

1999

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

**FEDERAL MAGISTRATES BILL 1999**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and New Clauses to be Moved on Behalf of the Government

(Circulated by the authority of the Attorney-General,  
the Honourable Daryl Williams AM QC MP)

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## AMENDMENTS TO THE FEDERAL MAGISTRATES BILL 1999

### OUTLINE OF AMENDMENTS

The Bill establishes the Federal Magistrates Court.

Clause 20 of the Bill deals with appeals from decisions of the Federal Magistrates Court. Proposed amendment 1 clarifies the meaning of this clause and proposed amendment 2 adds another subclause to this clause.

Clause 60 of the Bill deals with the making of affidavits for use in proceedings in the Federal Magistrates Court. Amendments 3 and 4 expand the range of persons who can witness affidavits outside Australia.

### FINANCIAL IMPACT STATEMENT

The amendments to the Bill contain no significant financial impact.

## NOTES ON AMENDMENTS

### **Amendment 1**

This amendment is to clause 20, which deals with appeals. It amends subclause 1 to ensure that it is clear that the clause only prevents appeals being brought to the High Court directly from judgments of the Federal Magistrates Court. By amendments made in the Federal Magistrates (Consequential Amendments) Bill 1999 to the *Family Law Court 1975* and the *Federal Court of Australia Act 1976*, appeals from judgments of the Federal Magistrates Court would be able to be brought in the Family Court or the Federal Court, and the normal avenues of appeal to the High Court from judgments of those courts would thereafter apply.

### **Amendment 2**

This amendment adds a subclause 3 to clause 20. In the event that the High Court were to find that the effect of section 73 of the Constitution was that it is not possible to restrict appeals to the High Court from decisions of the Federal Magistrates Court by channelling them first through the Family and Federal Courts, this amendment would ensure that appeals could only be brought directly from the Federal Magistrates Court to the High Court if the High Court granted special leave to do so.

### **Amendment 3**

This amendment adds paragraphs (ca) and (cb) to subclause 60(2). Subclause 60(2) deals with the categories of persons who can witness affidavits outside Australia for use in proceedings in the Federal Magistrates Court. This amendment allows persons referred to in paragraphs 3(c) or (d) of the *Consular Fees Act 1955* to witness affidavits. These provisions cover employees of the Commonwealth or the Australian Trade Commission authorised in writing by the Secretary to the Department of Foreign Affairs and Trade to carry out the consular acts described in the Consular Fees Regulations.

The *Consular Fees Act 1955* was amended in 1997 to add in paragraphs (c) and (d) to section 3, which amendments enable locally engaged staff to undertake the consular acts specified in the regulations. The Department of Foreign Affairs and Trade has identified various Commonwealth and State legislation which needs amending to allow such staff to undertake the consular acts.

This amendment will bring the provisions in the Federal Magistrates Bill 1999 regarding the witnessing of affidavits outside Australia into line with amendments to be made to various other Acts regarding the witnessing of documents, by allowing locally engaged staff at Australian consular offices to undertake such tasks.

### **Amendment 4**

This amendment is consequential upon amendment 3.