

Family Law (Fees) Regulation 20121

Select Legislative Instrument 2012 No. 279

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Family Law Act 1975* and the *Federal Magistrates Act 1999*.

Dated 6 December 2012

QUENTIN BRYCE

Governor-General

By Her Excellency’s Command

NICOLA ROXON

Attorney-General

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Part 1 Preliminary

1.01 Name of regulation

This regulation is the *Family Law (Fees) Regulation 2012*.

1.02 Commencement

This regulation commences on 1 January 2013.

1.03 Definitions

In this regulation:

***authorised officer***, in relation to a power or function, means:

(a) in relation to the Federal Magistrates Court—the following:

(i) an officer of that court authorised by the Chief Executive Officer of that court to exercise the power or carry out the function;

(ii) an officer of another court performing the function under an arrangement under section 90 of the Federal Magistrates Act;

(iii) an employee of an agency or organisation performing the function under an arrangement under section 91 of that Act; or

(b) in relation to a Family Court other than the Family Court of Western Australia—an officer of that court who is authorised by the Chief Executive Officer of that court to exercise the power or carry out the function; or

(c) in relation to the Family Court of Western Australia—an officer of that court who is authorised, by the executive manager appointed under paragraph 25 (1) (c) of the *Family Court Act 1997* (WA), to exercise the power or carry out the function; or

(d) in relation to the Supreme Court of the Northern Territory or a court of summary jurisdiction of a State or Territory—an officer of that court authorised by the Registrar of that court to exercise the power or carry out the function.

***conciliation conference*** means a conference:

(a) that is:

(i) attended by the parties to a proceeding and a Registrar of the relevant court; or

(ii) attended by the parties to a proceeding and a family dispute resolution practitioner, and the parties are not required to pay any fees of the practitioner in relation to the conference; and

(b) in which the parties try to reach agreement on the matters in issue in the proceeding.

***conciliation conference fee*** means the fee mentioned in item 20 of Schedule 1.

***eligible financial or parenting proceedings*** means:

(a) financial or Part VII proceedings; or

(b) any of the proceedings mentioned in paragraphs (a) to (f) of the definition of ***de facto financial cause*** in subsection 4 (1) of the Family Law Act.

***Family Court*** means:

(a) the Family Court of Australia; or

(b) a Family Court of a State.

***Family Court of a State*** means a court to which section 41 of the Family Law Act applies.

***Family Law Act*** means the *Family Law Act 1975*.

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

***Federal Magistrates Court*** means the Federal Magistrates Court of Australia.

***filing fee*** means a fee mentioned in any of items 1 to 10 of Schedule 1.

***hearing fee*** means a fee mentioned in any of items 15 to 18 of Schedule 1.

***interim order application*** includes:

(a) an application for an interlocutory or interim order; and

(b) an application for an order that will apply only for a specified period during a proceeding; and

(c) an application for an interim or partial property order under Part VIII or VIIIAB of the Family Law Act; and

(d) an application for an interim order that is included in an application that also covers other matters;

but does not include an application for a procedural order.

Example for paragraph (b)

An application for an interim parenting order that applies during a proceeding until a final parenting order is made.

Example for paragraph (d)

An application for both interim orders and final orders.

***liable person***, in relation to a fee, means the person who is required to pay the fee under section 2.03.

***magistrate*** includes a Federal Magistrate.

***Registrar***:

(a) of the Federal Magistrates Court—has the same meaning as in the Federal Magistrates Act; or

(b) of another court—has the same meaning as in the Family Law Act.

***relevant court***, in relation to a proceeding, means:

(a) if the proceeding is in the Federal Magistrates Court— that court; or

(b) if the proceeding is in a Family Court—that court; or

(c) if the proceeding is in the Supreme Court of the Northern Territory—that court; or

(d) if the proceeding is in a court of summary jurisdiction of a State or Territory—that court.

***setting down fee*** means a fee mentioned in any of items 11 to 14 of Schedule 1.

*Note*   Some terms used in this regulation are defined in the Family Law Act, including:

• appeal

• family dispute resolution practitioner

• financial or Part VII proceedings

• party to a de facto relationship

• proceedings

• recovery order.

