

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA LEGISLATION
(CONSEQUENTIAL AMENDMENTS AND OTHER MEASURES)
REGULATIONS 2021

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* (the instrument) amends family law and court-related regulations to ensure that they continue to operate effectively following the commencement of the *Federal Circuit and Family Court of Australia Act 2021* and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (the FCFC Acts). The instrument also makes minor and consequential amendments to other Commonwealth regulations to reflect the commencement of the Federal Circuit and Family Court of Australia (FCFC).

Under the FCFC Acts, the Family Court and the FCC are brought together into a unified administrative structure, the FCFC. The FCFC (Division 1) is a continuation of the Family Court of Australia (Family Court), and the FCFC (Division 2) is a continuation of the Federal Circuit Court of Australia (FCC).

The FCFC Acts establish the FCFC (Division 2) as the single point of entry into the federal family law courts. First instance matters would be filed in the FCFC (Division 2) and then transferred to the FCFC (Division 1) as appropriate. Additionally, the legislation provides for the making of common rules of courts, practice notes and directions to create an effective internal case management approach in family law. Additionally, all FCFC (Division 1) judges will be empowered to exercise family law appellate jurisdiction, rather than there being a designated Appeal Division. Further, the default position will be that appeals from decisions of the FCFC (Division 2) will be heard by a single judge, rather than by a Full Court.

The amendments made by the instrument reflect key reforms under the FCFC Acts. This includes the continuation of the Family Court and the FCC as the FCFC (Division 1) and the FCFC (Division 2), respectively, the establishment of the FCFC (Division 2) as the single point of entry into federal family law courts, the revised appeals pathway, and changes to the legislative framework for family law and the federal court system.

The instrument also makes changes to the family law court fees which are prescribed in regulations. Fees for divorce applications in the Family Court are reduced to align with those payable in the FCC when those courts continue operation as the FCFC (Division 1) and FCFC (Division 2), respectively.

In light of this fee change, the instrument also updates all family law court fees in the text of the *Family Law (Fees) Regulation 2012*, to reflect the fees payable as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when the fees in this regulation were last updated).

CONSULTATION

Consistent with the requirements under section 17 of the *Legislation Act 2003*, consultations occurred with the affected courts (the Family Court and the FCC), as well as the Department of Finance (Finance), the Department of the Treasury, the Department of Home Affairs, the Department of Industry, Science, Energy and Resources, the Department of Social Services and the Department of Infrastructure, Transport and Regional Development and Communications. Consultation involved the exchange of correspondence and discussions.

The Attorney-General's Department consulted with the affected courts (the Family Court and the FCC), the Department of the Prime Minister and Cabinet (PM&C) and Finance on the fee changes.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) assessed that a Regulation Impact Statement was not required for this instrument as it is unlikely to have more than a minor regulatory impact (OBPR reference 44106).

Details of the Regulation are set out in **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**.

Details of the proposed *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021*

Section 1 – Name of Regulations

This section provides that the title of the instrument is the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021*.

Section 2 – Commencement

This section provides that the whole of the instrument commences at the same time as the *Federal Circuit and Family Court of Australia Act 2021* (FCFC Act). The FCFC Act commences on 1 September 2021, unless an earlier date is fixed by Proclamation.

Section 3 – Authority

This section provides that the instrument is made under the following:

- a) the *Administrative Decisions (Judicial Review) Act 1977*
- b) the *Australian Crime Commission Act 2002*
- c) the *Automotive Transformation Scheme Act 2009*
- d) the *Designs Act 2003*
- e) the *Extradition Act 1988*
- f) the *Fair Work Act 2009*
- g) the *Fair Work (Registered Organisations) Act 2009*
- h) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*
- i) the *Family Law Act 1975*
- j) the *Federal Circuit and Family Court of Australia Act 2021*
- k) the *Federal Court of Australia Act 1976*
- l) the *Federal Proceedings (Costs) Act 1981*
- m) the *Financial Framework (Supplementary Powers) Act 1997*
- n) the *Legislation Act 2003*
- o) the *Mutual Assistance in Criminal Matters Act 1987*
- p) the *National Consumer Credit Protection Act 2009*
- q) the *Superannuation Act 1976*
- r) the *Superannuation Industry (Supervision) Act 1993*
- s) the *Trans-Tasman Proceedings Act 2010*

Section 4 - Schedules

This section provides that each instrument that is specified in a Schedule to the instrument is amended as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1—Main amendments

Part 1—General amendments

Federal Court and Federal Circuit Court Regulation 2012

Item [1] – Section 1.01

Item 1 repeals section 1.01, which provides that the name of the instrument is the *Federal Court and Federal Circuit Court Regulation 2012*, and substitutes it with a new section 1.01 that provides that the name of the instrument is the *Federal Court and Federal Circuit and Family Court Regulations 2012*. This amendment aligns the title of the instrument with the title of the enabling legislation.

The existing instrument is made under the *Federal Court of Australia Act 1976* (Federal Court Act) and the *Federal Circuit Court of Australia Act 1999* (FCC Act). The FCC Act is repealed by the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (FCFC Consequentials Act) (Item 1 of Schedule 3). The amendment reflects that, on commencement of the FCFC Act, the enabling legislation for the instrument is the FCFC Act and the Federal Court Act.

Item 1 also inserts new section 1.02 after section 1.01 to provide that the instrument is made under the FCFC Act and the Federal Court Act. This authority provision makes it clear that this instrument is made under those Acts, and aligns with current drafting practice.

Item [2] – After the heading to section 1.03

Item 2 inserts a new note at the start of section 1.03 to note that a number of expressions used in this instrument are defined in the Federal Court Act or the FCFC Act. This amendment is consequential to the change in the enabling legislation for the instrument (as outlined in Item 1 of Schedule 1) and aligns with current drafting practice.

Item [3] – Section 1.03

Item 3 omits the reference to ‘In this regulation’ in section 1.03 which precedes the list of terms and their definitions, and substitutes it with a reference to ‘In this instrument’ to align with current drafting practice.

Item [4] – Section 1.03 (paragraph (b) of the definition of *authorised officer*)

Item 4 repeals existing paragraph (b) of the definition of *authorised officer* in relation to the Federal Circuit Court of Australia (FCC), in section 1.03, and substitutes it with a new definition that provides that *authorised officer* in relation to the Federal Circuit and Family Court of Australia (Division 2) (FCFC (Division 2)) means:

- an officer of that court authorised by the Chief Executive Officer (CEO) to carry out the function
- an officer of another court performing the function under an arrangement under section 246 of the FCFC Act, or

- an employee of an agency or organisation performing the function under an arrangement under section 247 of the FCFC Act.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2). It also updates cross-references to provisions in the FCC Act, which is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3), with appropriate provisions in the FCFC Act. This amendment does not substantively change the definition.

Item [5] – Section 1.03

Item 5 inserts a definition of *Federal Circuit and Family Court Act* to mean the *Federal Circuit and Family Court of Australia Act 2021*. This amendment is a consequence of Items 2, 8, 9, 12, 18, 21 and 24 of Schedule 1, which make amendments to insert references to the *Federal Circuit and Family Court Act* in the instrument.

Item [6] – Section 1.03

Item 6 amends section 1.03 by repealing the definitions of *Federal Circuit Court*, *Federal Circuit Court Act*, *Federal Circuit Court Rules*, *general federal law proceeding* and *Registrar*.

The definitions of *Federal Circuit Court*, *Federal Circuit Court Act* and *Federal Circuit Court Rules* are repealed to reflect the continuation of the FCC as the FCFC (Division 2), the repeal of the FCC Act by the FCFC Consequentials Act (Item 1 of Schedule 3), and the automatic repeal of the *Federal Circuit Court Rules 2001* which are made under the FCC Act.

The definition of *general federal law proceeding* is repealed as section 1.05, which is the only section that refers to this term, is amended to directly outline the proceedings that fall within this term (see Item 11 of Schedule 1).

The definition of *Registrar* is repealed as all references to *Registrar* in this instrument are omitted and substituted with the new term *relevant Registrar* by Item 82 of Schedule 1. A definition of *relevant Registrar* is inserted into the instrument by Item 8 of Schedule 1 (see Item 8 for an explanation of this change).

Item [7] – Section 1.03 (paragraph (b) of the definition of *relevant court*)

Item 7 amends the definition of *relevant court* in section 1.03 by omitting the reference to the ‘Federal Circuit Court’ and substituting it with a reference to the ‘Federal Circuit and Family Court of Australia (Division 2)’. The amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not substantively change the definition.

Item [8] – Section 1.03

Item 8 inserts a new definition of *relevant Registrar* to mean:

- in relation to the Federal Court—the CEO and Principal Registrar (within the meaning of the Federal Court Act), or a District Registrar, or Deputy District Registrar or Registrar of the court; and

- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of the FCFC (Division 2).

The definition of *relevant Registrar* in relation to the Federal Court reproduces the substance of existing paragraph (a) of the definition of *Registrar*, albeit in a more condensed form. The term ‘CEO and Principal Registrar (within the meaning of the Federal Court Act)’ refers to both the substantive holder of that office appointed under section 18C of that Act, as well as a person appointed as the Acting CEO and Principal Registrar under section 18M of the Federal Court Act.

Existing paragraph (b) provides that the definition of *Registrar* in relation to the FCC has the same meaning as in the FCC Act (which means a Registrar of the FCC). The definition of *relevant Registrar* in relation to the FCFC (Division 2) reflects that registrar powers under the *Federal Court and Federal Circuit and Family Court Regulations 2012* will be exercised by officers holding the positions of CEO and Principal Registrar, as well as Senior Registrars and Registrars of the FCFC (Division 2).

Item 82 of Schedule 1 repeals all references to *Registrar* in the *Federal Court and Federal Circuit Court Regulation 2012*, and replaces these references with *relevant Registrar*.

This amendment ensures that the same officers of the Federal Court can continue to exercise the powers of a Registrar under the *Federal Court and Federal Circuit and Family Court Regulations 2012*, and all appropriate officers of the FCFC (Division 2) are able to exercise the powers of a Registrar under that Regulation.

Item [9] – after Section 1.03

Item 9 inserts new section 1.03A after section 1.03, to provide that if an expression used in the instrument is defined in both the Federal Court Act and the FCFC Act, the expression has the meaning given by whichever of those Acts is appropriate in the context of the application and operation of that provision.

Subsection 13(1) of the *Legislation Act 2003* (the Legislation Act) provides that expressions used in an instrument made under an Act have the same meaning as in the Act. New section 1.03A is intended to provide guidance on the interpretation of expressions which are defined in both of the Acts this instrument would be made under (the Federal Court Act and the FCFC Act).

Item [10] – Subsections 1.04(1) and (3)

Item 10 omits the references to ‘regulation’ in subsections 1.04(1) and (3), and substitutes these with references to ‘instrument’ to align with current drafting practice.

Item [11] – Section 1.05

Item 11 repeals section 1.05, which provides transitional arrangements and limits the application of Parts 1 and 2 to general federal law proceedings, and substitutes it with a new section 1.05 which no longer provides transitional arrangements. The transitional provisions in section 1.05 are spent and are no longer necessary.

New section 1.05 provides that Parts 1 and 2 apply to a fee for a service that is requested, or for the filing of a document that is lodged, in relation to a proceeding in the Federal Court or a proceeding in the FCFC (Division 2) other than a proceeding under the Family Law Act. The note under new section 1.05 refers the reader to the *Family Law (Fees) Regulation 2012* for information about fees in relation to proceedings under the Family Law Act.

New section 1.05 makes it clear that the *Federal Court and Federal Circuit and Family Court Regulations 2012* sets out the fees for general federal law proceedings (i.e. proceedings other than family law proceedings) in the FCFC (Division 2) and the Federal Court, while the *Family Law (Fees) Regulation 2012* sets out the fees for family law proceedings in the FCFC (Division 1) and the FCFC (Division 2).

Item [12] – Section 2.01

Item 12 repeals section 2.01, and substitutes it with a new section 2.01, to reflect the change in enabling provisions for prescribing fees in Part 2. Existing 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 FCC Act. New section 2.01 provides that Part 2 sets out matters relating to fees for the purposes of subsection 60(1) of the Federal Court Act and paragraphs 285(2)(b), (c) and (d) of the FCFC Act.

Subsection 60(1) of the Federal Court Act specifies that the Governor-General may make regulations prescribing the fees to be paid in respect of proceedings in the Federal Court. Paragraphs 285(2)(b), (c) and (d) of the FCFC Act specifies that the Governor-General may make regulations prescribing the fees to be paid in in the FCFC, exemptions from paying fees, and the waiver, remission or refund of fees.

This amendment reflects the repeal of the FCC Act by the FCFC Consequential Act (Item 1 of Schedule 3) and the new regulation-making powers under the FCFC Act. This amendment provides for more specific references to the relevant powers, and aligns with the current drafting practice of referring to ‘for the purposes of’ rather than ‘for’ an Act.

Item [13] – Paragraph 2.02(1)(a)

Item 13 amends paragraph 2.02(1)(a) by adding ‘in relation to a proceeding’ after ‘document’. Paragraph 2.02(1)(a) provides that Schedule 1 sets out the fees payable for the filing of a document.

This amendment clarifies the existing intention and practice that the fees for the filing of a document are only ever in relation to proceedings. It also makes it clear that the regulations are within the authority conferred by relevant provisions in the Federal Court Act (subsection 60(1)) and the FCFC Act (paragraphs 285(2)(b)) which provide that regulations may provide for fees paid in respect of proceedings in the Federal Court and FCC, respectively.

Item [14] – Subsection 2.06A(1)

Item 14 amends subsection 2.06A(1) by omitting the reference to ‘Federal Circuit Court’ and substituting it with a reference to ‘Federal Circuit and Family Court of Australia (Division 2)’. Section 2.06A provides for reduced fees or fee exemptions on the basis of

financial hardship for migration proceedings in the FCC. Subsection 2.06A(1) provides that section 2.06A applies to a proceeding in the FCC of a kind mentioned in item 201A of Schedule 1 of the *Federal Court and Federal Circuit Court Regulation 2012*.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2), and does not change the operation of the subsection.

Item [15] – Paragraph 2.06A(2)(b)

Item 15 amends paragraph 2.06A(2)(b) by omitting the reference to ‘Federal Circuit Court’ and substituting it with a reference to ‘Federal Circuit and Family Court of Australia (Division 2)’. Section 2.06A provides for reduced fees or fee exemptions on the basis of financial hardship for migration proceedings in the FCC. Paragraph 2.06A(2)(b) provides one of the conditions for granting a fee reduction or exemption; that the Registrar or authorised officer of the FCC considers that paying the full fee would cause financial hardship.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the paragraph.

Item [16] – Section 2.09 (heading)

Item 16 repeals the existing heading of section 2.09, ‘Fee not payable in Federal Circuit Court proceeding’, and substitutes it with a new heading ‘Fee not payable in the Federal Circuit and Family Court of Australia (Division 2)’. Section 2.09 sets out the circumstances in which fees are not payable in the FCC. Amended section 2.09 sets out the circumstances in which fees are not payable in the FCFC (Division 2) (see Item 17 of Schedule 1). This amendment to the heading appropriately reflects the amended subsection.

Item [17] – Subsections 2.09(1) and 2.10(4)

Item 17 amends subsections 2.09(1) and 2.10(4) by omitting the references to the ‘Federal Circuit Court’ and substituting these with references to the ‘Federal Circuit and Family Court of Australia (Division 2)’. Section 2.09 sets out the circumstances in which fees are not payable in the FCC. Subsection 2.09(1) provides that section 2.09 applies to proceedings in the FCC. Subsection 2.10(4) provides that certain fees are not payable in relation to a small claims proceeding in the FCC.

This amending item appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subsections.

Item [18] – At the end of subsection 2.11(1)

Item 18 adds new paragraphs (g) and (h) at the end of subsection 2.11(1), which provides a list of proceedings in the Federal Court in relation to which a filing fee is not payable.

New paragraph 2.11(1)(g) provides that a filing fee is not payable in relation to a proceeding transferred from the FCFC (Division 2) by the Federal Court under section 32AC of the Federal Court Act. Section 32AC, which is inserted into the Federal Court Act by FCFC Consequentials Act (Item 220 of Schedule 1), provides for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the Federal Court.

