

# **FAMILY LAW (FEES) REGULATIONS 2022**

## **EXPLANATORY STATEMENT**

Issued by authority of the Attorney-General

under section 125 of the *Family Law Act 1975* and

under section 285 of the *Federal Circuit and Family Court of Australia Act 2021*

### **PURPOSE AND OPERATION OF THE INSTRUMENT**

Section 125 of the *Family Law Act 1975* (Family Law Act) provides, in part, that the Governor-General may make regulations prescribing the fees payable in respect of proceedings under the Family Law Act. The regulations may also provide for the exemption and refund of those fees. Section 285 of the *Federal Circuit and Family Court of Australia Act 2021* (FCFCOA Act) provides, in part, that the Governor-General may make regulations prescribing the fees payable in respect of proceedings in the Federal Circuit and Family Court of Australia (FCFCOA) and the service and execution of the process of the FCFCOA. They may also provide for the exemption, waiver or refund of those fees.

The *Family Law (Fees) Regulations 2022* (the instrument) sets out the fees payable for filing documents in the course of a family law proceeding in the FCFCOA and the fees for the service and execution of the process of the FCFCOA. The instrument also contains provisions regarding the administration of fees, including the indexation of fees and how fees may be deferred, refunded, reduced or waived. Schedule 1 lists the specific amounts payable.

The instrument repeals and replaces the *Family Law (Fees) Regulation 2012* (2012 instrument) which was due to sunset on 1 April 2023 as a result of section 50 of the *Legislation Act 2003*. Section 50 of the Legislation Act provides that all legislative instruments registered after 1 January 2005 are automatically repealed on the first 1 April or 1 October falling on or after the tenth anniversary of their registration. The instrument remakes the 2012 instrument in substantially the same form, with minor changes to clarify the operation of the provisions, modernise the language used and bring the instrument in line with the Office of Parliamentary Counsel's current drafting practices.

The instrument is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The instrument commenced when the 2012 instrument was repealed on 1 April 2023.

## CONSULTATION

Consistent with the requirements under section 17 of the Legislation Act, consultations occurred from January to September 2022 with the FCFCOA and with relevant line areas of the Australian Attorney-General's Department. Consultations involved the exchange of correspondence and discussions. Stakeholders were asked to provide input into the remake of the instrument and to identify any areas that may require amendments. As a result of the consultation, minor amendments were made to the 2012 instrument to clarify the operation of certain provisions.

## REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) assessed that a Regulation Impact Statement was not required for the instrument as it is unlikely to have more than a minor regulatory impact (OBPR reference 22-01769)

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### **Family Law (Fees) Regulations 2022**

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 Disallowable Legislative Instrument**

The *Family Law (Fees) Regulations 2022* (the instrument) sets out the fees payable for filing documents in the course of a family law proceeding and for the service and execution of processes of the Federal Circuit and Family Court of Australia. The instrument also contains provisions regarding the administration of fees, including the indexation of fees and how fees may be deferred, refunded, reduced or waived. Schedule 1 lists the specific amounts payable.

The instrument replaces the *Family Law (Fees) Regulation 2012* which will be repealed on its sunset date of 1 April 2023. This is due to the operation of section 50 of the *Legislation Act 2003*. Section 50 of the Legislation Act provides that all legislative instruments registered after 1 January 2005 are automatically repealed on the first 1 April or 1 October falling on or after the tenth anniversary of their registration. The *Family Law (Fees) Regulation 2012* remained fit-for-purpose and has therefore been remade as the *Family Law (Fees) Regulations 2022*.

## **Human rights implications**

The instrument does not engage any of the applicable rights or freedoms, including the implied right to access justice.

The fee amounts payable by court users will continue to be indexed annually in line with the Consumer Price Index. There are no other fee increases introduced by the instrument. The instrument will also continue to provide fee exemptions for eligible persons and fee reductions for persons who, by reason of financial hardship, are unable to pay the full fee amount.

## **Conclusion**

The instrument is compatible with human rights as it does not raise any human rights issues.

Details of the instrument are set out in **Attachment A**.

## **Details of the *Family Law (Fees) Regulations 2022***

### **PART 1 – Preliminary**

#### **Section 1.01 – Name**

This section provides that the title of the instrument is the *Family Law (Fees) Regulations 2022*.

#### **Section 1.01A – Commencement**

This section provides that the instrument commences on 1 April 2023.

#### **Section 1.02 – Authority**

This section provides that the instrument is made under the *Family Law Act 1975* and the *Federal Circuit and Family Court of Australia Act 2021* (FCFCOA Act).