1.04 Application

(1) This regulation applies to a fee for a service requested, or for the filing of a document lodged, under the Family Law Act on or after 1 January 2013.

(2) However, if a service was requested before 1 January 2013:

(a) payment of the fee for the service may be deferred under section 2.10 (regardless of whether the fee was also deferred before 1 January 2013); and

(b) subsection 2.12 (9) applies to any hearing days that were fixed for 1 January 2013 or after.

*Note 1*   See regulation 83 of the *Family Law Regulations 1984* in relation to fees for services that were requested under those Regulations before 1 January 2013.

*Note 2*   See Part 5 of the *Federal Court and Federal Magistrates Court Regulation 2012* in relation to fees for services provided by the Federal Magistrates Court that were requested before 1 January 2013.

Part 2 Fees

Division 2.1 Fees—general

2.01 Purpose of Part

For section 125 of the Family Law Act, and section 120 of the Federal Magistrates Act, this Part sets out matters relating to fees.

2.02 Fees

(1) Schedule 1 sets out the fees payable for:

(a) the filing of a document; or

(b) a service in relation to a proceeding provided by:

(i) the relevant court; or

(ii) an officer of the relevant court; or

(iii) another person acting on behalf of the relevant court.

*Note 1*Fees are subject to increase under section 2.13.

*Note 2*   Fees are not payable in some circumstances: see Division 2.4.

(2) If a document filed in a proceeding includes an application for an interim order and also covers another matter, the fee payable is the sum of:

(a) the fee mentioned in item 9 of Schedule 1; and

(b) the fee mentioned in Schedule 1 for the filing of the document.

(3) If, under section 2.03, a particular fee mentioned in Schedule 1 is payable by more than one person, the only fee that is payable in relation to that particular fee is the highest fee that applies to any of those persons.

Division 2.2 Liability to pay fee

2.03 Persons liable to pay fee

(1) A fee mentioned in Schedule 1 is payable in relation to a proceeding (including an appeal) by:

(a) for the fee mentioned in item 5 of Schedule 1 (filing a response to an application) or item 9 of Schedule 1 (filing an interim order application)—the person for whom the document is filed; and

(b) for the fee mentioned in item 19 of Schedule 1 (issuing a subpoena)—the person who requests that the subpoena be issued; and

(c) in any other case—the person who commences the proceeding.

(2) However:

(a) any party to the proceeding may pay the fee; and

(b) the relevant court for the proceeding, or a Judge, Federal Magistrate or Registrar of that court, may order that another party to the proceeding is liable to pay the fee or part of the fee instead of the person mentioned in subsection (1).

Division 2.3 Exemptions from liability to pay fee

2.04 Persons exempt from paying fee—general

(1) A person is exempt from paying a fee mentioned in Schedule 1 (other than the fee mentioned in item 1 or 2 of Schedule 1) if, at the time the fee is payable, one or more of the following apply:

(a) the person has been granted legal aid under a legal aid scheme or service:

(i) established under a law of the Commonwealth or of a State or Territory; or

(ii) approved by the Attorney-General;

for the proceeding for which the fee would otherwise be payable;

(b) the person is the holder of any of the following cards issued by the Commonwealth:

(i) a health care card;

(ii) a pensioner concession card;

(iii) a Commonwealth seniors health card;

(iv) any other card that certifies the holder’s entitlement to Commonwealth health concessions;

(c) the person is serving a sentence of imprisonment or is otherwise detained in a public institution;

(d) the person is younger than 18;

(e) the person is receiving youth allowance or Austudy payments under the *Social Security Act 1991* or benefits under the ABSTUDY Scheme.

(2) For paragraph (1) (b), the ***holder*** of a card does not include a dependant of the person who is issued the card.

