Federal Magistrates Act’ is no longer necessary due to the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

**Items [62] – Section 1.03 (definition of *Federal Magistrates Court*)**

This item will repeal the definition of ‘Federal Magistrates Court’. The definition of ‘Federal Magistrates Court’ is no longer necessary due to the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

**Item [63] – Section 1.03 (definition of *Federal Magistrates Court Rules*).**

This item will repeal the definition of ‘Federal Magistrates Court Rules’. The definition of ‘Federal Magistrates Court Rules’ is no longer necessary due to the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

**Item [64] – Amendments of listed provisions – Federal Magistrate**

This item will remove references to ‘Federal Magistrate’ contained in subsection 2.03(1), subsection 2.18(3), paragraphs 2.18(4)(a),(b) and (c) and paragraph 2.19(10)(b).

Subsection 2.03(1) provides that court fees are payable unless the relevant court, Judge, Federal Magistrate or Registrar directs otherwise.

Subsection 2.18(3) provides that the relevant court, Judge, Federal Magistrate or Registrar may allow a document to be filed or served despite the court fee, or part of the fee, not being paid.

Paragraphs 2.18(4)(a),(b) and (c) provide that if a setting down fee or a hearing fee is not paid the relevant court, Judge, Federal Magistrate or Registrar may make specified orders.

Paragraph 2.19(10)(b) provides that the relevant court, Judge, Federal Magistrate or Registrar may order that a mediation fee be refunded.

These consequential amendments will update subsection 2.03(1), subsection 2.18(3), paragraphs 2.18(4)(a),(b) and (c) and paragraph 2.19(10)(b) to reflect the new title of Federal Magistrates as ‘Judge’.

**Item [65] – Amendments of listed provisions – Federal Circuit Court and Federal Circuit Court Act**

This item will remove references to ‘Federal Magistrates Court’ and ‘Federal Magistrates Act’ contained in sections 1.03, 1.05 (note 1) 2.01, 2.09 (heading), 2.09(1), 2.09, 2.10(4), 2.11(2), 2.11(2)(a)(ii), 2.12(2), 2.13(2), 2.17(1), 2.32(2)(b), 4.02 (heading), 4.02 and Schedule 1 (Part 2, Schedule 1 (heading)), items 205, 206, 217, 218, 219, 220, 221, 224 and will substitute, wherever occurring, references to ‘Federal Circuit Court’ and ‘Federal Circuit Court Act’.

Section 1.03 provides definitions which apply to the interpretation of the Regulations.

Note 1 to section 1.05 provides that the Regulation does not apply to a proceeding under the *Family Law Act 1975* in the Federal Magistrates Court.

Section 2.01 provides that Part 2 sets out matters relating to fees for the purposes of section 60 of the Federal Court Act, and section 120 of the Federal Magistrates Act.

Section 2.09 provides for when a Schedule 1 court fee is not payable in Federal Magistrates Court proceedings. Section 2.09(1) provides that section 2.09 applies to proceedings in the Federal Magistrates Court.

Section 2.10 (4) provides that fees (other than specified fees) are not payable in relation to small claims proceedings in the Federal Magistrates Court.

Section 2.11(2) provides for when a filing fee is not payable in relation to a proceeding in the Federal Magistrates Court. Section 2.11(2)(a)(ii) provides that a filing fee is not payable in relation to a proceeding in the Federal Magistrates Court if the matter was subsequently transferred by the Federal Court to the Federal Magistrates Court under section 32AB of the Federal Court Act.

Section 2.12(2) provides for when a setting down fee is not payable in relation to a proceeding in the Federal Magistrates Court.

Section 2.13(2) provides for when a hearing fee is not payable in relation to a proceeding in the Federal Magistrates Court. Section 2.13(2)(b) provides that a hearing fee is not payable for a proceeding in the Federal Magistrates Court if the matter is remitted by the High Court for re-hearing by the Federal Magistrates Court.

Section 2.17(1) provides for when a person may pay a fee to the Federal Court or Federal Magistrates Court in advance.

Section 4.02 provides for when the *Legislative Instruments Act 2003* applies in relation to the Federal Magistrates Court.

