

## **EXPLANATORY STATEMENT**

### *Family Law Act 1975*

#### Proclamation

This Proclamation sets 11 February 2012 as the date on and from which the Family Court of Australia under paragraph 31(1)(aa) of the *Family Law Act 1975* (the Act) may exercise its jurisdiction in respect to de facto financial causes instituted under the Act in New South Wales, Victoria, Queensland, South Australia, Tasmania, Australian Capital Territory, Northern Territory and Norfolk Island.

The Act provides for divorce and the resolution of disputes arising from the breakdown of a marriage and relationships, including disputes over the division of property and parental responsibility for children.

Sub-section 40(1) of the Act provides that the jurisdiction of the Family Court of Australia under the Act shall not be exercised except in accordance with a Proclamation.

Sub-section 40(2) then provides for the power of the Governor-General to fix a date, by Proclamation, from which the relevant jurisdiction can be exercised.

Paragraph 31(1)(aa) confers original jurisdiction on the Family Court of Australia with respect to matters arising under the Act in respect to de facto financial causes instituted under the Act.

The Proclamation was drafted by the Office of Legislative Drafting and Publishing. No consultation was required given the administrative nature of the instrument.

The Proclamation is registered on the Federal Register of Legislative Instruments under the *Legislative Instruments Act 2003*.

Authority: Subsection 40(2) of the *Family Law Act 1975*.

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

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

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

This Proclamation 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 Proclamation**

The purpose of the Proclamation is to enable the Family Court of Australia to exercise its original jurisdiction with respect to de facto financial causes conferred on it in 2008 by the *Family Law Amendment (De Facto Financial Matters and Other Measures) Act 2008* to provide for opposite-sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters.

#### **Human rights implications**

The Proclamation promotes the rights of equality and non-discrimination contained in Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR). These Articles are aimed at ensuring that people are treated equally before the law and without discrimination. The Proclamation promotes these rights as it enables the Family Court of Australia to deal with matters concerning de facto financial arrangements upon breakdown of those relationships in the same way as married couples. The Proclamation means that the Family Court can exercise its jurisdiction to provide de facto couples covered by the Act, including same-sex de facto couples, a nationally consistent financial settlement regime.

The Proclamation is also consistent with the right to a fair trial in Article 14(1) of the ICCPR. Without the Proclamation, the financial arrangements between separated de facto couples would be subject to State and Territory law, and these laws vary between jurisdictions. Enabling the Family Court to exercise its jurisdiction minimises jurisdictional disputes and uncertainties that sometimes impede settlement of these matters under State and Territory law.

#### **Conclusion**

The Proclamation is compatible with human rights because it advances the protection of human rights.