Section 125 of the Family Law Act provides that the Governor-General may make regulations, not inconsistent with the Family Law Act, prescribing court fees to be payable in respect of proceedings under the Family Law Act. They may also provide for the exemption and refund of those fees.

Section 285 of the FCFCOA Act provides that the Governor-General may make regulations prescribing court fees to be payable in respect of proceedings in the FCFCOA and the service and execution of the process of the FCFCOA.

#### **Section 1.02A – Schedule 2**

This section provides that each instrument that is specified in Schedule 2 is amended or repealed as set out in the items in that Schedule, and that any other item in that Schedule has effect according to its terms. In accordance with Schedule 2, the *Family Law (Fees) Regulation 2012* is repealed.

#### **Section 1.03 – Definitions**

This section provides definitions for terms commonly used in the instrument.

The expression ‘*independent children’s lawyer*’ is added to Note 1. Note 1 provides a non-exhaustive list of expressions used in the instrument that are defined in the Family Law Act. An ‘*independent children’s lawyer*’ is currently defined in the Family Law Act as a lawyer who represents the child’s interests in proceedings under an appointment made by an order of the court under subsection 68L(2) of the Act. Section 2.05A of the 2012 instrument previously included an end note which referred to

the meaning of '*independent children's lawyer*' as provided in subsection 4(1) of the Family Law Act. This end note is no longer necessary and has been removed from section 2.05A of the instrument.

Note 2 has also been added to the instrument. Note 2 sets out a non-exhaustive list of expressions used in the instrument that are defined in the FCFCOA Act. This list includes the expression '*Chief Executive Officer*' which is defined in the FCFCOA Act as the Chief Executive Officer and Principal Registrar of the FCFCOA (Division 1).

This section would also clarify that expressions used in the instrument that are defined in the Family Law Act and the FCFCOA Act have the meaning given by whichever of those Acts is appropriate in the context of the application and operation of the provision.

## **PART 2 – Fees**

### **Division 2.1 – General**

#### **Section 2.01 – Purpose of Part**

This section provides that for the purposes of section 125 of the Family Law Act and section 285 of the FCFCOA Act, Part 2 of the instrument sets out matters relating to fees.

#### **Section 2.02 – Fees**

This section provides that Schedule 1 of the instrument sets out the fees payable for the filing of a document, and for a service in relation to a proceeding provided by the relevant court or an officer of the relevant court or another person acting on behalf of the relevant court. The expression '*service*' would cover setting down a matter for hearing, conducting a hearing or a conciliation conference and issuing a subpoena.

Subsection 2.02(2) clarifies that where a person files a document which includes an interim order application and also covers another matter, the fee payable is the sum of the fee for the interim order (fee item 9 of Schedule 1) and the fee in Schedule 1 for filing the document covering the other matter.

Subsection 2.02(3) provides that where multiple persons are liable to pay a particular fee, the fee rate charged is the highest fee that applies to any of those persons. For example, if an application for final orders in parenting proceedings (fee item 4 of Schedule 1) is jointly commenced by a parent and a grandparent and the parent is eligible for the fee exemption under section 2.04 but the grandparent is not, the fee charged is the full fee in item 4 of Schedule 1. Where a joint application for divorce is filed and one party is eligible for the reduced fee prescribed in section 2.06 and the other party is not, then the fee payable is the general fee set out in the relevant item in Schedule 1.

## **Division 2.2 – Liability to pay fees**

### **Section 2.03 – Persons liable to pay fees**

This section specifies the persons who are liable to pay a fee set out in Schedule 1.

Subsection 2.03(1) provides that a fee is payable by the person who commences the proceeding, or if the proceeding is an appeal, the person who commences the appeal. This is with the exceptions of:

- a fee for filing a response to an application or an interim order application, which is payable by the person for whom the application is filed; and
- a fee for issuing a subpoena, which is payable by the person who requests that the subpoena be issued.

Subsection 2.03(2) allows any party to the proceeding to pay a fee on their own initiative, whether or not the fee is payable by them. The provision also enables the relevant court for the proceeding or a Judge or relevant Registrar of that court to order that another party must pay a fee (or part of a fee) instead of the person who is liable to pay the fee.

