

FEDERAL PROCEEDINGS (COSTS) REGULATIONS 1991 NO. 267

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

Federal Proceedings (Costs) Act 1981

Federal Proceedings (Costs) Regulations 2018

Section 22 of the *Federal Proceedings (Costs) Act 1981*, (the Act), provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing, inter alia, matters which are convenient to be prescribed for giving effect to the Act.

The purpose of the *Federal Proceedings (Costs) Regulations 2018* (the proposed Regulations) would be to remake the *Federal Proceedings (Costs) Regulations 1991 Regulations* (the 1991 Regulations). The *Legislative Instruments Act 2003* (LIA) provides that all legislative instruments, other than exempt instruments, progressively ‘sunset’ according to the timetable set out in the LIA. Legislative instruments made a year in the decade starting on 1 January 1940 that were registered on the Federal Register of Legislative Instruments on 1 January 2005, such as the 1991 Regulations, sunset on 1 October 2018. When a legislative instrument sunsets, it is automatically repealed.

Sections 6 to 9 of the Act provide for the Commonwealth to pay the costs of parties to an appeal from a Federal or Territory Court (other than a Court of the Northern Territory) where an appeal succeeds on a question of law or on the quantum of damages and the Court in its discretion issues a certificate.

The prescribed maximum amounts payable are set out in the 1991 Regulations. They range from \$2,000 in the lower court of a Territory to \$10,000 in the High Court. Those limits have applied from 1 September 1991 when the 1991 Regulations came into operation.

The purpose of the proposed Regulations is to maintain the amounts available for each court.

A Statement of compatibility with Human Rights is included in [Attachment A](#).

Details of the Regulations are included in [Attachment B](#).

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purpose of the LIA.

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulation Impact Statement is not required for the 2017 Regulations (OBPR reference 23895).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Federal Proceedings (Costs) Regulations 2018

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 *Federal Proceedings (Costs) Regulations 2018* (the ‘*Regulations*’) remakes the Regulations in its current form as prescribed for the purpose of the Act.

Sections 6 to 9 of the Act provide for the Commonwealth to pay the costs of parties to an appeal from a Federal or Territory Court (other than a Court of the Northern Territory) where an appeal succeeds on a question of law or on the quantum of damages and the Court in its discretion issues a certificate.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

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

Details of the *Federal Proceedings (Costs) Regulations 2018*

Part 1 Preliminary

Section 1 – Name of Regulation

This section provides that the title of the Regulations is the *Federal Proceedings (Costs) Regulations 2018* (Regulations).

Section 2 – Commencement

This section provides that the Regulations commence on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the authority to make the Regulations is the *Federal Proceedings (Costs) Act 1981*.

Section 4 – Schedule

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.

Section 5 – Definitions

This section provides that, for the purposes of the Regulations, ‘Act’ means the *Federal Proceedings (Costs) Act 1981*.

Part 2-Prescribed maximum amount

Section 6 – Prescribed maximum amounts in relation to appeals or new trials

This section provides a table listing the maximum amounts payable for costs certificates in various courts, for the purposes of subsection 18(1) of the Act. Within that table, the prescribed maximum amount in relation to a court specified in column 1 of an item is the amount specified in column 2 of the item.

Schedule 1 – Repeals

1 The whole of instrument

This Schedule provides for the repeal of the 1991 Regulations.