

# **Federal Magistrates Amendment Regulations 2004 (No. 1)**

## **2004 No. 292**

### **EXPLANATORY STATEMENT**

#### **STATUTORY RULES 2004 NO. 292**

Issued by the authority of the Attorney-General

*Federal Magistrates Act 1999*

*Federal Magistrates Amendment Regulations 2004 (No. 1)*

The *Federal Magistrates Act 1999* (the Act) establishes the Federal Magistrates Court as a court of record and a court of law and equity.

Section 120 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act, and in particular, prescribing the fees to be paid in respect of proceedings in the Court or the services and execution of the process of the Court by officers of the Court.

Pursuant to section 120 of the Act, the Governor-General made the *Federal Magistrates Regulations 2000* ('the Principal Regulations'), prescribing certain fees in relation to Court proceedings and making provision in relation to payment of those fees.

The Federal Magistrates Amendment Regulations 2004 ('the Amendment Regulations') amend the Principal Regulations by prescribing specific fees for filing an application for an order for substituted service of a bankruptcy notice.

Under the Principal Regulations there are no specific fees for filing an application for an order for substituted service of a bankruptcy notice. In at least some cases the fees being charged for this service are the fees prescribed for filing a document by which a proceeding in the Federal Magistrates Court seeking final orders is commenced - \$576 for a corporation and \$288 for a non-corporation.

Similarly, in the Federal Court of Australia, the fee currently charged for filing an application for an order for substituted service of a bankruptcy notice is the fee for filing an application commencing proceedings. Certain provisions of the *Federal Court of Australia Regulations 2004* introduce specific new fees for filing an application for an order for substituted service of a bankruptcy notice. These fees are \$298 for a corporation and \$149 for a non-corporation. The reduction in the fees in the Federal Court is to be accompanied by a proportionate reduction in the fees in the Federal Magistrates Court in order to reduce the likelihood of bankruptcy work moving from the Federal Magistrates Court to the Federal Court,

#### **Regulation 1 - Name of Regulations**

Regulation 1 provides for the Amendment Regulations to be named the *Federal Magistrates Amendment Regulations 2004 (No. 1)*.

#### **Regulation 2 - Commencement**

Regulation 2 provides for the Amendment Regulations to commence on 1 November 2004. This is the same commencement date as for the Federal Court of Australia Regulations 2004, which provide for the new fees for filing an application for an order for substituted service of a bankruptcy notice in the Federal Court.

#### **Regulation 3 - Amendment of *Federal Magistrates Regulations 2000***

Regulation 3 provides for schedule 1 to amend the Principal Regulations.

## **Schedule 1 - Amendment**

### **Item 1 - Schedule 1, after item 10 and before the note**

Item 1 of schedule 1 provides for the new fees for filing an application for an order for substituted service of a bankruptcy notice to be inserted between item 10 of schedule 1 of the Principal Regulations and the note at the bottom of schedule 1 of the Principal Regulations. The fee is \$150 for a corporation and \$75 for a non-corporation.

Inserting this fee into the Principal Regulations will retain the approximate ratio between the fees of the Federal Court and the Federal Magistrates Court for this service.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

### **Statutory Rule Draft No:**