## **Division 2.3 – Exemptions and reduced fees**

### **Section 2.04 – Persons exempt from paying fees – general**

This section provides that a person is exempt from paying a fee mentioned in Schedule 1 (except for the fees mentioned in items 1, 2 or 10A) if, at the time the fee is payable, the person:

- has been granted legal aid, for the proceeding for which the fee would otherwise be payable, under a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory or approved by the Attorney-General;
- is the holder of any of the following cards issued by the Commonwealth: a health care card, a pensioner concession card, a Commonwealth seniors health card and any other card that certifies the holder's entitlement to Commonwealth health concessions;
- is serving a sentence of imprisonment or is otherwise detained in a public institution or is in immigration detention (within the meaning of the *Migration Act 1958*);
- is younger than 18 years old; or
- is receiving youth allowance or Austudy payment under the *Social Security Act 1991* or benefits under the ABSTUDY Scheme.

Individuals in closed detention and those permitted to live in the community while under a residence determination are covered by the exemption in paragraph 2.04(1)(c).

Subsection 2.04(2) clarifies that the holder of a card does not include a dependant of the person who is issued the card.

For the purpose of paragraph (1)(a)(ii), the list of legal aid schemes and services approved by the Attorney-General can be found on the Attorney-General's Department's website.

### **Section 2.05 – Persons exempt from paying fees – financial hardship**

This section provides that if a fee mentioned in Schedule 1 (other than a fee mentioned in items 1, 2 or 10A) is payable by a person in relation to a proceeding and in the opinion of a relevant Registrar or an authorised officer of the relevant court, at the time the fee is payable, that the payment would cause financial hardship to the person, the relevant Registrar or authorised officer may exempt the person from paying the fee.

Under subsection 2.05(2), the relevant Registrar or authorised officer must have regard to the person's income, day-to-day living expenses, liabilities and assets when considering whether payment of the fee would cause the person financial hardship.

The end note after this section provides that a decision of a relevant Registrar or an authorised officer under subsection 2.05(2) is reviewable by the Administrative Appeals Tribunal (AAT) pursuant to section 2.14 of the instrument.

### **Section 2.05A – Persons exempt from paying fees – independent children's lawyer**

This section provides that an independent children's lawyer appointed to represent a child's best interests in proceedings under the Family Law Act is exempt from paying the filing fee for an interim order application and the fee for issuing a subpoena.

### **Section 2.06 – Reduced fees for filing applications for divorce or nullity of marriage orders**

This section provides for circumstances wherein the reduced fee for an application for divorce or nullity of marriage is payable. Column 3 of fee items 1 and 2 of Schedule 1 prescribes a 'general fee' and a 'reduced fee' for each fee item. Both reduced fees are one-third of the general fee, rounded down to the nearest \$5, pursuant to subregulations 2.13(5) and (6). The reduced fee is only payable by individuals who are eligible under this section. In all other cases the general fee for an application for divorce or nullity of marriage is payable.

Subsection 2.06(1) provides that if an individual is exempt from paying fees set out in Schedule 1 because of the operation of section 2.04 of the instrument (namely, they fall into a specified category of persons such as recipients of legal aid), then the individual may pay the reduced fee for a divorce or nullity of marriage application.

Subsection 2.06(2) enables a relevant Registrar or an authorised officer of the relevant court to determine that an individual may pay the reduced fee in item 1 or 2 if, at the time the fee is payable, it is the opinion of the relevant Registrar or authorised officer that payment of the full fee would cause financial hardship to the individual.

Subsection 2.06(3) provides that in considering whether payment of the full fee would cause financial hardship to the individual, the relevant Registrar or authorised officer must consider the individual's income, day-to-day living expenses, liabilities and assets. These considerations are the same as those prescribed in section 2.05 of the instrument.

The end note provides that a decision of the relevant Registrar or an authorised officer under subsection 2.06(2) is reviewable by the AAT pursuant to section 2.14 of the instrument.

## **Division 2.4 – When fees are not payable**

### **Section 2.07 – Fees not payable if already paid**

This section provides that a person who is liable to pay the fee does not have to pay the fee if another person has already paid the fee. This can include another party to the proceedings or a person unrelated to the proceeding. For example, the applicant would not have to pay the conciliation conference fee where the respondent has already paid it in order to ensure the matter proceeds.

### **Section 2.08 – Fees not payable in certain proceedings**

This section sets out the circumstances where fees are not payable.