2.05 Persons exempt from paying fee—financial hardship

(1) If:

(a) a fee mentioned in Schedule 1 (other than the fee mentioned in item 1 or 2 of Schedule 1) is payable by an individual in relation to a proceeding; and

(b) in the opinion of a Registrar or an authorised officer of the relevant court at the time the fee is payable, the payment of the fee would cause financial hardship to the individual;

the Registrar or authorised officer may exempt the individual from paying the fee.

(2) In considering whether payment of a fee would cause financial hardship to an individual, the Registrar or authorised officer must consider the individual’s income, day-to-day living expenses, liabilities and assets.

*Note*   A decision of a Registrar or an authorised officer under this section is reviewable by the AAT: see section 2.14.

2.06 Reduced fee for filing application for divorce or nullity of marriage order

(1) If:

(a) a fee mentioned in item 1 or 2 of Schedule 1 is payable by a person in relation to a proceeding; and

(b) the person is exempt under section 2.04 from paying any other fees mentioned in Schedule 1;

the person may pay the reduced fee mentioned in the item instead of the fee that would otherwise be payable.

(2) If:

(a) a fee mentioned in item 1 or 2 of Schedule 1 is payable by an individual in relation to a proceeding; and

(b) in the opinion of a Registrar or an authorised officer of the relevant court at the time the fee is payable, the payment of the fee would cause financial hardship to the individual;

the Registrar or authorised officer may determine that the individual may pay the reduced fee mentioned in the item instead of the fee that would otherwise be payable.

(3) In considering whether payment of a fee would cause financial hardship to an individual, the Registrar or authorised officer must consider the individual’s income, day-to-day living expenses, liabilities and assets.

*Note*   A decision of a Registrar or an authorised officer under subsection (2) is reviewable by the AAT: see section 2.14.

Division 2.4 When fee is not payable

2.07 Fee not payable by liable person if already paid

A fee mentioned in Schedule 1 is not payable by the liable person if another person has paid the fee.

2.08 Proceedings in which fee is not payable

(1) A fee mentioned in Schedule 1 is not payable in relation to the following proceedings:

(a) an application for a divorce order in relation to a marriage that was previously dissolved or annulled under the Family Law Actor the *Matrimonial Causes Act 1959*;

(b) a proceeding for which an international convention to which Australia is a party provides that no fee is to be payable;

(c) a proceeding under the *Family Law (Child Abduction Convention) Regulations 1986*;

(d) an application by a person to set aside a subpoena.

(2) A fee mentioned in Schedule 1 is not payable in relation to an objection to a subpoenaed document being inspected or copied.

(3) A fee mentioned in Schedule 1 is not payable in relation to a proceeding under the Family Law Act about any of the following:

(a) rescission of a divorce order;

(b) a parenting plan;

(c) child maintenance;

(d) a recovery order;

(e) a custody order, residence order, or an order that a child lives with a person, made by an overseas court;

(f) a custody order, residence order, or an order that a child lives with a person, made by a court in Australia and enforceable overseas;

(g) a maintenance order made by an overseas court;

(h) a maintenance order made by a court in Australia that is enforceable overseas;

(i) spousal maintenance;

(j) leave, under section 102A of that Act, for a child to be examined;

(k) an application for enforcement of an order;

(l) contravention of an order;

(m) contempt of court;

(n) an application for an injunction under section 114 of that Act;

(o) costs;

(p) a procedural matter.

Division 2.5 Payment of fees

2.09 When fee must be paid

Filing fee

(1) A filing fee for a document must be paid beforethe document is filed.

Setting down fee

(2) A setting down fee for a hearing in relation to a proceeding must be paid as follows:

(a) if the hearing day is within 28 days after the day when the hearing day is fixed—within the period, or at the time, approved by the Registrar or authorised officer of the relevant court for the payment of that fee;

(b) in any other case—no later than 28 days before the hearing day.

Hearing fee

(3) A hearing fee for a hearing in relation to a proceeding must be paid as follows:

(a) if the hearing day is more than 2 business days after the day when the hearing day is fixed—no later than close of business for the relevant court on the day that is 2 business days before the hearing day;

(b) in any other case—no later than 9.30 am on the hearing day.

