

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Family Law (Fees) Regulation 2012

1. This Regulation 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 Regulation

2. The purpose of the *Family Law (Fees) Regulation 2012* is to provide a single regulation in family law applying to proceedings under the *Family Law Act 1975* in the Family Court of Australia, the Federal Magistrates Court of Australia and other courts that exercise jurisdiction under the Family Law Act, and also to implement a range of reforms to court fees in proceedings under that Act, including:

- an increase in the fee for an application for a divorce in the Federal Magistrates Court of Australia from \$577 to \$800
- an increase in the fee for filing a consent order in the Family Court of Australia from \$84 to \$145
- general increases to most other existing fees by approximately 20 percent
- removing the reduced fee of \$60 payable by legal aid recipients and people on Commonwealth income support under the previous regulations, and providing that those persons need not pay court fees (with the exception of filing a divorce or nullity of marriage application), and
- introducing new fees targeting resource intensive processes to encourage court users to utilise alternative dispute processes.

3. These measures are part of wider reforms to the federal courts announced in the 2012-13 Budget. These measures include an increase to federal court fees to ensure there is a greater contribution by court users to the costs of running the courts, and lower fees or exemptions from fees in some cases to assist access to the courts.

Human rights implications

4. The Regulation engages the right to access to justice, which is implied in the right to effective remedy under Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR).

5. Article 2(3) of the ICCPR protects the right to effective remedy for violation of rights or freedoms recognised by the ICCPR, and provides for a person's right to be determined by competent judicial authorities, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.

6. The ICCPR recognises a number of rights and freedoms which may be relevant to family law proceedings:

- Article 2(3)(b) provides that determination of violation of rights must be by competent judicial, administrative or legislative authorities
- Article 23 provides that state parties shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution, in the case of dissolution, provision shall be made for the necessary protection of any children, and
- Article 24 provides that every child shall have the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

7. The right to access to justice is not absolute.

8. The Regulation both promotes and limits elements of this right to access to justice.

9. The Regulation advances the right to access to justice by providing a fee exemption for certain disadvantaged litigants specified in the proposed Regulation or where payment of the fee would cause financial hardship to the individual. These persons will be able to access court services without paying court fees. These disadvantaged persons include recipients of legal aid, people receiving Commonwealth income support, and minors under 18 years of age.

10. Further, the Regulation promotes access to justice to remedy violations of applicable rights or freedoms by providing that fees are not payable in a number of proceedings. These proceedings include matters for which an international convention to which Australia is party provides that no fee is to be payable, child support and maintenance, and spousal maintenance.

11. The Regulation introduces new fees and increases particular fees in the Family Court of Australia, the Federal Magistrates Court of Australia and other courts which exercise jurisdiction under the Family Law Act (the Courts). This may limit some persons' right of access to remedies which are enforceable by the Courts but this is balanced by the fees changes being reasonable, necessary and proportionate.

12. The Regulation introduces fees for resource intensive processes, which are reasonable in order to distribute court resources equitably and to send pricing signals to court users to encourage them to utilise alternative dispute processes. For example, fees for subpoenas and interim orders would encourage parties to utilise court processes more efficiently. The new fee for conciliation conferences are reasonable and proportionate to better reflect that there is cost of providing the service. At the same time, the Regulations provide exemptions from fees for disadvantaged litigants as discussed above.

13. Further, the changes to court fees are necessary to achieve a legitimate objective. Increased fees provide for court users to contribute to the running of the Courts as some of the revenue raised by fees will be returned to the Courts. The changes will provide for greater accessibility in general by ensuring the Courts are able to maintain vital services through increased funding to them.

Conclusion

14. The Regulation is compatible with human rights because it advances the protection of human rights, in particular the right to access to justice, and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

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