Subsection 2.08(1) lists the kinds of proceedings for which no fees are payable. These include:

- divorce orders in relation to a marriage that was previously dissolved or annulled under the Family Law Act or the *Matrimonial Causes Act 1959*;
- a proceeding for which an international convention that is in force for Australia provides that no fee is to be payable;
- a proceeding under the *Family Law (Child Abduction Convention) Regulations 1986*;



- an application to set aside a subpoena.
- a proceeding under the *Child Support (Assessment) Act 1989* or the *Child Support (Registration and Collection) Act 1988* (the Child Support Acts);
- an appeal under section 47A of the Family Law Act from a decree of a court exercising jurisdiction under the Child Support Acts;
- an appeal under subsection 26 of the FCFCOA Act from a judgment of a court exercising original or appellate jurisdiction under the Child Support Acts;
- an application for leave to appeal under section 47B of the Family Law Act; and
- an application for leave to appeal under section 28 of the FCFCOA Act from a judgment of a court exercising jurisdiction under, or in relation to, the Child Support Acts.

The previous reference to ‘an international convention *to which Australia is party*’ in the 2012 instrument has been changed to ‘an international convention *that is in force for Australia*’. This is the more accurate wording given Australia could be party to a convention that is not yet in force for Australia.

Subsection 2.08(2) provides that a fee in Schedule 1 is not payable for an objection to a subpoenaed document being inspected or copied.

Subsection 2.08(3) provides that fees are not payable for matters under the Family Law Act as itemised in this subsection.

## **Division 2.5 – Payment of Fees**

### **Section 2.09 – When fees must be paid**

This section specifies when fees are payable.

#### *Filing fee*

Subsection 2.09(1) provides that the fee for filing a document must be paid *before* the relevant document is filed.

#### *Setting down fee*

Subsection 2.09(2) provides that the fee for setting down a proceeding for a hearing must be paid no later than 28 days before the hearing day or, for a proceeding set down for hearing within 28 days,

within the period or at the time approved by the relevant Registrar or authorised officer of the relevant court.

Subsection 2.09(3) was inserted and minor changes to subsection 2.09(2) were made to make it clear that a setting down fee must be paid as soon as the proceeding is fixed for hearing and that it remains payable whether or not the proceeding is heard on the fixed days, on later days, or not at all.

#### *Hearing fee*

Subsection 2.09(4) provides that the fee for a hearing day, or part of a hearing day, of a proceeding must be paid no later than close of business on the day that is two business days before the hearing day, or, for a hearing fixed within two business days, no later than 9:30am on the hearing day.

#### *Conciliation conference fee*

Subsection 2.09(5) provides that the fee for a conciliation conference must be paid no later than 28 days before the conference day or, for a conference scheduled within 28 days, before the conference day.

#### *Fee for other service*

Subsection 2.09(6) provides that fees for all other services mentioned in an item in Schedule 1 must be paid *before* the service is provided.

### **Section 2.10 – Deferral of payment of fees**

This section allows a relevant Registrar or an authorised officer of the relevant court to defer the time for payment of a fee. If payment of the fee is deferred, section 2.09 does not apply.

Subsection 2.10(2) allows the time for payment of a fee to be deferred where a relevant Registrar or authorised officer is of the opinion that:

- in the case of a fee for the filing of a document (other than the filing of a response), the need to file the document is so urgent that it overrides the requirement to pay the fee before the document is filed; or
- it would be oppressive or otherwise unreasonable, having regard to the financial circumstances of the person required to pay the fee, to require payment of the fee at the time required under section 2.09.

Subsection 2.10(3) requires that, where the time for payment of a fee has been deferred, the fee must be paid within 28 days after the day the payment is deferred or within another period approved in writing by the relevant Registrar or authorised officer. These time periods apply instead of the time for payment of the fee under section 2.09.

Subsection 2.10(4) clarifies that the time for payment of a fee may be deferred more than once.

Subsection 2.10(5) permits a relevant Registrar or authorised officer to impose conditions on the deferral of the time for payment of a fee. These conditions commonly include how long the fee is to be deferred for, when it is to be paid by and how.

The end note provides that a decision of a relevant Registrar or authorised officer to defer payment of a fee under this section is reviewable by the AAT pursuant to section 2.14 of the instrument. The decision to impose conditions on the deferral in subsection 2.10(5) forms part of the overall decision to defer payment of a fee and is therefore not a separately reviewable decision.

## **Section 2.11 – What happens if fees are not paid**

This section sets out what happens if a fee is not paid and it is not deferred under section 2.10.

Subsection 2.11(2) provides that if the fee must be paid before the filing of a document or the provision of a service, the document must not be filed and the service must not be provided until the whole fee is paid. To avoid doubt, the expression “service” covers hearing fees, setting down fees and conciliation conference fees.