Schedule 1 provides for the fees payable for the filing of a document and service fees in relation to proceedings in the Federal Court or the Federal Magistrates Court.

The amendments to sections 1.03, 1.05 (note 1) 2.01, 2.09 (heading), 2.09(1), 2.09, 2.10(4), 2.11(2), 2.11(2)(a)(ii), 2.12(2), 2.13(2), 2.17(1), 2.32(2)(b), 4.02 (heading), 4.02 and Schedule 1 (Part 2, Schedule 1 (heading)), items 205, 206, 217, 218, 219, 220, 221, 224 will update references to reflect the new name of the Court and the new title of Federal Magistrates as 'Judge'.

## ***Jury Exemption Regulations 1987***

### **Item [66] – Subparagraph 5(2)(b)(iv)**

This item will remove reference to ‘Federal Magistrates Court’ and substitute ‘Federal Circuit Court of Australia’ in subparagraph 5(2)(b)(iv). Subparagraph 5(2)(b)(iv) provides that an officer or employee of the Federal Magistrates Court is exempt from liability to serve as a juror. This amendment will update subparagraph 5(2)(b)(iv) to reflect the new name of the Court.

## ***Legislative Instruments Regulations 2004***

### **Item [67] – Part 1 of Schedule 1 (paragraph (b) of item 25)**

This item will remove reference to ‘, a Federal Magistrate’ in item 25(b) of Part 1 of Schedule 1. Item 25(b) provides for when an application for an order, direction or other instrument, or a withdrawal of an application to a Judge, a Federal Magistrate or a Magistrate is not a legislative instrument. This consequential amendment will update item 25(b) to reflect the new title of Federal Magistrates as ‘Judge’.

### **Item [68] – Part 1 of Schedule 1 (paragraph (b) of item 25)**

This item will remove reference to ‘, Federal Magistrate’ in item 25(b) of Part 1 to Schedule 1. This consequential amendment will update item 25(b) to reflect the new title of Federal Magistrates as ‘Judge’.

### **Items [69] – Part 1 of Schedule 1 (paragraph (b) of item 26)**

This item will remove reference to ‘, a Federal Magistrate’ in item 26(b) of Part 1 of Schedule 1. Item 26(b) provides for when an order, direction, or other instrument made in response to an application is not a legislative instrument. This consequential amendment will update item 26(b) to reflect the new title of Federal Magistrates as ‘Judge’.

### **Item [70] – Part 1 of Schedule 1 (paragraph (b) of item 26)**

This item will remove reference to ‘, Federal Magistrate’ in item 26(b) of Part 1 of Schedule 1. This consequential amendment will update item 26(b) to reflect the new title of Federal Magistrates as ‘Judge’.

### **Item [71] – Part 1 of Schedule 1 (paragraph (b) of item 26A)**

This item will remove reference to ‘, a Federal Magistrate’ in item 26A of Part 1 of Schedule 1. Item 26A(b) provides for when an order, direction, or other instrument made in response to an application is not a legislative instrument. This consequential amendment will update item 26A to reflect the new title of Federal Magistrates as ‘Judge’.

## ***Mutual Assistance in Criminal Matters Regulations 1988***

### **Item [72] – Regulation 3 (heading)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘Magistrate’ in the heading to regulation 3. This consequential amendment will update the heading to regulation 3 to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

The expression ‘eligible Federal Circuit Court Judge’ will be inserted following references to ‘magistrate’ in provisions in the *Mutual Assistance in Criminal Matters Regulations 1988* under which Federal Magistrates can perform functions. These amendments to regulations reflect amendments to the *Mutual Assistance in Criminal Matters Act 1987* (the Mutual Assistance Act) in the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013*, which remove Federal Magistrates from the definition of ‘magistrate’ and insert a separate definition of ‘eligible Federal Circuit Court Judge’. Eligible Federal Circuit Court Judge has been defined in the Mutual Assistance Act to mean a Judge of the Federal Circuit Court of Australia in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Extradition Act are in force.

