



Federal Magistrates Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 244

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 *Federal Magistrates Act 1999*.

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 *Federal Magistrates Amendment Regulations 2010 (No. 2)*.

2 Commencement

These Regulations commence on 1 November 2010.

3 Amendment of *Federal Magistrates Regulations 2000*

Schedule 1 amends the *Federal Magistrates Regulations 2000*.

4 Transitional

Regulation 8 of the *Federal Magistrates Regulations 2000*, as in force on 31 October 2010, continues to apply to proceedings commenced before 1 November 2010.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 3, after definition of *enforcement fee*

insert

family law matter means a matter arising out of the *Family Law Act 1975*.

[2] Regulation 3, after definition of *financial matter*

insert

full fee means a fee that has not been reduced or waived.

general law matter means any matter other than a family law matter.

[3] Regulation 3, after definition of *mediation fee*

insert

reduced fee, for a matter, means:

- (a) if the matter is a family law matter — the fee mentioned in item 21 of Schedule 1; or
- (b) if the matter is a general law matter — the fee mentioned in item 22 of Schedule 1.

[4] Regulation 3, after definition of *setting down fee*

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.

[5] Subregulation 5 (5)

omit

[6] Paragraph 7 (2) (h)

omit

item);

insert

item).

[7] Subregulation 7 (3), including the note

omit

[8] Regulation 8

omit

[9] Regulations 9 and 10

substitute

8D 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) (c), **holder**, of a card, does not include a dependant of the holder.
- (3) The reduced fee is payable, instead of a full fee, on the first occasion the full fee would otherwise be payable by the person in a proceeding.

-
- (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 1 are payable by the person in connection with the proceeding.
- (6) A Registrar or an authorised officer may waive payment of a fee, 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 the related proceeding, a 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.

Note Regulation 13 provides for the review of a decision of a Registrar or an authorised officer.

9 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 1, considers that payment of the fee would cause financial hardship to the person, the Registrar or authorised officer may:
- (a) if the fee is less than the reduced fee — impose the fee on each occasion the fee is payable; and

(b) in any other case — impose the reduced fee on each occasion the fee is payable instead of the fee for which the person would otherwise be liable.

(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.

Note Regulation 13 provides for the review of a decision of a Registrar or an authorised officer.

9A Change in circumstances

(1) Subregulation 8D (5) applies to a person as if the person had paid a fee under subregulation 8D (3) or (4) if:

(a) the person pays a full fee, or a reduced fee under regulation 9, in a proceeding; and

(b) after the fee has been paid, the person becomes eligible under subregulation 8D (1) to pay the reduced fee.

(2) However, if a person's circumstances change so that subregulation 8D (1) no longer applies to the person, the person is liable to pay all fees that become payable after the change in circumstances.

10 Deferral of fees

(1) A Registrar or an authorised officer may, in accordance with subregulation (3), defer payment of all or part of the following fees:

(a) a filing fee, setting-down fee or hearing fee;

(b) the fee for the provision of a service mentioned in item 14 of Schedule 1.

(2) Deferral of payment of a fee is subject to any conditions determined by the Registrar or authorised officer.

(3) Payment of a fee may be deferred if:

(a) in the opinion of the Registrar or authorised officer:

(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 regulation 5; 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; or
 - (c) the person liable to pay the fee is represented by a practitioner who is acting pro bono.
- (4) A fee for which payment is deferred must be paid within:
- (a) 30 days after the deferral; or
 - (b) another period determined in writing by the Registrar or authorised officer.

Note Regulation 13 provides for the review of a decision of a Registrar or an authorised officer.

[10] Subregulation 10A (1)

after

(2),

insert

(2A),

[11] Subregulation 11 (1A)

omit

11 (1)

insert

(1B), (1C)

[12] Subregulation 11 (1)

substitute

- (1B) Subject to regulation 10 and subregulation (1C), if a fee in relation to the filing of a document, or the provision of a service, is unpaid, the document must not be filed or the service provided.
- (1C) The Federal Magistrates Court, a Federal Magistrate or a Registrar may allow the filing of a document or the provision of a service even if the fee is unpaid.

[13] Subregulations 12 (1) and (2)

omit

or hearing fee

[14] After subregulation 12 (2)

insert

- (2A) 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.

[15] After subregulation 12 (4)

insert

- (5) A person is entitled to a refund of the whole or part of a fee (the *refund amount*) if the person had paid more than the person is required to pay for the fee under these Regulations.
- (6) 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.

[16] Subregulation 13 (1)

omit

regulation 9

insert

subregulation 8D (6), 9 (1) or 10 (1)

[17] Regulation 14

substitute

14 Biennial increases in fees

The amount of each fee mentioned in Schedule 1 (other than the fees mentioned in items 2, 15, 18, 19, 21 and 22) is increased in accordance with regulation 15 on each biennial anniversary of 1 July 2010.

[18] Subregulation 15 (1), definitions of *fee* and *relevant period*

substitute

fee means a fee mentioned in Schedule 1 (other than a fee mentioned in item 2, 15, 18, 19, 21 and 22).

relevant period means any of the following periods:

- (a) the 2-year period starting on 1 July 2010;
- (b) each 2-year period starting on a biennial anniversary of 1 July 2010.

[19] Schedule 1, items 10 and 11

after

for each hearing day

insert

or part of a hearing day

[20] Schedule 1, item 13

omit

\$176

insert

\$243

[21] Schedule 1, after item 20

insert

21	Reduced fee — family law matter	\$60
22	Reduced fee — general law matter	\$100

[22] Schedule 1, at the foot

insert

Note The fees mentioned in this Schedule (other than the fees mentioned in items 2, 15, 18, 19, 21 and 22) are subject to biennial increase under regulation 14.

Note

1. 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>.