New paragraph 2.11(1)(h) provides that a filing fee is not payable in relation to a proceeding transferred by the FCFC (Division 2) to the Federal Court under section 153 of the FCFC Act, where that transfer is confirmed by the Federal Court under section 32AD of the Federal Court Act. Section 153 of the FCFC Act provides for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the FCFC (Division 2). Section 32AD of the Federal Court Act, which is inserted by the FCFC Consequentials Act (Item 220 of Schedule 1), provides for the confirmation of civil proceedings transferred from the FCFC (Division 2). Section 32AD seeks to limit the power of the FCFC (Division 2) to transfer matters by providing that the matter will only be transferred if the order is confirmed by the Federal Court.

This amendment ensures that court users who have already paid a filing fee to commence a proceeding in the FCFC (Division 2) are not liable to again pay a filing fee upon (court-directed) transfer of their proceeding to the Federal Court.

Item [19] – Subsection 2.11(2) (heading)

Item 19 repeals the heading of subsection 2.11(2) ‘*Federal Circuit Court*’ and replaces it with a new heading ‘*Federal Circuit and Family Court of Australia (Division 2)*’. Amended subsection 2.11(2) provides that a filing fee is not payable in the FCFC (Division 2) in relation to specified proceedings (see Item 20 of Schedule 1). This amendment to the heading appropriately reflects the amended subsection.

Item [20] – Subsection 2.11(2)

Item 20 amends subsection 2.11(2) by omitting the references to ‘Federal Circuit Court’ and substituting these with ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 2.11(2) provides that a filing fee is not payable in the FCC in relation to specified proceedings. This amending item appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subsection.

Item [21] – At the end of section 2.12(1)

Item 21 would add paragraphs (j) and (k) at the end of subsection 2.12(1), which provides that a setting down fee is not payable in relation to specified proceedings in the Federal Court.

New paragraph 2.12(1)(j) provides that a setting down fee is not payable in relation to a proceeding transferred from the FCFC (Division 2) by the Federal Court under section 32AC of the Federal Court Act, where a setting down fee has already been paid in relation to the proceeding. Section 32AC of the Federal Court Act, which is inserted by the FCFC Consequentials Act (Item 220 of Schedule 1), provides for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the Federal Court.

New paragraph 2.12(1)(k) provides that a setting down fee is not payable in relation to a proceeding transferred by the FCFC (Division 2) to the Federal Court under section 153 of the FCFC Act, where that transfer is confirmed by the Federal Court under section 32AD of the Federal Court Act, and where a setting down fee has already been paid in relation to the proceeding. Section 153 of the FCFC Act provides for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the FCFC (Division 2). Section 32AD of the Federal Court Act, which is inserted by the FCFC Consequentials Act

(Item 220 of Schedule 1), provides for the confirmation of civil proceedings transferred from the FCFC (Division 2). Section 32AD seeks to limit the power of the FCFC (Division 2) to transfer matters by providing that the matter will only be transferred if the order is confirmed by the Federal Court.

This amendment ensures that court users who have already paid a setting down fee for a proceeding commenced in the FCFC (Division 2) are not liable to again pay a setting down fee upon (court-directed) transfer to the Federal Court.

Item [22] – Subsection 2.12(2) (heading)

Item 22 repeals the existing heading to subsection 2.12(2) ‘*Federal Circuit Court*’ and substitutes it with a new heading ‘*Federal Circuit and Family Court of Australia (Division 2)*’. Subsection 2.12(2) provides that a setting down fee is not payable in the FCC in specified proceedings. Item 23 of Schedule 1 amends subsection 2.12(2) to provide that a setting down fee is not payable in the FCFC (Division 2) in specified proceedings. This amendment to the heading appropriately reflects the amended subsection.

Item [23] – Subsection 2.12(2)

Item 23 amends subsection 2.12(2) by omitting the references to ‘Federal Circuit Court’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 2.12(2) provides that a setting down fee is not payable in the FCC in specified proceedings.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subsection.

Item [24] – At the end of subsection 2.13(1)

Item 24 adds paragraphs (k) and (l) at the end of subsection 2.13(1), which provides a list of proceedings in the Federal Court in relation to which a hearing fee is not payable.

New paragraph 2.13(1)(k) provides that a hearing fee is not payable in relation to a proceeding transferred from the FCFC (Division 2) by the Federal Court under section 32AC of the Federal Court Act, where a hearing fee has already been paid in relation to the proceeding. Section 32AC of the Federal Court Act, which is inserted by the FCFC Consequential Act (Item 220 of Schedule 1), provides for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the Federal Court.

New paragraph 2.13(1)(l) provides that a hearing fee is not payable in relation to a proceeding transferred by the FCFC (Division 2) to the Federal Court under section 153 of the FCFC Act, where that transfer is confirmed by the Federal Court under section 32AD of the Federal Court Act, and where a hearing fee has already been paid in relation to the proceeding. Section 153 of the FCFC Act provides a power for the discretionary transfer of civil proceedings from the FCFC (Division 2) to the Federal Court by the FCFC (Division 2). Section 32AD of the Federal Court Act, which is inserted by the FCFC Consequential Act (Item 220 of Schedule 1), provides for the confirmation of civil proceedings transferred from the FCFC (Division 2). Section 32AD seeks to limit the power of the FCFC (Division 2) to transfer matters by providing that the matter will only be transferred if the order is confirmed by the Federal Court.

This amendment ensures that court users who have already paid a hearing fee in respect of a proceeding before the FCFC (Division 2) are not liable to again pay a hearing fee upon (court-directed) transfer of their proceeding to the Federal Court.

Item [25] – Subsection 2.13(2) (heading)

Item 25 repeals the existing heading for subsection 2.13(2) ‘Federal Circuit Court’, and replaces this with a new heading ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 2.13(2) provides that a hearing fee is not payable in the FCC in relation to specified proceedings. Item 26 of Schedule 1 amends subsection 2.13(2) to provide that a hearing fee is not payable in the FCFC (Division 2) in relation to specified proceedings to appropriately reflect the continuation of the FCC as the FCFC (Division 2). This amendment to the heading appropriately reflects the amended subsection.

Item [26] – Subsection 2.13(2)

Item 26 amends subsection 2.13(2) by omitting the references to ‘Federal Circuit Court’ and substituting these with ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 2.13(2) provides that a hearing fee is not payable in the FCC in relation to specified proceedings. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2), and does not change the operation of the subsection.

Item [27] – Subsection 2.17(1)

Item 27 amends subsection 2.17(1) by omitting the reference to ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 2.17(1) provides the circumstances under which a person may pay an amount to the Federal Court or the FCC on account. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subsection.

Item [28] – Subsections 2.19(1) and (3)

Item 28 amends subsections 2.19(1) and (3) by omitting the references to ‘this regulation’ and substituting these with ‘this instrument’ to reflect current drafting practice.

Item [29] – Section 2.22

Item 29 amends section 2.22 by omitting the reference to ‘this regulation’ and substituting it with ‘this instrument’ to reflect current drafting practice.

Item [30] – Section 4.01

Item 30 amends section 4.01 by omitting the reference to ‘For subsection’ and substituting it with ‘For the purposes of the subsection’ to align with the current drafting practice of referring to ‘for the purposes of’ rather than ‘for’ an enabling provision.

Item [31] – Section 4.02

Item 31 repeals section 4.02, which is a modification provision that is no longer necessary, and substitutes it with a new section 4.02, which reproduces regulation 15A of the *Family Law Regulations 1984* in amended form.

Existing section 4.02 provides that for subsection 120(4) of the FCC Act, subparagraph 14(1)(a)(ii) of the Legislation Act applies in relation to the FCC as if that subparagraph were modified by adding ‘or the provisions of any rules of court’ at the end.

The FCC Act is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3). This modification is also longer necessary as section 14 of the Legislation Act has been amended (by the *Legislation Amendment (Sunsetting Review and Other Measures) Act 2018*) to include a new subparagraph 14(1)(a)(iii), which now covers the rules of court.

New section 4.02 reproduces regulation 15A of the *Family Law Regulations 1984* in amended form. Regulation 15A prescribes decrees which require leave to appeal to the Family Court for the purposes of items 1 to 5 of the table in subsection 94AA(1) of the Family Law Act. Section 94AA is repealed by the FCFC Consequentials Act (Item 109 of Schedule 1) and reproduced, in amended form to reflect the continuation of the Family Court as the FCFC (Division 1), in section 28 of the FCFC Act. The authority to make regulation 15A has therefore moved from the Family Law Act to the FCFC Act. Given this, regulation 15A is repealed from the *Family Law Regulations 1984* (which is made under the Family Law Act) by Item 75 of Schedule 2, and reproduced in the *Federal Court and Federal Circuit and Family Court Regulations 2012*, which is now made under the FCFC Act (and the Federal Court Act).

New section 4.02 prescribes judgments which require leave to appeal to the FCFC (Division 1) for the purposes of paragraphs 28(1)(b) and 28(3)(e) of the FCFC Act. This reflects that items 1 to 5 of the table in subsection 94AA(1) of the Family Law Act are reproduced in paragraphs 28(1)(b) and 28(3)(e) of the FCFC Act. New section 4.02 also reflects the terminology change from ‘prescribed decree’ to ‘prescribed judgement’ under the FCFC Act. Section 7 of the FCFC Act defines *judgment* to include decrees.

Item [32] – Sections 5.01 and 5.02

Item 32 repeals sections 5.01 and 5.02. These are transitional provisions and are no longer required.

Item [33] – Paragraphs 5.03(e) and 5.04(e)

Item 33 amends paragraphs 5.03(e) and 5.04(e) by omitting the references to ‘this regulation’ and substituting these with ‘this instrument’ to reflect current drafting practice.

Item [34] – In the appropriate position in Part 5

Item 34 inserts a new section 5.07, titled ‘Application provision relating to the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021*’ into the instrument. The new section provides that amendments made to the instrument by Schedule 1 to the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* apply in relation to the liability of a person to pay certain fees in respect of filings on or after, or hearings fixed on or after, 1 September 2021.

Item [35] – Part 2 of Schedule 1 (heading)

Item 35 repeals the heading of Part 2 of Schedule 1, ‘Part 2—Fees for proceedings in the Federal Circuit Court’, and substitutes it with ‘Part 2—Fees for proceedings in the Federal Circuit and Family Court of Australia (Division 2)’. Items 36–43 of Schedule 1 of this instrument amends Part 2 of Schedule 1 of the *Federal Court and Federal Circuit Court Regulation 2012* to reflect the continuation of the FCC as the FCFC (Division 2). This amendment to the heading appropriately reflects amended Part 2 of Schedule 1.

Item [36] – Part 2 of Schedule 1

Item 36 amends the paragraph under the heading in Part 2 of Schedule 1 by omitting the reference to the ‘Federal Circuit Court’ and substituting this with ‘Federal Circuit and Family Court of Australia (Division 2)’. This paragraph provides that the table in Part 2 of Schedule 1 sets out fees payable in relation to proceedings in the Federal Circuit Court.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2). The fees set out in Part 2 of Schedule 1 would not be changed.

Item [37] – Part 2 of Schedule 1 (table heading)

Item 37 amends the table heading in Part 2 of Schedule 1 by omitting ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2).

Item [38] – Part 2 of Schedule 1 (table item 201, column headed “Document or service”)

Item 38 amends table item 201 in Part 2 of Schedule 1 by omitting ‘Federal Circuit Court of Australia’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Table item 201 provides the fee for filing a document by which a proceeding in the FCC seeking final orders is commenced. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the applicable fees under this table item.

Item [39] – Part 2 of Schedule 1 (table item 201A, column headed “Document or service”)

Item 39 amends table item 201A in Part 2 of Schedule 1 by omitting ‘Federal Circuit Court of Australia’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Table item 201A provides the fee for filing a document by which a proceeding is commenced seeking final orders in the FCC in relation to certain migration-related matters. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the applicable fees under this table item.

Item [40] – Part 2 of Schedule 1 (table item 205, column headed “Document or service”)

Item 40 amends table item 205 in Part 2 of Schedule 1 by omitting ‘by the Registrar of the Federal Circuit Court under subsection 104(2) of the Federal Circuit Court Act’, and substituting ‘by a delegate of the Federal Circuit and Family Court of Australia (Division 2) under subsection 256(1) of the Federal Circuit and Family Court Act’. Table Item 205 provides the fee for filing an application to review an exercise of power by the Registrar of

the FCC under subsection 104(2) of the FCC Act. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2). It also appropriately reflects that subsection 104(2) of the FCC Act, which is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3), is reproduced as subsection 256(1) of the FCFC Act. This amendment does not change the applicable fees under this table item.

Item [41] – Part 2 of Schedule 1 (table items 206 and 217, column headed “Document or service”)

Item 41 amends table items 206 and 217 in Part 2 of Schedule 1 by omitting the references to the ‘Federal Circuit Court of Australia’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Table items 206 and 217 provides the fees for filing a document by which a proceeding under the *Bankruptcy Act 1966* is commenced, and for the hearing for an examination by a Registrar of the FCC under section 50 or 81 of the *Bankruptcy Act 1966*. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the applicable fees under these table items.

Item [42] – Part 2 of Schedule 1 (table item 218, column headed “Document or service”)

Item 42 amends table Item 218 in Part 2 of Schedule 1 by omitting ‘subsection 104(3) of the Federal Circuit Court Act’ and substituting it with ‘subsection 256(2) of the Federal Circuit and Family Court Act’. Table item 218 provides the fees for the filing of an application (including a cross-claim) under subsection 104(3) of the FCC Act. This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2). This amendment also reflects that the FCC Act is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3) and subsection 104(3) of the FCC Act is reproduced as subsection 256(2) of the FCFC Act. This amendment does not change the applicable fees under this table item.

Item [43] – Part 2 of Schedule 1 (table items 219, 220, 221 and 224, column headed “Document or service”)

Item 43 amends table items 219, 220, 221 and 224 in Part 2 of Schedule 1 by omitting references to the ‘Federal Circuit Court of Australia’ and substituting these with ‘Federal Circuit and Family Court of Australia (Division 2)’. Table item 219 provides the fee for the production of a file of the FCC and making a copy of document(s) in the file. Table item 220 provides the fees for each service or execution (or attempt thereof) of the process of the FCC by an officer of the Court. Table item 221 provides the fee for seizure and sale of goods by an officer of the FCC in the execution of the process of the Court. Table item 224 provides the fee for mediation by an officer of the FCC.

This amendment appropriately reflects the continuation of the FCC as the FCFC (Division 2) and does not change the applicable fees under these table items.

Family Law (Fees) Regulation 2012

Item [44] – After section 1.01

Item 44 inserts new section 1.02 after section 1.01 to provide that this instrument is made under the Family Law Act and the FCFC Act. This amendment aligns the instrument with current drafting practice and make it clear which Acts the instrument is made under.

Item [45] – Section 1.03 (after the heading)

Item 45 amends section 1.03 by inserting a new note after the heading that provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act. The existing note at the end of Regulation 1.03, which also provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act, is repealed by Item 53 (Schedule 1). Items 45 and 53 of Schedule 1 of this instrument align the instrument with current drafting practice and make it clear which terms are defined in the Family Law Act.

The new note also updates the existing note to remove the reference to *appeal*, which is no longer be defined in the Family Law Act following amendment to the Family Law Act by the FCFC Consequentials Act (Item 2, Schedule 1). The new note includes a reference to the *Federal Circuit and Family Court of Australia*, which is defined in the Family Law Act, following amendment to the Family Law Act by the FCFC Consequentials Act (Item 8, Schedule 1).

Item [46] – Section 1.03 (paragraph (a) of the definition of *authorised officer*)

Item 46 repeals paragraph (a) of the definition of *authorised officer* and substitutes this with new paragraphs (aa) and (ab) to refer to certain officials exercising functions with respect to the FCFC (Division 1) and FCFC (Division 2).

Existing paragraph (a) of the definition of *authorised officer* refers to the FCC, as well as provisions in the FCC Act which are repealed by the FCFC Consequentials Act (Item 1 of Schedule 3). Existing paragraph (b), which provides the definition of *authorised officer* in respect of the Family Court, is amended by Item 47 of Schedule 1 to no longer define *authorised officer* in respect of the Family Court (nor will amended paragraph (b) define *authorised officer* in respect of the FCFC (Division 1)).

New paragraph (a) provides that *authorised officer* in relation to the FCFC (Division 1) means:

- an officer of that court authorised by the CEO and Principal Registrar to carry out the function
- an officer of another court performing the function under an arrangement under section 79 of the FCFC Act, or
- an employee of an agency or organisation performing the function under an arrangement under section 80 of the FCFC Act.