The new expression ‘eligible Federal Circuit Court Judge’ will not alter the nature of functions which are conferred under the *Mutual Assistance in Criminal Matters Regulations 1988* on Federal Magistrates under their new title. Express savings provisions are included in the *Federal Circuit Court of Australia (Consequential Amendments) Act 2013* to preserve existing consents, nominations and things done by Federal Magistrates under the new title of ‘Judge’.

### **Item [73] – Subregulation 3(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘A Magistrate’ in subregulation 3(1). Subregulation 3(1) provides for when a Magistrate who is performing functions under the Mutual Assistance Act may issue a summons requiring a person to attend as a witness. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 3(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

### **Items [74] and [75] – Paragraphs 3(1)(a) and Subparagraph 3(1)(b)(i)**

These items will insert ‘or Judge’ after ‘Magistrate’ in paragraph 3(1)(a) and subparagraph 3(1)(b)(i). Paragraph 3(1)(a) provides for when a Magistrate may issue a summons requiring a person to attend as a witness to give evidence, answer questions or produce documents or other articles in their custody or control. Subparagraph 3(1)(b)(i) requires a person who is to produce documents and/or other articles to attend before the Magistrate. The addition of a reference to ‘or Judge’ in paragraph 3(1)(a) and subparagraph 3(1)(b)(i) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).



**Item [76] – Subregulation 3(3)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘the Magistrate’ in subregulation 3(3). Subregulation 3(3) provides for when a magistrate may order certain steps be taken to bring the document to the notice of the person named in the summons. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 3(3) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [77] – Subregulation 3(4)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a magistrate’ in subregulation 3(4). Subregulation 3(4) provides for when a Magistrate may order that the document is to be taken to have been served. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 3(4) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [78] – Subregulation 3(4)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 3(4). The addition of a reference to ‘Judge’ in subregulation 3(4) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [79] – Regulation 4**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after the first reference to ‘a Magistrate’ in regulation 4. Regulation 4 provides that a person summoned to attend before a Magistrate must attend as specified in the summons and then from day to day unless excused or released from attending. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in regulation 4 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [80] – Regulation 4**

This item will insert ‘or Judge’ after the last reference to ‘a Magistrate’ in regulation 4. The addition of a reference to ‘Judge’ in regulation 4 will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [81] – Subregulation 5(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 5(1). Subregulation 5(1) provides for when a Magistrate may issue a warrant for the apprehension of a person in accordance with Form 2. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 5(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [82] – Subregulation 5(1)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 5(1). The addition of a reference to ‘Judge’ in subregulation 5(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [83] – Subregulation 5(2)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 5(2). Subregulation 5(2) provides that a person named in a warrant may, under the warrant, be apprehended, brought before a Magistrate and detained in custody until released by order of the Magistrate. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 5(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [84] – Subregulation 5(2)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 5(2). The addition of a reference to ‘Judge’ in subregulation 5(2) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [85] – Subregulation 5(4)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘the Magistrate’ in subregulation 5(4). Subregulation 5(4) provides that the apprehension of a person under a warrant does not relieve the person from any liability incurred by the person because of his or her failure to attend before the Magistrate. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 5(4) will reflect the new name of the court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [86] – Subregulation 6(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 6(1). Subregulation 6(1) provides for entitlement to witness fees and travelling allowances for a person attending in accordance with a summons or, in special circumstances, such fees and allowances as the Magistrate directs. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 6(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [87] - Subregulation 6(1)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 6(1). The addition of a reference to ‘Judge’ in subregulation 6(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [88] – Subregulation 7(1)**

This item will insert ‘or eligible Federal Circuit Court Judge’ after ‘A Magistrate’ in subregulation 7(1). Subregulation 7(1) provides for when a Magistrate may administer an oath or affirmation to any person appearing as a witness and examine the witness on oath or affirmation. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 7(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [89] – Subregulation 7(1)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 7(1). The addition of a reference to ‘Judge’ in subregulation 7(1) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [90] – Subregulation 8(1)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 8(1). Subregulation 8(1) provides for offences that may be committed by persons who are summoned to attend before a Magistrate. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 8(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [91] – Paragraph 8(1)(b)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in paragraph 8(1)(b). Paragraph 8(1)(b) provides that a person commits an offence if the person refuses to be sworn or make an affirmation as a witness or, without reasonable excuse, to answer any question when required to do so by a Magistrate. The addition of a reference to ‘Judge’ in paragraph 8(1)(b) will reflect the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [92] – Regulation 9 (heading)**