Subsection 2.11(3) permits the relevant court for the proceeding or a Judge or relevant Registrar of that court to allow the document to be filed or the service to be provided even though the fee, or part of the fee, has not been paid.

Subsection 2.11(4) provides that, in the case of an unpaid, or partially unpaid, conciliation conference fee, hearing fee or setting down fee:

- the relevant court, or a Judge or relevant Registrar of that court may order that no proceeding, or no proceeding other than a specified proceeding, is to take place without permission, and
- a person other than the person required to pay the fee, may pay the fee (without affecting any power of the relevant court or of a Judge or relevant Registrar of that court to make an order for costs for the fee); and
- the relevant court or a Judge or relevant Registrar of that court may vacate the hearing day or conciliation conference.

## **Division 2.6 – Miscellaneous**

### **Section 2.12 – Refund of fees**

This section sets out the circumstances under which a fee can be refunded.

#### *General*

Subsections 2.12(1) and (2) provide an entitlement to a refund of an amount in relation to the payment of a fee if a person pays an amount that is more than they are required to pay for the fee under the instrument. The amount to be refunded, under that entitlement, is the difference between the amount paid by the person and the amount the person is required to pay for the fee under the instrument.

Subsection 2.12(3) provides an entitlement to a refund of the amount paid by a person as a fee where another person has already paid the fee or the fee was not payable under the instrument.

#### *Setting down fee*

Subsection 2.12(4) provides that a setting down fee is not refundable if the first hearing day fixed by the setting down, or a hearing day scheduled in place of that first hearing day does not occur.

#### *Hearing fees – hearing not commenced*

Subsections 2.12(5) and (6) provide an entitlement to a refund of a hearing fee paid by a person for a hearing day, or a part of a hearing day, in respect of a hearing that has not commenced, if the person notifies the relevant Registrar or an authorised officer of the relevant court in writing at least 10 business days before the hearing day that the hearing will not occur, or will occur only for the making of orders finalising the proceedings that were the subject of the hearing. In the case of any hearing day fixed less than 10 business days before the hearing day, the person must have notified the relevant Registrar or authorised officer in writing at least two business days before the hearing day.

Subsection 2.12(7) provides that a relevant Registrar may refund a hearing fee for a hearing day, or part of a hearing day, in respect of a hearing that has not commenced if the person, through no fault on their part, has not notified the relevant Registrar or authorised officer in writing, within the relevant time limit, that the hearing will not occur, or will occur only for the making of orders finalising the proceedings that were the subject of the hearing.

The end note after this section provides that a decision of a relevant Registrar or an authorised officer under subsection 2.12(7) is reviewable by the AAT pursuant to section 2.14 of the instrument.

### *Hearing fees – hearing commenced*

Subsection 2.12(8) provides an entitlement to a refund of a hearing fee for any unused hearing days where the hearing has commenced. As it is anticipated that the entitlement would usually arise when a multi-day hearing finishes early, no advance written notification to the relevant Registrar is required. This provision enables litigants to be able to prepay all their hearing fees in one transaction rather than paying individually each day, and be assured that the hearing fees paid for any unused hearing days are refundable.

### *Conciliation conference fee*

Subsection 2.12(9) provides an entitlement to a refund of a conciliation conference fee where the conference does not proceed because the proceedings in relation to the conference are settled or discontinued before the conference could be held.

## **Section 2.13 – Annual increase in fees**

This section provides for the automatic annual increase of the court fees set out in Schedule 1 to the instrument, commencing from 1 July 2023. The fees are increased annually in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician. The fees in Schedule 1 reflect the indexation for the 2022-23 financial year.

To provide an example on the operation of subsection 2.13(4), if the amount to be rounded is \$52.50, the amount is to be rounded down to \$50. If the amount to be rounded is \$18.50, the amount is to be rounded down to \$18.

## **Section 2.14 – Notice of decision and AAT review**

This section provides that a person has right of appeal to the AAT from a decision of a relevant Registrar or an authorised officer about the payment of a fee under:

- section 2.05 (exemption from payment on the ground of financial hardship);
- subsection 2.06(2) (payment of the reduced fee for a divorce or nullity of marriage application);
- section 2.10 (deferral of the time for payment of a fee); and
- subsection 2.12(7) (refund of a hearing fee for an unused hearing day where notification within the required time limit has not occurred).

This section requires a relevant Registrar or authorised officer to give notice of the decision to the person (subsection 2.14(1)) within 28 days after making the decision (subsection 2.14(2)) setting out the decision and, for particular decisions, a statement that the person may apply to the AAT for review of the decision and the reasons for the decision (subsections 2.14(3)).

