

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

High Court of Australia (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 purposes of the *High Court of Australia (Fees) Regulation 2012* are to replace the *High Court of Australia (Fees) Regulations 2004* and to implement a range of reforms to court fees, including:

- i. general increases to existing civil law fees by 15 percent, increasing fees payable by corporations by around 40 percent, introduction of a separate fee for publicly listed companies which would be higher than the rate for corporations, and specifying that small businesses would pay the lower rate payable by an individual
- ii. removing the reduced fee of \$100 payable by legal aid recipients and people on Commonwealth income support under the *High Court of Australia (Fees) Regulations 2004*, and providing that those persons need not pay filing and hearing fees, and
- iii. other reforms to streamline fees administration.

3. Similar reforms to court fees are also being introduced for the Federal Court of Australia, Family Court of Australia, and the Federal Magistrates Court of Australia. 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. 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.

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 Regulation. It also promotes the right to access to justice by providing for persons whom payment of the full fee would cause financial hardship, to remain eligible for a two-third fee waiver of the full fee. These disadvantaged persons include recipients of legal aid, people receiving Commonwealth income support, people in detention (who may seek to exercise their right to liberty by challenging their detention as unlawful) and children (including those seeking to be protected or exercising their right to freedom from discrimination).

10. Further, the Regulation promotes access to justice for violations of applicable rights or freedoms by providing that fees are not payable in a proceeding for which an international convention to which Australia is party provides that no fee is to be payable.

11. The Regulation introduces new fees and increases particular fees in the High Court of Australia. Fees in criminal law matters would not be increased and the majority of the fee increases and new fees relate to corporations as court users. Civil law fee increases for natural persons would increase by only 15 per cent. For some persons who are not eligible for the two-third reduction of fees, this may limit their right of access to remedies which are enforceable by the High Court.

12. However, the changes to court fees are necessary to achieve the legitimate objectives of ensuring that fees more appropriately reflect the cost of providing the service, encouraging the efficient use of court services and for court users to consider alternative dispute resolution where appropriate. This would ensure that the High Court of Australia is able to focus on its functions of interpreting and applying the law, deciding cases of special federal significance, and hearing appeals.

13. The new and increased fees are reasonable, necessary and proportionate. The fees are reasonable and proportionate in that they focus on litigants with the capacity to pay, such as publically listed companies, corporations and public authorities. At the same time, the Regulation provides fee exemptions for disadvantaged litigants and reduction of fees where payment of the full fee would cause financial hardship.

14. Accordingly, any limitation of the right to access to justice is within the allowable limitation provided in Article 2(3) of the ICCPR.

Conclusion

15. 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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