

EXPLANATORY STATEMENT

Minute No. _____ of 2018 – Attorney-General

Subject - *Administrative Appeals Tribunal Act 1975* *Judiciary Act 1903*
Federal Court of Australia Act 1976 *Migration Act 1958*
Family Law Act 1975 *Native Title Act 1993*
Federal Circuit Court of Australia Act 1999

Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018

The *Judiciary Act 1903* made provision for the exercise of the judicial power of the Commonwealth. It also outlined the jurisdiction and procedure of the High Court of Australia. The *Federal Court of Australia Act 1976* established the Federal Court of Australia and made provisions regarding its jurisdiction. The *Family Law Act 1975* relates to family law matters, including marriage, divorce, parental responsibility for children and financial matters arising out of the breakdown of de facto relationships. It also established the Family Court of Australia. The *Federal Circuit Court of Australia Act 1999* is an Act relating to the Federal Circuit Court of Australia, including enabling the Court to operate as informally as possible in the exercise of judicial power and use streamlined procedures. The *Administrative Appeals Tribunal Act 1975* establishes the Administrative Appeals Tribunal (AAT). The *Migration Act 1958* relates to the entry into, and presence in, Australia of aliens, and the departure and deportation from Australia of aliens and certain other individuals. The *Native Title Act 1993* is an Act regarding native title in relation to land or waters, and for related purposes. It also established the National Native Title Tribunal (NNTT).

The Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018 (the Regulation) is made under the following sections of the relevant Acts, under which the Governor-General has the authority to make regulations:

- section 88 of the *Judiciary Act 1903*
- section 60 of the *Federal Court of Australia Act 1976*
- section 125 of the *Family Law Act 1975*
- section 120 of the *Federal Circuit Court of Australia Act 1999*
- section 70 of the *Administrative Appeals Tribunal Act 1975*
- section 504 of the *Migration Act 1958*
- section 215 of the *Native Title Act 1993*.

The Regulation will amend the *High Court of Australia (Fees) Regulation 2012* to:

- update the High Court's fees listed in existing Regulations to reflect those fees payable as at 1 July 2018. The prescribed fees will reflect both the regular biennial indexation of fees which is set to occur on 1 July 2018 under the current Regulation, as well as an additional increase of 17.5 percent.
- amend the frequency of the indexation of the Court's fees from biennial to annual, commencing on 1 July 2019.

The Regulation will amend the *Federal Court and Federal Circuit Court Regulation 2012* to:

- update fees payable in the Federal Court and for general federal law matters in the Federal Circuit Court listed in existing Regulations to reflect those fees payable as at 1 July 2018. The prescribed fees will reflect both the regular biennial indexation of fees which is set to occur on 1 July 2018 under the current Regulation, as well as an additional increase of 3.9 percent.
- amend the frequency of the indexation of courts fees from biennial to annual, commencing on 1 July 2019.

The Regulation will amend the *Family Law (Fees) Regulation 2012*, *Administrative Appeals Tribunal Regulation 2015* and *Native Title (Tribunal) Regulations 1993* to:

- update family law fees, as well as fees payable in the AAT (other than for matters in its Migration and Refugee Division) and the NNTT, as listed in existing Regulations, to reflect those fees payable as at 1 July 2018. This will include the regular biennial indexation of these fees that is set to occur on 1 July 2018.
- amend the frequency of the indexation of fees payable under these Regulations from biennial to annual, commencing on 1 July 2019.

The Regulation will amend the *Migration Regulations 1994* to:

- update the fees payable in the AAT's Migration and Refugee Division to reflect those fees payable as at 1 July 2018, following the previous biennial indexation of fees on 1 July 2017.
- amend the frequency of the indexation of fees payable in the AAT's Migration and Refugee Division from biennial to annual, commencing on 1 July 2018.

