



Family Law Amendment Regulations 2010 (No. 3)¹

Select Legislative Instrument 2010 No. 242

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Family Law Act 1975*.

Dated 14 October 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ROBERT McCLELLAND
Attorney-General

1 Name of Regulations

These Regulations are the *Family Law Amendment Regulations 2010 (No. 3)*.

2 Commencement

These Regulations commence on 1 November 2010.

3 Amendment of *Family Law Regulations 1984*

Schedule 1 amends the *Family Law Regulations 1984*.

4 Transitional

- (1) Paragraphs 11 (7) (a) to (d) of the *Family Law Regulations 1984*, as in force on 31 October 2010, continue to apply to proceedings commenced before 1 November 2010.
- (2) Subregulation 11 (9) of the *Family Law Regulations 1984*, as in force on 31 October 2010, continues to apply to:
 - (a) a hearing fee paid before 1 July 2010; and
 - (b) a hearing fee, for the first day of hearing, paid before 1 November 2010.
- (3) Subregulation 11 (10), inserted by item [21] of these Regulations, applies to a hearing fee, for the second and subsequent days of a hearing, paid before 1 November 2010.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 3 (1), after definition of *application*

insert

authorised officer, for a power or function under these Regulations, means an officer of the Court who is authorised by the Registrar to exercise the power or carry out the function.

[2] Subregulation 3 (1), after definition of *filed*

insert

filing fee means a fee mentioned in item 1, 2, 5, 8, 14 or 16 of Schedule 1AA.

full fee means a fee (other than a fee mentioned in item 14 or 15 of Schedule 1AA) that has not been reduced or waived.

hearing fee means a fee mentioned in item 4, 7, 11 or 13 of Schedule 1AA.

[3] Subregulation 3 (1), after definition of *Principal Registrar*

insert

reduced fee means the fee mentioned in item 15 of Schedule 1AA.

[4] Subregulation 3 (1), after definition of *Secretary*

insert

setting-down fee means a fee mentioned in item 3, 6, 10 or 12 of Schedule 1AA.

[5] Subregulation 3 (1), after definition of *transitional family dispute resolution practitioner*

insert

working day, for a hearing, means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the place where the hearing is to take place.

[6] Regulation 3A

omit

paragraph 38A (4) (b)

insert

subsection 38A (4)

[7] Subregulation 11 (1)

substitute

Imposition of fees

- (1) Subject to subregulation (7), Schedule 1AA sets out the fees payable in proceedings under the Act, other than proceedings in the Federal Magistrates Court.

Note The fees mentioned in Schedule 1AA are subject to increase under Part IIAA.

[8] After subregulation 11 (1)

insert

Liability to pay

[9] Paragraph 11 (2) (a)

after

proceedings

insert

or lodging the appeal

[10] After subregulation 11 (2)

insert

When must fees be paid?

[11] Subregulation 11 (3)

after

application

insert

or appeal

[12] After subregulation 11 (3)

insert

(3A) A setting-down fee is payable:

- (a) if the Court or a registrar directs a time within which the fee must be paid — within that time; or
- (b) in any other case — when a date is fixed for the hearing of the proceedings.

[13] Paragraph 11 (4) (a)

omit

Registrar

insert

a registrar

[14] After subregulation 11 (4)

insert

What happens if fees are unpaid?

[15] Subregulation 11 (5)

*after each mention of
application*

insert

or appeal

[16] Subregulation 11 (7) and (7A)

substitute

- (6A) If a fee remains unpaid after the time mentioned in subregulation (3) or (4) or the end of a period mentioned in subregulation 16 (3), the unpaid fee is recoverable by the Commonwealth as a debt due to the Commonwealth.

When fees are not payable

- (7) A fee mentioned in Schedule 1AA is not payable if the fee has already been paid in relation to the proceedings by a person other than the person liable to pay the fee.

Note For circumstances when a person will be liable to pay a reduced fee, see regulations 11A and 11B.

[17] After subregulation 11 (7)

insert

Refund of fees

[18] After subregulation 11 (8)

insert

- (8A) A person is entitled to a refund of the whole or part of a fee mentioned in Schedule 1AA (the *refund amount*) if the person pays more than the person is required to pay for the fee under these Regulations.
- (8B) The refund amount is the difference between the fee paid by the person and the amount the person is required to pay for the fee.