New paragraph (aa) provides that *authorised officer* in relation to the FCFC (Division 2) means:

- an officer of that court authorised by the CEO and Principal Registrar to carry out the function
- an officer of another court performing the function under an arrangement under section 246 of the FCFC Act, or

- an employee of an agency or organisation performing the function under an arrangement under section 247 of the FCFC Act.

This amendment appropriately reflects the continuation of the Family Court and the FCC as the FCFC (Division 1) and FCFC (Division 2), respectively. It also updates cross-references to provisions in the Family Law Act, which are repealed by the FCFC Consequentials Act, with appropriate provisions in the FCFC Act.

Item [47] – Section 1.03 (paragraph (b) of the definition of *authorised officer*)

Item 47 amends paragraph (b) of the definition of *authorised officer* by inserting ‘of a State’ after the first occurring reference to the ‘Family Court’. This amendment has the effect that the definition of *authorised officer* in relation to the Family Court is no longer prescribed by this paragraph. Rather a new definition of *authorised officer* in relation to the FCFC (Division 1), which is the continuation of the Family Court, is inserted by Item 46 of Schedule 1.

Amended paragraph (b) of the definition of *authorised officer* reflects that the only ‘Family Court’ that exists in name after the commencement of the FCFC is a Family Court of a State or Territory; that is, a State or Territory court exercising family law jurisdiction. Although amended paragraph (b) of the definition of *authorised officer* applies to a Family Court of a State, the definition of *authorised officer* in relation to the Family Court of Western Australia in paragraph (c) remains, given relevant appointments for that court are set out under the *Family Court Act 1997* (WA).

Item [48] – Section 1.03 (definition of *Family Court*)

Item 48 repeals the definition of *Family Court* which is defined to mean the Family Court of Australia or the Family Court of a State. This definition is no longer relevant given that the Family Court will continue as the FCFC (Division 1). References to *Family Court* in the instrument which are intended to include the Family Court of a State are amended to refer directly to the Family Court of a State (see Items 47 and 51 of Schedule 1).

Item [49] – Section 1.03

Item 49 inserts a new definition of *Federal Circuit and Family Court Act* to mean the *Federal Circuit and Family Court Act 2021*. This is necessary because Item 54 of Schedule 1 inserts a reference to the *Federal Circuit and Family Court Act* into the instrument.

Item [50] – Section 1.03

Item 50 repeals the definitions of *Federal Circuit Court*, *Federal Circuit Court Act*, *magistrate* and *Registrar*.

The definition of the *Federal Circuit Court* is no longer be needed as the FCC will continue operation as the FCFC (Division 2). The definition of the *Federal Circuit Court Act* is no longer be needed as the FCC Act is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3).

Existing section 1.03 defines *magistrate* as including a Judge of the FCC. The repeal of this definition is appropriate as the references to a *magistrate* which are intended to refer to a

Judge of the FCC will be substituted with ‘a judge of the Federal Circuit and Family Court of Australia (Division 2)’ (see Items 71–73 and 75–77 of Schedule 1). As a result, the remaining references to a *magistrate* in Schedule 1 of this Regulation refer only to State and Territory magistrates, and do not need to be defined.

The definition of *Registrar* is no longer needed as Item 83 of Schedule 1 repeals all references to *Registrar* in this instrument and replaces these references with *relevant Registrar*. Item 52 of Schedule 1 inserts a new definition of *relevant Registrar*. See Item 52 for an explanation of this change.

Item [51] – Section 1.03 (paragraphs (a) and (b) of the definition of *relevant court*)

Item 51 amends section 1.03 by repealing paragraphs (a) and (b) of the definition of *relevant court*, which refer to the Family Court and the FCC, and inserts new paragraphs (a), (b) and (ba) which refer to the FCFC (Division 1), the FCFC (Division 2), and the Family Court of a State.

This amendment reflects the continuation of the Family Court and the FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

A new reference to the Family Court of a State is necessary as a consequence of repealing paragraph (b) which refers to the ‘Family Court’. It is also needed because of Item 48 of Schedule 1, which repeals the existing definition of *Family Court*, which means the Family Court of Australia or a Family Court of a State.

Item [52] – Section 1.03

Item 52 inserts a new definition of *relevant Registrar* to mean:

- in relation to the FCFC (Division 1)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

This amendment is necessary as a consequence of the amendment to the definition of *Registrar* in the Family Law Act by the FCFC Consequentials Act (Item 11 of Schedule 1). The new definition of *Registrar* in the Family Law Act is narrower than the existing definition as it does not include the CEO and Principal Registrar.

The existing definition of *Registrar* in the *Family Law (Fees) Regulation 2012* refers to the meaning of that term in the FCC Act (in respect of the FCC) or the Family Law Act (in respect of another court). The FCC Act is repealed by the FCFC Consequentials Act (Item 1 of Schedule 3). It would not be appropriate for the amended definition of *Registrar* in the Family Law Act to apply because the CEO and Principal Registrar would be precluded from

continuing to exercise the powers of a *Registrar* under the *Family Law (Fees) Regulation 2012*.

To ensure that the CEO and Principal Registrar can continue to exercise the powers of a *Registrar* under the *Family Law (Fees) Regulation 2012*, Item 52 of Schedule 1 introduces the new term *relevant Registrar*, and Item 83 of Schedule 1 repeals all references to *Registrar* in the *Family Law (Fees) Regulation 2012* and replace these references with *relevant Registrar*.

Item [53] – Section 1.03 (note)

Item 53 repeals the note at the end of section 1.03 as Item 45 of Schedule 1 reproduces this note in updated form and inserts it at the beginning of section 1.03. The existing note at the end of section 1.03 provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act.

Items 44 and 45 of Schedule 1 align the instrument with current drafting practice and makes it clear which terms are defined in the Family Law Act. The new note also updates the existing note to remove the reference to *appeal* which is no longer defined in the Family Law Act, following amendment to the Family Law Act by the FCFC Consequentials Act (Item 2, Schedule 1). The new note includes a reference to the *Federal Circuit and Family Court of Australia*, which is defined in the Family Law Act, following amendment to the Family Law Act by the FCFC Consequentials Act (Item 8, Schedule 1).

Item [54] – After section 1.03

Item 54 inserts new section 1.03A after section 1.03 to provide that if an expression used in the instrument is defined in both the Family Law Act and the FCFC Act, the expression has the meaning given by whichever of those Acts is appropriate in the context of the application and operation of that provision.

Subsection 13(1) of the Legislation Act provides that expressions used in an instrument made under an Act have the same meaning as in the Act. New section 1.03A is intended to provide guidance on the interpretation of expressions which are defined in both of the Acts this instrument is made under (the Federal Court Act and the FCFC Act).

Item [55] – Subsection 1.04(1)

Item 55 amends subsection 1.04(1) by omitting ‘(1)’ as a consequence of the repeal of subsection 1.04(2) by Item 56 of Schedule 1.

Item [56] – Subsection 1.04(2)

Item 56 repeals subsection 1.04(2) (including the notes). This is a transitional provision and is no longer required.

Item [57] – Section 2.01

Item 57 amends section 2.01 by inserting ‘the purposes of’ after ‘For’ to align with the current drafting practice of referring to ‘for the purposes of’ rather than ‘for’ an Act.

Item [58] – Section 2.01

Item 58 amends section 2.01 by omitting the reference to ‘and section 120 of the Federal Circuit Court Act’, and substituting it with ‘and section 285 of the Federal Circuit and Family Court of Australia Act 2021’. Section 2.01 provides that Part 2 sets out matters relating to fees for the purposes of section 125 of the Family Law Act, and section 120 of the Federal Circuit Court Act.

Paragraph 125(1)(c) of the Family Law Act provides that the Governor-General may make regulations prescribing court fees to be payable in respect of proceedings under the Family Law Act. Paragraphs 285(2)(b), (c) and (d) of the FCFC Act provides that the Governor-General may make regulations prescribing the fees to be paid in in the FCFC as well as exemption from paying fees and waiver, remission or refund of fees.

This amendment reflects the repeal of the FCC Act by the FCFC Consequentials Act (Item 1 of Schedule 3) and the new regulation-making powers under the FCFC Act.

Item [59] – after paragraph 2.08(1)(c)

Item 59 amends subregulation 2.08(1) by inserting new paragraphs 2.08(1)(ca)-(ce) after paragraph 2.08(1)(c). These paragraphs list proceedings, appeals and applications relating to the *Child Support (Assessment) Act 1989* and the *Child Support (Registration and Collection) Act 1988* (together ‘the Child Support Acts’) for which a fee mentioned in Schedule 1 of the Regulation is not payable.

At present, the federal family law courts do not charge fees in child support matters. This is consistent with section 1.04 which provides that this regulation applies to a fee for a service requested and or the filing of a document lodged under the Family Law Act (but not under the Child Support Acts). This amendment ensures the continuation of the existing no-charge arrangement for child support matters, by expressly setting out this exemption in section 2.08 rather than relying on the application provision under section 1.04.

New paragraphs 2.08(1)(ca)-(ce) provides that fees are not payable in the following proceedings:

- A proceeding under the Child Support Acts.
- An appeal under section 47A of the Family Law Act from a decree of a court exercising jurisdiction under the Child Support Acts. Section 47A is inserted into the Family Law Act by the FCFC Consequentials Act (Item 69 of Schedule 1), and provides that an appeal from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under the Family Law Act or the Child Support Acts lies to the FCFC (Division 1) or the Supreme Court of that State or Territory.
- An appeal under subsection 26 of the FCFC Act from a judgment of a court exercising original or appellate jurisdiction under the Child Support Acts.
- An application for leave to appeal under section 47B of the Family Law Act. Section 47B is inserted into the Family Law Act by the FCFC Consequentials Act (Item 69 of Schedule 1), and outlines that leave of the relevant Division of

the FCFC or the Supreme Court of a State or Territory is required to appeal to those courts from a decree of a court of summary jurisdiction of a State or Territory exercising jurisdiction under the Child Support Acts.

- An application for leave to appeal under section 28 of the FCFC Act from a judgement of a court exercising jurisdiction under, or in relation to, the Child Support Acts.

Item [60] – Subsection 2.13(1)

Item 60 amends subsection 2.13(1) by omitting the reference to ‘1 July 2019’ and substituting this with ‘1 July 2022’.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Subsection 2.13(1) provides that the amount of each fee mentioned in Schedule 1 is increased on 1 July 2019 and on each 1 July following that day.

This amendment is a consequence of Items 63–79 of Schedule 1 of this instrument, which updates the fee amounts in Schedule 1, to those amounts as at 1 July 2021, to reflect the impact of indexation. This means that the next increase will be 1 July 2022.

Item [61] – Subsection 2.13(9)

Item 61 amends the definition of *relevant period* in subsection 2.13(9) by omitting the reference to ‘1 July 2018’ and substituting this with ‘1 July 2021’.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Subsection 2.13(3) sets out a formula for increasing the fee if, in a *relevant period*, the latest CPI number is greater than the earlier CPI number. Subsection 2.13(9) defines *relevant period* to mean a financial year starting on or after 1 July 2018.

This amendment is a consequence of Items 63–79 of Schedule 1 of this instrument, which updates the fee amounts in Schedule 1, to those amounts as at 1 July 2021, to reflect the impact of indexation. This means that any relevant period will be a financial year starting on or after 1 July 2021.

Item [62] – Section 3.01

Item 62 repeals existing section 3.01, which is a transitional provision which is spent and no longer required, and inserts a new section 3.01, titled ‘Application provision in relation to the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021*’.

New subsection 3.01(1) provides that amendments made to the instrument by the *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* apply in relation to the liability of a person to pay certain fees in respect of filing on or after, or hearings and conciliation conferences fixed on or after, 1 September 2021.

New subsection 3.01(2) provides that the repeal of the definition of *magistrate* applies in relation to a proceeding that began before 1 September 2021, as well as on or after this date. Existing section 1.03 defines *magistrate* as including a Judge of the FCC. As set out Item 50 of Schedule 1, references to a Judge of the FCC are captured through direct references to Judges of the FCFC (Division 2) and hence the definition of *magistrate* will be repealed.

A proceeding may have commenced before a Judge of the FCC before 1 September 2021, which continues as a proceeding before a Judge of the FCFC (Division 2) on, and after, 1 September 2021. Subsection 3.01(2) makes it clear that the rate of fee payable on or after 1 September 2021 in respect of a hearing in that proceeding is that which applies to a Judge of the FCFC (Division 2) and not a magistrate, even if a fee was paid before that day in respect of a service provided by a *magistrate*.

Item [63] – Schedule 1 (table items 1 and 2)

Item 63 repeals table items 1 and 2, and substitutes these with new table items 1 and 2. Existing table item 1 sets out the fees for filing an application in proceedings for a divorce order in relation to a marriage or a decree of nullity of marriage, other than proceedings to which item 2 applies. Table item 2 applies a lower fee for such applications in proceedings commenced in the FCC (or in a court mentioned in paragraphs 10A(a) and (c) of the Family Law Regulations, or in another court for transfer to a court mentioned in paragraphs 10A(a) and (c) of the Family Law Regulations). Existing table item 1 therefore applies to the Family Court and other courts not specified in table item 2.

New table item 1 continues to set the fees for filing an application in proceedings for a divorce order in relation to a marriage or a decree of nullity of marriage, other than proceedings to which table item 2 applies. New table item 2 applies the lower fee for such applications in proceedings commenced in the FCFC (or in a court mentioned in paragraphs 10A(a) and (c) of the Family Law Regulations, or in another court for transfer to a court mentioned in paragraphs 10A(a) and (c) of the Family Law Regulations).

This amending item reflects the continuation of the FCC as the FCFC (Division 2). It also reflects that fees for divorce applications in the Family Court are reduced to align with those payable in the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Reducing the FCFC (Division 1) divorce fees to the level of the FCFC (Division 2) is appropriate given the vast majority of divorce applications are currently dealt with by the FCC, as well as the function that it will serve as the single point of entry for such matters when it continues as the FCFC (Division 2).

Item 63 also updates the fee amounts in table items 1 and 2 to the fee payable under those items as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [64] – Schedule 1 (cell at table item 3, column headed ‘Fee’)

Item 64 amends the cell at table item 3 under the column headed ‘Fee’ by omitting ‘\$1,275’ and substituting it with ‘\$1,335’ to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts’ websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [65] – Schedule 1 (cell at table item 4, column headed ‘Fee’)

Item 65 amends the cell at table item 4 under the column headed ‘Fee’ by omitting ‘\$345’ and substituting it with ‘\$365’ to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts’ websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [66] – Schedule 1 (cell at table item 5, column headed ‘Fee’)

Item 66 amends the cell at table item 5 under the column headed ‘Fee’ by omitting ‘\$345’ and substituting it with ‘\$365’ to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts’ websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [67] – Schedule 1 (cell at table item 6, column headed ‘Fee’)

Item 67 would amend the cell at table item 6 under the column headed ‘Fee’ by omitting ‘\$165’ and substituting it with ‘\$170’ to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts’ websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect

the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [68] – Schedule 1 (table items 7 and 8)

Item 68 repeals table items 7 and 8 of Schedule 1 and substitutes these with new table items 7 and 8. Existing table items 7 and 8 set out the fees for filing an appeal, or application for leave to appeal, under sections 94 or 94AAA of the Family Law Act. New table items 7 and 8 set out the fees for filing an appeal, or application for leave to appeal, under sections 26 or 28 of the FCFC Act.

Sections 94 and 94AAA of the Family Law Act will be repealed by the FCFC Consequential Act (Item 109 of Schedule 1). This amending item appropriately reflects the new appeal provisions under the FCFC Act.