The 2018-19 Budget provided the High Court with \$10.7 million over the forward estimates to implement enhanced security measures. These security measures included capital works following a review of the Court's security, and ongoing funding towards the Court's security needs. The additional ongoing security funding will be funded through increases to fees payable in the High Court of 17.5 percent, and increases of 3.9 percent to the fees payable in the Federal Court and for general federal law matters in the Federal Circuit Court. These increases will be applied in addition to the prescribed increases to fees in these courts for indexation to the Consumer Price Index (CPI) that is set to occur on 1 July 2018.

Additionally, as part of the 2018-19 Budget, federal courts' and tribunal fees will be indexed to CPI annually, rather than biennially as is currently the case. This amendment will generate approximately \$4.8 million of additional revenue over the forward estimates, while only having a modest impact on court users. This revenue will be applied to Budget repair and priorities within the Attorney-General's and the Minister for Home Affairs' portfolios. This measure will affect fees payable for matters in the High Court, the Federal Court, the Family Court, the Federal Circuit Court, AAT and the NNTT. Users of the federal courts, AAT (other than for matters in its Migration and Refugee Division) and NNTT will not be impacted until 1 July 2019, as federal court fees are already scheduled for biennial indexation on 1 July 2018. However, the Migration and Refugee Division of the AAT will have annual indexation applied to its fees for the first time on 1 July 2018. The next biennial increase would otherwise occur on 1 July 2019.

The shift to annual indexation will enable court and tribunal fees to keep pace with inflation. Annual indexation is typical across a broad range of government services.

Finally, the 2018-19 Budget also provides that juror remuneration in the Federal Court will be indexed to CPI annually, rather than biennially. The impact of this increase is anticipated to be negligible. The Federal Court has not empanelled a jury to date.

These changes will have limited impact on access to justice arrangements. Federal courts and tribunals provide a number of fee waivers and exemption provisions for vulnerable litigants, which are unaffected by these changes. Court fees are also structured to reflect different capacities to pay, by charging different amounts to certain types of litigants.

The Regulation will commence on 1 July 2018, and apply to fees for documents filed or services provided for affected fee categories after commencement.

The affected courts and tribunals, as well as the Department of Home Affairs, were consulted on the Regulation. Consultation involved the exchange of correspondence and discussions.

Details of the Regulation are set out in **Attachment A**.

A Statement of Compatibility with Human Rights is at **Attachment B**.

The Office of Best Practice Regulation was consulted on the measures. It advised that the measures were likely to have no impact or only a minor regulatory impact on business, community organisations or individuals and thus only a short-form Regulatory Impact Statement was required (reference numbers 23606, 23563 and 23654).

The authorising Acts contain no conditions that need to be fulfilled before the Regulation can be made.

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

Authority:

Section 70 of the *Administrative Appeals Tribunal Act 1975*

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

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

Section 125 of the *Family Law Act 1975*

Section 88 of the *Judiciary Act 1903*

Section 504 of the *Migration Act 1958*

Section 215 of the *Native Title Act 1993*

Details of the Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018

Section 1 – Name

This section will provide that the name of the Regulation is the *Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018*.

Section 2 – Commencement

This section will provide that the Regulation commences on 1 July 2018. This section will apply to current and future proceedings in the High Court of Australia, the Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia, the Administrative Appeals Tribunal (AAT) and the National Native Title Tribunal (NNTT).

Section 3 – Authority

This section will list the Acts under which the Regulation will be made. The Regulation will be made under the following Acts:

- the *Administrative Appeals Tribunal Act 1975*
- the *Family Law Act 1975*
- the *Federal Circuit Court of Australia Act 1999*
- the *Federal Court of Australia Act 1976*
- the *Judiciary Act 1903*
- the *Migration Act 1958*
- the *Native Title Act 1993*.

Section 4 – Schedules

This section will provide that each instrument specified in a Schedule to the Regulation is amended or repealed as set out in the items of the relevant Schedule. Any other item in a Schedule to the Regulation will have effect according to its terms.

