

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Federal Court and Federal Magistrates Court 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 purpose of the *Federal Court and Federal Magistrates Court Regulation 2012* (the Regulation) is to replace the *Federal Court of Australia Regulations 2004* and the *Federal Magistrates Regulations 2000* with a consolidated regulation mainly dealing with court fees for proceedings in the Federal Court of Australia and the Federal Magistrates Court of Australia (other than in family law) and also to implement a range of reforms to court fees, including:

- increasing existing fees by 15 percent, increasing fees payable by corporations by around 40 percent, and introduction of a separate higher fee for a corporation that is a publicly listed company
- removing the reduced fee of \$100 payable by certain persons specified in the *Federal Court of Australia Regulations 2004* and the *Federal Magistrates Regulations 2000* (such as legal aid recipients and people on Commonwealth income support), and providing that those persons need not pay court fees (other than some photocopying fees), and
- introducing new fees targeting resource intensive processes to encourage court users to utilise alternative dispute processes.

3. Similar reforms to court fees are also being introduced for the High Court of Australia, the Family Court of Australia and proceedings under the *Family Law Act 1975* in 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. This 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, by 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 by providing a fee exemption for certain disadvantaged litigants specified in the Regulation or where payment of the fee would cause financial hardship to the individual. These persons are able to access most court services without paying court fees. 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. The Regulation also promotes the right to access to justice for remedying violations of applicable rights and freedoms, by providing for proceedings where fees are not payable. These proceedings include an appeal from a judgement on an application under section 46O or 46PP of the *Australian Human Rights Commission Act 1986*, an appeal from a judgement on an application under section 539 of the *Fair Work Act 2009*, the trying of an election petition under the *Aboriginal Torres Strait Islander Act 2005*, a proceeding under the *Child Support (Registration and Collection) Act 1988* or the *Child Support (Assessment) Act 1984* and 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 Federal Court of Australia and the Federal Magistrates Court of Australia (the Courts). This may limit some persons' right of access to remedies which are enforceable by the Courts. However, there remain a number of other avenues under which complaints of human rights violations may be made, including State and Territory courts. Accordingly, any limitation of the right to access to justice is within the allowable limitation provided in Article 2(3) of the ICCPR.

12. Any limitation on the right to access to justice by the new and increased fees is reasonable, necessary and proportionate. The Regulation introduces fees for resource intensive processes, which are reasonable in order to distribute court resources equitably. The increased fees for mediation are reasonable and proportionate to better reflect the cost of providing the service. The fees are also reasonable and proportionate in that they focus on litigants with the capacity to pay, such as publically listed companies, corporations and public entities. At the same time, the Regulations provide exemptions from fees for disadvantaged litigants.

13. Further, the changes to court fees are necessary to achieve a legitimate objective. Increased fees provide for court users to contribute to the running of the Courts as some of the revenue raised by fees will be returned to the Courts. The changes will provide for greater accessibility in general by ensuring the Courts are able to maintain vital services through increased funding to them.

Conclusion

14. This 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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