Item 68 also updates the fee amounts in table items 7 and 8 to reflect the fee payable under these items as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [69] – Schedule 1 (cell at table item 9, column headed 'Fee')

Item 69 amends the cell at table item 9 under the column headed 'Fee' by omitting '\$120' and substituting it with '\$125' to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the specific changes to family law fees, the fees set out in Schedule 1 is also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [70] – Schedule 1 (cell at table item 10, column headed 'Fee')

Item 70 amends the cell at table item 10 under the column headed 'Fee' by omitting '\$565' and substituting it with '\$595' to reflect the fee payable under this item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [71] – Schedule 1 (cell at table item 11, column headed ‘Fee’)

Item 71 repeals the cell at table item 11 under the column headed ‘Fee’ and substitutes this with a new cell. Existing item 11 provides the fees for setting down for hearing in proceedings for a divorce order, if defended, in relation to a marriage or a decree of nullity for marriage, before a judge or magistrate (defined to include a FCC judge). Amended item 11 sets out these fees in respect of a hearing before a judge of the FCFC (Division 1), a judge of the FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former’s continued status as a superior court of record. Litigants before the FCFC (Division 1) will benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) continues, like the FCC, as a court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 71 also updates the fee amounts in table item 11 to reflect the fee payable under this Item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts’ websites. Given the changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [72] – Schedule 1 (cell at table item 12, column headed ‘Fee’)

Item 72 repeals the cell at table item 12 under the column headed ‘Fee’ and substitutes this with a new cell. Existing item 12 provides the fees for setting down for hearing in proceedings, if defended, for a declaration as to the validity of a marriage, a divorce or the annulment of a marriage, before a judge or magistrate (defined to include a FCC judge). Amended item 12 sets out these fees in respect of a hearing before a judge of the FCFC of the FCFC (Division 1), a judge of the FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former’s continued status as a superior court of record. Litigants before the FCFC (Division 1) will benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) continues, like the FCC, as a court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 72 also updates the fee amounts in table item 12 to reflect the fee payable under this Item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [73] – Schedule 1 (cell at table item 13, column headed ‘Fee’)

Item 73 repeals the cell at table item 13 under the column headed ‘Fee’ and substitutes this with a new cell. Existing item 13 provides the fees for setting down for hearing of an application for final orders, if defended, in eligible financial or parenting proceedings, before a judge or magistrate (defined to include a FCC judge). Amended item 13 sets out these fees in respect of a hearing before a judge of the FCFC (Division 1), a judge of the FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and the FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former's continued status as a superior court of record. Litigants before the FCFC (Division 1) will benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) continues, like the FCC, as a court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 73 also updates the fee amounts in table item 13 to reflect the fee payable under this item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [74] – Schedule 1 (table item 14)

Item 74 repeals table item 14 and substitutes it with a new table item 14. Existing table item 14 sets out the fee for setting down for hearing in an appeal under section 96 of the Family Law Act from a decree of a court of summary jurisdiction. New table item 14 sets out the fee for setting down for hearing in an appeal under section 47A of the Family Law Act from a decree of a court of summary jurisdiction. This amendment reflects that section 96 of the

Family Law Act is repealed and replaced by section 47A in the Family Law Act (see Items 69 and 109 of Schedule 1 of the FCFC Consequentials Act).

Item 74 also updates the fee amount under item 14 to reflect the fee payable under this item as at 1 July 2021. Regulation 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [75] – Schedule 1 (cell at table item 15, column headed 'Fee')

Item 75 repeals the cell at table item 15 under the column headed 'Fee' and substitutes this with a new cell. Existing item 15 provides the fees for a hearing in proceedings for a divorce order, if defended, in relation to a marriage or a decree of nullity of marriage, before a judge or magistrate (defined to include a FCC judge). Amended item 15 sets out these fees in respect of a hearing before a judge of the FCFC (Division 1), a judge of the FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former's continued status as a superior court of record. Litigants before the FCFC (Division 1) will benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) continues, like the FCC, as a court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 75 also updates the fee amounts in table item 15 to reflect the fee payable under this Item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [76] – Schedule 1 (cell at table item 16, column headed 'Fee')

Item 76 repeals the cell at table item 16 under the column headed 'Fee' and substitute this with a new cell. Existing item 16 provides the fees for a hearing in proceedings, if defended, for a declaration as to the validity of a marriage, a divorce or the annulment of a marriage, before a judge or magistrate (defined to include a FCC judge). Amended item 16 would set out these fees in respect of a hearing before a judge of the FCFC (Division 1), a judge of the

FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former's continued status as a superior court of record. Litigants before the FCFC (Division 1) will benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) will continue, like the FCC, as an inferior court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 76 also updates the fee amounts in table item 16 to reflect the fee payable under this Item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [77] – Schedule 1 (cell at table item 17, column headed 'Fee')

Item 77 repeals the cell at table item 17 under the column headed 'Fee' and substitute this with a new cell. Existing item 17 provides the fees for a hearing of an application for final orders, if defended, in eligible financial or parenting proceedings, before a judge or magistrate (defined to include a FCC judge). Amended item 17 sets out these fees in respect of a hearing before a judge of the FCFC (Division 1), a judge of the FCFC (Division 2), as well as a hearing before any other judge, and a hearing before a magistrate. This amendment reflects the continuation of the Family Court and FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

This amendment maintains the current difference in fee levels for court events (i.e. where the services of a judge are involved) in the Family Court and the FCC when these courts continue as the FCFC (Division 1) and FCFC (Division 2), respectively. Retaining the difference in court event fees between FCFC (Division 1) and FCFC (Division 2) reflects the former's continued status as a superior court of record. Litigants before the FCFC (Division 1) benefit from having their matters, of a more complex nature, heard by judges with a heightened degree of specialisation. The FCFC (Division 2) continues, like the FCC, as an inferior court of record.

This amendment also maintains the current difference in fee levels for other courts exercising relevant federal family law jurisdiction.

Item 77 also updates the fee amounts in table item 17 to reflect the fee payable under this Item as at 1 July 2021. Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated

annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the proposed changes to family law fees, the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [78] – Schedule 1 (table item 18)

Item 78 repeals table item 18 and substitutes it with a new table item 18. Existing table item 18 sets out the fee for a hearing in an appeal under section 96 of the Family Law Act from a decree of a court of summary jurisdiction. New table item 18 sets out the fee for a hearing in an appeal under section 47A of the Family Law Act from a decree of a court of summary jurisdiction. This amendment reflects the repeal and replacement of section 96 of the Family Law Act by section 47A in the Family Law Act (see Items 69 and 109 of Schedule 1 of the FCFC Consequential Act).

Item 78 also updates the fee amount under item 18 to reflect the fee payable under this Item as at 1 July 2021. Regulation 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the changes to family law fees (under Item 36 of Schedule 1), the fees set out in Schedule 1 are updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [79] – Schedule 1 (cell at table item 20, column headed 'Fee')

Item 79 amends the cell at table item 20 under the column headed 'Fee' by omitting '\$395' and substituting it with '\$415' to reflect the fee payable under this Item as at 1 July 2021.

Section 2.13 provides for regular annual increases to the fees in Schedule 1 for indexation to the Consumer Price Index (CPI). Schedule 1 is not updated annually to reflect these increases. However, the updated fees are published annually in the Commonwealth Government Notices Gazette, and the federal family courts' websites. Given the specific changes to family law fees, the fees set out in Schedule 1 are also updated generally to reflect the amount as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when Schedule 1 was last updated).

Item [80] – Schedule 1 (note 1)

Item 80 amends Schedule 1 by omitting the reference to 'Note 1' and substituting it with 'Note'. This would be a minor, consequential amendment to reflect the repeal of 'Note 2' in Item 81 below. Enumerating the notes is accordingly no longer necessary.

Item [81] – Schedule 1 (note 2)

Item 81 repeals note 2 of Schedule 1. Note 2 provides that the definition of magistrate in section 1.03 includes a Judge of the FCC. The repeal of this note is appropriate as the references to a 'magistrate' in Schedule 1 which are intended to refer to a Judge of the FCC are substituted with 'a judge of the Federal Circuit and Family Court of Australia (Division 2)' (see Items 71–73 and 75–77 of Schedule 1). The remaining references to a 'magistrate' in

Schedule 1 of this Regulation, as a result, refer only to State and Territory magistrates, and does not need to be defined.

Part 2—Amendments of listed provisions

Federal Court and Federal Circuit Court Regulation 2012

Item [82] – Amendments of listed provisions—Federal Court and Federal Circuit Court Regulation 2012

Item 82 omits all references to *Registrar* throughout the *Federal Court and Federal Circuit Court Regulation 2012* and substitute these with *relevant Registrar*. Item 8 of Schedule 1 inserts a new definition of *relevant Registrar*. See Item 8 of Schedule 1 for an explanation of this change.

Family Law (Fees) Regulation 2012

Item [83] – Amendments of listed provisions—Family Law (Fees) Regulation 2012

Item 83 omits all references to *Registrar* throughout the *Family Law (Fees) Regulation 2012* and substitutes these with *relevant Registrar*. Item 52 of Schedule 1 inserts a new definition of *relevant Registrar*. See Item 52 of Schedule 1 for an explanation of this change.

Schedule 2—Other consequential amendments

Part 1—General amendments

Administrative Decisions (Judicial Review) Regulations 2017

Item 1 – Subsection 6(1)

Item 1 amends subsection 6(1) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subsection 6(1) outlines the classes of decisions that are not subject to judicial review by the Federal Court or the FCC under the *Administrative Decisions (Judicial Review) Act 1977*. This amendment reflects the continuation of the FCC as the FCFC (Division 2). This amendment does not change the operation of the subsection.

Australian Crime Commission Regulations 2018

Item [2] – Paragraph 12(6)(b)

Item 2 amends paragraph 12(6)(b) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Paragraph 12(6)(b) defines *Judge* for the purpose of regulation 12 of the *Australian Crime Commission Regulations 2018* (which prescribes the manner for serving a summons pursuant to section 30 of the *Australian Crime Commission Act 2002* (ACC Act)). Existing paragraph 12(6)(b) defines *Judge* as a Judge of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [3] – Subregulation 14(3)

Item 3 amends subregulation 14(3) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 14(3) provides that for the purposes of subparagraphs 55A(5B)(b)(ii) and (5C)(b)(ii) of the ACC Act, each duty, function, or power under a provision of a State law mentioned in Schedule 6 of the instrument is a kind of duty, function or power that a State law may confer on a Judge of the Federal Court or a Judge of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [4] – Schedule 6 (heading)

Item 4 repeals the heading of Schedule 6, ‘Schedule 6—Duties, functions and powers conferred on Federal Court Judges or Federal Circuit Court Judges by State laws’, and substitutes it with a new heading, ‘Schedule 6—Duties, functions and powers conferred on Federal Court Judges or Federal Circuit and Family Court of Australia (Division 2) Judges by State laws’. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [5] – Clause 1 of Schedule 6

Item 5 amends Clause 1 of Schedule 6 by omitting the reference to ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Clause 1 of Schedule 6 provides that a duty, function or power under the law of Victoria mentioned in an item of the table (which follows Clause 1) is prescribed as a kind of duty, function or power that may be conferred upon a Judge of the Federal Court or Judge of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [6] – Clause 1 of Schedule 6 (table, heading to column headed “Federal Court Judge or Federal Circuit Court Judge”)

Item 6 amends the table under Clause 1 of Schedule 6 by repealing the heading to the column titled ‘Federal Court Judge or Federal Circuit Court Judge’ and substituting it with ‘Judge of the Federal Court or Federal Circuit and Family Court of Australia (Division 2)’. The table specifies the duties, functions or powers under the law of Victoria that may be conferred upon Judges of the Federal Court or FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [7] – Clause 1 of Schedule 6 (table item 3 column headed “Federal Court Judge or Federal Circuit Court Judge”)

Item 7 amends item 3 of the table under Clause 1 of Schedule 6 by omitting the reference to the ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Item 3 of the table provides that the duty to use a prescribed form for a search warrant, under regulation 8 of the *Australian Crime Commission (State Provisions) Regulations 2014* (Vic), can be conferred upon a Judge of the Federal Court or a Judge of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [8] – Clause 2 of Schedule 6

Item 8 amends Clause 2 of Schedule 6 by omitting the reference to the ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’.

Clause 2 of Schedule 6 outlines that a duty, function or power under the law of Western Australia mentioned in an Item in the table (which follows Clause 2) may be conferred upon a Judge of the Federal Court or of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [9] – Clause 2 of Schedule 6 (table, heading to column headed “Federal Court Judge or Federal Circuit Court Judge”)

Item 9 amends the table under Clause 2 of Schedule 6 by repealing the heading to the column titled ‘Federal Court Judge or Federal Circuit Court Judge’ and substituting it with ‘Judge of the Federal Court or Federal Circuit and Family Court of Australia (Division 2)’. The table under Clause 2 of Schedule 6 specifies the duties, functions or powers under the laws of Western Australia that may be conferred upon Judges of the Federal Court or of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Item [10] – Clause 2 of Schedule 6 (table item 3, column headed “Federal Court Judge or Federal Circuit Court Judge”)

Item 10 amends item 3 of the table in Part 2 of Schedule 6 by omitting the reference to the ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Item 3 of the table provides that the duty to use a prescribed form for a search warrant, under regulation 5 of the *Australian Crime Commission (Western Australia) Regulations 2005 (WA)*, can be conferred upon a judge of the Federal Court or of the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Automotive Transformation Scheme Regulations 2010

Item [11] – Subparagraph 5.4(1)(a)(i)

Item 11 amends subparagraph 5.4(1)(a)(i) by omitting the reference to ‘Federal Circuit Court of Australia’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Section 5.4 stipulates limitations on the implementation of a court’s decision concerning payment of assistance following review by the court provided in subregulation 5.4(1). Subparagraph 5.4(1)(a)(i) specifies the Federal Court or the FCC as relevant courts. The amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subparagraph.

Designs Regulations 2004

Item [12] – subparagraph 5.04(c)(iii)

Item 12 amends subparagraph 5.04 (c)(iii) by omitting ‘, the Federal Magistrates Court or the Federal Circuit Court of Australia’ and substituting it with ‘or the Federal Circuit and Family Court of Australia (Division 2)’. Subparagraph 5.04(c)(iii) provides that if an appeal is made to the Federal Court, the Federal Magistrates Court or the FCC against a decision of a Registrar under section 67 or 68 of the *Designs Act 2003 (Designs Act)*, the prescribed period for the purpose of paragraph 65(3)(b) of the Designs Act is the period determined by the Registrar to allow the examination to be completed. Section 67 of the Design Act relates to the issue by a Registrar of a certificate of examination in respect of validly registered designs, and section 68 to the revocation of registration by the Registrar after an examination, in appropriate circumstances. Paragraph 65(3)(b) provides that Regulations are to prescribe the

period in which a Registrar must conduct an examination of a registered design under the Act.

This amendment to subparagraph 5.04 (c)(iii) reflects the continuation of the FCC (and formerly the Federal Magistrates Court) as the FCFC (Division 2). It does not change the operation of the subparagraph.

Extradition Regulations 1988

Item [13] – Regulation 4 (heading)

Item 13 repeals the heading of regulation 4 ‘Power of magistrate or eligible Federal Circuit Court Judge to send for witnesses and documents’ and replaces it with a new heading, ‘Power of magistrate or eligible Judge to send for witnesses and documents’.

Regulation 4 is amended by Item 14 of Schedule 2 to reflect a change that will be made to the terminology used in the *Extradition Act 1988* (Extradition Act) by the FCFC Consequentials Act. This amendment to the heading appropriately reflects amended regulation 4.

Item [14] – Regulation 4(1)

Item 14 amends subregulation 4(1) by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Subregulation 4(1) provides for the power of a magistrate or an eligible Federal Circuit Court Judge to issue summons for witnesses to attend, give evidence, answer questions and produce documents and other articles. This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 2). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the subregulation.

Item [15] – Regulation 5

Item 15 amends regulation 5 by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Regulation 5 provides for the duty of a person summonsed under regulation 4 to continue to attend unless released or excused from attending by a magistrate or eligible FCC Judge. This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 2). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a

consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the regulation.

Item [16] – Subregulations 6(1), (2) and (4), 7(1), 8(1), and 9(1)

Item 16 amends subregulations 6(1), (2), and (4), 7(1), 8(1) and 9(1) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Regulation 6 provides for the arrest of a person summonsed under regulation 4 to attend before a magistrate or eligible FCC Judge who fails to attend as required. Regulation 7 provides for the payment of witness fees and allowances to a person who attends as a witness before a magistrate or eligible FCC Judge. Regulation 8 provides that an eligible FCC Judge performing functions under the Act may administer an oath or affirmation to a person appearing as a witness and examine that witness on oath or affirmation. Regulation 9 creates offences in relation to persons who are summoned to attend before a magistrate or eligible FCC Judge.

This amending item reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amending item reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amending item does not change the operation of the subregulations.

Item [17] – Regulation 10 (heading)

Item 17 repeals the heading of regulation 10 ‘eligible Federal Circuit Court Judge’ and replaces it with a new heading ‘eligible Judge’.

Regulation 10 is amended by Item 2 of Schedule 2 to reflect a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act. This amendment to the heading appropriately reflects amended regulation 10.

Item [18] – Regulation 10

Item 18 amends regulation 10 by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Regulation 10 provides for the offences that may be committed against an eligible FCC Judge. This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in

force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the regulation.