This item will insert ‘or eligible Federal Circuit Court Judges’ after ‘Magistrates’ in the heading to regulation 9. This amendment will update the heading to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

**Item [93] – Regulation 9**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in Regulation 9. Regulation 9 provides for offences which may be committed in relation to Magistrates when a Magistrate is performing a function under the Mutual Assistance Act. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in regulation 9 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

**Item [94] – Paragraphs 9(a), (b) and (c)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in paragraphs 9(a), (b) and (c). Paragraphs 9(a), (b) and (c) provide for offences which may be committed in relation to Magistrates. The addition of a reference to ‘Judge’ in paragraphs 9(a), (b) and (c) will reflect the new title of Federal Magistrate as ‘Judge’ (See item 72).

**Item [95] – Subparagraphs 9(d)(i) and (ii)**

This item will insert ‘or Judge’ after ‘the Magistrate’ wherever it occurs in subparagraphs 9(d)(i) and (ii). Subparagraphs 9(d)(i) and (ii) provide for offences which may be committed in relation to Magistrates. The addition of a reference to ‘Judge’ in paragraphs 9(d)(i) and (ii) will reflect the new title of Federal Magistrate as ‘Judge’ (See item 72).

#### **Item [96] – Subregulation 10(2)**

Item 94 will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 10(2). Subregulation 10(2) provides that a barrister or solicitor appearing before a Magistrate in connection with the performance by the Magistrate of functions under the Mutual Assistance Act has the same protection as a barrister or solicitor appearing for a party in proceedings in the Supreme Court of a State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 10(2) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (See item 72).

#### **Item [97] – Subregulation 10(2)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 10(2). The addition of a reference to ‘Judge’ in subregulation 10(2) will reflect the new title of Federal Magistrate as ‘Judge’ (See item 72).

#### **Item [98] – Subregulation 10(3)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 10(3). Subregulation 10(3) provides that where an unrepresented person appears before a Magistrate in connection with the performance by the Magistrate of functions under the Mutual Assistance Act, the person has the same protection and immunity as an unrepresented party appearing in proceedings in the Supreme Court of the State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 10(3) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 71).

#### **Item [99] – Subregulation 10(3)**

This item will insert ‘or Judge’ after ‘the Magistrate’ in subregulation 10(3). The addition of a reference to ‘Judge’ in subregulation 10(3) will reflect the new title of Federal Magistrate as ‘Judge’ (See item 72).

#### **Item [100] – Subregulation 10(4)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘a Magistrate’ in subregulation 10(4). Subregulation 10(4) provides that a person summoned as a witness to attend or appear before a Magistrate has the same protection as a witness in proceedings in the Supreme Court of that State or Territory. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in subregulation 10(4) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

### **Item [101] – Subregulations 11(1) and (2)**

This item will repeal subregulations 11(1) and (2) and insert new subsections in the same terms with the addition of references to ‘eligible Federal Circuit Court Judge’.

Subregulation 11(1) provides that if a person on bail fails to comply with the conditions of the recognisance, a Magistrate or a Judge of the Supreme Court of a State or Territory may make a declaratory order that the recognisance be forfeited.

Subregulation 11(2) provides that if the recognisance has been declared forfeited, payment of any sum due under it may be enforced as a fine imposed by a court having jurisdiction in that State or Territory.

The addition of references to ‘an eligible Federal Circuit Court Judge’ in subregulation 11(1) will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

### **Item [102] – Schedule (Form 1, paragraph (b) of note)**

This item will insert ‘or an eligible Federal Circuit Court Judge’ after ‘Magistrate’ in paragraph (b) of the note in Form 1. The addition of a reference to ‘an eligible Federal Circuit Court Judge’ in Form 1 will reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (see item 72).

### **Item [103] – Schedule (Form 2)**

This item will remove reference to ‘a Federal Magistrate in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Act are in force’ and substitute ‘an eligible Federal Circuit Court Judge’ in paragraph (a) of Form 2. This consequential amendment will update Form 2 to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’ (See item 72).

