

EXPLANATORY STATEMENT

Select Legislative Instrument No ., 2016

Issued by the Authority of the Attorney-General

Commonwealth Electoral Act 1918

Family Law Act 1975

Federal Circuit Court of Australia Act 1999

Federal Court of Australia Act 1976

Courts Administration (Consequential Amendments) Regulation 2016

Section 395 of the *Commonwealth Electoral Act 1918*, section 125 of the *Family Law Act 1975*, section 120 of the *Federal Circuit Court of Australia Act 1999* and section 60 of the *Federal Court of Australia Act 1976* provide that the Governor-General may make regulations prescribing matters which are required or permitted by the respective Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the respective Act.

The purpose of the *Courts Administration (Consequential Amendments) Regulation 2016* (the Regulation) is to make consequential amendments as a result of the *Courts Administration Legislation Amendment Act 2016* (the Courts Amendment Act). The Courts Amendment Act implements the measure announced as part of the Government's 2015-16 Budget to merge the corporate services functions of the Federal Court of Australia with those of the Family Court of Australia and the Federal Circuit Court of Australia. To achieve this, the Courts Amendment Act amends a number of Acts in order to adjust the courts' governance structures to support shared corporate services and bring the courts into a single administrative entity under the *Public Governance, Performance and Accountability Act 2013* (the finance law) and a single statutory agency under the *Public Service Act 1999*.

The Courts Amendment Act provides for centralised management of the courts' shared corporate services by the Federal Court Chief Executive Officer and Principal Registrar. To facilitate the governance structure it:

- preserves the role of the Registrar of the Federal Court, re-titling it 'the Chief Executive Officer and Principal Registrar'
- re-titles Deputy Registrars of the Federal Court 'Registrars', and
- replaces the role of the Chief Executive Officer of the Family Court and Federal Circuit Court with a separate Chief Executive Officer for each court. The Chief Executive Officers will also hold the position of Principal Registrar, although for the Family Court, this change is deferred until 1 January 2018.

The Regulation amends the *Electoral and Referendum Regulation 2016*, the *Federal Court and Federal Circuit Court Regulation 2012* and the *Family Law Regulations 1984* to reflect these changes to the position titles.

The Federal Court, the Family Court, the Federal Circuit Court and the Department of Finance were consulted in the drafting of this Regulation.

Details of the Regulation are set out in the Attachment.

The authorising Acts do not specify any conditions that need to be satisfied before the power to make the Regulation is exercised.

The Office of Best Practice Regulation was consulted in relation to the Courts Amendment Act 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 provisions of the Regulation will commence on either 1 July 2016 or 1 January 2018, to align with the commencement dates in the Courts Amendment Act.

Authority:

Section 395 of the *Commonwealth Electoral Act 1918*

Section 125 of the *Family Law Act 1975*

Section 120 of the *Federal Circuit Court of Australia Act 1999*

Section 60 of the *Federal Court of Australia Act 1976*

Statement of Compatibility with Human Rights

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

Courts Administration (Consequential Amendments) Regulation 2016

This legislative instrument 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 Legislative Instrument

The purpose of the *Courts Administration (Consequential Amendments) Regulation 2016* (the Regulation) is to make consequential amendments as a result of the *Courts Administration Legislation Amendment Act 2016* (the Courts Amendment Act). The amendments will reflect changes to the position titles of the Registrar and Deputy Registrars of the Federal Court of Australia and the Chief Executive Officer of the Family Court of Australia and the Federal Circuit Court of Australia.

Human rights implications

The legal effect of the Regulation is confined to technical amendments that update certain position titles to achieve consistency with the Courts Amendment Act.

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

This Regulation is compatible with human rights as it does not raise any human rights issues.

Senator George Brandis QC, Attorney-General

Details of the Courts Administration (Consequential Amendments) Regulation 2016

Section 1 – Name

This section provides that the title of the Regulation is the *Courts Administration (Consequential Amendments) Regulation 2016*.

Section 2 – Commencement

This section provides that each provision of the Regulation specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table.

Section 3 – Authority

This section provides that the Regulation is made under the *Commonwealth Electoral Act 1918*, the *Family Law Act 1975*, the *Federal Circuit Court of Australia Act 1999*, and the *Federal Court of Australia Act 1976*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Part 1 – Amendments commencing 1 July 2016

Electoral and Referendum Regulation 2016

Item 1 – Clause 1 of Schedule 1 (table item 24)

Item 1 amends the *Electoral and Referendum Regulation 2016* to omit from the title of the prescribed authority at table item 24 ‘(the Statutory Agency consisting of the Registrar and the APS employees assisting the Registrar)’ and substitute it with ‘(the Statutory Agency consisting of the Chief Executive Officer and Principal Registrar of the Federal Court and the APS employees referred to in section 18N of the *Federal Court of Australia Act 1976* assisting the Chief Executive Officer and Principal Registrar of the Federal Court)’.

Federal Court and Federal Circuit Court Regulation 2012

Item 2 – Regulation 1.03 (definition of Registrar)

Item 2 repeals the definition of *Registrar* in Regulation 1.03 of the *Federal Court and Federal Circuit Court Regulation 2012* and substitutes it with a definition of *Registrar* that includes the updated position titles of ‘the Chief Executive Officer’, ‘an acting Chief Executive Officer’ and ‘a Registrar’ of the Federal Court.

Part 2 – Amendments commencing 1 January 2018

Family Law Regulations 1984

Item 3 – Subregulation 3(1) (definition of *Principal Registrar*)

Item 3 repeals the definition of *Principal Registrar* in subregulation 3(1) of the *Family Law Regulations 1984*

Item 4 – Subregulation 3(1) (definition of *registrar*)

Item 4 repeals the definition of *registrar* in subregulation 3(1) of the *Family Law Regulations 1984* and substitutes it with a definition of *registrar* that includes ‘(a) a Registrar within the meaning of subsection 4(1) of the Act; and (b) in relation to a court of summary jurisdiction—the clerk of the court, clerk of petty sessions or other person holding or performing the duties of a similar office in the court’.