

CIVIL DISPUTE RESOLUTION AMENDMENT REGULATIONS 2021

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

under the *Civil Dispute Resolution Act 2011*.

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Civil Dispute Resolution Amendment Regulations 2021* (the Regulations) amend the *Civil Dispute Resolution Regulations 2021* (the Principal Regulations) to amend the sunset date to be three years after the commencement of the Regulations.

The *Civil Dispute Resolution Act 2011* (the Act) ensures that, as far as possible, parties take ‘genuine steps’ to resolve a civil dispute before proceedings are commenced in the Federal Court of Australia or the Federal Circuit and Family Court of Australia (Division 2) (FCFC (Division 2)). Section 17 of the Act provides that regulations may be made to exempt proceedings from this requirement in the Act.

Certain proceedings have been identified in the Principal Regulations as excluded proceedings which are not subject to the requirements of the Act.

Section 50 of the *Legislation Act 2003* provides that a legislative instrument will be repealed on the first 1 April or 1 October falling on or after the tenth anniversary of registration of the instrument. The purpose of the Regulations is to amend the sunset period of the Principal Regulations to be three years after its commencement, rather than being in effect for ten years. The Regulations address concerns raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation that a ten-year period was too long for the Principal Regulations to be in operation.

Section 19 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.

CONSULTATION

The Principal Regulations were informed by consultation with a range of relevant stakeholders. The Regulation addresses concerns raised by the Senate Standing Committee for the Scrutiny of Delegated Legislation in relation to the sunset period for the Regulations. Since the substantive content of the Principal Regulations has not changed, the stakeholders have not been consulted on the Regulation, however they will be informed of the change to the sunset period once the Regulation commences.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) has confirmed that a Regulatory Impact Statement is not required for the Regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Civil Dispute Resolution Amendment Regulations 2021

This Legislative Instrument (the Regulations) 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 *Civil Dispute Resolution Amendment Regulations 2021* (the Regulations) amend the *Civil Dispute Resolution Regulations 2021* (the Principal Regulations) to change the sunset date to be three years after the commencement of the Regulations.

The *Civil Dispute Resolution Act 2011* (the Act) requires that, as far as possible, parties take ‘genuine steps’ to resolve a civil dispute before proceedings are commenced in the Federal Court or the Federal Circuit and Family Court of Australia (Division 2). Section 17 of the Act provides that regulations may be made to exempt proceedings from this requirement in the Act.

Section 50 of the *Legislation Act 2003* provides that a legislative instrument will be repealed on the first 1 April or 1 October falling on or after the tenth anniversary of registration of the instrument.

The purpose of the Regulations is to amend the sunset period of the Principal Regulations to be three years after their commencement.

Section 19 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.

Human rights implications

The Regulations do not engage any of the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Regulations simply amend the sunset period of the Principal Regulations to be three years after their commencement.

Conclusion

The Regulations are compatible with human rights as it does not raise any human rights issues.

NOTES ON SECTIONS

Section 1 - Name of Regulations

This section provides that the title of the Regulations is the *Civil Dispute Resolution Amending Regulations 2021*.

Section 2 - Commencement

This section provides for the Regulations to commence on the date that they are registered.

Section 3 - Authority

This section provides that the *Civil Dispute Resolution Amending Regulations 2021* is made under the *Civil Dispute Resolution Act 2011*.

Section 4 – Schedule(s)

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1 – Amendments

Item [1] – section 7

Item 1 of Schedule 1 inserts a new section 7 into the Principal Regulations. New section 7 provides that the *Civil Dispute Resolution Regulations 2021* is repealed at the start of 1 October 2024.