

FAMILY LAW AMENDMENT (2014 MEASURES NO. 1) RULES
2014

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT NO. 213, 2014

**Issued by the authority of the Judges of the Family Court of
Australia**

Section 123 of the *Family Law Act 1975 (the Act)* provides that the Judges of the Family Court of Australia, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Family Court and other courts exercising jurisdiction under the Act. The Judges of the Court made the Family Law Rules 2004, which commenced on 29 March 2004. These amending Rules, the Family Law Amendment (2014 Measures No. 1) Rules 2014, have now been made by the Judges to amend the Family Law Rules 2004.

Section 123(2) of the Act provides that the Legislative Instruments Act 2003 (apart from sections 5-7, 10, 11 and 16) applies to Rules of Court. In this application, references to a legislative instrument in the Act are to be read as references to Rules and references to a Rule maker as references to the Chief Justice.

The Legislative Instruments Act provides for certain consultation obligations when Rules are made. The Chief Justice has authorised the

Court's Rules Advisory Committee to undertake consultation on Rules matters on her behalf.

In this case, the Court undertook consultation with the Family Law Section of the Law Council of Australia, and with other constituent bodies, in relation to the proposed amendment to the production of a certificate stating whether a person has been or is subject to a vexatious proceedings order, the requirement for a coversheet to be attached to all documents to be filed that are not otherwise forms and the expansion of the automatic right to inspection of the court record to include State/Territory child welfare officers. Only minimal consultation occurred in connection with the amendments required as a result of the legislation dealing with Trans-Tasman proceedings, the change in nomenclature of the Federal Circuit Court of Australia, the application of the prescribed rate of interest and the extension of child support obligations capable of enforcement by a person. This was because the amendments are necessary to give effect to that legislation. In relation to the methods of attaching the seal of the court, the removal of the obligation to produce sufficient copies of documents at the time of filing and technical changes including updating the prescribed Form 4 – minimal consultation occurred because the changes are of an administrative nature including, in the case of the removal of the requirement to produce additional copies, the overriding obligation of a filing party to serve filed documents is not affected.

The major changes introduced by the amendments to the Rules are set out below:

1. To describe the methods by which the seal of the Court can be attached to documents.
2. To give effect to the commencement on 12 April 2013 of the *Federal Circuit Court of Australia Legislation Amendment Act 2013*. This Amending Act inter alia changed the name of the Federal Magistrates Court to the Federal Circuit Court of Australia and its judicial officers to Chief Judge and Judges.
3. To make a rule convenient to implement amendments made by the *Access to Justice (Federal Jurisdiction) Amendment Act 2012* which commenced on 12 June 2013, to enable the court to produce a certificate stating whether a person is or has been the subject of a vexatious proceedings order.
4. To make a rule requiring a coversheet is attached to all documents that are not forms but nonetheless are required to be filed.
5. Without detracting from a party's obligation to serve parties with filed copies of documents; the removal of the requirement of a filing party to produce sufficient additional copies of original documents at the time of filing.
6. To expand the class of persons who are automatically entitled to access the court record to include (in certain cases) child welfare officers of a State or Territory.
7. To rectify the inadvertent repeal of Schedule 2 Family Law Amendment Rules 2011 (No. 2) which occurred upon the commencement of the *Attorney-General's (Spent and Redundant Instruments) Repeal Regulation 2013* so as to implement where

possible, the *Trans-Tasman Proceedings Act 2010*, including the empowering of Registrars to make decisions and orders with respect to Trans-Tasman subpoenas.

8. To increase the scale of costs by 2.8% in conformity with the increase approved nationally by all superior courts such that it applies to all work done and services performed by lawyers after Wednesday, 31 December 2014.

Schedule 3 of the Family Law Rules 2004 specifies the amount which lawyers, who are entitled to practise in the Family Court, may charge and be allowed on assessment of costs in respect of proceedings in the Court. The amounts in the Schedule were last varied by Select Legislative Instrument 2013 No. 282 made on 17 December 2013, and which came into operation on 1 January 2014.

The Joint Costs Advisory Committee (JCAC) was established in 2007 to review annually and recommend variations in the quantum of costs contained in the Rules made by the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia. It comprises representatives of those courts. In conducting its reviews, the JCAC applies a formula which has regard to movements in wages and salaries and other costs of solicitors' practices.

In its 2014 annual review (as in previous reviews), the JCAC wrote to the Commonwealth Attorney-General's Department, the Law Council of Australia, the National Association of Community Legal Centres and National Legal Aid inviting them and their respective constituent bodies to make submissions to the review. A notice of the review was also placed on the website of each court. Following its annual review, the JCAC provided a report in September 2014 to the High Court of Australia, the Federal Court of Australia, the Family Court of Australia and the Federal Circuit Court of Australia recommending an increase of 2.8% to the solicitors' costs provided for in the Rules of each Court. Issues raised in consultations were addressed in the report.

