

Federal Magistrates Amendment Regulations 2004 (No. 2)

2004 No. 320

EXPLANATORY STATEMENT

STATUTORY RULES 2004 NO. 320

Issued by the authority of the Attorney-General

Federal Magistrates Act 1999

Federal Magistrates Amendment Regulations 2004 (No. 2)

The *Federal Magistrates Act 1999* (the Act) establishes the Federal Magistrates Court (FMC) as a court of record and a court of law and equity.

Subsection 120(1) of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 120(3) provides that regulations may be made prescribing the fees to be paid in respect of proceedings in the FMC.

The *Federal Magistrates Regulations 2000* ('the Principal Regulations') prescribe certain fees in relation to FMC proceedings and make provision in relation to the payment of those fees.

The purpose of the Federal Magistrates Amendment Regulations 2004 ('the Amendment Regulations') is to amend the Principal Regulations to make certain provisions, including some fees and fee exemptions, more consistent with the *Federal Court of Australia Regulations 2004* (Federal Court Regulations) which came into effect on 1 November 2004. The Amendment Regulations also: update the fees in the Schedule to the Principal Regulations to reflect the currently applicable fees, as automatically indexed in accordance with the prescribed formula, and update and clarify the meaning of certain terms in the Principal Regulations.

Established as a lower cost court the FMC does not have its own registry but shares registry facilities with the Federal Court. Thus the same staff administer both the Federal Court Regulations and the Principal Regulations. The two courts also have concurrent jurisdiction in many areas of laws such as bankruptcy and migration. Greater consistency between the Federal Court Regulations and the Principal Regulations will ensure that the same types of applications and proceedings are treated the same in both courts, and will make the Regulations easier for registry staff to administer.

Details of the Amendment Regulations are set out in the [Attachment](#)

The Act does not specify any conditions that need to be met before the power to make the Amendment Regulations may be exercised.

Statutory Rule Draft No:

ATTACHMENT

Details of the *Federal Magistrates Amendment Regulations 2004 (No. 2)*

Regulation 1 - Name of Regulations

Regulation 1 provides for the Amendment Regulations to be called the *Federal Magistrates Amendment Regulations 2004 (No. 2)*.

Regulation 2 - Commencement

Regulation 2 provides for the Amendment Regulations to commence on the date of their notification in the *Gazette*.

Regulation 3 - Amendment of *Federal Magistrates Regulations 2000*

Regulation 3 provides for Schedule 1 to the *Federal Magistrates Amendment Regulations 2004* (the Amendment Regulations) to amend the *Federal Magistrates Regulations 2000* (the Principal Regulations).

Schedule 1 - Amendments

Schedule 1 to the Amendment Regulations provides for the following amendments to be made to the Principal Regulations.

Item 1 - Definition of 'corporation'

The reference to the Corporations Law in the Principal Regulations is obsolete. Item 1 provides for the substitution of a new definition for 'corporation' which refers to the *Corporations Act 2001*. This definition is consistent with the *Federal Court of Australia Regulations 2004* (the Federal Court Regulations).

Item 2 - Definition of 'holder' of a concession card

Subclause 1(5) of Schedule 3 to the Federal Court Regulations provides that, for the purpose of the concession card holder fee exemptions, 'holder' of a card does not include a dependant of the holder of the card. Most dependants are children who are covered by the exemption for minors, and dependants who are not children are likely to be eligible for waiver of fees or an exemption in their own right.

Item 2 reflects this providing for the insertion of new subregulation 8(3) into the Principal Regulations specifying that 'holder' of a concession card does not include a dependant of the holder of the card.

Item 3 - Cases remitted from the High Court

There is provision in the Federal Court Regulations for fee exemptions when a matter is remitted from the High Court to the Federal Court in accordance with section 44 of the *Judiciary Act 1903* (the Judiciary Act). There is an automatic exemption from the filing fee because a higher filing fee would already have been paid in the High Court. Exemptions from setting down fees and hearing fees under the Federal Court Regulations only apply when a matter is remitted by the High Court in its appellate jurisdiction to the Federal Court to be re-heard.

The Principal Regulations have been amended to ensure that the fee exemptions are consistent in the Federal Court and the Federal Magistrates Court (FMC) for matters remitted from the High Court.

Item 3 provides for the insertion of new regulation 8A into the Principal Regulations. This regulation provides an automatic exemption from filing fees where a case is remitted from the High Court to the Federal Court and subsequently transferred to the FMC pursuant to section 32AB of the *Federal Court of Australia Act 1976* (Federal Court Act) and for cases remitted directly from the High Court to the FMC in accordance with section 44 of the Judiciary Act.