[19] Subregulation 11 (9)

omit

hearing fee

insert

setting-down fee

[20] Subparagraph 11 (9) (a) (ii)

omit

20

insert

10

[21] After subregulation 11 (9)

insert

- (10) A person who has paid a hearing fee for the whole or part of a hearing is entitled to a refund of:
- (a) if the hearing is conducted only to formalise the making of final orders — the hearing fee; or
 - (b) if the hearing does not proceed on a particular hearing day — the hearing fee for that day.
- (11) In this regulation, *appeal* includes cross-appeal.

[22] After regulation 11

insert

11A Reduction of fees — general

- (1) This regulation applies to a person if:
 - (a) the person has been granted legal aid (under a legal aid scheme or service established under Commonwealth, State or Territory law, or approved by the Attorney-General) for the proceeding; or
 - (b) the person is:
 - (i) the holder of any of the following cards issued by the Department of Families, Housing, Community Services and Indigenous Affairs:
 - (A) a health care card;
 - (B) a pensioner concession card;
 - (C) a Commonwealth seniors health card; or
 - (ii) the holder of any other card issued by the Department of Families, Housing, Community Services and Indigenous Affairs, or the Department of Veterans' Affairs, that certifies the holder's entitlement to Commonwealth health concessions; or
 - (iii) serving a sentence of imprisonment, or otherwise lawfully detained in a public institution; or
 - (iv) aged less than 18 years; or
 - (v) receiving youth allowance or Austudy payment, within the meaning of the *Social Security Act 1991*; or
 - (vi) receiving benefit under ABSTUDY, within the meaning of the *Social Security Act 1991*.
- (2) In paragraph (1) (b), **holder**, of a card, does not include a dependant of the holder.
- (3) The reduced fee is payable, instead of the full fee, on the first occasion the full fee would otherwise be payable by the person in a proceeding.

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- (4) However, if the full fee for the proceeding mentioned in subregulation (3) is less than the reduced fee, the full fee is payable by the person.
- (5) If a fee mentioned in subregulation (3) or (4) is paid by the person in a proceeding, or if a fee is waived under subregulation (6), no other fees mentioned in Schedule 1AA (other than a fee mentioned in item 14) are payable by the person in connection with the proceeding.
- (6) A registrar or an authorised officer may waive payment of a fee (other than a fee mentioned in item 14 of Schedule 1AA or a fee for an appeal), payable by a person in a proceeding related to a proceeding mentioned in subregulation (3), if the registrar or authorised officer considers that the proceedings are closely connected and that the waiver of the fee is appropriate.

Note If the registrar or authorised officer decides not to waive the fee in the related proceeding, the fee is payable by the person in accordance with subregulations (3), (4) and (5).

- (7) In considering whether to waive payment of a fee in a related proceeding, the registrar or authorised officer must take into account the following factors:
- (a) whether the dispute is between the same parties;
 - (b) whether the dispute arises from the same circumstances;
 - (c) the length of time since the first proceeding was commenced;
 - (d) whether the manner in which the proceedings have been brought is an efficient use of the court's resources;
 - (e) whether the litigation would be in the public interest;
 - (f) the capacity of the person to pay the fee.
- (8) In this regulation, an appeal is to be treated as a new proceeding.

Note Regulation 16A provides for the review of a decision of a registrar or an authorised officer.

11B Reduction of fees — hardship

- (1) If a registrar or an authorised officer, having regard to the income, day-to-day living expenses, liabilities and assets of a person liable to pay a fee mentioned in Schedule 1AA (other than a fee mentioned in item 14), considers that payment of the fee would cause financial hardship to the person, the registrar or authorised officer may impose the reduced fee on each occasion the fee is payable instead of the fee for which the person would otherwise be liable.

Note Regulation 16A provides for the review of a decision of a registrar.

- (2) However, if subregulation (1) applies, the reduced fee is payable only once for setting down, and no fee is payable for a hearing, regardless of the number of hearing days.

11C Change in circumstances

- (1) Subregulation 11A (5) applies to a person as if the person had paid a fee under subregulation 11A (3) or (4) if:
 - (a) the person pays a full fee, or a reduced fee under regulation 11B, in a proceeding; and
 - (b) after the fee has been paid, the person becomes eligible under subregulation 11A (1) to pay the reduced fee.
- (2) However, if a person's circumstances change so that subregulation 11A (1) no longer applies to the person, the person is liable to pay all fees that become payable after the change in circumstances.

[23] Regulation 16

substitute

16 Deferral of fees

- (1) Subject to subregulation (2), all or part of a fee mentioned in these Regulations may be deferred by a registrar or an authorised officer, subject to any conditions determined by the registrar or authorised officer.