Item [19] – Subregulations 11(2), (3) and (4)

Item 19 amends subregulations 11(2), (3) and (4) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Regulation 11 provides protections to certain persons under the Extradition Act, and subregulations (2), (3) and (4) set out the protections for a barrister or solicitor, a person represented by a barrister or solicitor, or a witness summonsed to attend or appear, before a magistrate or eligible FCC Judge.

This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the subregulations.

Item [20] – Subregulation 12(1)

Item 20 amends subregulation 12(1) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Subregulation 12(1) provides for the power for a magistrate, an eligible FCC Judge or a Judge of the Supreme Court of a State or Territory to order that a recognisance has failed. This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the subregulations.

Item [21] – Subregulation 13(1)

Item 21 amends subregulation 13(1) by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Regulation 13 sets out the procedure that is required after the arrest of a person who was on bail. This amendment reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the subregulation.

Item [22] – Regulations 14 and 15

Item 22 amends regulations 14 and 15 by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Regulations 14 and 15 provide that the form of a warrant issued by a magistrate or eligible FCC Judge under subparagraphs 48(1)(b)(iii) or 48(1)(b)(iv) of the Extradition Act, respectively, may be in accordance with specified forms. This amending item reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not change the operation of the regulations.

Item [23] – Schedule (Forms 1, 2, 4, 5, 6, 7, 8, 8A, 8B, 9, 9A, 10, 11, 12, 12A, 13A, 16, 17, 18, 19, 20, 20A, 20B, 21 and 22)

Item 23 amends relevant forms in the Schedule by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. This amending item reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2), and amendments made to the Extradition Act by the FCFC Consequential Act. This amendment does not substantively change the forms.

The affected forms are:

- Form 1 - Summons
- Form 2 - Warrant of arrest
- Form 4 - Application for extradition arrest warrant
- Form 5 - Warrant for arrest under subsection 12(1)
- Form 6 - Notice directing magistrate or eligible Federal Circuit Court Judge to cancel warrant
- Form 7 - Warrant under subsection 14(1) in relation to search/and/seizure
- Form 8 - Warrant under subsection 15(4) in relation to transfer of person on remand
- Form 8A - Warrant under subsection 15A(4) in relation to waiver of extradition
- Form 8B - Notice to order release from custody under subsection 15B(4)
- Form 9 - Notice of receipt of extradition
- Form 9A - Amended notice of receipt of extradition request
- Form 10 - Notice to order release from remand
- Form 11 - Warrant under subsection 18(2) in relation to consent to being surrendered
- Form 12 - Warrant under subsection 19(9) ordering committal to prison to await surrender
- Form 12A - Warrant under paragraph 21(2A)(b) ordering committal to prison to await
- Form 13A - Surrender warrant under section 23 for person on bail at time of surrender determination
- Form 16 - Application under section 28 for indorsement of New Zealand warrant
- Form 17 - Indorsement of New Zealand warrant under section 28 authorising execution of warrant in Australia
- Form 18 - Application under section 29 for provisional arrest warrant
- Form 19 - Provisional arrest warrant under section 29

- Form 20 - Warrant under subsection 31(1) in relation to search/and/seizure
- Form 20A - Surrender warrant under subsection 33A(2)
- Form 20B - Warrant of committal under
- Form 21 - Surrender warrant under subsection 34(1)
- Form 22 - Warrant of committal under subsection 34(1)

Item [24] – Schedule (Form 22A)

Item 24 amends Form 22A by omitting the references to ‘Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Form 22A is for the issue of a warrant of committal under subsection 34(1) of the Extradition Act. This amending item reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not substantively change the form.

Item [25] – Schedule (Forms 26, 27, 28 and 29)

Item 25 amends Forms 26, 27, 28 and 29 by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. This amending item reflects a change that will be made to the terminology used in the Extradition Act by the FCFC Consequentials Act (Item 335 of Schedule 5). The existing term used in the Extradition Act is *eligible Federal Circuit Court Judge*, defined to mean a FCC Judge in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 45A(1) and a nomination under subsection 45A(2) of the Extradition Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments made to the Extradition Act by the FCFC Consequentials Act. This amendment does not substantively change the forms.

Fair Work (Registered Organisations) Regulations 2009

Item [26] – Subregulation 176F(2)

Item 26 amends subregulation 176F(2) by omitting the reference to ‘*Federal Circuit Court Rules 2001*’ and substituting this with ‘*Federal Circuit Court Rules 2001*, as in force on 2 May 2017’

Subregulation 176F(2) provides that a witness who is issued a notice to attend under the *Fair Work (Registered Organisations) Act 2009* is to be calculated using the costs for general federal law proceedings set out in the *Federal Circuit Court Rules 2001* (FCC Rules). These rules are made under the FCC Act, which will be repealed by the FCFC Consequentials Act (Item 1 of Schedule 3). Item 26 amends subregulation 176F(2) to provide that the legal allowance will be calculated using the costs for general federal law proceedings set out in the FCC Rules as in force on 2 May 2021, which is the date that regulation 176F commenced. This 2017 version of the rules remains freely available on the Federal Register of Legislative Instruments – register identification number: F2016C00584.

Although the reference to 2 May 2017 does not appear in existing subregulation 176(F)(2), the existing subregulation should be interpreted to refer to the rules as in force at this time, that is, when the regulation commenced. Adding an explicit reference to 2 May 2017 will not therefore change the operation of the subregulation.

Fair Work Regulations 2009

Item [27] – Subregulation 4.01A(2) (table)

Item 27 amends the table after subregulation 4.01A(2) by omitting the references to the ‘Federal Circuit Court’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. The table sets out the civil remedy provisions, the persons and courts that would be referred to in applying for that remedy and the maximum penalty payable in relation to the civil penalty provision under the *Fair Work Regulations 2009*. This amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subregulation.

Item [28] – Subparagraph 4.01(1)(a)(ii)

Item 28 amends subparagraph 4.01(1)(a)(ii) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 4.01(1) sets out the procedure for a person to indicate they want a small claims procedure to apply to their action and subparagraph 4.01(1)(a)(ii) provides that the person must lodge certain documentation with the magistrates court or the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subparagraph.

Item [29] – Subregulation 4.01(2)

Item 29 amends subregulation 4.01(2) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 4.01(2) provides that the procedure in subregulation 4.01(1) does not apply if the relevant rules of court prescribe the manner in which a person indicates he or she wants a

small claimed procedure to apply. This amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subregulation.

Item [30] – Subregulation 4.01(3)

Item 30 amends subregulation 4.01(3) by omitting the references to the ‘Federal Circuit Court’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 4.01(3) provides that a party to a small claims proceeding in the FCC may be represented by an official of an industry association if granted leave to do so by the FCC. This amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subregulation.

Fair Work (Transitional Provisions and Consequential Amendments) Regulations 2009

Item [31] – Subregulation 5.06(1)

Item 31 amends subregulation 5.06(1) by omitting the reference to ‘subregulation (3)’ and substituting it with ‘subregulation (2)’. This amendment corrects a typographical error as subregulation 5.06(3) does not exist. The intended cross-reference is to subregulation 5.06(2).

Item [32] – Subregulation 5.06(2) (table)

Item 32 amends the table in subregulation 5.06(2) by omitting references to the ‘Federal Circuit Court’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. The table in subregulation 5.06(2) sets out the civil remedy provisions, the persons and courts that would be referred to in applying for that remedy and the maximum penalty payable in relation to the civil penalty provision. This amendment reflects the continuation of the FCC as the FCFC (Division 2) and does not change the operation of the subregulation.

Item [33] – Regulation 5.13

Item 33 amends regulation 5.13 by omitting references to the ‘Federal Circuit Court’ and substituting these with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Regulation 5.13 provides for a modification of section 724 of the *Workplace Relations Act 1996*. This amendment reflects the continuation of FCC as the FCFC (Division 2) and does not change the operation of the regulation.

Family Law (Child Abduction Convention) Regulations 1986

Item [34] – After regulation 1

Item 34 inserts a new regulation 1AA after regulation 1 to provide that this instrument is made under the Family Law Act. This amendment aligns the instrument with current drafting practice and makes it clear which Act the instrument is made under.

Item [35] – Regulation 2 (heading)

Item 35 repeals the heading of regulation 2, ‘Interpretation’, and substitutes it with the heading ‘Definitions’ followed by a note that provides a non-exhaustive list of expressions used in this instrument are defined in the Family Law Act. This amendment aligns the

instrument with current drafting practice and makes it clear which terms are defined in the Family Law Act.

Item [36] – Subregulation 2(1)

Item 36 amends subregulation 2(1) by omitting ‘unless the contrary intention appears’ so that the subregulation will read ‘In this instrument:’. This amendment aligns the instrument with current drafting practice.

Item [37] – Subregulation 2(1)

Item 37 amends subregulation 2(1) by inserting a definition of *Act* to mean the *Family Law Act 1975*. This definition is required as a consequence of Item 35 of Schedule 2 which inserts a reference to *Act* in this instrument.

Item [38] – Subregulation 2(1)

Item 38 repeals the definitions of *court* and *Registrar* in subregulation 2(1).

The existing definition of *court* means a court having jurisdiction under paragraph 39(5)(d), 39(5A)(a) or 39(6)(d) of the Family Law Act. The Family Law Act (section 4) defines *court* to mean, in relation to any proceedings, the court exercising jurisdiction in those proceedings by virtue of this Act. The definition of *court* in the Family Law Act appropriately applies to references to *court* in this instrument. Therefore *court* does not need to be separately defined in this instrument. Paragraph 13(1)(b) of the Legislation Act provides that terms used in legislative instruments have the same meaning as the enabling legislation as in force from time to time.

The definition of *Registrar* is repealed as all references to *Registrar* in this instrument are omitted and substituted with *relevant Registrar* by Items 41–44 of Schedule 2. Item 39 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 39 of Schedule 2 for an explanation of this change.

Item [39] – Subregulation 2(1)

Item 39 inserts a new definition of *relevant Registrar* to mean:

- in relation to the FCFC (Division 1)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court
- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

The existing definition of *Registrar* in the *Family Law (Child Abduction Convention) Regulations 1986* (the Child Abduction Regulations) encapsulates the Registrar or a Deputy Registrar of the Family Court or the Family Court of Western Australia (FCWA), but confines the definition to the principal officer of any other court.

The definition of *Registrar* under the Family Law Act, as amended by the FCFC Consequentials Act (Item 11 of Schedule 1), will mean the Senior Registrar or Registrar in respect of the FCFC (Division 1) and FCFC (Division 2).

However, the policy intention is for the CEO and Principal Registrar of the FCFC (in addition to the Senior Registrar and Registrar) to be able to exercise the powers of a Registrar under the Child Abduction Regulations. Hence it would not be appropriate for the amended definition of *Registrar* in the Family Law Act to apply. Since an instrument cannot define a term inconsistently with the enabling Act, the new terminology of *relevant Registrar* is used to ensure that all the appropriate officers of the FCFC (Division 1) and FCFC (Division 2) can exercise the powers of a Registrar under the Child Abduction Regulations.

The definition of *relevant Registrar* refers to both the FCFC (Division 1) and the FCFC (Division 2) to reflect the continuation of the Family Court as the FCFC (Division 1) and the operation of the FCFC (Division 2) as the single point of entry for family law matters, under the FCFC Act.

The definition of *relevant Registrar* in relation to any other court is broader than the existing definition of *Registrar* to include any other appropriate officer or staff member of the court. This ensures a consistent approach to defining this term, which is used in other family law related regulations (see Items 52 of Schedule 1, and Items 46 and 68 of Schedule 2).

Item [40] – Subregulation 2(1) (definition of *the Act*)

Item 40 repeals the definition of *the Act* (including the note). This is a consequence of Item 37 of Schedule 2 which inserts a new definition of *Act*, retaining the same meaning as *the Act*. This change reflects the current drafting practice of removing articles before terms which are defined. The note, which provides that *applicable Rules of Court* is defined in subsection 4 (1) of the Act, is removed as a consequence of Item 35 of Schedule 2. Item 35 of Schedule 2 inserts a note at the beginning of regulation 2 to provide a non-exhaustive list of terms used in the instrument that are defined in the Family Law Act, including *applicable Rules of Court*.

Item [41] – Paragraphs 15(4)(a) and (b)

Item 41 amends paragraphs 15(4)(a) and (b) by omitting the references to ‘Registrar’ and substituting these with ‘relevant Registrar’. Item 39 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 39 of Schedule 2 for an explanation of this change.

Item [42] – Paragraph 28(2)(b)

Item 42 amends paragraphs 15(4)(a) and (b) by omitting the references to ‘Registrar’ and substituting these with ‘relevant Registrar’. Item 39 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 39 of Schedule 2 for an explanation of this change.

Item [43] – Paragraph 28(2A)

Item 43 amends paragraph 28(2A) by omitting the references to ‘Registrar’ and substituting these with ‘relevant Registrar’. Item 39 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 39 of Schedule 2 for an explanation of this change.

Item [44] – Schedule 3 (Forms 2, 2C and 4)

Item 44 amends Forms 2, 2C and 4 in Schedule 3 by omitting the references to ‘Registrar’ and substituting these with ‘relevant Registrar’. Item 39 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 39 of Schedule 2 for an explanation of this change.

Family Law (Child Protection Convention) Regulations 2003

Item [45] – After regulation 1

Item 45 inserts a new regulation 1A after regulation 1 to provide that this instrument is made under the Family Law Act. This amendment aligns the instrument with current drafting practice and makes it clear which Act the instrument is made under.

Item [46] – Subregulation 3(1)

Item 46 inserts a new definition of *relevant Registrar* to mean:

- in relation to the FCFC (Division 1)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

The *Family Law (Child Protection Convention) Regulations 2003* (the Child Protection Regulations) refers the reader to the meaning of *Registrar* in the Family Law Act. This definition is amended by the FCFC Consequential Act (Item 11 of Schedule 1). This amended definition is narrower than the existing definition as it does not include the CEO and Principal Registrar.

Hence it would not be appropriate for the amended definition of *Registrar* in the Family Law Act to apply because the CEO and Principal Registrar would be precluded from continuing to exercise the powers of a *Registrar* under the Child Protection Regulations. Since an instrument cannot define a term inconsistently with the enabling Act, the new term *relevant Registrar* is used to ensure that the CEO and Principal Registrar can continue to exercise the powers of a *Registrar* under the Child Protection Regulations.

Item 106 of Schedule 2 omits all references to *Registrar* in the Child Protection Regulations, and replaces these references with *relevant Registrar*.

Item [47] – Subregulation 3(2) (note 2)

Item 47 omits ‘Registrar (in relation to a court)’ in note 2 of subregulation 3(2). Note 2 of subregulation 3(2) provides for words or expressions that are used in the instrument that have the meaning given by subsection 4(1) of the Family Law Act. This amendment is consequential to Item 106 of Schedule 2 which omits all references to *Registrar* in the Child Protection Regulations and replaces these with *relevant Registrar*. Item 46 of Schedule

inserts a new definition of *relevant Registrar*. See Item 46 of Schedule 2 for an explanation of this change.

Item [48] – Paragraph 11(b)

Item 48 amends paragraph 11(b) by omitting the reference to ‘Registrar of the Family Court of Australia’ and substituting it with ‘relevant Registrar of the Federal Circuit and Family Court of Australia’. Regulation 11 provides that on receiving a document that is a foreign measure, the Commonwealth central authority may send the document to a State central authority or to a Registrar of the Family Court of Australia, the Family Court of Western Australia or the Supreme Court of the Northern Territory.

Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with a general reference to the FCFC. This is because the FCFC Act will create a single point of entry to the federal family law courts, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance.

This amendment also reflects the change in terminology from *Registrar* to *relevant Registrar* in the Child Protection Regulations, made by Items 46 and 106 of Schedule 2. See Item 46 of Schedule 2 for an explanation of this change.

Item [49] – Subregulation 13(2)

Item 49 amends subregulation 13(2) by omitting the reference to ‘Family Court of Australia’ and substituting it with ‘Federal Circuit and Family Court of Australia’. Subregulation 13(2) currently prohibits a Registrar of a court from registering a foreign measure relating to special medical treatment unless the Family Court, or another authorised court or tribunal, has authorised the medical treatment or declared that registration is not contrary to public policy.

Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with a general reference to the FCFC. This is because the FCFC Act will create a single point of entry to the federal family law courts, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance. Matters will be transferrable to the FCFC (Division 1) under section 51 of the FCFC Act. Therefore, this amendment reflects that either the FCFC (Division 1) or FCFC (Division 2) could make an order authorising special medical treatment.