Subsection 2.14(4) provides that failure to advise of rights of appeal to the AAT does not affect the validity of the decision made by the relevant Registrar or authorised officer.

### **Section 2.15 – Debt due to the Commonwealth, State or Territory**

Subsection 2.15(1) provides that if a fee is not paid in accordance with the instrument, then it immediately becomes a debt due to the Commonwealth. This would include where a fee is not paid at the end of an invoice period or deferral period (and no further deferral is granted).

Subsection 2.15(2) provides that subsection (1) is subject to the following:

- if the fee is payable in relation to a proceeding in a Family Court of a State – then it is recoverable by the State as a debt due to that State;
- if the fee is payable in relation to a proceeding in the Supreme Court of the Northern Territory – then it is recoverable by the Northern Territory as a debt due to that Territory; and
- if the fee is payable in relation to the proceeding in a court of summary jurisdiction of a State or Territory – then it is recoverable by the State or Territory as a debt due to that State or Territory.

A reference to the Supreme Court of the Northern Territory is inserted in subsection 2.15(2). The Supreme Court of the Northern Territory is included in the definition of a ‘*relevant court*’ in section 1.03 thus paragraph 2.15(2)(b) makes express reference to debts due to the Supreme Court of the Northern Territory. The title of this section was also amended so that it refers to debts due to the ‘*Commonwealth, State or Territory*’.

## **PART 3 – Application, saving and transitional provisions**

### **Division 3.1 – Application, saving and transitional provisions in relation to the commencement of this instrument**

#### **Section 3.01 – Definitions**

This section provides that the ‘*old regulations*’ means the *Family Law (Fees) Regulation 2012* as in force immediately before the commencement day of the instrument.

### **Section 3.02 – Application provision**

This section provides that the fees specified in the instrument apply to:

- a filing fee for a document filed on or after 1 April 2023;
- a setting down fee for a hearing if the day when the hearing is fixed is on or after 1 April 2023;
- a hearing fee for a day, or part of a day, if the day (or part day) is fixed on or after 1 April 2023;
- a conciliation conference fee for a conference if the conference is fixed on or after 1 April 2023; and
- any other fee under this instrument for a document or service provided on or after 1 April 2023.

### **Section 3.03 – Saving provision**

This section clarifies that the *Family Law (Fees) Regulation 2012* continues to apply in relation to the liability of a person to pay a fee incurred under that instrument before 1 April 2023. This means that unpaid fees, the liability for which were incurred under the 2012 instrument, remain payable even after the 2012 instrument is repealed.

This express saving provision is consistent with the operation of section 7 of the *Acts Interpretation Act 1901* which provides that a liability that is accrued or incurred under an original instrument is not affected by the subsequent repeal of that instrument. Section 7 of the Acts Interpretation Act applies to this instrument because of section 13 of the *Legislation Act 2003*.

### **Section 3.04 – Things done under the old regulations**

This section provides that if something was done under the *Family Law (Fees) Regulation 2012* and could be done for the same purpose under the instrument, the thing has effect under the instrument.

Subsection 3.03(2) provides that such a thing can include, but is not limited to, a notice or a determination being made or given.

This section is included in the instrument to transition things from being done under the 2012 instrument to being done under the new instrument.

### **Section 3.05 – Conduct, event or circumstances occurring before commencement**

This section specifies that a function or duty may be performed, or a power exercised, under the instrument in relation to conduct, events or circumstances that arose before 1 April 2023. For example, a fee may be paid in accordance with section 2.10 if the Registrar deferred the payment of the fee before 1 April 2023, or a person may pay a financial hardship fee in respect of a hearing on or after 1 April 2023 if the Registrar determines before that day that the person may pay that fee.

Subsection 3.04(2) provides that this section does not limit section 3.04 of the instrument or section 7 of the *Acts Interpretation Act 1901*.

This section is included in the instrument to transition things from being done under the 2012 instrument to being done under the new instrument.

### **SCHEDULE 1 – Fees**

Schedule 1 lists the fees payable for filing documents or for the provision of a service in respect of proceedings under the Family Law Act. The fees listed in this Schedule are indexed every year in accordance with section 2.13 of the instrument. The fees reflect the indexed amounts for the 2022-23 financial year.

### **SCHEDULE 2 – Repeals**

Schedule 2 provides that the whole of the *Family Law (Fees) Regulation 2012* is repealed.