

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 284

Issued by Authority of the Attorney-General

Family Law Act 1975

Federal Court of Australia Act 1976

Federal Circuit Court of Australia Act 1999

Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2)

Subsection 125(1) of the *Family Law Act 1975* (the Family Law Act), subsection 60(1) of the *Federal Court of Australia Act 1976* (the Federal Court Act) and subsection 120(1) of the *Federal Circuit Court of Australia Act 1999* (the Federal Circuit Court Act) provide that the Governor-General may make regulations prescribing matters required or permitted by these Acts to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to these Acts. This includes the prescription of fees payable in respect of court proceedings.

The power under subsection 60(1) of the Federal Court Act also extends to making provision for remuneration and allowances payable to jurors in criminal proceedings in the Federal Court. The power also extends to prescribing a monetary limit for contracts able to be made by the Chief Justice of the Federal Court, providing for payments to be made or received by the Commonwealth, without the authority of the Attorney-General.

The power under subsection 120(1) of the Federal Circuit Court Act also extends to making provision modifying or adapting the provisions of the *Legislative Instruments Act 2003* in their application to the Federal Circuit Court of Australia (the Federal Circuit Court).

Pursuant to subsection 125(1) of the Family Law Act, the Governor-General made the *Family Law Regulations 1984* prescribing, amongst other things, court fees payable in respect of proceedings under the Family Law Act and making provision in relation to payment of those fees.

Pursuant to subsection 60(1) of the Federal Court Act and subsection 120(1) of the Federal Circuit Court Act, the Governor-General made the *Federal Court of Australia Regulations 2004* (the Federal Court Regulations) and the *Federal Magistrates Regulations 2000* (the Federal Magistrates Regulations) prior to the change of name to the Federal Circuit Court on 12 April 2013. These Regulations prescribed fees payable in respect of Federal Court and Federal Circuit Court proceedings, respectively, and made provision in relation to payment of those fees. The Federal Court Regulations also made provision for remuneration and allowances payable to jurors in criminal proceedings in the Federal Court, and prescribed an upper limit of \$1,000,000 for contracts able to be made by the Chief Justice of the Federal Court providing for payments to be made or received by the

Commonwealth. The Federal Magistrates Regulations also modified section 14 of the Legislative Instruments Act in its application to the Federal Circuit Court.

Pursuant to subsection 125(1) of the Family Law Act, subsection 60(1) of the Federal Court Act and subsection 120(1) of the Federal Circuit Court Act, the Governor-General made the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 1)*, to commence on the commencement of particular provisions of the *Trans-Tasman Proceedings Act 2010*, to amend the Family Law Regulations, the Federal Court Regulations and the Federal Magistrates Regulations respectively, to provide for a fee for filing an application to register a judgement under the Trans-Tasman Proceedings Act.

The *Federal Court and Federal Circuit Court Regulation 2012* repeals and replaces the Federal Court Regulations and the Federal Magistrates Regulations.

The *Family Law Amendment Regulation 2012 (No. 4)* repeals the existing provisions in the Family Law Regulations making provision in relation to court fees. The *Family Law (Fees) Regulation 2012* replaces those provisions.

The *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law (Fees) Regulation 2012* are key elements of the court fees reform package, part of wider reforms to the federal courts announced in the 2012-13 Budget.

The purpose of the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No.2)* (the Regulation) is to:

- repeal, on the commencement of the Trans-Tasman Proceedings Act, the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 1)*; and
- amend the *Federal Court and Federal Circuit Court Regulation 2012*, and the *Family Law (Fees) Regulation 2012*, to provide for fees for filing of applications under the Trans-Tasman Proceedings Act, including an application to register a judgement under that Act.

The Regulation makes no change to the \$95 fee for the registration of a New Zealand judgment in the Family Court of Australia, Federal Court of Australia or the Federal Circuit Court of Australia on commencement of the Trans-Tasman Proceedings Act.

The Regulation updates amendments to refer to the *Family Law (Fees) Regulation 2012* and the *Federal Court and Federal Circuit Court Regulation 2012* where the relevant fee provisions are located.

The Regulation clarifies that, where proceedings are commenced in Australia under the Trans-Tasman Proceedings Act, the fee payable is the lower fee for commencing interim matters, rather than the fee for initiating an application in federal law matters or the fee for an application seeking final orders in family law.

The Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia were consulted on the content of the Regulation. The consultation involved exchange of correspondence.

The Office of Best Practice Regulation was consulted on the court fees reform package and advised that no Regulation Impact Statement was required.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the commencement of sections 3 to 110 of the Trans-Tasman Proceedings Act, which will commence on a day to be fixed by Proclamation.

Details of the Regulation are as follows:

Section 1 – Name of regulation

This section provides that the title of the Regulation is the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 2)*.

Section 2 – Commencement

This section provides that the Regulation commences on the commencement of sections 3 to 110 of the Trans-Tasman Proceedings Act.

Section 3 – Repeal

This section repeals the *Trans-Tasman Proceedings Legislation Amendment Regulation 2012 (No. 1)*.

Section 4 – Amendment of *Family Law (Fees) Regulation 2012*

This section amends the Family Law (Fees) Regulation as set out in Schedule 1.

Section 5 – Amendment of *Federal Court and Federal Circuit Court Regulation 2012*

This section amends the *Federal Court and Federal Circuit Court Regulation 2012* as set out in Schedule 2.

Schedule 1 – Amendments of Family Law (Fees) Regulation 2012

Item [1] – Section 1.03, definition of *filing fee*

This item omits ‘10’ and inserts ‘10A’ to include the new fee for an application to register a New Zealand judgement under the Trans-Tasman Proceedings Act in the definition of ‘filing fee’.

Item [2] – Subsection 1.04(1)

This item amends subsection 1.04(1) to provide that the Family Law (Fees) Regulation also applies to the filing of an application lodged under the Trans-Tasman Proceedings Act on or after the commencement of sections 3 to 110 of that Act.

Item [3] – Subsection 2.04(1)

This item substitutes ‘1, 2 or 10A’ in place of ‘1 or 2’ in the bracketed words in the opening lines of subsection 2.04(1). This provides that a person will not be exempt under section 2.04 from payment of the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act. Subsection 2.04 exempts particular categories of persons, including recipients of legal aid and holders of certain concession cards, from payment of fees under the Family Law (Fees) Regulation.

Item [4] – Paragraph 2.05(1)(a)

This item substitutes ‘1, 2 or 10A’ in place of ‘1 or 2’ in the bracketed words in paragraph 2.05(1)(a). This provides that a Registrar or authorised officer will not be able to exempt an individual from payment of the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act on the grounds of financial hardship.

Item [5] – Schedule 1, item 4

This item, in substituting item 4 of Schedule 1 to the Family Law (Fees) Regulation, excludes the filing of an application under the Trans-Tasman Proceedings Act from the higher fee in item 4 for an originating application for a final order in parenting or family law financial proceedings. An application under the Trans-Tasman Proceedings Act will be made in the course of litigation in New Zealand, for which parties will pay the relevant New Zealand court fee as an originating application. An application under the Trans-Tasman Proceedings Act, under the next following amendment, attracts the lower interim order application fee.

Item [6] – Schedule 1, item 9

This item, in substituting item 9 of Schedule 1 to the Family Law (Fees) Regulation, provides that the filing of an application under the Trans-Tasman Proceedings Act attracts the lower interim order application fee of A\$105.

The application of the lower interim order fee recognises that an application will have already been filed in a New Zealand court and initiating application fees paid in New Zealand. To this end, this item clarifies that such applications in Australia should attract the lower fee for commencing interim matters, rather than the higher fee for an initiating application.

Item [7] – Schedule 1, after item 10

This item inserts an item 10A after item 10 in Schedule 1. This item 10A provides that the fee for filing an application to register a New Zealand judgement under the Trans-Tasman Proceedings Act is A\$95. This fee reflects the simplified process under the Trans-Tasman Proceedings Act and is aligned as closely as possible with the fee for registering an Australian judgement in New Zealand.

Schedule 2 – Amendments of *Federal Court and Federal Circuit Court Regulation 2012*

Item [1] – Section 1.03, definition of *filing fee*

This item omits ‘214’ and inserts ‘214A’ to include the new fee for an application to register a New Zealand judgement under the Trans-Tasman Proceedings Act in the definition of ‘filing fee’.