Schedule 1 – Amendments

Administrative Appeals Tribunal Regulation 2015

Item [1] – Subsection 20(1)

This item will amend the fee to include indexation as at 1 July 2018.

Item [2] – Subsection 20(2)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [3] – Subparagraphs 20(2)(a)(i) and (ii)

This item will amend the formatting of the fee to include a comma every three decimal places to the left of the decimal point.

Item [4] – Section 25 (heading)

This item will amend the formatting of the fee listed in the heading to include a comma every three decimal places to the left of the decimal point.

Item [5] – Paragraphs 25(1)(a) and (b)

This item will amend the formatting of the fee to include a comma every three decimal places to the left of the decimal point.

Item [6] – Section 27 (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [7] – Subsection 27(1)

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2016 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each second year to each year.

Item [8] – Subsection 27(2)

This item will change the reference to “indexation year” to “indexation day” to correct an existing mistake.

Item [9] – Subsection 27(2) (definition of base quarter)

This item will change the definition of “base quarter” to reflect that the indexation period is changing from every two years to every one year.

Item [10] – In the appropriate position in Part 8

This item will clarify that the AAT fees prior to 1 July 2018 will continue to apply for applications made prior to this date.

Family Law (Fees) Regulation 2012

Item [11] – Section 2.13 (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [12] – Subsection 2.13(1)

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2014 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be

indexed from this date. The indexation period will also be changed from each second year to each year.

Item [13] – Subsection 2.13(9) (definition of relevant period)

This item will change the definition of “relevant period” to mean “a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Item [14] – After Part 2

This item will provide transitional arrangements to clarify in which instances the previous or amended fee is payable after the commencement of the Regulation. To that end, the item sets out the following amended fees:

- a filing fee for filing a document on or after 1 July 2018
- a setting down fee for a hearing if the hearing day is fixed on or after 1 July 2018
- a hearing fee for a day, or a part of a day, if the day (or part of the day) is fixed on or after 1 July 2018
- a conciliation conference fee for a conference fixed on or after 1 July 2018
- any other fee under this Regulation for a service provided on or after 1 July 2018.

Item [15] – Schedule 1 (cell at table item 1, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [16] – Schedule 1 (cell at table item 2, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [17] – Schedule 1 (table item 3, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [18] – Schedule 1 (table items 4 and 5, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [19] – Schedule 1 (table item 6, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [20] – Schedule 1 (table items 7 and 8, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [21] – Schedule 1 (table item 9, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [22] – Schedule 1 (table item 10, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [23] – Schedule 1 (table item 10A)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [24] – Schedule 1 (cells at table items 11 to 13, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [25] – Schedule 1 (table item 14, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [26] – Schedule 1 (cells at table items 15 to 17, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [27] – Schedule 1 (table item 18, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [28] – Schedule 1 (table item 19, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [29] – Schedule 1 (table item 20, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Federal Court and Federal Circuit Court Regulation 2012

Item [30] – Section 1.03

This item will create a definition for a “relevant period” in the definition section of the Act. This will define a relevant period to “mean a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Item [31] – Paragraphs 2.08(2)(a) to (c)

This item will correct the spelling of “judgement” to “judgment”.

Item [32] – Paragraph 2.13(1)(b)

This item will correct the spelling of “judgement” to “judgment”.

Item [33] – Section 2.20 (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [34] – Subsection 2.20(1)

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2016 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each second year to each year.

Item [35] – Subsection 2.20(6) (definition of relevant period)

This item will repeal the definition of “relevant period”. This term has been redefined under item 30.

Item [36] – Section 3.04 (heading)

This item would amend the heading which referred to “biennial” to “annual” to reflect that juror’s remuneration is to be indexed to CPI annually, rather than biennially.

Item [37] – Subsection 3.04(1)

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2014 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each second year to each year.

Item [38] Subsection 3.04(6) (definition of relevant period)

This item will repeal the definition of “relevant period”. This term has been redefined under item 30.

