

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 114, 2015**

Issued by Authority of the Attorney-General

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

*Family Law (Fees) Amendment (2015 Measures No. 1) Regulation 2015*

The *Family Law Act 1975* relates to family law matters, including marriage, divorce, parental responsibility for children and financial matters arising out of the breakdown of de facto relationships. The *Federal Circuit Court of Australia Act 1999* is an act relating to the Federal Circuit Court of Australia, including enabling the Court to operate as informally as possible in the exercise of judicial power and use streamlined procedures.

The *Family Law (Fees) Amendment (2015 Measures No. 1) Regulation 2015* (the Regulation) is made under section 125 of the Family Law Act and section 120 of the Federal Circuit Court of Australia Act, under which the Governor-General has the authority to make regulations.

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

- increase the full divorce fee in the Federal Circuit Court of Australia from \$845 to \$1,200 (\$355 increase) and the full divorce fee in the Family Court of Australia from \$1,195 to \$1,200 (\$5 increase)
- increase the fees for consent orders from \$155 to \$240 (\$85 increase), and for issuing subpoenas from \$55 to \$125 (\$70 increase)
- increase all other existing family law fee categories (by an average of 11 per cent) except for the reduced divorce fee in the Federal Circuit Court and Family Court, and
- establish a new fee category for the filing of amended applications (\$125).

Family law fee increases that were intended to commence on 1 July 2015 under Schedule 2 of the *Federal Courts Legislation Amendment (Fees) Regulation 2015* were disallowed by the Senate on 25 June 2015. The Government will reintroduce those family law fee increases under the Regulation with an additional \$5 increase. The reduced divorce fees in the Family Court and Federal Circuit Court will continue to not be subject to any increase. The family law filing fee for an application to register a New Zealand judgment under the *Trans-Tasman Proceedings Act 2010* will also remain unchanged from the Federal Courts Legislation Amendment (Fees) Regulation (\$110) to ensure consistency with the corresponding general federal law fee increase from 1 July 2015.

It is essential that the additional revenue from the family law fee changes, as well as the general federal law fee changes that commenced on 1 July 2015 under Schedule 1 of the Federal Courts Legislation Amendment (Fees) Regulation, is generated to put the federal courts on a sustainable financial footing. Given the structural deficits currently facing the

family courts, the only alternatives would be to cut frontline court services, close registries and not replace judges, which would severely undermine access to justice.

The Regulation will achieve parity between the full divorce fee in the Federal Circuit Court and Family Court, to reflect that the Federal Circuit Court is well established as the main court dealing with divorce applications. As there will be no change to the reduced divorce fee in the Federal Circuit Court and Family Court, 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 divorce fee in the Federal Circuit Court and Family Court. 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 the day after registration, and apply to fees for documents filed or services provided for all family law fee categories after commencement.

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 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*

### **Family Law (Fees) Amendment (2015 Measures No. 1) 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 *Family Law (Fees) Amendment (2015 Measures No. 1) Regulation 2015* will 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 11 per cent), except for the reduced divorce fee in the Federal Circuit Court of Australia and the Family Court of Australia, and
- establish a new fee category for the filing of amended applications.

#### **Human rights implications**

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

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.

Details of the Regulation are as follows:

**Section 1 – Name**

This section will provide that the name of the Regulation is the *Family Law (Fees) Amendment (2015 Measures No. 1) Regulation 2015*.

**Section 2 – Commencement**

This section will provide timing for commencement of the Regulation on the day after registration. This section will apply to current and future proceedings in the Family Court of Australia and Federal Circuit Court of Australia.

**Section 3 – Authority**

This section will list the Acts under which the Regulation will be made. The Regulation will be made under 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 – Amendments

**Part 1 – Main Amendments**

*Family Law (Fees) Regulation 2012*

**Item [1] – Section 1.03 (definition of *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] – Subsection 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**

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

This item will add fee item 10B for amended applications. This fee will not apply to minor, technical amendments.

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 after the commencement of the Regulation in the Family Court of Australia and Federal Circuit Court of Australia.