Item [2] – Subsection 2.05(1)

This item amends subsection 2.05(1) to provide that a person will not be exempt under section 2.05 from payment of the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act. Section 2.05 exempts particular categories of persons, including recipients of legal aid and holders of certain concession cards, from payment of fees under the *Federal Court and Federal Circuit Court Regulation 2012*.

Item [3] – Paragraph 2.06(1)(a)

This item amends paragraph 2.06(1)(a) to provide that a Registrar or authorised officer will not be able to exempt an individual from payment of the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act on the grounds of financial hardship.

Item [4] – Subsection 2.11(1)

This item amends subsection 2.11(1) to provide that the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act is payable in proceedings in the Federal Court in relation to which no filing fee is payable. No filing fee is payable, under paragraph 2.11(1)(a) of the *Federal Court and Federal Circuit Court Regulation 2012*, in relation to a proceeding in relation to a matter arising directly under a treaty, which may be remitted by the High Court to the Federal Court under section 44 of the *Judiciary Act 1903*.

Item [5] – Subsection 2.11(2)

This item amends subsection 2.11(2) to provide that the fee for registering a New Zealand judgement under the Trans-Tasman Proceedings Act is payable in proceedings in the Federal Circuit Court in relation to which no filing fee is payable. No filing fee is payable, under paragraphs 2.11(2)(a) or (b) of the *Federal Court and Federal Circuit Court Regulation 2012*, in relation to a proceeding in relation to a matter arising directly under a treaty, which may be remitted by the High Court either to:

- the Federal Circuit Court under section 44 of the Judiciary Act; or
- the Federal Court under that provision of the *Judiciary Act 1903*, and subsequently transferred by the Federal Court to the Federal Circuit Court under section 32AB of the Federal Court Act.

Item [6] – Schedule 1, item 101

This item excludes the filing of an application under the Trans-Tasman Proceedings Act from the higher fee in item 101 for an originating application commencing Federal Court

proceedings. An application under the Trans-Tasman Proceedings Act will be made in the course of litigation in New Zealand, for which parties will pay the relevant New Zealand court fee as an originating application. An application under the Trans-Tasman Proceedings Act, under the next following amendment, attracts the lower interlocutory order application fee set out in item 111 of Schedule 1 to the *Federal Court and Federal Circuit Court Regulation 2012*.

Item [7] – Schedule 1, item 111

This item, in substituting item 111 of Schedule 1 to the *Federal Court and Federal Circuit Court Regulation 2012* provides that the filing of an application under the Trans-Tasman Proceedings Act attracts the lower interlocutory order application fee of A\$1,450 (for a publicly listed company), A\$965 (for a corporation) and A\$395 (in any other case).

Item [8] – Schedule 1, after item 115B

This item inserts an item 115C after item 115B in Schedule 1. Item 115C provides that the fee for filing an application to register a New Zealand judgement under the Trans-Tasman Proceedings Act is A\$95.

Item [9] – Schedule 1, item 201

This item, in substituting item 201 of Schedule 1 to the *Federal Court and Federal Circuit Court Regulation 2012*, excludes the filing of an application under the Trans-Tasman Proceedings Act from the higher fee in item 201 for an originating application commencing Federal Circuit Court proceedings. An application under the Trans-Tasman Proceedings Act will be made in the course of litigation in New Zealand, for which parties will pay the relevant New Zealand court fee as an originating application. An application under the Trans-Tasman Proceedings Act, under the next following amendment, attracts the lower interlocutory order application fee under item 204 of the *Federal Court and Federal Circuit Court Regulation 2012*.

Item [10] – Schedule 1, item 204

This item, in substituting item 204 of Schedule 1 to the *Federal Court and Federal Circuit Court Regulation 2012* provides that the filing of an application under the Trans-Tasman Proceedings Act attracts the lower interlocutory order application fee of A\$1,125 (for a publicly listed company), A\$750 (for a corporation) and A\$305 (in any other case).

Item [11] – Schedule 1, after item 214

This item inserts an item 214A after item 214 in Schedule 1. Item 214A provides that the fee for filing an application to register a New Zealand judgement under the Trans-Tasman Proceedings Act is A\$95.