Conciliation conference fee

(4) A conciliation conference fee must be paid as follows:

(a) if the conciliation conference is within 28 days after the day when the conference is fixed—before the conference commences;

(b) in any other case—by 28 days before the day the conference will occur.

Fee for other service

(5) A fee for a service:

(a) mentioned in an item in Schedule 1; and

(b) not otherwise mentioned in this section;

must be paid before the service is provided.

2.10 Deferral of payment of fees

(1) Section 2.09 does not apply if a Registrar or an authorised officer of the relevant court for a proceeding defers the payment of a fee mentioned in Schedule 1 in relation to the proceeding.

(2) The Registrar or authorised officer may defer the payment of a fee under subsection (1) if, in the opinion of the Registrar or authorised officer:

(a) for a filing fee for a document (other than the fee mentioned in item 5 of Schedule 1)—the need to file the document is so urgent that it overrides the requirement to pay the filing fee before the document is filed; or

(b) considering the financial circumstances of the person liable to pay the fee, it would be oppressive or otherwise unreasonable to require payment of the fee in accordance with section 2.09.

(3) If the payment of a fee is deferred, the fee must be paid:

(a) within 28 days after the day the payment is deferred; or

(b) within another period approved, in writing, by the Registrar or authorised officer for the payment of that fee.

*Note*   If a setting down fee in relation to a hearing is deferred and the hearing does not occur, the setting down fee is still payable in accordance with this subsection.

(4) A fee may be deferred more than once.

(5) The Registrar or authorised officer may impose conditions on the deferral of the payment of a fee.

*Note*   A decision of a Registrar or an authorised officer under this section is reviewable by the AAT: see section 2.14.

2.11 What happens if fee is not paid

(1) This section applies if the payment of a fee is not deferred under section 2.10.

(2) If a person is required to pay a fee mentioned in Schedule 1 in relation to a proceeding before the filing of a document or the provision of a service for which the fee is payable, the document must not be filed or the service must not be provided until the whole fee is paid.

(3) However, the relevant court for the proceeding, or a Judge, Federal Magistrate or Registrar of that court, may allow the document to be filed or the service to be provided despite the fee, or part of the fee, not being paid.

(4) Subsection (5) applies to a conciliation conference fee, a hearing fee and a setting down fee.

(5) If the fee, or part of the fee, is not paid in relation to a proceeding:

(a) the relevant court, or a Judge, Federal Magistrate or Registrar of that court, may order that no proceeding, or no proceeding other than a specified proceeding, is to take place except by leave; and

(b) a person other than the person liable to pay the fee may pay the fee without affecting any power of the relevant court, or of a Judge, Federal Magistrate or Registrar of that court, to make an order for costs for the fee; and

(c) the relevant court, or a Judge, Federal Magistrate or Registrar of that court, may vacate the day scheduled for the hearing or conciliation conference.

Division 2.6 Miscellaneous

2.12 Refund of fee

General

(1) A person is entitled to a refund of an amount in relation to the payment of a fee mentioned in Schedule 1 if the person pays more than the person is required to pay for the fee under this regulation.

(2) The amount to be refunded is the difference between the amount paid by the person and the amount that the person is required to pay for the fee.

(3) A person is entitled to the refund of the amount paid by the person as a fee mentioned in Schedule 1 if:

(a) the fee had already been paid by another person; or

(b) the fee was not payable under this regulation.

Setting down fee

(4) A person is not entitled to the refund of the amount paid by the person as a setting down fee for a hearing in relation to a proceeding if the first hearing day fixed by the setting down, or a hearing day fixed in place of the first hearing day, does not occur.

Hearing fees—hearings not commenced

(5) A person is entitled to the refund of the amount paid by the person as a hearing fee for a hearing that has not commenced in relation to a proceeding if:

(a) the person notifies the Registrar or an authorised officer of the relevant court, in accordance with subsection (6), that the hearing will not occur or will occur only for the purpose of making formal orders; and

(b) the hearing does not occur or occurs only for the purpose of making formal orders.

