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# Federal Magistrates Regulations 2000

Statutory Rules 2000 No.   2  

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I, WILLIAM PATRICK DEANE, 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        **7 JUN 2000**        2000

**WILLIAM DEANE**  
Governor-General

By His Excellency's Command

DARYL WILLIAMS  
Attorney-General



# Federal Magistrates Regulations 2000

Statutory Rules 2000 No. 1

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made under the

*Federal Magistrates Act 1999*

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## Part 1 Preliminary

### 1 Name of Regulations

These Regulations are the *Federal Magistrates Regulations 2000*.

### 2 Commencement

These Regulations commence on 22 June 2000.

### 3 Definitions

In these Regulations:

*Act* means the *Federal Magistrates Act 1999*.

*applicant* means a person who starts the proceedings in relation to which the expression is used.

*authorised officer* means:

- (a) an officer of the Federal Magistrates Court authorised for those provisions by the Chief Executive Officer; or
- (b) an officer of another Court performing functions under an arrangement made under section 90 of the Act; or
- (c) an officer of another agency or organisation performing functions under an arrangement made under section 91 of the Act.

*corporation* has the same meaning it has for Parts 7.11 and 7.12 of the Corporations Law.

*Note* For Parts 7.11 and 7.12 of the Corporations Law, *corporation* includes a financial institution (as defined in section 111AZA of that Law).

*enforcement fee* means a fee mentioned in item 9 or 10 of Schedule 1.

*mediation fee* means a fee mentioned in item 8 of Schedule 1.

*setting down fee* means a fee mentioned in item 5 of Schedule 1.

**Regulation 4**

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## **Part 2                      Imposition, payment,                                  exemption from, waiver,                                  deferral and refund of fees**

### **4                      Fees**

A fee, in accordance with Schedule 1, is payable, except as provided by these Regulations, for an action of:

- (a) the Federal Magistrates Court; or
- (b) an officer of the Federal Magistrates Court; or
- (c) another person acting on behalf of the Federal Magistrates Court.

*Note* Fees are subject to increase under regulation 14.

### **5                      When payment due**

- (1) A fee for filing an application or other document must be paid when the document is filed.
- (2) A setting down fee must be paid within the earlier of:
  - (a) 3 months after the applicant is informed, either orally or in writing, of the date fixed for hearing of the proceedings; and
  - (b) 14 days before the hearing date.
- (3) A mediation fee must be paid before the mediation begins.
- (4) An enforcement fee must be paid within the time specified by an officer of the Federal Magistrates Court for payment of the fee.

*Note* Fees can be deferred under regulation 10.

### **6                      Persons liable to pay fees**

- (1) The person liable to pay a fee for filing a document is the person on whose behalf the document is filed.
- (2) The person liable to pay a mediation fee is the applicant.

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**Regulation 8**

- (3) The person liable to pay a fee for a service not mentioned in this regulation is the person for whom the service is provided.
- (4) However, the Federal Magistrates Court, a Federal Magistrate or a Registrar may order that another party to the proceedings to which the fee applies is liable to pay the fee or part of the fee.

**7 Circumstances in which fee not payable**

- (1) A fee is not payable for a service if the fee has been paid by a person other than the person liable to pay the fee.
- (2) A fee is not payable for the following proceedings:
  - (a) an application for a decree of dissolution of marriage for a marriage that was previously dissolved or annulled under the *Family Law Act 1975* or the *Matrimonial Causes Act 1959*;
  - (b) an application to the Federal Magistrates Court for an extension of the time within which a proceeding may be commenced;
  - (c) a proceeding for which a Convention to which Australia is a party provides that a fee is not payable.
- (3) A fee is not payable if the person liable to pay the fee is exempt from payment of the fee under regulation 8.

*Note* A fee may be waived under regulation 9.

