**EXPLANATORY STATEMENT**

Subject *Courts Legislation Amendment (Judicial Complaints) Act 2012 Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*

Proclamations

These Proclamations set 12 April 2013 as the date for commencement of Schedule 1 to the *Courts Legislation Amendment (Judicial Complaints) Act 2012* (Judicial Complaints Act) and sections 3 to 83 of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012* (Parliamentary Commissions Act).

It is proposed that both the Judicial Complaints Act and the Parliamentary Commissions Act commence on 12 April 2013. Concurrent commencement dates will ensure practical steps necessary for implementation of the judicial complaints reforms can be jointly progressed, facilitating a smooth and coordinated transition to the new arrangements for the federal courts and other stakeholders.

*Courts Legislation Amendment (Judicial Complaints) Act 2012*

The Judicial Complaints Act, together with the Parliamentary Commissions Act will introduce greater transparency and accountability in handling of complaints about judicial officers in the federal courts other than the High Court of Australia. A judicial officer is a person holding judicial office such as a Chief Justice, Judge or Federal Magistrate.

Allegations of serious misconduct or incapacity relating to a High Court Justice may be appropriately referred to Parliament for consideration of removal from office under section 72(ii) of the Constitution, rather than being handled or investigated within the Court. This approach reflects the position of the High Court as the apex of the Australian judicial system and the special nature of its jurisdiction.

Schedule 1 to the Act amends the *Family Law Act 1975*, the *Federal Court of Australia Act 1976*, the *Federal Magistrates Act 1999* and the *Freedom of Information Act 1982* to:

* provide a statutory basis for the Chief Justice of the Federal Court, the Chief Justice of the Family Court and the Chief Federal Magistrate to deal with complaints about judicial officers
* provide protection from civil proceedings that could arise from a complaints handling process for a Chief Justice or the Chief Federal Magistrate as well as participants assisting them in the complaints handling process, and
* exclude from the operation of the *Freedom of Information Act 1982* documents arising in the context of consideration and handling of a complaint about a judicial officer.

*Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*

The Parliamentary Commissions Act provides a standard mechanism for parliamentary consideration of removal of a judge from office under paragraph 72(ii) of the Constitution.

Paragraph 72(ii) of the Constitution provides that Justices of the High Court and other courts created by the Parliament shall not be removed except by the Governor‑General in Council, on an address from both Houses of Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity. Currently, there is no standard mechanism by which allegations about misbehaviour or incapacity against federal judicial officers would be investigated to assist Parliament’s consideration of removal of a federal judicial officer.

The Act establishes a Parliamentary Commission (comprised of three members, at least one of whom would be a retired justice of a federal court or a judge or retired judge of a State or Territory Supreme Court). A Commission will be able inquire into allegations of misconduct or incapacity and advise Parliament whether, in its opinion, facts amounting to proved misbehaviour or incapacity exist and would warrant consideration by Parliament of removal of the justice from office by means of the provisions of paragraph 72(ii) of the Constitution.

The Proclamations were drafted by the Office of Parliamentary Counsel. No consultation was required given the administrative nature of the instruments.

The Proclamations are registered on the Federal Register of Legislative Instruments under the *Legislative Instruments Act 2003*.

Authority: Subsection 2(1) of the *Courts Legislation Amendment (Judicial Complaints) Act 2012*

Subsection 2(1) of the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*

**Statement of Compatibility with Human Rights**

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

***Courts Legislation Amendment (Judicial Complaints)* Commencement Proclamation 2013
*Judicial Misbehaviour and Incapacity (Parliamentary Commissions)* Commencement Proclamation 2013**

These Legislative Instruments are 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 Instruments**

The Proclamation sets 12 April 2013 as the date for commencement of Schedule 1 to the *Courts Legislation Amendment (Judicial Complaints) Act 2012* and sections 3 to 83 to the *Judicial Misbehaviour and Incapacity (Parliamentary Commissions) Act 2012*.

**Human rights implications**

The Proclamations do not engage any of the applicable rights or freedoms.

**Conclusion**

The Proclamations are compatible with human rights and do not raise any human rights issues.