(6) The person must notify the Registrar or authorised officer in writing:

(a) if the hearing day was fixed less than 10 business days before the hearing day—at least 2 business days before the hearing day; and

(b) in any other case—at least 10 business days before the hearing day.

(7) Despite subsection (5), a Registrar or authorised officer may refund a hearing fee for a hearing that has not commenced if:

(a) the person who paid the hearing fee has not notified the Registrar or authorised officer in accordance with paragraph (5) (a) and subsection (6); and

(b) the Registrar or authorised officer is satisfied that the reason the person has not notified the Registrar or authorised officer is not the fault of the person; and

(c) the hearing does not occur or occurs only for the purpose of making formal orders.

(8) For subsections (5) and (7), ***formal orders*** means orders finalising the proceedings that were to be the subject of the hearing.

Hearing fees—hearings commenced

(9) A person is entitled to the refund of the amount paid by the person as a hearing fee for a hearing day for a hearing that has commenced if:

(a) the proceeding is settled or discontinued before the hearing day; or

(b) the hearing day does not proceed for some other reason.

Example

If a person pays hearing fees in advance for 20 hearing days, but the proceeding finishes after 10 hearing days, a person is entitled to a refund of the hearing fees paid for the unused hearing days.

Conciliation conference fee

(10) A person is entitled to the refund of the amount paid by the person as a conciliation conference fee in relation to a proceeding if the proceeding is settled or discontinued before the conference is held.

*Note*   A decision of a Registrar or authorised officer under subsection (7) is reviewable by the AAT: see section 2.14.

2.13 Biennial increase in fees

(1) The amount of each fee mentioned in Schedule 1 is increased on 1 July 2014, and on each second 1 July following that day.

Fees other than reduced fees

(2) Subsections (3) and (4) apply to a fee mentioned in Schedule 1 other than a fee that is described as a reduced fee.

(3) If, in a relevant period, the latest CPI number is greater than the earlier CPI number, the fee is increased, on 1 July immediately following the end of the period, in accordance with the formula:



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.

(4) The amount of the fee worked out under subsection (3) is to be rounded to an amount of dollars and cents and then further rounded as follows:

(a) if the amount is $50 or more—the amount is to be rounded to the nearest amount that is a multiple of $5;

(b) if the amount is less than $50—the amount is to be rounded to the nearest whole dollar;

(c) if the amount to be rounded is 50 cents, the amount is to be rounded down.

Reduced fee

(5) If:

(a) a fee (the ***first fee***) is increased and rounded under subsections (3) and (4); and

(b) the item in Schedule 1 that mentions the fee also mentions a reduced fee;

the reduced fee is increased, at the same time as the first fee, in accordance with subsection (6).

(6) The increased reduced fee is one-third of the amount of the first fee (as increased and rounded under subsections (3) and (4)), rounded down to the nearest multiple of $5.

Other rules

(7) 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 section.

(8) However, if the Australian Statistician changes the reference base for the Consumer Price Index, then for the application of this section after the change is made, regard must be had only to CPI numbers published in terms of the new reference base.

(9) In this section:

***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.

***March quarter*** means a period of 3 months ending at the end of March.

***relevant period***means a 2 year period beginning on 1 July 2012 or on each second 1 July following that day.

2.14 Notice of decision and AAT review

(1) A Registrar or an authorised officer must give a person liable to pay a fee mentioned in Schedule 1 a notice in accordance with this section if the Registrar or authorised officer makes a decision about the payment of the fee under section 2.05 or 2.10 or subsection 2.06 (2) or 2.12 (7).

(2) The Registrar or authorised officer must give the notice to the liable person within 28 days after making the decision.

(3) The notice must set out:

(a) the decision; and

(b) a statement that the liable person may apply to the Administrative Appeals Tribunal for review of the decision; and

(c) reasons for the decision.

(4) Paragraphs (3) (b) and (c) only apply if the decision is:

(a) to not exempt a person from paying a fee; or

(b) to not defer the payment of a fee; or

(c) to not refund a fee that has been paid; or

(d) to not determine that a person may pay a reduced fee.