Family Law (Family Dispute Resolution Practitioners) Regulations 2008

Item [50] – Regulation 2

Item 50 repeals regulation 2, which provides that these regulations commence on 1 January 2009, and inserts a new regulation 2 which provides that this instrument is made under the Family Law Act.

The commencement provision under regulation 2 is repealed given that it is spent and these provisions are automatically repealed under Part 3 of Chapter 3 of the Legislation Act. New regulation 2 aligns the instrument with current drafting practice and makes it clear which Act the instrument is made under.

Item [51] – Subparagraph 26(4)(b)(ii)

Item 51 repeals subparagraph 26(4)(b)(ii) and substitutes it with a new subparagraph 26(4)(b)(ii).

It is compulsory for parties to attempt family dispute resolution before applying for a parenting order, subject to certain exceptions. The Family Law Act requires applicants to obtain a certificate under subsection 60I(8) from a registered family dispute resolution practitioner and file that certificate with the application for an order in relation to a child under Part VII of the Act. Exceptions to this requirement are set out at subsection 60I(9). Subparagraph 26(4)(b)(ii) of the Regulations specify that, before a practitioner gives a certificate under paragraph 60I(8)(a), the practitioner must have informed each party that the certificate may be taken into account by a court when determining whether to make an order under section 13C (which sets out that a court may refer parties to family counselling, family dispute resolution or other family services) or an order awarding costs under section 117 of the Family Law Act.

New subparagraph 26(2)(b)(ii) specifies that, before a practitioner gives a certificate under paragraph 60I(8)(a), the practitioner must have informed each party that the certificate may be taken into account by the court as specified in subregulation 26(4A). New subregulation 26(4A) is inserted by Item 52 of Schedule 2. The combined effect of this amendment and the amendment made by Item 52 of Schedule 2 is outlined under Item 52 of Schedule 2.

Item [52] – After subregulation 26(4)

Item 52 inserts new subregulation 26(4A), which is referred to in amended subparagraph 26(4)(b)(ii) (see Item 51 of Schedule 2).

Existing subparagraph 26(4)(b)(ii) of the Regulations specifies that, before a practitioner gives a certificate under paragraph 60I(8)(a), the practitioner must have informed each party that the certificate may be taken into account by a court when determining whether to make an order under section 13C (which sets out that a court may refer parties to family counselling, family dispute resolution or other family services) or an order awarding costs under section 117 of the Family Law Act.

New subparagraph 26(2)(b)(ii) specifies that, before a practitioner gives a certificate under paragraph 60I(8)(a), the practitioner must have informed each party that the certificate may be taken into account by the court as specified in subregulation 26(4A).

New subregulation 26(4A) provides that for the purposes of subparagraph 26(4)(b)(ii), the certificate may be taken into account by the court when determining whether to make an order under section 13C of the Family Law Act, or in relation to the following:

- for the FCFC (Division 1)—to award costs against a party under section 117 of the Family Law Act, taking into account the powers of the court under Division 4 of Part 6 of Chapter 3 of the FCFC Act (dealing with case management)
- for the FCFC (Division 2)—to award costs against a party under section 117 of the Family Law Act, taking into account the powers of the Court under

Division 4 of Part 6 of Chapter 4 of the FCFC Act (dealing with case management)

- for any other court—to award costs against a party under section 117 of the Family Law Act.

This amendment (combined with the amendment by Item 51 of Schedule 2) reflects the power to award costs under new case management provisions in the FCFC Act, in addition to the existing power to make costs orders under section 117 of the Family Law Act. For other courts exercising family law jurisdiction, the power would be derived from section 117 of the Family Law Act.

Item [53] – Subparagraph 28(1)(h)

Item 53 repeals subparagraph 28(1)(h) and substitutes it with a new subparagraph 28(1)(h).

Regulation 28 stipulates that certain information must be given to parties before family dispute resolution commences. Existing subparagraph 28(1)(h) specifies that parties must be informed that the court may take into account that a certificate under subsection 60I(8)(a) of the Family Law Act is filed (because of one party’s refusal or failure to attend family dispute resolution) when considering whether to make an order under section 13C of the Family Law Act or to award costs against a party under section 117 of that Act.

New subparagraph 28(1)(h) provides that parties must be informed that the court may take into account that a certificate under subsection 60I(8)(a) of the Family Law Act is filed (because of one party’s refusal or failure to attend family dispute resolution) as specified in subregulation 28(1A). New subregulation 28(1A) is inserted by Item 54 of Schedule 2. The combined effect of this amendment and the amendment made by Item 54 of Schedule 2 is outlined under Item 54 of Schedule 2.

Item [54] – After subregulation 28(1)

Item 54 inserts a new subregulation 28(1A), which is referred to in new subparagraph 28(1)(h) (see Item 53 of Schedule 2).

New paragraph 28(1)(h) specifies that before a family dispute resolution commences in the FCFC (Division 1), the parties must be informed that, if a certificate under subsection 60I(8) of the Act is filed, the certificate may be taken into account by the Court as specified in subregulation 28(1A).

New subregulation 28(1A) provides that for the purpose of paragraph 28(1)(h), a court may take the certificate into account when considering whether to make an order under section 13C of the Family Law Act, or in relation to the following:

- in relation to the FCFC (Division 1)—to award costs against a party under section 117 of the Act, taking into account the powers of the Court under Division 4 of Part 6 of Chapter 3 of the FCFC Act (dealing with case management)
- in relation FCFC (Division 2)—to award costs against a party under section 117 of the Act, taking into account the powers of the Court under

Division 4 of Part 6 of Chapter 3 of the FCFC Act (dealing with case management), or

- in relation to any other court— when determining whether to award costs against a party under section 117 of the Act.

This amendment reflects the power to award costs under new case management provisions in the FCFC Act, in addition to the general power to make costs orders under section 117 of the Family Law Act. For other courts exercising family law jurisdiction, the power is derived from section 117 of the Family Law Act.

Family Law (Hague Convention on Intercountry Adoption) Regulations 1998

Item [55] – Regulation 2

Item 55 repeals regulation 2, which is a commencement provision, given that it has been spent and these provisions are automatically repealed under Part 3 of Chapter 3 of the Legislation Act. Item 55 inserts new regulation 2 to provide that this instrument is made under the Family Law Act. This amendment aligns the instrument with current drafting practice and make it clear which Act the instrument is made under.

Item [56] – Regulation 3 (heading)

Item 56 repeals the heading of regulation 3, ‘Interpretation’, and substitutes it with the heading ‘Definitions’ followed by a note that provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act. This amendment aligns the instrument with current drafting practice and makes it clear which terms are defined in the Family Law Act.

Item [57] – Subregulation 3(1)

Item 57 amends subregulation 3(1) by omitting ‘In these Regulations, unless the contrary intention appears:’ and substituting with ‘In this instrument:’. This amendment aligns the instrument with current drafting practice.

Item [58] – Subregulation 3(1) (note)

Item 58 repeals the note in subregulation 3(1) which provides that the terms *court* and *territory* are defined in the Family Law Act. Item 56 of Schedule 2 inserts a new note at the beginning of regulation 3 which provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act, including *court* and *territory*. This amendment aligns the instrument with current drafting practice.

Item [59] – Regulation 24A (heading)

Item 59 amends the heading of Regulation 24A by omitting the reference to ‘Family Court of Australia’ and substituting it with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Regulation 24A currently confers jurisdiction in relation to a matter to which Part 4 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* applies on the Family Court. Part 4 of the Regulations deals with court orders and recognition of intercountry adoption. Regulation 24A is amended (by Items 60 to 62 of Schedule 2) to

reflect that jurisdiction under this regulation is conferred on the FCFC (Division 2). This amendment to the heading appropriately reflects amended Regulation 24A.

Item [60] – Subregulation 24A(1)

Item 60 amends subregulation 24A(1) by omitting the reference to ‘Family Court of Australia’ and substituting this with the ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 24A(1) confers jurisdiction in relation to a matter to which Part 4 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* applies on the Family Court. Part 4 of the Regulations deals with court orders and recognition of intercountry adoption. Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with the FCFC (Division 2). This is because the FCFC Act will create a single point of entry to the federal family law courts, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance. Matters will be transferrable to the FCFC (Division 1) under section 51 of the FCFC Act.

This amendment reflects a change in policy as the Family Court, continuing as the FCFC (Division 1) will no longer be conferred original jurisdiction for matters under Part 4 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*. In order to reflect the creation of a single-point entry into the federal family courts, jurisdiction is instead conferred on the FCFC (Division 2).

Item [61] – Subregulation 24A(2)

Item 61 amends subregulation 24A(2) by omitting the reference to ‘Family Court of Australia’ and substituting this with ‘Federal Circuit and Family Court of Australia (Division 2)’. Subregulation 24A(2) removes the jurisdiction of the Family Court under subregulation 24(1) if jurisdiction in the matter is invested in a State court under a law of the State. Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with the FCFC (Division 2).

This amendment is consequential to the amendment made by Item 60 of Schedule 2, which confers jurisdiction in relation to a matter to which Part 4 of the Regulations applies on the FCFC (Division 2). See Item 60 of Schedule 2 for an explanation of that change.

Item [62] – Paragraph 24A(3)(a)

Item 62 amends subregulation 24A(3)(a) by omitting the reference to ‘Family Court of Australia’ and substituting this with ‘Federal Circuit and Family Court of Australia (Division 2)’. Paragraph 24A(3)(a) provides that subregulation 24A(2) (which divests the Family Court of jurisdiction in respect of matters arising in a State court under State law) does not have effect if proceedings were instituted in the Family Court before the day on which jurisdiction is invested in the State court. Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with the FCFC (Division 2).

This amendment is consequential to the amendment made by Item 60 of Schedule 2, which confers jurisdiction in relation to a matter to which Part 4 of the Regulations applies on the FCFC (Division 2). See Item 60 of Schedule 2 for an explanation of that change.

Item [63] – Regulations 24B to 24E

Item 63 repeals regulations 24B to 24E, and substitutes these with new regulation 24B.

New subregulation 24B(1) confers appellate jurisdiction on the FCFC (Division 1) in respect of matters to which Part 4 of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998* applies.

- Paragraph 24B(1)(a) confers jurisdiction on the FCFC (Division 1) to hear appeals from a decision of a single judge of the FCFC (Division 1) exercising original jurisdiction. This provides for appeals where the matter has been transferred to the FCFC (Division 1) under section 51 of the FCFC Act.
- Paragraph 24B(1)(b) confers jurisdiction on the FCFC (Division 1) to hear appeals from a decision of a single judge of the FCFC (Division 1) exercising appellate jurisdiction.
- Paragraph 24B(1)(c) confers jurisdiction on the FCFC (Division 1) to hear appeals from a decision of the FCFC (Division 2) exercising original jurisdiction under subregulation 24A(1).

New subregulation 24B(2) provides that:

- if the appeal is from a decision of a single Judge of the FCFC (Division 1), the appeal will be heard by a Full Court of the FCFC (Division 1), or
- if the appeal is from a decision of the FCFC (Division 2), the appeal will be heard by a single Judge of the FCFC (Division 1), unless the Chief Justice directs that it be heard by a Full Court of the FCFC (Division 1).

The approach reflected in new subregulation 24(B) is consistent with the revised appeals pathway established under section 32 of the FCFC Act. This revised appeals pathway reflects a policy intent that most appeals from decisions of the FCFC (Division 2) would be heard by a single judge of the FCFC (Division 1), instead of by a Full Court, to free up considerable judicial resources to work on first instance family law matters. In turn this would help reduce delays and the backlog of cases in the family law system.

Existing regulation 24C provides for evidence that may be given in an appeal. This regulation is longer necessary as section 35 of the FCFC Act appropriately provides for evidence that may be given in an appeal mentioned in regulation 24B of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

Existing regulation 24D provides that an appeal mentioned in regulation 24B must be instituted within the time prescribed, or within a further time that is allowed, by the Rules of Court. Consistent with the approach under the FCFC Act, it is not necessary to explicitly provide that an appeal must be instituted in accordance with Rules of Court. The Rules of Court directly impose the time limit for appeals to the FCFC (Division 1). Therefore this regulation is removed.

Existing regulation 24E provides the orders that may be made on appeal. This regulation is no longer necessary as sections 36 and 44 of the FCFC Act appropriately provide for the orders

that the FCFC (Division 1) may make in respect of an appeal mentioned in regulation 24B of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

Existing regulation 24F provides that an appeal does not lie to the High Court from a decree of a court exercising jurisdiction under regulation 24A or 24B, except by special leave of the High Court. This regulation is no longer necessary as section 55 of the FCFC Act appropriately provides for appeals to the High Court from the FCFC (Division 1) exercising jurisdiction under regulations 24A or 24B of the *Family Law (Hague Convention on Intercountry Adoption) Regulations 1998*.

Family Law Regulations 1984

Item [64] – After regulation 1

Item 64 inserts new regulation 1A after regulation 1 to provide that this instrument is made under the Family Law Act.

This amendment aligns the instrument with current drafting practice and makes it clear which Act the instrument is made under.

Item [65] – Regulation 3 (heading)

Item 65 repeals the heading of regulation 3, ‘Interpretation’ and substitutes this with a new heading ‘Definitions’ to align the instrument with current drafting practice. Item 65 also amends the existing note, which provides a non-exhaustive list of expressions used in this instrument that are defined in the Family Law Act by removing the reference to *Registrar* and including new references to the *Chief Executive Officer* and the *Federal Circuit and Family Court of Australia*.

The reference to *Registrar* is removed as a consequence of Item 107 of Schedule 2 which omits all references to *Registrar* in the *Family Law Regulations 1984* and substitute these with *relevant Registrar* (which is defined in the instrument, see Item 68 of Schedule 2).

The reference to *Chief Executive Officer* is included as a consequence of Items 68 and 73 of Schedule 2, which insert new references to *Chief Executive Officer* into the *Family Law Regulations 1984*.

The reference to *Federal Circuit and Family Court of Australia* is included as a consequence of Item 68 of Schedule 2, which inserts a new reference to the *Federal Circuit and Family Court of Australia* in the *Family Law Regulations 1984*.

Item [66] – Subregulation 3(1)

Item 66 amends subregulation 3(1) by omitting ‘(1) In these Regulations, unless the contrary intention appears:’ and substituting it with ‘In this Instrument:’. The omission of ‘(1)’ is required as a consequence of the amendment made by Item 70 of Schedule 2 which repeals subregulation 3(2). The other changes in wording are to align the instrument with current drafting practice.

Item [67] – Subregulation 3(1) (definition of *registrar*)

Item 67 amends subregulation 3(1) by repealing the existing definition of *registrar*.

This amendment is necessary as a consequence of the amendment to the definition of *Registrar* in the Family Law Act by the FCFC Consequentials Act (Item 11 of Schedule 1). The new definition of *Registrar* in the Family Law Act is narrower than the existing definition as the new definition does not include the CEO and Principal Registrar.

Existing subregulation 3(1) defines *registrar* as:

- a Registrar within the meaning of subsection 4(1) of the Family Law Act, and
- in relation to a court of summary jurisdiction—the clerk of the court, clerk of petty sessions or other person holding or performing the duties of a similar office in the court.

It is not appropriate for the amended definition of *Registrar* in the Family Law Act to apply because the CEO and Principal Registrar would be precluded from continuing to exercise the powers of a *registrar* under the *Family Law Regulations 1984*.

Since an instrument cannot define a term inconsistently with the enabling Act, the new term *relevant Registrar* is used. Item 107 of Schedule 2 omits all references to *registrar* and *Registrar* in the *Family Law Regulations 1984*, and replaces these references with *relevant Registrar*. Item 68 of Schedule 2 inserts a new definition of *relevant Registrar* to mean:

- in relation to the FCFC (Division 1)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

The existing definition of *registrar* in relation to a court of summary jurisdiction is not reproduced. This is because the definition of *relevant Registrar* in relation to any other court appropriately covers courts of summary jurisdiction.

This amendment ensures that the CEO and Principal Registrar can continue to exercise the powers of a *registrar* or *Registrar* under the *Family Law Regulations 1984*. This change also reconciles the references to *registrar* and *Registrar* throughout the instrument by replacing these references with a consistent term.

Item [68] – Subregulation 3(1)

Item 68 inserts a definition of *relevant Registrar* to mean:

- in relation to the FCFC (Division 1)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to the FCFC (Division 2)—the CEO and Principal Registrar (within the meaning of the FCFC Act), or a Senior Registrar or Registrar of that court; or
- in relation to any other court—the principal officer of the court or any other appropriate officer or staff member of the court.