**8 Persons exempt from payment of fees**

- (1) A person is exempt from payment of a fee 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 proceedings for which the fee would otherwise be payable; or
  - (b) the person is:
    - (i) the holder of a concession card; or
    - (ii) an inmate of a prison or is otherwise lawfully held in a public institution; or

**Regulation 9**

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- (iii) a child under the age of 18; or
  - (iv) in receipt of a youth allowance, or an Austudy payment, within the meaning of the *Social Security Act 1991*; or
  - (v) in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme.
- (2) For paragraph (1) (b), **concession card** means:
- (a) any of the following cards issued by the Department of Family and Community Services:
    - (i) a health care card;
    - (ii) a pensioner concession card;
    - (iii) a seniors health card; or
  - (b) any other card issued by the Department of Family and Community Services or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions.

**9 Waiver of fees**

- (1) 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, may waive payment of the fee.
- (2) A Registrar or an authorised officer must not waive payment of a fee unless, in his or her opinion, payment of the fee would cause financial hardship to the person liable to pay it.

**10 Deferral of payment**

- (1) A Registrar or an authorised officer may defer payment of a fee if, in his or her opinion, there is an urgency that overrides the requirement of payment of the fee at the time that, but for deferral, it would be payable.
- (2) If payment of a fee is deferred, the fee:
  - (a) must be paid within 30 days of deferral; and

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**Regulation 12**

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- (b) if not paid within that period, is a debt due to the Commonwealth that may be recovered in a court of competent jurisdiction.

**11 Consequence of non-payment of fee**

- (1) A document must not be filed in a Registry of the Federal Magistrates Court, and a service mentioned in an item in Schedule 1 must not be provided, unless the fee payable for the filing or service has been paid, waived or deferred.
- (2) If a setting down fee is not paid when due and is not waived:
  - (a) the Federal Magistrates Court, a Federal Magistrate or a Registrar may order that no proceedings other than specified proceedings, are to take place, except by leave, in the matter to which the application relates; and
  - (b) the Federal Magistrates Court, a Federal Magistrate or a Registrar may vacate the date fixed for hearing; and
  - (c) a person other than the person liable to pay the fee may pay the fee without affecting any power of the Federal Magistrates Court, a Federal Magistrate or a Registrar to make an order for costs for the fee.

*Note* For when a setting down fee must be paid, see subregulation 5 (2).

**12 Refund of fees**

- (1) A person who has paid a setting down fee is entitled to a refund of the fee if:
  - (a) notice that the hearing of the application for which the fee was paid will not go ahead is given to a Registrar:
    - (i) if the date for hearing was fixed less than 10 working days before that date — not less than 2 working days before the date for hearing; or
    - (ii) in any other case — not less than 10 working days before the date for hearing; and
  - (b) the hearing does not go ahead.



**Regulation 13**

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- (2) A person who has paid a setting down fee is entitled to a refund of the fee if, despite notice being given to a Registrar under paragraph (1) (a), a hearing is conducted for the purpose of making formal orders.
- (3) A person who has paid a mediation fee is entitled to a refund of the fee if the mediation does not happen and the Federal Magistrates Court, a Federal Magistrate or a Registrar orders a refund of the fee.
- (4) A person who has paid a fee is entitled to a refund of the fee if the fee was not payable because of regulation 7.

**13 Review by Administrative Appeals Tribunal**

- (1) A Registrar or an authorised officer who makes a decision under regulation 9 must give a notice of the decision to the person liable to pay the fee to which the decision relates.
- (2) Application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) If the decision is not to waive payment of a fee, the notice must:
  - (a) set out reasons for the decision; and
  - (b) contain, or be accompanied by, a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.
- (4) The notice must be given within 28 days of the date of the decision.
- (5) Failure to comply with paragraph (3) (b) does not affect the validity of the decision.

## Part 3 Indexation of fees

### 14 Biennial increases in fees

A fee that is mentioned in Schedule 1 (except in item 2) is increased, in accordance with regulation 15, on each biennial anniversary of 1 July 2000.

### 15 Working out of increase

- (1) In this regulation:

*fee* means a fee that is mentioned in Schedule 1 (except in item 2).

*CPI number* means the All Groups Consumer Price Index number (being the weighted average of the 8 Australian capital cities) published by the Australian Statistician.