(5) The liable person may apply to the Administrative Appeals Tribunal for review of the decision.

(6) Failure to comply with paragraph (3) (b) does not affect the validity of the decision.

2.15 Debt due to Commonwealth or State

(1) Any fee mentioned in Schedule 1 that is not paid in accordance with this regulation is recoverable by the Commonwealth as a debt due to the Commonwealth.

(2) However:

(a) if the fee is payable in relation to a proceeding in a Family Court of a State, the fee is recoverable by the State as a debt due to that State; and

(b) if the fee is payable in relation to a proceeding in a court of summary jurisdiction of a State or Territory, the fee is recoverable by the State or Territory as a debt due to that State or Territory.

Schedule 1 Fees

(section 2.02)

| Item | Document or service | 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 | (a) general fee—$1,135  (b) reduced fee—$375 |
| 2 | Filing an application in proceedings for a divorce order:  (a) commenced in a court mentioned in paragraph 10A (a) or (c) of the *Family Law Regulations 1984*; or  (b) commenced in another court for transfer to a court mentioned in paragraph 10A (a) or (c) of those Regulations; or  (c) commenced in the Federal Magistrates Court | (a) general fee—$800  (b) reduced fee—$265 |
| 3 | Filing an application in proceedings for a declaration about the validity of a marriage, a divorce or the annulment of a marriage | $1,135 |
| 4 | Filing an application for final orders in eligible financial or parenting proceedings | $305 |
| 5 | Filing a response to an application for final orders in eligible financial or parenting proceedings | $305 |
| 6 | Filing an application for a consent order | $145 |
| 7 | Filing an appeal under section 94 or 94AAA of the Family Law Act, unless leave to appeal is required and the fee mentioned in item 8 has been paid | $1,205 |
| 8 | Filing an application for leave to appeal under section 94 or 94AAA of the Family Law Act | $1,205 |
| 9 | Filing an interim order application | $105 |
| 10 | Filing an application for both an order under Part VII of the Family Law Act and an order under any of the following:  (a) Part VIII of that Act (other than a spousal maintenance order);  (b) Part VIIIA of that Act;  (c) Part VIIIAB of that Act (other than an order for the maintenance of a party to a de facto relationship) | $500 |
| 11 | Setting down for hearing in proceedings for a divorce order, if defended, in relation to a marriage or a decree of nullity of marriage | (a) for hearing before a judge—$765  (b) for hearing before a magistrate—$560 |
| 12 | 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—$765  (b) for hearing before a magistrate—$560 |
| 13 | Setting down for hearing of an application for final orders, if defended, in eligible financial or parenting proceedings | (a) for hearing before a judge—$765  (b) for hearing before a magistrate—$560 |
| 14 | Setting down for hearing in an appeal under section 96 of the Family Law Act from a decree of a court of summary jurisdiction | $765 |
| 15 | Hearing in proceedings for a divorce order, if defended, in relation to a marriage or a decree of nullity of marriage—for each hearing day or part of a hearing day, other than the first hearing day | (a) for hearing before a judge—$765  (b) for hearing before a magistrate—$560 |
| 16 | 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, other than the first hearing day | (a) for hearing before a judge—$765  (b) for hearing before a magistrate—$560 |
| 17 | Hearing of an application for final orders, if defended, in eligible financial or parenting proceedings—for each hearing day or part of a hearing day, other than the first hearing day | (a) for hearing before a judge—$765  (b) for hearing before a magistrate—$560 |
| 18 | Hearing in an appeal under section 96 of the Family Law Act from a decree of a court of summary jurisdiction—for each hearing day or part of a hearing day, other than the first hearing day | $765 |
| 19 | For issuing a subpoena | $50 |
| 20 | For a conciliation conference in proceedings for an order under Part VIII or VIIIAB of the Family Law Act | $350 |

*Note*The fees mentioned in this Schedule are subject to increase under section 2.13.

**Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003.* See [www.comlaw.gov.au](http://www.comlaw.gov.au/).