

EXPLANATORY STATEMENT

Select Legislative Instrument 2010 No. 165

Issued by the Authority of the Attorney-General

Family Law Act 1975
Family Law Amendment Regulations 2010 (No. 2)

Subsection 125(1) of the *Family Law Act 1975* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all 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.

The purpose of the amendments is to amend the *Family Law Regulations 1984* (the Principal Regulations) to introduce a hearing fee for each day of hearing, other than the first day of hearing. The fees listed in regulations 11 and 16 of the Principal Regulations, which relate to various applications and court services, will also be increased. The changes also implement new fees for consent order applications.

These changes are part of a suite of measures the government is implementing as part of its access to justice framework in the 2010-11 Budget. The framework is based on principles of accessibility, appropriateness, equity, efficiency and effectiveness. The access to justice measures in the 2010-11 Budget are focussed on directing people away from high-cost litigation to early intervention services, which help people resolve disputes before they escalate to larger problems.

The amendments also restructure the way fees are described so that fees are relocated from Regulations 11 and 16 of the Principal Regulations to proposed new Schedule 1AA in Item [9].

The new fee amounts in Schedule 1AA of the Regulations also incorporate biennial increases in fees. These biennial increases occur on each biennial anniversary of 1 July 1996, as required by Regulation 21AA of the Principal Regulations. The biennial increases are calculated in accordance with the formula specified in Regulation 21AB of the Principal Regulations.

The fee amounts listed in the Principal Regulations are not up to date, due to the effect of past biennial increases that have not been recorded in the Principal Regulations. The fee amounts listed in the *Commonwealth Government Notices Gazette*, No. GN 21, 28 May 2008 are the actual fees in force until 1 July 2010. The fee increases have therefore been applied to the gazetted fee amounts, rather than the fee amounts in the Principal Regulations.

Details of the Regulations are set out in the Attachment.

The Act specifies no conditions that need to be satisfied before the power to make the proposed Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence 1 July 2010.

The Family Court of Australia has been consulted in relation to these amendments.

Details of the *Family Law Amendment Regulations 2010 (No. 2)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Family Law Amendment Regulations 2010 (No. 2)*.

Regulation 2 – Commencement

This regulation provides for the Regulations to commence on 1 July 2010.

Regulation 3 – Amendment of *Family Law Regulations 1984*

This regulation provides for the amendment of the *Family Law Regulations 1984* (the Principal Regulations) as set out in Schedule 1.

Schedule 1 – Amendments

Item [1] – Subregulations 11(1), (1AA) and (1A), including the notes

This item will replace subregulations 11(1), (1AA) and (1A) of the Principal Regulations with a provision explaining that fee amounts are set out in new Schedule 1AA, which will be introduced by item [9] below.

Item [2] – Subregulation 11(5)

This item will replace references to subregulations 11(1), (1AA) and (1A) in subregulation 11(5) with a reference to Schedule 1AA. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which will be implemented by item [9] below.

Item [3] – Subregulation (6)

This item will replace references to subregulations 11(1), (1AA) and (1A) in subregulation 11(6) with a reference to Schedule 1AA. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which will be implemented by item [9] below.

Item [4] – Subregulation 11(7)

This item will replace references to subregulations 11(1), (1AA) and (1A) in subregulation 11(7) with a reference to Schedule 1AA. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which will be implemented by item [9] below.

This item will also ensure that fee waivers and fee exemptions would not apply in relation to applications for consent orders. This is because the process of ascertaining whether a litigant is eligible for a fee waiver or exemption in relation to

these applications would be unduly onerous for courts to administer, given that the fee for consent order applications is only \$80.

Item [5] – Subregulation 11(8)

This item will replace references to subregulations 11(1), (1AA) and (1A) in subregulation 11(8) with a reference to Schedule 1AA. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which will be implemented by item [9] below.

Item [6] – Subregulation 16(1)

This item will replace subregulation 16(1) with a provision explaining that the fee amount for an appeal under section 94 or 94AAA of the Act is set out in Schedule 1AA in item [9] of the proposed amendments.

Item [7] – Regulation 21AA

This item will replace references to subregulations 11(1), (1AA) and (1A) and 16(1) in Regulation 21AA with a reference to Schedule 1AA in item [9]. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which will be implemented by item [9] below.

This item will also provide that the biennial increase in fees is not to apply to the proposed new fee for consent order applications until 1 July 2012. This is because the 1 July 2010 biennial increase in fees should only apply to fee items that existed prior to 1 July 2010.

Item [8] – Subregulation 21AB(1), definition of *fee*

This item will replace references to regulations 11 and 16 in subregulation 21AB(1) with a reference to Schedule 1AA. This is because of the proposed relocation of all fee amounts to Schedule 1AA, which would be implemented by item [9] below.

Item [9] – Before schedule 1

This item will implement new hearing fees for days other than the first day of hearing. This item will also increase the fees listed in the fee schedule. This item will also implement new fees for consent order applications. These changes are part of a suite of measures the government is implementing as part of its access to justice framework in the 2010-11 Budget. The framework is based on principles of accessibility, appropriateness, equity, efficiency and effectiveness. The access to justice measures in the 2010-11 Budget are focussed on directing people away from high-cost litigation to early intervention services, which help people resolve disputes before they escalate to larger problems.

The increases also incorporate new amounts following the 1 July 2010 biennial increase in fees.