



**Australian Government**  
**Attorney-General's Department**

**Access to Justice Division**

10/17848

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To whom it may concern

As foreshadowed in our e-mail of 24 June 2010, regulations introducing changes to court fees have been approved by the Governor-General in Council, for commencement on 1 November 2010.

These regulations amend the *High Court of Australia (Fees) Regulations 2004*, *Federal Court of Australia Regulations 2004*, *Family Law Regulations 1984*, *Federal Magistrates Regulations 2000* and the *Administrative Appeals Tribunal Regulations 1976*. The changes will affect all federal courts, the Administrative Appeals Tribunal, and state and territory courts exercising family law jurisdiction.

The new regulations and accompanying explanatory statements can be accessed on the ComLaw website <<http://www.comlaw.gov.au/>>.

The regulations:

- introduce low flat fees (\$100 for general law matters and \$60 for family law matters) to replace fee waivers and certain fee exemptions
- include measures to ensure that the new low flat fees do not affect access to justice (including deferral of fees, ensuring courts have discretion to hear matters where a fee has not been paid, and enabling registrars and authorised officers to waive fees for subsequent closely related applications where the person is in a set category), and
- harmonise federal family law courts fees with the fees for state and territory courts exercising family law jurisdiction.

The amendments to introduce low flat fees in place of fee waivers and certain fee exemptions form the second series of measures to implement a 2010-2011 Budget decision. The first series of amendments commenced on 1 July 2010.

The savings from the changes to court fees on 1 July 2010 and 1 November 2010 will, in combination with other Budget measures, provide savings which have been directed to an increase in legal assistance funding, totalling \$154 million over four years.

The measures reflect an increased focus on early intervention services, consistent with the Government's Strategic Framework for Access to Justice, to provide incentives for individuals to consider the many other options available for the early resolution of disputes.

The new fees will also ensure that those who choose to use courts to resolve disputes make a contribution which is closer to the cost of the service being provided.

A summary of the key changes is at **Attachment A**.

You may wish to bring this information to the attention of your members and stakeholders.

If you have further questions about the operation of the new fees, please contact Bernadette Radford, on 02 6141 3102.

Yours sincerely

Dr Susan Cochrane  
A/g Assistant Secretary  
Federal Courts Branch

### Summary of fee changes

#### **Fees to replace fee exemptions for litigants falling within disadvantage categories**

The 1 November 2010 amendments will introduce a flat fee for individuals who were previously exempt from the payment of court fees in all federal courts and the Administrative Appeals Tribunal. This fee will be \$60 for a family law matter and \$100 for a general law matter.

The new flat fee will apply to people in the following categories:

- recipients of legal aid
- persons who have been granted assistance under Part 11 of the *Native Title Act 1993*, and
- persons holding certain concession cards or in receipt of certain benefits, persons serving a term of imprisonment or otherwise lawfully detained, and persons aged less than 18 years.

If the existing full fee (which would otherwise be payable) is lower than the flat fee, the full fee will be payable instead. After paying either a full fee or a flat fee, an individual will not need to pay any further fees within that proceeding, subject to the exceptions outlined below.

A Registrar or authorised officer will have discretion to waive payment of a further fee where an individual who falls within a disadvantage category has paid the flat fee in a separate but related proceeding. This will lessen the burden on disadvantaged litigants where multiple proceedings are required to resolve a legal problem. It will also protect disadvantaged respondents where multiple vexatious claims are brought against them.

#### **Fees to replace fee waivers that are granted in situations of financial hardship**

The amendments will introduce a flat fee for individuals (and, where relevant, corporations) in the Federal Court, Family Court of Australia, state courts exercising family law jurisdiction, Federal Magistrates Court and Administrative Appeals Tribunal, in circumstances where payment of the full fee would cause financial hardship. This fee will be \$60 for a family law matter and \$100 for a general law matter. However, where the full fee is less than the flat fee, then the full fee is payable. Assessment of financial hardship is a matter for a Registrar or authorised officer.

Where an individual or corporation in financial hardship would otherwise be required to pay multiple court fees for setting down and for each hearing day, a Registrar will impose only one flat fee at the time of setting down, and no further hearing fees will be payable. This exception will ensure that litigants will not be burdened with a large number of fees to cover each day of hearing. The exception will not apply in the Administrative Appeals Tribunal because it does not have setting down or hearing fees.

The High Court (Fees) Regulations provide for imposition of a fee, rather than a full waiver, that is one third of the full fee in situations of financial hardship. The amendments will not affect this.

## **Exceptions to the application of the new fees replacing waivers and exemptions**

Fee reductions will not be available for:

- consent order applications in the Family Court of Australia and state and territory courts exercising family law jurisdiction
- photocopy fees in the Federal Court, and
- Part 2 fees in the High Court, which relate to photocopying or obtaining a court service.

## **Change of circumstances**

The amendments will also provide that if a person's circumstances change so that they come within a disadvantage category where they previously did not, they will not need to pay any further fees within a proceeding. If a person's circumstances change so that the person no longer comes within a disadvantage category, they will need to pay all fees arising after their change in circumstances.

## **Protecting access to justice - discretion for courts to consider matters where a fee is unpaid**

The Family Law Regulations will be amended to ensure that fee payment may be deferred at the discretion of a Registrar or an authorised officer. There are already equivalent provisions operating in the Federal Court of Australia Regulations and the Federal Magistrates Regulations.

Amendments to the Federal Magistrates Regulations and the High Court (Fees) Regulations will allow the courts to decide to continue to process a case where a fee has not been paid. This will prevent the new fees from being a barrier to accessing the court system in situations of urgency or extreme hardship. It is expected that the courts would only use this power in exceptional circumstances.

## **Harmonisation of family law fees**

The amendments to the Family Law Regulations will harmonise fees in the Family Court of Australia and in state and territory courts exercising family law jurisdiction, by merging the two parts of Schedule 1AA so that the same fees would apply in those courts. Harmonisation will make the fees simpler for litigants to understand and will also ensure that litigants are paying the same fees for the same services in each court that exercises family law jurisdiction. The amendments will also create a separate fee for hearings by a state magistrate which will match the hearing fees in the Federal Magistrates Regulations.

While these amendments will primarily affect the Family Court of Western Australia, they will also affect the courts in the other states and territories that hear family law matters.

## **Response fees in courts exercising family law jurisdiction**

The amendments will harmonise application and response fees in all courts exercising family law jurisdiction. This fee will be \$243. It is appropriate for application and response fees to be the same, given that both are effectively applications for final orders in connection with children or property. Harmonising these fees across the different courts will also help to make family law fees simpler for litigants in the different family law courts.