Item [39] – In the appropriate position in Part 5

This item will provide transitional arrangements to clarify in which instances the previous or amended fee is payable after the commencement of the Regulation. To that end, the item sets out the following amended fees:

- a filing fee for filing a document on or after 1 July 2018
- a setting down fee for a hearing if the hearing day is fixed on or after 1 July 2018
- a hearing fee for a day, or a part of a day, if the day (or part of the day) is fixed on or after 1 July 2018
- a mediation fee for an attendance fixed on or after 1 July 2018
- any other fee under this Regulation for a service provided on or after 1 July 2018.

Item [40] – Part 1 of Schedule 1 (cell at table item 101, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [41] – Part 1 of Schedule 1 (table item 105, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [42] – Part 1 of Schedule 1 (cell at table item 106, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [43] – Part 1 of Schedule 1 (cell at table item 108, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [44] – Part 1 of Schedule 1 (cell at table item 109, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [45] – Part 1 of Schedule 1 (cell at table item 110, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [46] – Part 1 of Schedule 1 (cell at table item 111, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [47] – Part 1 of Schedule 1 (cell at table item 112, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [48] – Part 1 of Schedule 1 (cell at table item 113, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [49] – Part 1 of Schedule 1 (cell at table item 114, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [50] – Part 1 of Schedule 1 (cells at table items 115 to 115B, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [51] – Part 1 of Schedule 1 (table item 115C, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [52] – Part 1 of Schedule 1 (cell at table item 116, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [53] – Part 1 of Schedule 1 (cells at table items 117 and 118, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [54] – Part 1 of Schedule 1 (cell at table item 119, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [55] – Part 1 of Schedule 1 (cell at table item 120, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [56] – Part 1 of Schedule 1 (cell at table item 121, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [57] – Part 1 of Schedule 1 (cell at table item 121A, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [58] – Part 1 of Schedule 1 (cell at table item 122, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [59] – Part 1 of Schedule 1 (table item 125, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [60] – Part 1 of Schedule 1 (cell at table item 126, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [61] – Part 1 of Schedule 1 (cell at table item 127, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [62] – Part 1 of Schedule 1 (table items 128 to 131)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [63] – Part 1 of Schedule 1 (cell at table item 132, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [64] – Part 1 of Schedule 1 (note)

This item will amend the note under Part 1 of Schedule 1, which refers to the biennial increase in fees under section 2.20, to reflect that fees will now index annually.

Item [65] – Part 2 of Schedule 1 (cell at table item 201, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [66] – Part 2 of Schedule 1 (table item 203, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [67] – Part 2 of Schedule 1 (cells at table items 204 and 205, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [68] – Part 2 of Schedule 1 (cell at table item 206, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [69] – Part 2 of Schedule 1 (cell at table item 207, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [70] – Part 2 of Schedule 1 (cell at table item 208, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [71] – Part 2 of Schedule 1 (table items 211 to 214)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [72] – Part 2 of Schedule 1 (table item 214A, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [73] – Part 2 of Schedule 1 (cells at table items 215 and 216, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [74] – Part 2 of Schedule 1 (cell at table item 217, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [75] – Part 2 of Schedule 1 (cell at table item 218, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [76] – Part 2 of Schedule 1 (table item 221, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [77] – Part 2 of Schedule 1 (cell at table item 222, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [78] – Part 2 of Schedule 1 (cell at table item 223, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [79] – Part 2 of Schedule 1 (table item 224, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 3.9 percent.

Item [80] – Part 2 of Schedule 1 (note)

This item will amend the note under Part 2 of Schedule 1, which refers to the biennial increase in fees under section 2.20, to reflect that fees will now index annually.

Item [81] – Schedule 2 (table item 2, column headed “Amount payable”)

This item will amend the amount payable to jurors to reflect the amount payable as at 1 July 2018, following the application of indexation.

