

EXPLANATORY STATEMENT

Select Legislative Instrument No. 70, 2015

Issued by Authority of the Attorney-General

Subject - *Federal Court of Australia Act 1976*
Family Law Act 1975
Federal Circuit Court of Australia Act 1999

Federal Courts Legislation Amendment (Fees) Regulation 2015

The *Federal Courts Legislation Amendment (Fees) Regulation 2015* (the Regulation) is made under section 60 of the *Federal Court of Australia Act 1976*, section 125 of the *Family Law Act 1975* and section 120 of the *Federal Circuit Court of Australia Act 1999*, under which the Governor-General has the authority to make regulations.

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

- exclude ‘public authorities’ (such as government agencies) from having to pay fees applicable to a ‘corporation’ and instead provide that they pay the lower fees applicable ‘in any other case’ when filing all matters in the Federal Court of Australia and the Federal Circuit Court of Australia, other than bankruptcy matters
- remove the ‘publicly listed company’ fee category, and instead provide that such companies pay the lower fees applicable to a ‘corporation’ when filing all matters in the Federal Court and the Federal Circuit Court, other than bankruptcy matters
- increase all fee categories (as amended above) by 10 per cent, except for those fees not subject to a biennial fee increase, and
- exempt certain procedural international arbitration matters from the general filing fee.

The Regulation will also amend the *Family Law (Fees) Regulation 2012* to:

- increase the full divorce fee in the Federal Circuit Court from \$845 to \$1,195 (\$350 increase)
- increase the fees for consent orders from \$155 to \$235 (\$80 increase), and for issuing subpoenas from \$55 to \$120 (\$65 increase)
- increase all other existing family law fee categories (by an average of 10 per cent) except for the reduced divorce fee in the Federal Circuit Court and divorce fees in the Family Court of Australia, and
- establish a new fee category for the filing of amended applications (\$120).

The Regulation will increase all general federal law fees by 10 per cent (except for those fees not subject to a biennial fee increase), following a restructure of fee categories for public authorities and publicly listed companies filing matters, other than bankruptcy matters, in the Federal Court and Federal Circuit Court. Currently, the applicable fees for public authorities and publicly listed companies in the federal courts are significantly higher than those of some State courts.

The basis on which the amended fees are calculated is to increase fee parity between the federal courts and State courts, and achieve higher cost recovery overall. Distinct fees for bankruptcy matters will remain unchanged, as these matters form a large proportion of filings and are matters over which the Commonwealth has exclusive jurisdiction. Certain minor, procedural international arbitration matters will also be exempt from the general filing fee to make Australia a more desirable arbitration seat.

The Regulation will also increase the full divorce fee in the Federal Circuit Court to achieve parity with the full fee in the Family Court, to reflect that the Federal Circuit Court is well established as the main court dealing with divorce applications. There will be no change to the reduced divorce fee in the Federal Circuit Court and divorce fees in the Family Court of Australia. Accordingly, the Regulation will also remove the provisions referring to a specific biennial fee increase formula for reduced family law fees. This will no longer be applicable as the reduced divorce fee in the Federal Circuit Court will not be one-third of the full divorce fee in that Court, and no other family law fee items have reduced fees or reduced fee filings.

The Regulation will also increase all other family law fees, except for the reduced Federal Circuit Court divorce fee and Family Court divorce fees. The basis on which the amended fees are calculated is to better reflect the cost of providing court services for private matters where there often may be little public interest at stake, and reinforce the message to litigants that early dispute resolution is encouraged (where appropriate) and courts should be considered a last resort. Full or partial waivers of fees will continue to apply to vulnerable litigants, including reduced fees for divorce applications.

The Regulation will commence on 1 July 2015, and apply to fees for documents filed or services provided for all general federal law (except distinct fees relating to bankruptcy proceedings) and family law fee categories on or after 1 July 2015.

The Federal Court of Australia, the Family Court of Australia, the Federal Circuit Court of Australia and the Family Court of Western Australia were consulted on the content of the Regulation. Consultation involved the exchange of correspondence and discussions.

Details of the Regulation are set out in the [Attachment](#).

The Office of Best Practice Regulation was consulted on the measures and advised that no Regulation Impact Statement was required.

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 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

Statement of Compatibility with Human Rights

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

Federal Courts Legislation Amendment (Fees) Regulation 2015

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 Courts Legislation Amendment (Fees) Regulation 2015* will amend the *Federal Court and Federal Circuit Court Regulation 2012* to:

- exclude public authorities from having to pay fees for a corporation in the Federal Court of Australia and the Federal Circuit Court of Australia, except in relation to distinct fee items for bankruptcy matters
- remove the publicly listed company fee category, except in relation to distinct fee items for bankruptcy matters
- increase all fee categories (as amended above) by 10 per cent, and
- exempt certain procedural international arbitration matters from the general filing fee.