Section 9 of the Legislative Instruments Act 2003 provides that Rules of Court made for the Family Court of Australia are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in this Explanatory Statement.

DETAILS OF AMENDMENTS

Rule 1 Name of Rules

The name of the rules is the *Family Law Amendment (Measures No. 1) Rules 2014*.

Rule 2 Commencement

Rules 1 – 4 and Schedule 1 commence on 1 January 2015.

Rule 3 Authority

The Rules are made under the *Family Law Act 1975*.

Rule 4 Schedule

Schedule 1 amends the *Family Law Rules 2004*.

Schedule 1 – Amendments commencing on 1 January 2015

[1] At the end of Part 1.4

This amendment describes the methods by which the Court seal may be attached to documents.

[2] Subrule 2.04D(1)

[3] Paragraph 2.04E(1)(c)

These amendments are of a technical nature. The amendments more appropriately identify the prescribed Form 4.

[4] After rule 11.03

This amendment prescribes a procedure to be followed should a request for a certificate relating to a vexatious proceedings order be received by the Court including the information to be included within the certificate.

[5] Division 15.3.4

This amendment is consequential upon the inclusion of a new Chapter 26A - Cases to which the *Trans-Tasman Proceedings Act 2010* applies.

[6] Paragraph 16.06(1)(a)

[7] Paragraph 16.06(1)(b)

[8] At the end of paragraphs 16.06(1)(c) and (d)

These amendments reflect the Attorney-General's Department practice of no longer publishing its arrangements with other countries for the taking of evidence so as to determine arrangements for the taking of evidence electronically. Instead an obligation is imposed upon a party seeking to adduce evidence from a witness in a foreign country to make appropriate inquiries for the taking of evidence by electronic communication.

[9] Rule 17.03

This amendment is of a technical nature to extend the calculation of the prescribed rate of interest in the event that an order is made pursuant to subsection 90UN(b) of the *Family Law Act 1975*.

[10] Subrule 18.06(2) (at the end of table 18.5)

This amendment delegates to Deputy Registrars all powers identified in the new Chapter 26A – Cases to which the *Trans-Tasman Proceedings Act 2010* applies.

[11] At the end of paragraph 20.04(d)

[12] Rule 20.04 (at the end of the note)

These amendments are of a technical nature to extend the types of obligations that may be enforced by a person to include unregistered child support liabilities.

[13] Rule 22.02 (note 3)

[14] Rule 22.22(2) (note)

[15] Rule 22.36 (note 2)

[16] Rule 22.36 (note 3)

These amendments are technical in nature, consequential upon the omission of rule 24.08.

[17] Paragraph 24.01(1)(g)

[18] Subparagraph 24.01(1)(g)(iv)

[19] Paragraph 24.01(1)(h)

These amendments require a coversheet approved by the Principal Registrar to be attached to the front of any document which is not a form but nonetheless is required to be filed.

[20] Rule 24.06 (note 1)

[21] Rule 24.06 (note 2)

These amendments are technical in nature, consequential upon the omission of rule 24.08.

[22] Rule 24.08

This amendment removes the requirement for a party to produce sufficient copies at the time of filing the original document at a Registry or within seven days of filing by facsimile. The amendments do not alter a party's obligation to serve filed copies of documents upon other parties.

[23] After paragraph 24.13(1)(b)

This amendment extends the class of persons automatically entitled to inspect a court record in cases affecting or potentially affecting the welfare of a child – a child welfare officer of a State or Territory.

[24] After Chapter 26

This amendment is of a technical nature to reflect the inadvertent repeal of Schedule 2 Family Law Amendment Rules 2011 (No. 2) which occurred upon the commencement of the *Attorney-General's (Spent and Redundant Instruments) Repeal Regulation 2013*. The new chapter sets out the rules about a case to which the *Trans-Tasman Proceedings Act 2010* applies, particularly with respect to subpoenas. It applies as far as possible, and with necessary amendments, the relevant Federal Court Rules.

[25] At the end of Chapter 27

This amendment prescribes that Schedule 3 (Itemised scale of costs) applies to work done by lawyers on or after 1 January 2015.

[26] Schedule 2

This amendment is of a technical nature, inserting the current prescribed Form 4.

[27] Schedule 3

The amendment provides for a uniform increase of 2.8% to all items in the Itemised scale of costs. The amendment is also technical in nature because it amends the name of the title of column 3 and records that the amount charged includes GST. In relation to the GST this was previously reflected as a notation within the Schedule.

[28] Dictionary (definition of *Federal Magistrates Court*)

[29] Amendments of listed provisions relating to the Federal Magistrates Court of Australia

These are technical amendments, consequential upon the commencement of the *Federal Circuit Court of Australia Legislation Amendment Act 2013*. The amendments reflect the change of name of the Federal Magistrates Court to the Federal Circuit Court of Australia and its judicial officers to Chief Judge and Judges.