Item [82] – Schedule 2 (table item 3, column headed “Amount payable”)

This item will amend the amount payable to jurors to reflect the amount payable as at 1 July 2018, following the application of indexation.

Item [83] – Schedule 2 (table item 4, column headed “Amount payable”)

This item will amend the amount payable to jurors to reflect the amount payable as at 1 July 2018, following the application of indexation.

High Court of Australia (Fees) Regulation 2012

Item [84] – Subsection 10(4)

This item will correct the spelling of “judgement” to “judgment”.

Item [85] – Section 16 (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [86] – Subsection 16(1)

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2014 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each second year to each year.

Item [87] – Subsection 16(9) (definition of relevant period)

This item will repeal the definition of “relevant period” and establish a new definition for a “relevant period” to “mean a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Item [88] – In the appropriate position in Part 3

This item will provide transitional arrangements to clarify in which instances the previous or amended fee is payable after the commencement of the Regulation. To that end, the item sets out the following amended fees:

- a filing fee for filing a document on or after 1 July 2018
- a hearing fee for a hearing, a day or a part of a day, if the hearing, day or part of the day is fixed on or after 1 July 2018
- a fee (other than a fee mentioned in item 204 of Schedule 1) for obtaining a document on or after 1 July 2018
- a fee mentioned in item 204 of Schedule 1 for a service requested on or after 1 July 2018
- any other fee under this Regulation for a service provided on or after 1 July 2018.

Item [89] – Part 1 of Schedule 1 (cells at table items 101 to 103, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [90] – Part 1 of Schedule 1 (cell at table item 104, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [91] – Part 1 of Schedule 1 (cells at table items 105 and 106, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [92] – Part 1 of Schedule 1 (cell at table item 107, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [93] – Part 1 of Schedule 1 (cell at table item 108, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [94] – Part 1 of Schedule 1 (cell at table item 109, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [95] – Part 1 of Schedule 1 (cell at table item 110, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [96] – Part 1 of Schedule 1 (cell at table item 111, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [97] – Part 2 of Schedule 1 (table item 201, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [98] – Part 2 of Schedule 1 (table item 202, column headed “Fee”)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [99] – Part 2 of Schedule 1 (table items 203 and 204)

This item will amend the fees currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [100] – Part 2 of Schedule 1 (table item 205, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [101] – Part 2 of Schedule 1 (table item 206, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [102] – Part 2 of Schedule 1 (table item 207, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Item [103] – Part 2 of Schedule 1 (table item 208, column headed “Fee”)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation and a fee increase of 17.5 percent.

Migration Regulations 1994

Item [104] – Subregulation 4.13(1)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [105] – Regulation 4.13A (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [106] – Regulation 4.13A

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2011 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be

indexed from this date. The indexation period will also be changed from each biennial anniversary to each year commencing 1 July 2019.

Item [107] – Subregulation 4.13B(5) (definition of relevant period)

This item will repeal the definition of “relevant period” and establish a new definition for a “relevant period” to “mean a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Item [108] – Subregulation 4.14(1) (table items 1, 5 and 6, column headed “the amount to be refunded is ...”)

This item will ensure that if an applicant is entitled to a refund under subregulation 4.13 they received the amount they paid, rather than the increased amended fees listed in subregulation 4.13(1).

Item [109] – Paragraph 4.31B(1)(c)

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [110] – Regulation 4.31BA (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [111] – Regulation 4.31BA

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 2011 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each biennial anniversary to each year commencing 1 July 2019.

Item [112] – Subregulation 4.31BB(5) (definition of relevant period)

This item will repeal the definition of “relevant period” and establish a new definition for a “relevant period” to “mean a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Item [113] – In the appropriate position in Schedule 13

This item will ensure the amended fees for a tribunal review, listed in of Regulations 4.13 and 4.31B, will apply to review applications made on or after 1 July 2018.

Native Title (Tribunal) Regulations 1993

Item [114] – Regulation 7

This item will amend the fee currently set out to prescribe the fee payable for the relevant document or service as at 1 July 2018, following the application of indexation under the Regulation.