The *Federal Courts Legislation Amendment (Fees) Regulation 2015* will also amend the *Family Law (Fees) Regulation 2012* to:

- increase the fee for certain divorce applications, consent orders and issuing subpoenas by a prescribed amount
- increase all other existing family law fee categories (by an average of 10 per cent), except for the reduced divorce fee in the Federal Circuit Court and divorce fees in the Family Court of Australia, and
- establish a new fee category for the filing of amended applications.

Human rights implications

The Regulation will reduce overall the fees payable by public authorities and publicly listed companies filing matters in the Federal Court of Australia and the Federal Circuit Court of Australia, except in relation to distinct fee items for bankruptcy matters.

The Regulation will also increase certain fees payable by applicants filing family law matters in the Family Court of Australia and the Federal Circuit Court of Australia.

The Regulation does not engage any of the applicable rights or freedoms.

Conclusion

The Regulation is compatible with human rights and does not raise any human rights issues.

Senator the Hon George Brandis QC, Attorney-General

Details of the Regulation are as follows:

Section 1 – Name

This section will provide that the name of the Regulation is the *Federal Courts Legislation Amendment (Fees) Regulation 2015*.

Section 2 – Commencement

This section will provide timing for commencement of the Regulation on 1 July 2015. This section will apply to current and future proceedings in the Federal Court of Australia, Family Court of Australia, Federal Circuit Court of Australia and Family Court of Western Australia.

Section 3 – Authority

This section will list the Acts under which the Regulation will be made. The Regulation will be made under the *Federal Court of Australia Act 1976*, the *Family Law Act 1975* and the *Federal Circuit Court of Australia Act 1999*.

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 – Amendment of the *Federal Court and Federal Circuit Court Regulation 2012*

Part 1 – Main Amendments

Federal Court and Federal Circuit Court Regulation 2012

Item [1] – Section 1.03

This item will add a definition for a ‘public authority’ under section 1.03. This term will have the meaning given by subsection 1.04(4) of the *Federal Court and Federal Circuit Court Regulation 2012*.

Item [2] – Paragraph 1.04(1)(d)

This item will remove ‘public authority’ from the definition of ‘corporation’ under subsection 1.04(1). This will exclude public authorities from having to pay fees for a corporation in the Federal Court and Federal Circuit Court, except as provided for in the distinct fee items in Schedule 1 relating to bankruptcy proceedings.

Item [3] – Paragraph 1.04(2)(a)

This item will remove ‘that is not a public authority’ following ‘a corporation sole’ from paragraph 1.04(2)(a). This will clarify that ‘a corporation sole’ is excluded from the definition of ‘corporation’, regardless of whether it is or is not a public authority. This will

be consistent with ‘public authority’ also being excluded from the definition of ‘corporation’.

Item [4] – At the end of subsection 1.04(2)

This item will add ‘a public authority’ to the definition of what is not a ‘corporation’ under subsection 1.04(2). This will clarify that a ‘corporation’ does not include a ‘public authority’. This will reflect that public authorities will pay fees applicable ‘in any other case’ unless specifically provided for in a fee item in Schedule 1.

Item [5] – Subsection 1.04(4) (subparagraph (a)(iii) of the definition of *public authority*)

This item will repeal the out of date reference to a prescribed agency under the *Financial Management and Accountability Act 1997*. This item will substitute this with the updated reference to any other non-corporate Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

Item [6] – Paragraphs 2.02(2)(a) and (b)

This item will repeal the clarification of existing fee categories in paragraphs 2.02(2)(a) and (b), and clarify the application of a fees to a ‘publicly listed company’ in Schedule 1. This item will clarify that where a fee item in Schedule 1 mentions a fee for a publicly listed company, then a corporation that is a publicly listed company will pay that fee. Where a fee item mentions a fee for a corporation and not for a publicly listed company, then a corporation that is a publicly listed company will be liable to pay the fee for a corporation. Where a fee item mentions a fee for a corporation, then a corporation that is not a publicly listed company will be liable to pay that fee.

Item [7] – Paragraph 2.02(3)(b)

This item will remove ‘publicly listed company, another corporation and another person’ from paragraph 2.02(3)(b), and will refer to ‘different persons’, which will encompass publicly listed companies and corporations.

Item [8] – At the end of subsection 2.08(2)

This item will add ‘an application under section 23 of the *International Arbitration Act 1974* for the issue of a subpoena’ to the list of fees not payable in a Federal Court of Australia proceeding. This will exempt such procedural matters from the general filing fee in that Court, but these will still be subject to the fee for issuing a subpoena.

