

EXPLANATORY STATEMENT

Issued by the Authority of the Attorney-General

Judiciary Act 1903

High Court of Australia (Fees) Amendment Regulations 2018

The *Judiciary Act 1903* (the Act) provides for the exercise of the judicial power of the Commonwealth. It outlines the jurisdiction and procedure of the High Court of Australia. Section 88 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

The *High Court of Australia (Fees) Amendment Regulations 2018* (the Regulation) amends the *High Court of Australia (Fees) Regulation 2012* (principal Regulation), making the following changes:

- amend the title of an ‘application for an order to show cause in relation to a writ of certiorari, a writ of mandamus, a writ of habeas corpus, an order for production, a writ of prohibition or an information of quo warranto or similar relief’ to ‘application for a constitutional or other writ’ in table items 101 and 111(a) of Schedule 1, and
- delete the reference in table item 111(d) to ‘or a summons mentioned in rule 25.03.1 of the Rules’ because an applicant will no longer be required to file a summons of this type mentioned in rule 25.03.1 of the *High Court Rules 2004* (the Rules).

The purpose of the Regulation is to make consequential amendments to the principal Regulation based on the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018*, which also commenced on 1 November 2018. These amendments to the Rules provide a more streamlined procedure for the filing and consideration of applications. The amendments to the Rules move away from the phrase ‘application for an order to show cause in relation to a writ of certiorari, a writ of mandamus, a writ of habeas corpus, an order for production, a writ of prohibition or an information of quo warranto or similar relief’ which was more appropriate to the rules of the court before the Rules, to the phrase, ‘application for a constitutional or other writ’.

The Regulation commenced on 1 November 2018.

The High Court of Australia was consulted and supported the Regulation. Consultation also occurred between the High Court, relevant professional organisations and the Special Committee of Solicitors-General in relation to and resulting in, the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018*. These consultations were taken into account by the Court in making these amendments to the Rules.

A Statement of Compatibility with Human Rights is at **Attachment A**.

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) Amendment Regulations 2018

1. This Disallowable 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 Regulation

2. The *High Court of Australia (Fees) Amendment Regulations 2018* (the Regulations) provide only minor changes to the *High Court of Australia (Fees) Regulation 2012* (principal Regulation), which are machinery in nature and do not have a regulatory impact.
3. The Regulations are made under section 88 of the *Judiciary Act 1903*, which provides, in part, that the Governor-General may make regulations prescribing the fees payable in respect of proceedings in the High Court and the execution of the process of the High Court.
4. The purpose of the Regulations is to make consequential amendments to the principal Regulation based on proposed amendments to the *High Court Amendment (Constitutional Writs and Other Matters) Rules 2018*, which also commenced on 1 November 2018. These amendments provide a more streamlined procedure for the filing and consideration of applications. Included in these amendments is a move away from the phrase ‘application for an order to show cause in relation to a writ of certiorari, a writ of mandamus, a writ of habeas corpus, an order for production, a writ of prohibition or an information of quo warranto or similar relief’ which was more appropriate to the rules of the court before the *High Court Rules 2004*, to the phrase, ‘application for a constitutional or other writ’.

Human right implications

5. These Regulations do not engage with any of the applicable rights or freedoms.

Conclusion

6. These Regulations are compatible with human rights as they do not raise any human rights issues.