This amendment is necessary as a consequence of the amendment to the definition of *Registrar* in the Family Law Act by the FCFC Consequentials Act (Item 11 of Schedule 1). The new definition of *Registrar* in the Family Law Act is narrower than the existing definition as the new definition does not include the CEO and Principal Registrar.

The *Family Law Regulations 1984* defines *registrar* as:

- a Registrar within the meaning of subsection 4(1) of the Family Law Act, and
- in relation to a court of summary jurisdiction—the clerk of the court, clerk of petty sessions or other person holding or performing the duties of a similar office in the court.

It is not appropriate for the amended definition of *Registrar* in the Family Law Act to apply because it would preclude the CEO and Principal Registrar from continuing to exercise the powers of a *registrar* under the *Family Law Regulations 1984*. Since an instrument cannot define a term inconsistently with the enabling Act, the new term *relevant Registrar* is used. Item 107 of Schedule 2 omits all references to *registrar* and *Registrar* in the *Family Law Regulations 1984* and replaces these references with *relevant Registrar*.

The existing definition of *registrar* in relation to a court of summary jurisdiction is not reproduced given the definition of *relevant Registrar* in relation to any other court appropriately covers courts of summary jurisdiction.

This amendment ensures that the CEO and Principal Registrar can continue to exercise the powers of a *registrar* or *Registrar* under the *Family Law Regulations 1984*. It also reconciles the references to *registrar* and *Registrar* throughout the instrument by replacing these references with a consistent term.

Item [69] – Subregulation 3(1) (definition of *State Family Court*)

Item 69 amends subregulation 3(1) by repealing the definition of *State Family Court*. This amendment is a consequence of Items 70 and 77 of Schedule 2 which remove the existing two references to *State Family Court* in this instrument. This is because this instrument uses the term *Family Court of a State*, which reflects the terminology of the Family Law Act.

Item [70] – Subregulation 3(2)

Item 70 repeals subregulation 3(2), which provides that a reference in these regulations, other than in regulation 10, to ‘the Family Court’ shall be read as including a reference to a State

Family Court. This provision is not necessary as the one other reference to ‘the Family Court’ is removed (see Item 77 of Schedule 2).

Item [71] – Regulation 3A

Item 71 repeals regulation 3A, which prescribes a contract limit amount of \$1,000,000 for the purposes of existing subsection 38A(4) of the Family Law Act. Subsection 38A(4) limits the power of the Chief Justice of the Family Court to enter into contracts involving amounts exceeding \$1,000,000 and provides that regulations can prescribe a higher amount.

Subsection 38A(4) will be repealed by the FCFC Consequentials Act (Item 36 of Schedule 1). Subsection 78(6) of the FCFC Act will replicate the effect of subsection 38A(4), and limit the power of the Chief Justice of the FCFC (Division 1) to enter into contracts involving amounts exceeding \$1,000,000 unless a higher amount is prescribed in regulations. This repeal reflects the repeal of subsection 38A(4) of the Family Law Act and the policy intention not to prescribe an amount higher than \$1,000,000.

Item [72] – Subregulation 4(2)

Item 72 repeals subregulation 4(2), which allows the court or a registrar to give directions in matters of practice and procedure in proceedings to which section 9 of the Family Law Act applies. Section 9 provides transitional arrangements for proceedings which were pending when the Family Law Act passed. Section 9 is to be repealed by the FCFC Consequentials Act (Item 19 of Schedule 1) as there are no longer any proceedings to which it will apply.

Item [73] – Regulation 7

Item 73 repeals regulation 7 and substitutes it with a new regulation 7. Existing regulation 7 provides that for paragraph 11B(c) of the Family Law Act, a family consultant may be appointed in writing by the CEO of the Family Court or the CEO of the FCC. New regulation 7 provides that for the purposes of paragraph 11B(c), a family consultant may be appointed in writing by the CEO. This amendment replaces the separate references to the CEO of the Family Court and CEO of the FCC with a simple reference to the CEO.

As provided in section 13(1)(b) of the Legislation Act, expressions used in statutory instruments have the same meaning as they have in the enabling legislation. The definition of CEO in subsection 4(1) of the Family Law Act will be amended by the FCFC Consequentials Act (Item 4 of Schedule 1) to mean ‘Chief Executive Officer and Principal Registrar of the Federal Circuit Court of Australia (Division 1)’. The CEO of FCFC (Division 1) will also serve in this role with respect to the FCFC (Division 2) (see section 250 of the FCFC Act).

This amendment reflects the continuation of the Family Court and the FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

Item [74] – Regulations 10 and 12AB

Item 74 repeals regulations 10 and 12AB.

Regulation 10 relates to the recording and transcription of proceedings in the Family Court. Since the Family Court will continue as the FCFC (Division 1), which will have its own rules in relation to recording and transcription, regulation 10 is no longer required.

Regulation 12AB prescribes nine as the number of judges that should not be exceeded in the Appeal Division of the Family Court for the purposes of subsection 22(2AC) of the Family Law Act. Section 22 is repealed by the FCFC Consequentials Act (Item 36 of Schedule 1) as part of the repeal of Part IV of the Family Law Act. As the Family Court will continue in existence as the FCFC (Division 1), the provisions specific to the establishment, function and governance of the Family Court are removed from the Family Law Act and inserted into the FCFC Act. Under the FCFC Act, all judges of the FCFC (Division 1) will be able to hear appeals, either as a single judge or as a member of a Full Court. Regulation 12AB is no longer required as there is no longer a cap on the number of judges that can be assigned to hear appeals.

Item [75] – Regulation 15A

Item 75 repeals regulation 15A, which prescribes decrees which require leave to appeal to the Family Court for the purposes of items 1 to 5 of the table in subsection 94AA(1) of the Family Law Act. Section 94AA will be repealed by the FCFC Consequentials Act (Item 109 of Schedule 1) and reproduced, in amended form to reflect the continuation of the Family Court as the FCFC (Division 1), in section 28 of the FCFC Act. The authority to make regulation 15A will, therefore, be moved from the Family Law Act to the FCFC Act. Given this, Item 75 repeals regulation 15A from the *Family Law Regulations 1984* (which is made under the Family Law Act). In turn Item 31 of Schedule 1 reproduces regulation 15A in the *Federal Court and Federal Circuit Court Regulation 2012*, which will be made under the FCFC Act (and the Federal Court Act).

Item [76] – Paragraphs 21N(2)(b) to (d)

Item 76 repeals paragraphs 21N(2)(b) to (d) and replaces these with new paragraphs 21N(2)(b) and (c). Existing paragraphs 21N(2)(b) to (d) specify the CEO of the Family Court, the Registrar of the Family Court of Western Australia, and the CEO of the FCC as persons to whom the National Association of Testing Authorities (NATA) must provide a list under subregulation 21N(1). New paragraphs 21N(2)(b) and (c) would specify the CEO and the Registrar of the Family Court of Western Australia as persons to whom NATA must provide a list under subregulation 21N(1).

As provided in paragraph 13(1)(b) of the Legislation Act, expressions used in statutory instruments have the same meaning as they have in the enabling legislation. The FCFC Consequentials Act (Item 4 of Schedule 1) will amend the definition of the CEO in subsection 4(1) of the Family Law Act to mean ‘the Chief Executive Officer and Principal Registrar of the Federal Circuit and Family Court of Australia (Division 1)’. Section 250 of the FCFC Act provides that the CEO of the FCFC (Division 1) also serves in this role with respect to FCFC (Division 2). Therefore, the reference to the CEO in new paragraph 21N(2)(b) encompasses both the CEO of the FCFC (Division 1) and the CEO of the FCFC (Division 2).

This amendment reflects the continuation of the Family Court and the FCC as the FCFC (Division 1) and FCFC (Division 2), respectively.

Item [77] – Subregulation 23(1A)

Item 77 repeals subregulation 23(1A) and substitutes it with a new subregulation 23(1A) to reflect a change in terminology that is made in this instrument and the creation of the FCFC.

Existing subregulation 23(1A) provides that the Secretary of the Attorney-General's Department must send certified copies of overseas child orders to a registrar of the Family Court, registrar of a State Family Court or the Registrar of a Supreme Court of a State or Territory.

New subregulation 23(1A) provides that the Secretary of the Attorney-General's Department must send certified copies of overseas child orders to a *relevant Registrar*. Item 68 of Schedule 2 inserts a new definition of *relevant Registrar* in relation to the FCFC (Division 1), the FCFC (Division 2) and any other court. The term *relevant Registrar* appropriately provides for all the registrars to whom subregulation 23(1A) applies.

The new definition *relevant Registrar*, as applied to this subregulation, reflects the continuation of the Family Court as the FCFC (Division 1). The term *relevant Registrar* appropriately incorporates certain officers of the FCFC (Division 2), while also reflecting that court's function as the single point of entry for family law matters under the FCFC Act

Item [78] – Subregulation 28(2) (note)

Item 78 omits the reference to 'subregulation 3(1)' and substitutes this with 'regulation 3'. This is because Item 70 of Schedule 2 repeals subregulation 3(2) and Item 66 of Schedule 2 consequently omits the numeration of (1) in regulation 3.

Item [79] – Subregulation 28C(2) (note)

Item 79 omits the reference to 'subregulation 3(1)' and substitutes this with 'regulation 3'. This is because Item 70 of Schedule 2 repeals subregulation 3(2) and Item 66 of Schedule 2 consequently omits the numeration of (1) in regulation 3.

Item [80] – Subregulation 38A(3) (note)

Item 80 omits the reference to 'subregulation 3(1)' and substitutes this with 'regulation 3'. This is because Item 70 of Schedule 2 repeals subregulation 3(2) and Item 66 of Schedule 2 consequently omits the numeration of (1) in regulation 3.

Item [81] – Regulation 39BB (heading)

Item 81 repeals the heading of regulation 39BB, 'Certain jurisdiction of Family Court must not be exercised in States and Territories', and substitutes it with 'Certain jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) must not be exercised in States and Territories'. Although the Family Court will continue as the FCFC (Division 1), this amendment replaces the reference to the Family Court with a reference to the FCFC (Division 2). As outlined under Item 82 of Schedule 2, the relevant jurisdiction which is limited under this regulation is the jurisdiction of the FCFC (Division 2). This is because the FCFC Act creates a single point of entry to the federal family law courts, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance.

This amended heading reflects the continuation of the Family Court as the FCFC (Division 1) and the creation of a single point entry to the federal family law courts via the FCFC (Division 2).

Item [82] – Subregulation 39BB(1)

Item 82 amends subregulation 39BB(1) by omitting ‘from 1 April 2012 the jurisdiction of the Family Court must not be exercised in relation to proceedings under paragraph 31(1)(c) of the Act’ and substituting it with ‘from 1 September 2021 the jurisdiction of the Federal Circuit and Family Court of Australia (Division 2) must not be exercised in relation to proceedings referred to in paragraph 132(1)(c) of the *Federal Circuit and Family Court of Australia Act 2021*’.

Existing subregulation 39BB(1) provides that the Family Court must not exercise jurisdiction under paragraph 31(1)(c) of the Family Law Act in all States or Territories. Paragraph 31(1)(c) of the Family Law Act confers original jurisdiction on the Family Court in respect of certain matters arising under a law of a Territory other than the Northern Territory (including Norfolk Island, Christmas Island and Cocos (Keeling) Islands). Paragraph 31(1)(c) will be repealed by the FCFC Consequential Act (Item 36 of Schedule 1). This provision will be replicated by paragraph 132(1)(c) of the FCFC Act, which will confer original jurisdiction on the FCFC (Division 2) in respect of certain matters arising under a law of a Territory other than the Northern Territory. Although the Family Court will continue as the FCFC (Division 1), original jurisdiction for these matters will be conferred on the FCFC (Division 2) because the FCFC Act will create a single point entry to the federal family law courts, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance.

Subsection 40(1) of the Family Law Act, as amended by the FCFC Consequential Act (Item 50 of Schedule 1), will provide that the regulations may restrict the exercise of the FCFC (Division 2)’s jurisdiction in specified States and Territories.

This amendment maintains the restriction on the exercise of the Family Court’s jurisdiction under existing subregulation 39BB(1) in respect of the FCFC (Division 2) when it commences on 1 September 2021. In turn, this reflects the continuation of the Family Court as the FCFC (Division 1) and the creation of a single point entry to the federal family law courts via the FCFC (Division 2).

Item [83] – Subregulations 39BB(2) and (3)

Item 83 repeals subregulations 39BB(2) and (3) and substitutes these with a new subregulation 39BB(2).

Existing subregulation 39BB(2) restricts the Family Court from exercising a large proportion of the jurisdiction conferred on it under the Family Law Act in Western Australia, Christmas Island or the Cocos (Keeling) Islands. This is because in Western Australia, the Family Court of Western Australia (FCWA) is invested with federal jurisdiction under the Family Law Act. The FCWA also exercises original jurisdiction in relation to family law matters in the Cocos (Keeling) Islands and Christmas Island.

New subregulation 39BB(2) continues the existing limitations on the exercise of the Family Court’s jurisdiction when it is conferred on the FCFC (Division 2). Although the Family Court will continue operation as the FCFC (Division 1), new subregulation 39BB(2) would refer to the FCFC (Division 2) to reflect that the creation of a single point entry to the federal family law courts by the FCFC Act, with court-users being required to file family law or child support matters in the FCFC (Division 2) in the first instance. Subsection 40(1) of the

Family Law Act, as amended by the FCFC Consequential Act (Item 50 of Schedule 1), will provide that the regulations may restrict the exercise of the FCFC (Division 2)'s jurisdiction in specified States and Territories.

New subregulations 39BB(2)(a), (b), (c) and (d) reproduce the effect of existing subregulations 39BB(1)(a), (b), (c) and (d) by individually describing the matters currently covered by references to paragraphs 31(1)(a), (aa), (b) and (d) of the Family Law Act. This is necessary as section 31 of the Family Law Act will be repealed by the FCFC Consequential Act (Item 36 of Schedule 1).

The references to subsection 39(5) and paragraph 39B(1)(a) of the Family Law Act in existing paragraphs 39BB(1)(e) and (f) remain appropriate as these provisions will not be amended by the FCFC Consequential Act. These references are reproduced in new subparagraphs 39BB(2)(e)(i) and (ii).

The reference to paragraph 93A(1)(aa) of the Family Law Act in existing paragraph 39BB(1)(g) is omitted in new subregulation 39BB. Paragraph 93A(1)(aa) confers certain appellate jurisdiction on the Family Court, and will be repealed by the FCFC Consequential Act (Item 109 of Schedule 1). Given the FCFC (Division 2) will not exercise any appellate jurisdiction, the existing limitation with respect to this jurisdiction does not need to be continued under new subregulation 39BB(2).

The reference to paragraph 93A(1)(b) of the Family Law Act in existing paragraph 39BB(1)(h) is also omitted in new subregulation 39BB. Paragraph 93A(1)(b) also confers certain appellate jurisdiction on the Family Court, and will be repealed by the FCFC Consequential Act (Item 109 of Schedule 1). Given the FCFC (Division 2) will not exercise any appellate jurisdiction, the existing limitation with respect to this jurisdiction does not need to be continued under new subregulation 39BB(2).

The limitations on the exercise of jurisdiction by the FCFC (Division 2) under new subregulation 39BB(2) would commence from 1 September 2021, which is the date the FCFC is due to commence.

This item also repeals subregulation 39BB(3), which qualifies the restriction placed on the Family Court's jurisdiction in Western Australia and other listed territories in subregulation 39BB(2). The qualification relates to the Family Court's appellate jurisdiction under subsection 94AAA(1A) of the Family Law Act. Given the restrictions on the Family Court's appellate jurisdiction are not continued under new subregulation 39BB(2), there is no longer a need for this qualification.

This amendment reflects the continuation of the Family Court as the FCFC (Division 1), and the creation of a single point of entry to the federal family courts via the FCFC (Division 2).

Item [84] – Regulation 45 (note)

Item 84 omits the reference to 'subregulation 3(1)' and substitutes this with 'regulation 3'. This is because Item 70 of Schedule 2 repeals subregulation 3(2) and Item 66 of Schedule 2 consequently omits the numeration of (1) in regulation 3.

Item [85] – Regulations 79 and 82

Item 85 repeals regulations 79 and 82. These regulations are transitional regulations and are no longer required.

