

FAMILY LAW AMENDMENT (COSTS) RULES 2018

EXPLANATORY STATEMENT

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Issued by the authority of the Judges of the Family Court of Australia

Section 123 of the *Family Law Act 1975* (the Act) provides that the Judges of the Family Court of Australia, or a majority of them, may make Rules of Court providing for the practice and procedure to be followed in the Family Court and other courts exercising jurisdiction under the Act. The Judges of the Court made the *Family Law Rules 2004* (the Rules), which commenced on 29 March 2004. These amending Rules, the *Family Law Amendment (Costs) Rules 2018* (the Costs FLAR) have now been made by the Judges to amend the Rules.

Section 123(2) of the Act provides that the *Legislation Act 2003* (other than sections 8, 9, 10 and 16 and Part 4 of Chapter 3 of that Act) applies to Rules of Court. In this application, references to a legislative instrument in the Act are to be read as references to Rules and references to a Rule-maker as references to the Chief Justice.

Section 8(8)(d) of the *Legislation Act 2003* provides that the Rules of Court made for the Family Court of Australia are not legislative instruments for the purposes of that Act. As a result the *Human Rights (Parliamentary Scrutiny) Act 2011* does not apply to any such Rules of Court and no statement of compatibility for the purposes of that latter Act is included in his Explanatory Statement.

1. GENERAL OUTLINE

Schedule 1 — Amendments

The Joint Costs Advisory Committee (JCAC) was established in 2007 to undertake an annual review of the quantum of costs contained in the Rules made by the High Court of Australia (the High Court), the Federal Court of Australia (the Federal Court), the Family Court of Australia (the Family Court) and the Federal Circuit Court of Australia (the Federal Circuit Court) and to recommend any variations. It comprises representatives of those courts. In conducting its reviews, the JCAC applies a formula which has regard to movements in wages and salaries and other costs of solicitors' practices.

Following its annual review, the JCAC provided a report in September 2018 to the High Court, the Federal Court, the Family Court and the Federal Circuit Court. The Eleventh Report on Legal Practitioners' Costs (September 2018) recommended an increase of two point one per cent (2.1%) to the current scale of costs specified in the Rules of each Court. Issues raised in consultation were addressed in the report. The Costs FLAR implement the recommendations of the report of the JCAC.

The Judges are conferred with specific powers in relation to costs by s 123(1)(g) of the Act.

2. CONSULTATION

In its 2018 annual review (as in previous reviews) the JCAC wrote to the Commonwealth Attorney-General's Department, the Law Council of Australia, the National Association of Community Legal Centres and National Legal Aid inviting them and their respective constituent bodies to make submissions. A notice of review was also placed on the website of each court.

3. SUMMARY OF MAJOR CHANGES

To increase by two point one per cent (2.1%) the costs allowable for work done and services rendered by lawyers and itemised in the scale of costs in Schedule 3 of the Rules.

4. DETAILS OF AMENDMENTS

Schedule 1— Amendments

Rule 1 Name

The name of the rules is the *Family Law Amendment (Costs) Rules 2018*.

Rule 2 Commencement

The whole of these Rules commence on 1 January 2019.

Rule 3 Authority

The Rules are made under the *Family Law Act 1975*.

Rule 4 Schedules

Schedule 1 amends the *Family Law Rules 2004*.

[1] Schedule 3

The amendments repeal and substitute Schedule 3 — Itemised scale of costs. Each item of costs in Schedule 3 is increased by two point one per cent (2.1%).

[2] Part 27.1

The amendments repeal and substitute Part 27.1 to provide that Schedule 3, as amended, applies to work done on or after 1 January 2019.