Item [9] – Subsection 2.20(1)

This item will add fee item 107 to the list of fee items in Schedule 1 that are not subject to a biennial fee increase. This reflects the change of fee item 107 from a fee amount to text that clarifies it as the sum of fee items 106 and 109 under the proposed Regulation. This approach will be consistent with other fee items prescribed in text, but related fee items 106 and 109 will still be subject to a biennial increase, therefore the total amount payable for fee item 107 will reflect this.

Item [10] – Subsection 2.20(1)

This item will omit the reference to ‘1 July 2014’ and substitute it with ‘1 July 2016’, to reflect the date of the next biennial fee increase.

Item [11] – Schedule 1

This item will repeal Schedule 1 – Fees and replace it with an amended fee schedule. The amended Schedule 1 will remove the provisions that refer to a ‘publicly listed company’ fee category (except in the case of distinct provisions relating to bankruptcy proceedings) and provide for the distinct provisions relating to bankruptcy proceedings to have a separately specified fee for a ‘public authority’.

All fee amounts will also be subject to a 10 per cent increase. This is with the exception of categories where biennial fee increases do not apply—that is, fee items where there is no actual fee amount, and fees for filing applications under section 46PO or 46PP of the *Australian Human Rights Commission Act 1986* in the Federal Court and Federal Circuit Court.

This item will replace fee item 107 with text that clarifies the fee amount as equal to the sum of the fees mentioned in items 106 and 109 for a corporation and in any other case. This will ensure that fee item 107 is always equal to the sum of fee items 106 and 109, even following a biennial fee increase.

This item will also amend a typographical error in item 218 of Part 2 of Schedule 1 to clarify that the relevant provision is subsection 104(3) of the *Federal Circuit Court of Australia Act 1999*.

Part 2 – Application of amendments

Federal Court and Federal Circuit Court Regulation 2012

Item [12] – Part 5 (heading)

This item will amend the heading of Part 5 from ‘Repeal and transitional’ to ‘Transitional provisions’. This will reflect that there will no longer be any applicable repeal provisions under Part 5 of the *Federal Court and Federal Circuit Court Regulation 2012*.

Item [13] – At the end of Part 5

This item will provide that the Regulation will apply to fees for documents filed or services provided on or after 1 July 2015 in the Federal Court of Australia and Federal Circuit Court of Australia.

Schedule 2 – Amendment of the *Family Law (Fees) Regulation 2012*

Part 1 – Main Amendments

Family Law (Fees) Regulation 2012

Item [1] – Section 1.03 (definition of a *filing fee*)

This item will amend the definition of a filing fee so that it includes the new fee item for filing an amended application.

Item [2] – Section 1.03 (definition of *magistrate*)

This item will repeal the definition of ‘magistrate’ as it will no longer be necessary. This will reflect that, under the proposed Regulation, amended Schedule 1 will refer to fees applicable to hearings by a magistrate, as distinct from fees applicable to hearings by a Judge of the Federal Circuit Court of Australia.

Item [3] – At the end of section 1.04

This item will add a note directing readers to Part 3 for the other transitional provisions that will apply to the *Family Law (Fees) Regulation 2012*.

Item [4] – Section 2.13(1)

This item will omit the reference to ‘1 July 2014’ and substitute it with ‘1 July 2016’, to reflect the date of the next biennial fee increase.

Item [5] – Subsections 2.13(2), (5) and (6)

This item will repeal the provisions referring to a specific biennial fee increase formula for reduced family law fees. This will no longer be applicable as the reduced divorce fee in the Federal Circuit Court will not be one-third of the full divorce fee in that Court under the Regulation. It is also not applicable to the Family Court where there are no reduced divorce fee filings. No other family law fee items have reduced fees.

Item [6] – Subsection 2.13(7) (heading)

This item will repeal the heading of ‘reduced fee’ as the specific biennial fee increase formula for reduced fees is repealed.

Item [7] – Schedule 1 - Fees

This item will repeal Schedule 1 – Fees and replace an amended fee schedule.

This item will amend the categories for fee items 11, 12, 13, 15, 16 and 17 to setting down for hearings and hearings before a judge of a Family Court, judge of the Federal Circuit Court of Australia or a magistrate.

This item will also delete Note 2 to Schedule 1 – Fees ‘Magistrate includes a Judge of the Federal Circuit Court (see the definition of *magistrate* in section 1.03), as it is no longer necessary.

Part 2 – Application of amendments

Family Law (Fees) Regulation 2012

Item [8] – After Part 2

This item will provide that the Regulation will apply to fees for documents filed or services on or after 1 July 2015 in the Family Court of Australia and Federal Circuit Court of Australia.