

FAMILY LAW AMENDMENT (SCALE OF COSTS) RULES 2013

**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 282, 2013**

**Issued by the authority of the Judges of the Family Court of  
Australia**

Section 123 of the *Family Law Act 1975 (the Act)* provides that the Judges of the Family Court of Australia, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Family Court and other courts exercising jurisdiction under the Act. The Judges of the Court made the Family Law Rules 2004, which commenced on 29 March 2004. These amending Rules, the Family Law Amendment (Scale of Costs) Rules 2013, have now been made by the Judges to amend the Family Law Rules 2004.

Section 123(2) of the Act provides that the Legislative Instruments Act 2003 (apart from sections 5-7, 10, 11 and 16) applies to Rules of Court. In this application, references to a legislative instrument in the Act are to be read as references to Rules and references to a Rule maker as references to the Chief Justice.

The Legislative Instruments Act provides for certain consultation obligations when Rules are made. The Chief Justice has authorised the Court's Rules Advisory Committee to undertake consultation on Rules matters on her behalf.

Schedule 3 of the Family Law Rules 2004 specifies the amount which lawyers, who are entitled to practise in the Family Court, may charge and be allowed on assessment of costs in respect of proceedings in the Court. The amounts in the Schedule were last varied by Select Legislative Instrument 2012 No. 331 made on 19 December 2012, and which came into operation on 1 January 2013.

The Joint Costs Advisory Committee (JCAC) was established in 2007 to review annually and recommend variations in the quantum of costs contained in the Rules made by the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia. It comprises representatives of those courts. In conducting its reviews, the JCAC applies a formula which has regard to movements in wages and salaries and other costs of solicitors' practices.

In its 2013 annual review (as in previous reviews), the JCAC wrote to the Commonwealth Attorney-General's Department, the Law Council of Australia, the National Association of Community Legal Centres and National Legal Aid inviting them and their respective constituent bodies to make submissions to the review. A notice of the review was also placed on the website of each court. Following its annual review, the JCAC provided a report in September 2013 to the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia recommending an increase of

2.7% to the solicitors' costs provided for in the Rules of each Court. Issues raised in consultations were addressed in the report.

The Court has agreed to the recommendation of the Committee for an increase of 2.7% to the solicitors' costs as set out in Schedule 3 of the Family Law Rules 2004, which is to come into operation on Wednesday, 1 January 2014 and will apply in respect of all work done and services performed by lawyers after Tuesday, 31 December 2013.

Section 9 of the Legislative Instruments Act 2003 provides that Rules of Court made for the Family Court of Australia are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

## **DETAILS OF AMENDMENTS**

### **Rule 1 Name of Rules**

The name of the rules is the *Family Law Amendment (Scale of Costs) Rules 2013*.

### **Rule 2 Commencement**

Rules 1 – 4 and Schedule 1 commence on 1 January 2014.

### **Rule 3 Authority**

The Rules are made under the *Family Law Act 1975*.

### **Rule 4 Schedule**

Schedule 1 amends the *Family Law Rules 2004*.

## **Schedule 1 – Amendments commencing on 1 January 2014**

### **[1] Schedule 3 is repealed and substituted with an itemized scale of costs**

After the heading of this Schedule there is a note that states this schedule applies to work done and services performed after 1 July 2006.

This amendment repeals that note after the Schedule heading and the historical itemised scale of costs that followed to avoid confusion.

A note after the Schedule heading confirms that Schedule 3 as in force from 1 July 2006 until the day on which these Rules are registered (i.e. the day before Rules 1 to 4 and Schedule 1 commence) continues to apply for work done and services performed during that period. The amended Schedule 3 applies for work done and services performed from the day after these Rules are registered (i.e. the day Rules 1 to 4 and Schedule 1 commence).