Item 3 also provides for the insertion of new regulation 8B into the Principal Regulations providing an exemption from setting down fees. This exemption applies where, after a successful appeal to the High Court, a case is either remitted by the High Court to the Federal Court for re-hearing then subsequently transferred to the FMC, or remitted by the High Court directly to the FMC for re-hearing.

Items 4 & 5 - Amendment of Regulations 14 & 15

Regulation 14 of the Principal Regulations provides for the fees prescribed in Schedule 1 (except item 2) to be biennially increased using the formula specified in regulation 15. Item 9 - the fee for each service or execution, or attempted service or execution, of the process of the FMC by an officer of the FMC - should also be exempt from the application of the biennial fee increase under regulations 14 and 15. This exemption is appropriate because this fee is not a specified amount but depends on the expenses and salary of the FMC officer. Item 4 provides for the amendment of regulation 14 to exempt item 9 of Schedule 1 to the Principal Regulations from the application of the biennial fee increase under regulation 15.

Items 4 and 5 also provide for the amendment of regulations 14 and 15 respectively to reflect the fact the fees will be automatically increased on each biennial anniversary of 1 July 2004 instead of 1 July 2000. This reflects that item 9 of Schedule 1 to the Amendment Regulations (see 'Item 9 - Schedule of fees', below) substitutes the fees prescribed by Schedule 1 to the Principal Regulations with the fees that have applied since 1 July 2004.

Item 6 - Review of a decision of a Registrar

In the Federal Court Regulations, item 9 of Schedule 1 provides for specific fees for an application to review a decision of the registrar in accordance with subsection 35A(5) of the Federal Court Act. The fees in the Federal Court are \$592 for a corporation and \$296 for non-corporations. There is no similar item in the Schedule of fees to the Principal Regulations and there has been some confusion as to the correct fees applicable under the Principal Regulations.

In the absence of specific fees, registry staff had regarded such applications as attracting the fees prescribed under item 4 of Schedule 1 to the Principal Regulations, that is, the fees for filing a document seeking interlocutory, interim or procedural orders (\$345 for a corporation and \$173 in any other case). However, in *McAuliffe Williams & Partners v Pecoult* [2003] FMCA 278 it was decided that the appropriate fees for an application for review of a decision of a Registrar are those prescribed by item 1 of Schedule 1 to the Principal Regulations, the fees for filing a document by which a proceeding in the FMC seeking final orders is commenced (\$576 for a corporation and \$288 in any other case). As a consequence, an application for review of a decision of a registrar currently attracts the same fee as filing a document by which a proceeding in the FMC seeking final orders is commenced.

To maintain the FMC as a lower cost court than the Federal Court handling simpler and shorter matters, the fees prescribed in the FMC are substantially lower than the fees prescribed for the same service in the Federal Court. Item 6 provides for the insertion of new item 4A into Schedule 1 to the Principal Regulations, prescribing specific fees for an application to review an exercise of

power by the Registrar in accordance with subsection 104(2) of the *Federal Magistrates Act 1999*. The prescribed fees are \$345 for a corporation and \$173 in any other case, the same fee as prescribed for filing a document seeking interlocutory, interim or procedural orders. Without these proposed lower fees being prescribed, the fees in the FMC for an application to review an exercise of power by the Registrar would be almost the same as the fees in the Federal Court for the same service.

The prescribed fees do not apply to family law and child support matters reflecting that there is no fee in the Family Court for an application to review a decision of a Registrar.

Item 7 - Fee for the seizure and sale of goods by an officer of the FMC

Item 10 of Schedule 1 to the Principal Regulations prescribes the fee for the seizure and sale of goods by an officer of the FMC in the execution of the process of the Court as \$2 for every \$100 of the value of goods. In the Federal Court Regulations the equivalent fee under item 18 of Schedule 1 to the Regulations has been changed to a flat fee of \$527.

Item 7 provides for the amendment of the fee prescribed by item 10 of Schedule 1 to the Principal Regulations, abolishing the ad valorem fee and making it a flat fee of \$263.

Without this amendment there is the potential for a litigant to pay a higher fee for this service in the FMC than in the Federal Court.

Item 8 - Schedule 1, note

Item 8 provides for the amendment of the note at the end of Schedule 1 to the Principal Regulations to reflect that the subject of item 9 is exempt from the application of the biennial fee increase under amended regulations 14 and 15.

Item 9 - Schedule of fees (Schedule 1)

Schedule 1 to the Principal Regulations lists the fees for filing a document or provision of a service by the FMC for the year 2000. Although the fees were increased on 1 July 2002 and 1 July 2004, the fees listed in the Schedule were not amended. Increased fees applied by virtue of the automatic fee increase provisions under regulations 14 and 15. Item 9 provides for the amendment of Schedule 1 to the Principal Regulations to reflect the fees as of 1 July 2004.