Item [115] – Regulation 16 (heading)

This item will amend the heading which referred to “biennial” to “annual” to reflect that fees are to be indexed to CPI annually, rather than biennially.

Item [116] – Regulation 16

This item will amend the date on which fees prescribed in this Regulation should be indexed from 1 July 1996 to 1 July 2019. This reflects that the fees listed in the Regulation will be updated to incorporate indexation as at 1 July 2018 and that going forward fees will be indexed from this date. The indexation period will also be changed from each biennial anniversary to each year commencing 1 July 2019.

Item [117] – Subregulation 17(1) (definition of relevant period)

This item will repeal the definition of “relevant period” and establish a new definition for a “relevant period” to “mean a financial year starting on or after 1 July 2018”. This reflects that the Regulation will be amended to prescribe those fees payable as at 1 July 2018. The amendment will also assist to facilitate the change from biennial to annual indexation of fees.

Statement of Compatibility with Human Rights

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

**Court and Tribunal Legislation Amendment (Fees and Juror Remuneration)
Regulations 2018**

1. This Disallowable 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 Regulations

2. The purpose of the *Court and Tribunal Legislation Amendment (Fees and Juror Remuneration) Regulations 2018* is to:
 - increase the base court fees payable in the High Court of Australia by 17.5 percent, and increasing fees payable in the Federal Court of Australia, and for general federal law matters in the Federal Circuit Court of Australia, by 3.9 percent,
 - provide that fees in the High Court, Federal Court, Family Court of Australia, Federal Circuit Court, Administrative Appeals Tribunal (AAT) and National Native Title Tribunal (NNTT) will be increased for consumer price indexation annually, rather than biennially, and
 - provide that remuneration for jurors in the Federal Court will be increased for consumer price indexation annually, rather than biennially.

Human rights implications

3. This Instrument 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).
4. 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, by administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State.
5. Rights and freedoms recognised by the ICCPR include a right to life, to equality and non-discrimination, to freedom from slavery and forced labour, to freedom of movement, to freedom of opinion and expression, to freedom of thought, conscience and religion or belief, to humane treatment in detention, to security of the person and freedom from arbitrary detention, to a fair trial and fair hearing, to freedom of assembly and association, prohibition on interference with privacy and attacks on reputation, rights of parents and children, a right to work and rights at work. Not all of these rights and freedoms have remedies for violation that involve courts. The right to access to justice is not absolute.
6. Two elements of the Instrument limit elements of the right to access to justice.
7. First, the Instrument increases the base fees payable in the High Court, Federal Court and general federal law matters in the Federal Circuit Court. This may limit some persons'

right of access to remedies which are enforceable by these courts. This limitation on the right to access to justice by the new and increased fees is reasonable, necessary and proportionate.