*relevant period* means any of the following periods:

- (a) the 2-year period starting on 1 July 2000;
  - (b) each 2-year period starting on a biennial anniversary of 1 July 2000.
- (2) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is increased, on 1 July immediately following the end of the period, in accordance with the formula:

$$\frac{\text{fee} \times \text{latest CPI number}}{\text{earlier CPI number}}$$

where:

*earlier CPI number* is the CPI number for the last March quarter before the start of the relevant period.

*fee* is the fee in force at the end of the relevant period.

*latest CPI number* is the CPI number for the last March quarter before the end of the relevant period.

## Regulation 15

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- (3) If the amount of a fee increased under subregulation (2) is an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (4) Subject to subregulation (5), if the Australian Statistician publishes for a particular March quarter a CPI number in substitution for a CPI number previously published by the Australian Statistician for that quarter, the publication of the later CPI number is disregarded for this regulation.
- (5) If the Australian Statistician changes the reference base for the Consumer Price Index, then, for the application of this regulation after the change is made, regard must be had only to numbers published in terms of the new reference base.

# Schedule 1 Fees to be taken in the Registry of the Federal Magistrates Court

(regulation 4)

Item	Document or service	Fee
1	Filing a document by which a proceeding in the Federal Magistrates Court (other than a proceeding mentioned in item 2 or 3) is commenced:	
	(a) if a corporation is liable to pay the fee	\$500.00
	(b) in any other case	\$250.00
2	Filing an application under section 46PO of the <i>Human Rights and Equal Opportunity Commission Act 1986</i>	\$50.00
3	Filing a document by which a proceeding in the Federal Magistrates Court under the <i>Family Law Act 1975</i> about a financial matter or a matter under Part VII is commenced	\$100.00
4	Filing a document seeking interlocutory, interim or procedural orders (other than a proceeding under the <i>Family Law Act 1975</i> or a proceeding mentioned in item 2):	
	(a) if a corporation is liable to pay the fee	\$300.00
	(b) in any other case	\$150.00

Item	Document or service	Fee
5	Setting down for hearing for final orders of a proceeding or an issue in question in a proceeding (other than an undefended proceeding under the <i>Family Law Act 1975</i> , a proceeding under the <i>Bankruptcy Act 1966</i> or a proceeding mentioned in item 2):	
	(a) if a corporation is liable to pay the fee	\$600.00
	(b) in any other case	\$300.00
6	Filing, by a person other than the applicant, a document seeking the making of final orders different from those sought by the applicant (otherwise than in a proceeding under the <i>Family Law Act 1975</i> or a proceeding mentioned in item 2):	
	(a) if a corporation is liable to pay the fee	\$500.00
	(b) in any other case	\$250.00
7	Filing, by a person other than the applicant, a document seeking the making of final orders different from those sought by the applicant in a proceeding under the <i>Family Law Act 1975</i> :	
	(a) if a corporation is liable to pay the fee	\$200.00
	(b) in any other case	\$100.00
8	Mediation by a court officer of the Federal Magistrates Court (otherwise than in a proceeding under the <i>Family Law Act 1975</i> or a proceeding mentioned in item 2) — for the first attendance at the mediation	\$200.00

Item	Document or service	Fee
9	Each service or execution, or attempted service or execution, of the process of the Federal Magistrates Court by an officer of the Court (in a proceeding other than a proceeding under the <i>Family Law Act 1975</i> or a proceeding mentioned in item 2)	An amount equal to the amount of any expenses reasonably incurred in the service or execution, or attempted service or execution, of the process of the Court, together with a charge calculated at the hourly rate of salary payable to the officer of the Court
10	Seizure and sale of goods by an officer of the Federal Magistrates Court in the execution of the process of the Court (in a proceeding other than a proceeding under the <i>Family Law Act 1975</i> or a proceeding mentioned in item 2)	\$2.00 for each \$100.00 of value of goods

*Note* The fees mentioned in this Schedule (except item 2) are subject to increase under regulation 14.

### Note

1. Made by the Governor-General on the *Commonwealth of Australia Gazette* on / 2000, and notified in / 2000.

7 June  
15 June