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- (2) The registrar or authorised officer may defer the whole or part of a fee if:
- (a) the registrar or authorised officer considers that:
 - (i) for a filing fee — the need to file the document is so urgent that it overrides the requirement to pay the filing fee at the time of filing; or
 - (ii) it would, having regard to the financial circumstances of the person liable to pay the fee, be oppressive or otherwise unreasonable to require payment in accordance with subregulation 11 (3), (3A) or (4); or
 - (b) for a setting-down fee — the date of the hearing is more than 6 months after the day on which the proceeding is set down for hearing.
- (3) If payment of a fee has been deferred under this regulation, the fee must be paid within:
- (a) 30 days after the date of deferral; or
 - (b) another period specified in writing by the registrar or authorised officer.

Note Regulation 16A provides for the review of a decision of a registrar or an authorised officer.

[24] Subregulation 16A (1)

substitute

- (1) A person may apply under the *Administrative Appeals Tribunal Act 1975* to the Administrative Appeals Tribunal for review of a decision of a registrar or an authorised officer under regulation 11A, 11B or 16.

[25] Subregulation 16A (2)

omit everything before paragraph (a), insert

If a registrar or an authorised officer makes a decision under regulation 11A refusing to waive a fee, under regulation 11B refusing to reduce a fee or under regulation 16 refusing to defer a fee, the registrar or authorised officer must, within 28 days, give the applicant written notice of:

[26] Regulation 21AA

substitute

21AA Biennial increases

A fee mentioned in Schedule 1AA (other than a fee mentioned in item 15) is increased in accordance with this Part on each biennial anniversary of 1 July 2010.

[27] Subregulation 21AB (1), definition of fee

after

Schedule 1AA

insert

(other than the fee mentioned in item 15)

[28] Subregulation 21AB (1), definition of *relevant period*

omit each mention of

1996

insert

2010

[29] Schedule 1AA

substitute

Schedule 1AA Fees

(regulation 11)

Item	Document or action	Fee
1	Filing an application in proceedings for a divorce order in relation to a marriage or a decree of nullity of marriage, other than proceedings to which item 2 applies	\$777

Item	Document or action	Fee
2	Filing an application in proceedings for a divorce order: (a) instituted in a prescribed court mentioned in paragraph 10A (a) or (c); or (b) instituted in another court for transfer to a prescribed court mentioned in paragraph 10A (a) or (c)	\$492
3	Setting down for hearing in proceedings, if defended, for a divorce order in relation to a marriage or a decree of nullity of marriage	(a) for hearing before a judge \$608 (b) for hearing before a magistrate \$444
4	Hearing in proceedings, if defended, for a divorce order in relation to a marriage or a decree of nullity of marriage — for each hearing day, or part of a hearing day, excluding the first hearing day	(a) for hearing before a judge \$608 (b) for hearing before a magistrate \$444
5	Filing an application in proceedings for a declaration as to the validity of a marriage, a divorce or the annulment of a marriage	\$777
6	Setting down for hearing in proceedings, if defended, for a declaration as to the validity of a marriage, a divorce or the annulment of a marriage	(a) for hearing before a judge \$608 (b) for hearing before a magistrate \$444
7	Hearing in proceedings, if defended, for a declaration as to the validity of a marriage, a divorce or the annulment of a marriage — for each hearing day, or part of a hearing day, excluding the first hearing day	(a) for hearing before a judge \$608 (b) for hearing before a magistrate \$444
8	Filing an application for final orders in financial or Part VII proceedings	\$243
9	Filing a response to an application for final orders in financial or Part VII proceedings	\$243

Item	Document or action	Fee	
10	Setting down for hearing of an application for final orders, that is defended, in financial or Part VII proceedings	(a) for hearing before a judge	\$608
		(b) for hearing before a magistrate	\$444
11	Hearing of an application for final orders, that is defended, in financial or Part VII proceedings — for each hearing day, or part of a hearing day, excluding the first hearing day	(a) for hearing before a judge	\$608
		(b) for hearing before a magistrate	\$444
12	Setting down for hearing in an appeal under section 96 of the Act from a decree of a court of summary jurisdiction		\$608
13	Hearing in an appeal under section 96 of the Act from a decree of a court of summary jurisdiction — for each hearing day, or part of a hearing day, excluding the first hearing day		\$608
14	Filing an application for a consent order		\$80
15	Reduced fee		\$60
16	Filing an appeal under section 94 or 94AAA of the Act		\$956

Note 1 The term *financial or Part VII proceedings* is defined in subsection 4 (1) of the Act.

Note 2 The fees mentioned in this Schedule (other than the fee mentioned in item 15) are subject to increase under Part IIAA.

Note

- All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.