8. There remain other avenues under which complaints of human rights violations may be made, including State and Territory courts and the Australian Human Rights Commission (AHRC). Accordingly, any limitation of the right to access to justice is within the allowable limitation provided in Article 2(3) of the ICCPR. In addition, the Instrument does not increase the fees applicable for applications in the Federal Court and Federal Circuit Court under sections 46PO and 46PP of the *Human Rights Act 1986*. Section 46PO relates to applications to a court following a decision by the President of the AHRC to terminate a complaint, while section 46PP relates to applications made to the courts seeking an interim injunction after lodging a complaint with the AHRC.
9. The Instrument also does not increase fees for applications in the Federal Court or Federal Circuit Court under section 539 of the *Fair Work Act 2009* (FWA), if the application relates to discrimination by an employer or unfair dismissal.
10. The new fees are prescribed by law. The Instrument amends the *High Court (Fees) Regulations 2012* and *Federal Court and Federal Circuit Court Regulation 2012* so that the new fees in the High Court, Federal Court and for general federal law matters in the Federal Circuit Court would be reflected in the schedules of the regulations. The new fees following indexation in subsequent years would be gazetted. In addition, the courts will generally publish the latest fees on their respective websites.
11. The increases to court fees are necessary to achieve a legitimate objective. The additional revenue will be applied towards providing the High Court with additional ongoing funding for its security arrangements. The High Court is the apex court under Australia's constitutional arrangements. Ensuring the security of the Court, therefore contributes to the integrity of Australia's federal court system and the protection of human rights that this affords. Additionally, this funding will enhance the physical security of the Court's Justices, staff and visitors.
12. The increases to court fees are also reasonable and proportionate. The increase to fees in the Federal Court and for general federal law matters in the Federal Circuit Court is 3.9 percent, which will only have a modest impact on court users. In 2012, there was a 15 percent increase in fees payable by individuals in general federal law matters and a 40 percent increase in fees payable by corporations in the Federal Court and Federal Circuit Court. In addition, in 2015, fees in the Federal Court and general federal law matters in the Federal Circuit Court increased by 10 percent, except for fees that are not subject to biennial indexation. Increases to fees payable in the High Court (17.5 percent) reflect that the Court and its users are the key beneficiary of the additional revenue. In 2012, there was a general increase to civil law fees in the High Court of 15 percent and an increase of 40 percent for fees payable by corporations.
13. Second, the Instrument limits the right to access to justice by changing the frequency of the indexation of court and tribunal fees. This limitation is also reasonable, necessary and proportionate.
14. The change in the frequency of fees indexation is necessary to achieve a legitimate objective. Additional revenue will be generated from the change, in years where the fees were previously not due for indexation. This amounts to approximately \$4.8 million over the forward estimates. The additional revenue from this change in indexation will be used

for Budget repair, and to fund policy priorities in the Attorney-General's and the Minister for Home Affairs' portfolios.

15. The change in indexation is prescribed by law. The Instrument amends provisions in the *High Court (Fees) Regulations 2012*, *Federal Court and Federal Circuit Court Regulation 2012*, *Family Law (Fees) Regulation 2012*, *Administrative Appeals Tribunal Regulation 2015*, *Migration Regulations 1994* and *Native Title (Tribunal) Regulations 1993* to give effect to the change. The new provisions will clearly specify that the fees will be indexed annually.
16. The shift to annual indexation does not change court and tribunal fees in real terms. Rather, the change in indexation is targeted at ensuring that court and tribunal fees keep pace with inflation each year. The current system of biennial indexation means that this measure will only impact fees every second year, when fees would not otherwise have been indexed. This element is consistent with the timing of indexation for a broad range of other Government services.
17. More generally, court fees are structured so as to distinguish between litigants on the basis of capacity to pay. Therefore, those litigants with a higher capacity to pay, such as publicly listed companies, corporations and public entities, will continue to pay higher fees than individual litigants.
18. The Instrument also maintains exemptions and waivers from fees in courts and the NNTT, and concessional fees in the AAT, for disadvantaged litigants. This further highlights that these increases are reasonable and proportionate. Disadvantaged litigants eligible for exemptions and waivers include recipients of legal aid, people receiving Commonwealth income support, people in detention and children (including those seeking to be protected or exercising their right to freedom from discrimination). In addition, the instrument maintains that concessional fees in the AAT will not be subject to indexation.
19. The Instrument also maintains the position that some applications to review a decision in the AAT do not attract a fee. Examples include reviews of a reviewable decision under the *Military Rehabilitation and Compensation Act 2004*, a reviewable decision under the *National Disability Insurance Scheme Act 2013*, and a reviewable decision under the *Veterans' Entitlements Act 1986*.
20. The Instrument also provides that juror remuneration in the Federal Court will be indexed on an annual rather than a biennial basis. This will not impact on the right to access to justice.

Conclusion

21. The Regulation is compatible with human rights because to the extent that it may limit human rights, it is reasonable, necessary and proportionate.