### ***National Consumer Credit Protection Regulations 2010***

#### **Item [104] - Paragraph 36(5)(c)**

This item will update the reference to ‘Federal Magistrate’s Court’ to be ‘Federal Circuit Court’ in paragraph 36(5)(c). Paragraph 36(5)(c) provides for where a court proceeding should be filed. This consequential amendment will update paragraph 36(5)(c) to reflect the new name of the Court.

### ***Privacy (Private Sector) Regulations 2001***

#### **Items [105] - Clause 4.2 of Schedule 1 (note)**

This item will update the reference to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in the note to clause 4.2 of Schedule 1. Clause 4.2 provides for when a complainant must be informed of specified rights under the code and the *Privacy Act 1988*. This consequential amendment will update the note to clause 4.2 to reflect the new name of the Court.

## **Item [106] - Item 111 of Schedule 2**

This item will update the reference to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in item 111 of Schedule 2. Schedule 2 lists organisations that are defined as ‘agencies’ for the purpose of regulation 6, including the Federal Magistrates Court. This consequential amendment will update item 111 of Schedule 2 to reflect the new name of the Court.

## ***Public Order (Protection of Persons and Property) Regulations 1999***

### **Item [107] - The whole of the regulations**

This item will update references to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ wherever they occur in the *Public Order (Protection of Persons and Property) Regulations 1999*. These consequential amendments will update the Regulations to reflect the new name of the Court.

## ***Road Safety Remuneration Regulation 2012***

### **Item [108] - Subparagraphs 5.1(a)(i) and (ii)**

This item will update the references to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in subparagraphs 5.1(a)(i) and (ii). Subparagraphs 5.1(a)(i) and (ii) provide for when a party to small claims proceedings may be represented in proceedings in the Federal Magistrates Court by an official of an industrial association. These consequential amendments will update subparagraphs 5.1(a)(i) and (ii) to reflect the new name of the Court.

## ***Superannuation (CSS) Eligible Employees Regulations 1976***

### **Item [109] – Paragraph 4(1)(zr)**

This item will update the reference to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in paragraph 4(1)(zr). Paragraph 4(1)(zr) provides that a Federal Magistrate is a prescribed class of persons not included in the definition of ‘eligible employee’ for the purposes of the definition of *eligible employee* in subsection 3(1) of the *Superannuation Act 1976*. This consequential amendment will update paragraph 4(1)(zr) to reflect the new name of the Court.

### **Item [110] - Paragraph 4(1)(zr)**

This item will update the reference to ‘Federal Magistrate’ to be ‘Judge of the Federal Circuit Court of Australia’ in paragraph 4(1)(zr). This consequential amendment will update paragraph 4(1)(zr) to reflect the new name of the Court and the new title of Federal Magistrate as ‘Judge’.

## ***Trans-Tasman Proceedings Regulation 2012***

### **Item [111] - Paragraph 8(a)**

This item will update the reference to ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ in paragraph 8(a). Paragraph 8(a) provides that the Federal Magistrates Court is a prescribed Australian court to which an application for interim relief may be made. This consequential amendment will update paragraph 8(a) to reflect the new name of the Court

## ***Workplace Relations Regulations 2006***

### **Item [112] - The whole of the regulations**

This item will update references to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ wherever they occur in the *Workplace Relations Regulations 2006*. These consequential amendments will update the Regulations to reflect the new name of the Court.

## **Schedule 2 - Amendments**

## ***Federal Court and Federal Circuit Court Regulation 2012***

### **Item [1] - Schedule 1 (table item 201)**

This item will update the reference to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court of Australia’ in table item 201 of Schedule 1. Schedule 1 prescribes fees for proceedings in Federal Magistrates Court. This consequential amendment will update table item 201 of Schedule 1 to reflect the new name of the Court.

## ***Trans-Tasman Proceeding Legislation Amendment Regulation 2012 (No.2)***

### **Item [2] – Schedule 2 (heading)**

This item will update the reference to the ‘Federal Magistrates Court’ to be ‘Federal Circuit Court’ in the heading to Schedule 2. This consequential amendment will update the heading to Schedule 2 to reflect the new name of the Court.