Federal Proceedings (Costs) Regulations 2018

Item [86] – Section 6 (table item 3)

Item 86 repeals table item 3 and substitutes it with a new item 3 that prescribes \$4,000 as the maximum amount payable by the Commonwealth in respect of certain costs certificates issued in respect of proceedings in the FCFC under the *Federal Proceedings (Costs) Act 1981*.

Although not reflected in existing Schedule 6 of the *Federal Proceedings (Costs) Regulations 2018*, a cap of \$4,000 also applies to the FCC. The reference to the ‘Federal Circuit and Family Court of Australia’ in new table item 3 is intended to cover both the FCFC (Division 1) and the FCFC (Division 2). This amendment would reflect the continuation of the Family Court as the FCFC (Division 1) and the FCC as the FCFC (Division 2).

Financial Framework (Supplementary Powers) Regulations 1997

Item [87] – Part 2 of Schedule 1AB (table item 11, column headed “Purpose”)

Item 87 amends table item 11 in Part 2 of Schedule 1AB under the column headed ‘Purpose’, by omitting the reference to the ‘Family Court of Australia and the Federal Circuit Court of Australia’ and substituting it with ‘the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2)’. Item 11 at paragraph (b) provides for the Commonwealth’s funding arrangements with States and Territories for the Family Court and the FCC to use State court facilities. This amendment reflects the continuation of the Family Court as the FCFC (Division 1) and the continuation of the FCC as the FCFC (Division 2). This amendment does not change the operation of this item.

Legislation (Exemptions and Other Matters) Regulation 2015

Item [88] – Section 12 (table item 28, column headed “Legislative instrument”, after paragraph (d))

Item 88 inserts new paragraph (da) in table item 28 in section 12 to provide that a proclamation made under subsection 47A(5) of the Family Law Act is not subject to sunset. New subsection 47A(5) of the Family Law Act provides that the Governor-General may, by Proclamation, fix a date as the date on or after which appeals to the Supreme Court of a specified State or Territory under this section may not be instituted, and such a Proclamation may be expressed to apply only to proceedings of a specified class or specified classes.

This amendment is a consequence of Item 90 of Schedule 2, which repeals paragraph (i) in table item 28. Paragraph (i) provides that a proclamation made under subsection 96(3) of the Family Law Act is not subject to sunset. Subsection 96(3) of the Family Law Act will be

repealed by the FCFC Consequentials Act (Item 109 of Schedule 1) and replicated as new subsection 47A(5) of the Family Law Act.

Proclamations made under the provisions referred to in paragraphs (a) to (d) in table item 28 define which federal, state and territory courts have jurisdiction to hear matters arising under the Family Law Act. A proclamation made under new paragraph (da) specifies a date after which certain appeals may no longer be commenced in a state or territory. These proclamations are part of an intergovernmental scheme and are intended to be enduring. Accordingly, and consistently with section 54(1) of the Legislation Act, it is not appropriate for them to be subject to sunseting.

Items 88 and 90 reflect amendments to the Family Law Act by the FCFC Consequentials Act.

Item [89] – Section 12 (table item 28, column headed “Legislative instrument”, paragraph (h))

Item 89 makes a punctuation amendment to paragraph (h) in table item 28 in section 12 by removing a semi-colon after that paragraph as a consequence of the repeal of paragraph (i) by Item 90 of Schedule 2.

Item [90] – Section 12 (table item 28, column headed “Legislative instrument”, paragraph (i))

Item 90 repeals paragraph (i) in table item 28 in section 12, which provides that a proclamation made under section 96(3) of the Family Law Act is not subject to sunseting. Subsection 96(3) of the Family Law Act will be repealed by the FCFC Consequentials Act (Item 109 of Schedule 1). Repealed subsection 96(3) will be reproduced as new subsection 47A(5) which will be inserted into the Family Law Act by the FCFC Consequentials Act (Item 69 of Schedule 1). Item 88 of Schedule 2 inserts new paragraph (da) in table item 28 in section 12 to provide that a proclamation made under section 47A(5) of the Family Law Act is not subject to sunseting.

Items 88 and 90 reflect amendments to the Family Law Act by the FCFC Consequentials Act.

Mutual Assistance in Criminal Matters Regulations 1988

Item [91] – Regulation 3 (heading)

Item 91 repeals the heading of regulation 3 ‘Power of Magistrate or eligible Federal Circuit Court Judge to send for witnesses and documents’ and replaces it with new heading ‘Power of Magistrate or eligible Judge to send for witnesses and documents’.

Regulation 3 is amended by Item 92 of Schedule 2 to reflect a change that will be made to the terminology used in the *Mutual Assistance in Criminal Matters Act 1987* (Mutual Assistance Act) by the FCFC Consequentials Act. This amendment to the heading appropriately reflects amended Regulation 3.

Item [92] – Subregulations 3(1), (3) and (4)

Item 92 amends subregulations 3(1), (3) and (4) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Regulation 3 sets

out the power of a magistrate or eligible FCC Judge to issue a summons for a witness or documents.

This amending item reflects the change made to the terminology in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is ‘eligible Federal Circuit Court Judge’, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term ‘eligible Judge’, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amending item reflects the continuation of the FCC as the FCFC (Division 2) and amendments to the Mutual Assistance Act by the FCFC Consequentials Act.

Item [93] – Regulation 4

Item 93 amends regulation 4 by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Regulation 4 sets out the duties of a person summoned to attend under regulation 3. This amendment reflects a change made to the terminology used in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2) and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. This amendment does not change the operation of the regulation.

Item [94] – Subregulations 5(1), (2) and (4)

Item 94 amends subregulations 5(1), (2) and (4) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Regulation 5 sets out the circumstances in which a person summoned to attend under regulation 3 can be apprehended if that person fails to attend. This amending item reflects a change to the terminology used in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amending item would reflect the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. This amending item would not change the operation of the subregulations.

Item [95] – Subregulations 6(1), 7(1) and 8(1)

Item 95 amends subregulations 6(1), 7(1) and 8(1) by omitting the references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Subregulation 6(1) provides the circumstances in which a person who attends in accordance with a summons under regulation 3 is entitled to be paid witness fees and travel allowances.

Subregulation 7(1) provides that a magistrate or eligible FCC Judge can administer an oath or affirmation to, and examine, any person appearing as a witness before them.

Subregulation 8(1) creates offences in relation to persons who are summoned to attend before a magistrate or eligible FCC Judge.

This amending item reflects a change made to the terminology used in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amending item reflect the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by FCFC Consequentials Act.

Item [96] – Regulation 9 (heading)

Item 96 repeals the heading of Regulation 9 ‘Offences in relation to Magistrates or eligible Federal Circuit Court Judges’ and replaces it with new heading ‘Offences in relation to Magistrates or eligible Judges’.

Regulation 9 will be amended by Item 97 of Schedule 2 to reflect a change made to the terminology used in the Mutual Assistance Act by the FCFC Consequentials Act. This amendment to the heading appropriately reflects amended Regulation 9.

Item [97] – Regulation 9

Item 97 amends Regulation 9 by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Regulation 9 creates offences against a magistrate or eligible FCC Judge performing functions under Mutual Assistance Act. This amendment reflects a change made to the terminology in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. The amendment does not change the operation of the regulation.

Item [98] – Subregulations 10(2), (3) and (4)

Item 98 amends subregulations 10(2), (3) and (4) by omitting the references to ‘eligible Federal Circuit Court Judge’ and replacing these with ‘eligible Judge’. Subregulations 10(2), (3) and (4) set out protections for barristers, solicitors, persons appearing unrepresented or persons summoned to attend as a witness before a magistrate or eligible FCC Judge. This amending item reflects a change made to the terminology in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amending item reflects the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act.

Item [99] – Subregulation 11(1)

Item 99 amends subregulation 11(1) by omitting references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Subregulation 11(1) sets out the circumstances in which a recognisance can be declared to be forfeited. This amendment reflects a change made to the terminology used in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. The amendment does not change the operation of the subregulation.

Item [100] – Schedule 1 (Form 1)

Item 100 amends paragraph (b) of the note in Form 1 by omitting the reference to ‘eligible Federal Circuit Court Judge’ and substituting it with ‘eligible Judge’. Form 1 is used to issue a summons under regulation 3 of the *Mutual Assistance in Criminal Matters Regulations 1988* (the Mutual Assistance Regulations). This amendment reflects a change made to the terminology in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amendment reflects the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. The amendment does not change the substance of Form 1.

Item [101] – Schedule 1 (Form 2)

Item 101 amends Form 2 by omitting references to ‘eligible Federal Circuit Court Judge’ and substituting these with ‘eligible Judge’. Form 2 is used to issue warrants under regulation 5 of the Mutual Assistance Regulations. This amending item reflects a change made to the terminology in the Mutual Assistance Act by the FCFC Consequentials Act (Item 581 of Schedule 2). The existing term used in the Mutual Assistance Act is *eligible Federal Circuit Court Judge*, defined to mean a Judge of the FCC in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) are in force. On commencement of the FCFC Acts, this term will be replaced with the term *eligible Judge*, defined to mean a Judge of the FCFC (Division 2) in relation to whom a consent under subsection 38ZC(1) and a nomination under subsection 38ZC(2) of the Mutual Assistance Act are in force.

This amending item reflects the continuation of the FCC as the FCFC (Division 2), and amendments to the Mutual Assistance Act by the FCFC Consequentials Act. The amendment does not change the substance of Form 2.

National Consumer Credit Protection Regulations 2010

Item [102] – Paragraph 36(5)(c)

Item 102 amends paragraph 36(5)(c) by omitting the reference to the ‘Federal Circuit Court’ and substituting it with ‘Federal Circuit and Family Court of Australia (Division 2)’. Regulation 36 specifies where court proceedings pursuant to section 330 of the *National Consumer Credit Protection Act 2009* should be filed if certain conditions are met, with paragraph 36(5) prescribing where proceedings should be filed.

This amendment reflects the continuation of the FCC as the FCFC (Division 2), and does not change the operation of the paragraph.

Superannuation (CSS) Eligible Employees Regulations 1976

Item [103] – Paragraph 4(1)(zr)

Item 103 repeals paragraph 4(1)(zr) and replaces it with a new paragraph 4(1)(zr) that prescribes ‘a person who is a Judge of the Federal Circuit and Family Court of Australia (Division 2)’ as a class of persons who are not included in the definition of eligible employee under the *Superannuation Act 1976*. Existing paragraph 4(1)(zr) refers to ‘a person who, if a body known as the Federal Circuit Court of Australia is established by statute, becomes a Judge of the Federal Circuit Court of Australia’.

This amendment reflects the continuation of Judges of the FCC as Judges of the FCFC (Division 2). Existing paragraph 4(1)(zr) reflects that previous amendments to paragraph 4(1)(zr) were contingent on the commencement of the relevant court. This amendment reflects that this instrument will commence at the same time as the commencement of the FCFC (Division 2), and, therefore, contingent wording is not required.

Superannuation Industry (Supervision) Regulations 1994

Item [104] – Part 3 of Schedule 1AA

Item 104 amends Part 3 of Schedule 1AA by omitting the reference to the ‘*Federal Magistrates Act 1999*’ and substituting it with the ‘*Federal Circuit and Family Court of Australia Act 2021*’. Schedule 1AA provides for exempt public sector superannuation schemes (EPSSS), which are public sector superannuation schemes that are exempt from regulation under the *Superannuation Industry (Supervision) Act 1993* and the *Superannuation (Resolution of Complaints) Act 1993*, in recognition that they are already subject to regulation under their enabling legislation. Part 3 of Schedule 1AA lists EPSSS for the 1997-98 year of income and subsequent years of income.

The *Federal Magistrates Act 1999* is currently listed in Schedule 1AA to ensure that the death and disability arrangements for Federal Magistrates are treated as an EPSSS. In 2012, this Act was renamed the *Federal Circuit Court of Australia Act 1999* by the *Federal Circuit Court of Australia Legislation Amendment Act 2012*. The *Federal Circuit Court of Australia Act 1999* will be repealed by the FCFC Consequentials Act (Schedule 3) and the FCFC Act will continue the death and disability arrangements for Judges of the FCFC (Division 2) under the new court structure.

Item 104 inserts a reference to the FCFC Act in Schedule 1AA to ensure that the death and disability arrangements for Judges of the FCFC (Division 2) are treated as an EPSS. This amendment reflects the continuation of the FCC as the FCFC (Division 2).

Trans-Tasman Proceedings Regulation 2012

Item [105] – Paragraph 8(a)

Item 105 repeals paragraph 8(a) which refers to ‘the Federal Circuit Court of Australia’ and substitutes it with a new paragraph 8(a) which refers to ‘the Federal Circuit and Family Court of Australia (Division 2)’. Regulation 8 sets out the Australian courts to which an application of interim relief may be made under paragraph 25(d) of the *Trans-Tasman Proceedings Act 2010*. This amendment reflects the continuation of the FCC as the FCFC (Division 2), and does not change the operation of the regulation.

Part 2—Amendments of listed provisions

Family Law (Child Protection Convention) Regulations 2003

Item [106] – Amendments of listed provisions—Family Law (Child Protection Convention) Regulations 2003

Item 106 omits all references to *Registrar* throughout the *Family Law (Child Protection Convention) Regulations 2003* and substitutes these with *relevant Registrar*. Item 46 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 46 of Schedule 2 for an explanation of this change.

Family Law Regulations 1984

Item [107] – Amendments of listed provisions—Family Law Regulations 1984

Item 107 omits all references to *registrar* and *Registrar* throughout the *Family Law Regulations 1984* and substitutes these with *relevant Registrar*. Item 68 of Schedule 2 inserts a new definition of *relevant Registrar*. See Item 68 of Schedule 2 for an explanation of this change.

Statement of Compatibility with Human Rights

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

Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021

This Disallowable 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 Disallowable Legislative Instrument

The *Federal Circuit and Family Court of Australia Legislation (Consequential Amendments and Other Measures) Regulations 2021* (the instrument) amends family law and court-related regulations to ensure that they continue to operate effectively following the commencement of the *Federal Circuit and Family Court of Australia Act 2021* and the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* (the FCFC Acts). The instrument also makes minor and consequential amendments to other Commonwealth regulations to reflect the commencement of the Federal Circuit and Family Court of Australia (FCFC).

Under the FCFC Acts, the Family Court of Australia (Family Court) and the Federal Circuit Court (FCC) are brought together into a unified administrative structure, the FCFC. The FCFC (Division 1) is a continuation of the Family Court and the FCFC (Division 2) is a continuation of the FCC.

The FCFC Acts establish the FCFC (Division 2) as the single point of entry into the federal family law courts. Matters would be filed in the FCFC (Division 2) and then transferred to the FCFC (Division 1) as appropriate. Additionally, the legislation provides for the making of common rules of courts, practice notes and directions to create an effective internal case management approach in family law. A new approach to appeals has also been legislated. Under this approach, all FCFC (Division 1) judges will be empowered to exercise family law appellate jurisdiction, rather than there being a designated Appeal Division. Further, the default position will be that appeals from decisions of the FCFC (Division 2) will be heard by a single judge, rather than by a Full Court.

The amendments made by the instrument reflect key reforms under the FCFC Acts. This includes the continuation of the Family Court and the FCC as the FCFC (Division 1) and the FCFC (Division 2), respectively, the establishment of the FCFC (Division 2) as the single point of entry into federal family law courts, the revised appeals pathway, and changes to the legislative framework for family law and the federal court system.

The instrument also makes changes to the family law court fees which are prescribed in regulations. Fees for divorce applications in the Family Court are reduced to align with those

payable in the FCC when those courts continue operation as the FCFC (Division 1) and FCFC (Division 2), respectively.

In light of this fee change, the instrument also updates all family law court fees in the text of the *Family Law (Fees) Regulation 2012* (Fee Regulations), to reflect the fees payable as at 1 July 2021, after accounting for annual increases for indexation since 1 July 2018 (when the fees in this regulation were last updated). Annual increases to fees to account for indexation is prescribed by law and are gazetted. In addition, the courts generally publish the latest fees on their respective websites. This instrument will update the text of the Fee Regulations to reflect the fee amounts already payable by court-users as at 1 July 2021 to enhance readability.

Human rights implications

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

The new family court fees essentially maintain the current amounts payable by court-users with changes to reflect the new court structure, except in relation to divorce fees which are reduced for applications in the Family Court when it continues as the FCFC (Division 1). Therefore the fee changes do not engage any of the applicable rights or freedoms, including the implied right to access justice.

Conclusion

The Regulations are compatible with human rights as they do not raise any human rights issues.