



AUSTRALIAN CAPITAL TERRITORY

## Supreme Court (Amendment) Act 1994

No. 3 of 1994

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### An Act to amend the *Supreme Court Act 1933*

*[Notified in ACT Gazette S44: 14 March 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

#### Short title

1. This Act may be cited as the *Supreme Court (Amendment) Act 1994*.

#### Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

#### Principal Act

3. In this Act, “Principal Act” means the *Supreme Court Act 1933*.<sup>1</sup>

#### Substitution

4. Section 37 of the Principal Act is repealed and the following sections are substituted:

#### Fees and charges—determination

“37. (1) The Attorney-General may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Court, and matters incidental to such proceedings, including—
  - (i) the admission and enrolment of barristers and solicitors;
  - (ii) the service and execution of the process of the Court; and

- (iii) the taxation of costs by officers of the Court;
- (b) facilities and services provided by the Court, including the service and execution of the process of any court of the Commonwealth, a State or another Territory, or of any court of a foreign country;
- (c) the general purposes of this Act, the Regulations or the Rules of Court.

“(2) A determination under subsection (1) may provide for any of the following matters:

- (a) the exemption of persons from liability to pay filing fees or fees for the service and execution of process, in whole or in part;
- (b) exemptions from liability for the payment of filing fees or fees for the service and execution of process, in whole or in part, in particular circumstances;
- (c) the remission or refund of fees or charges by the Registrar, in whole or in part, in particular circumstances;
- (d) the deferral of liability by the Registrar for the payment of fees or charges, in whole or in part, in particular circumstances.

“(3) A determination under subsection (1) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Fees and charges—payment**

“37A. (1) A fee or charge determined under subsection 37 (1) is payable, in advance, in accordance with the determination, subject to this section.

“(2) A fee or charge determined under subsection 37 (1) is payable on notification from the Registrar if it is calculated by reference to expenses actually incurred in performing the function, or in providing the facility or service, for which the fee or charge is payable.

“(3) If a fee or charge determined under subsection 37 (1) and payable in advance is not paid when due, there is no obligation on the Registrar or the Court to perform the function, or provide the facility or service, for which the fee or charge is payable.

### **Fees and charges—remission, refund, deferral, waiver, exemption**

“37B. (1) A fee or charge determined under subsection 37 (1) may be remitted or refunded, or liability for its payment deferred, in accordance with the determination.

“(2) A fee or charge determined under subsection 37 (1) is not payable—

- (a) if the person otherwise liable to pay the fee or charge is—
  - (i) exempt from paying the fee or charge under subsection 93 (1) of the *Legal Aid Act 1977*; or
  - (ii) legally assisted under a scheme or service provided or approved by the Attorney-General;
- (b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge—to the extent of the waiver; or
- (c) for filing a document, or for the service or execution of process, in relation to proceedings—
  - (i) in a criminal matter, including an appeal;
  - (ii) under the *Coroners Act 1956*;
  - (iii) under Part V of the *Legal Practitioners Act 1970*;
  - (iv) under Part X of the *Magistrates Court Act 1930*;
  - (v) under any of the following Acts:
    - (A) the *Adoption Act 1993*;
    - (B) the *Children's Services Act 1986*;
    - (C) the *Criminal Injuries Compensation Act 1983*;
    - (D) the *Domestic Violence Act 1986*;
    - (E) the *Guardianship and Management of Property Act 1991*;
    - (F) the *Maintenance Act 1968*;
    - (G) the *Mental Health Act 1983*;
    - (H) the *Testamentary Guardianship Act 1984*;
  - (vi) on appeals in respect of the following matters:
    - (A) a matter under the *Children's Services Act 1986*;
    - (B) a matter under the *Mental Health Act 1983*;
    - (C) a decision of the Guardianship and Management of Property Tribunal;
  - (vii) on a matter that has been remitted to the Court by the High Court under section 44 of the *Judiciary Act 1903* of the Commonwealth;
  - (viii) in respect of which a Convention to which Australia is a party provides that a fee is not to be payable; or

- (ix) on an application to the Court for an extension of the time within which a proceeding may be commenced.

**Fees and charges—recovery where otherwise not payable**

“37C. (1) This section applies in civil proceedings in the Court between 2 parties (in this section called ‘the first party’ and ‘the second party’), where—

- (a) a filing fee, or a fee for the service or execution of process, otherwise payable by the first party is—
  - (i) not payable (in whole or in part) due to the exemption of the first party as referred to in paragraph 37 (2) (a) or (b) or 37B (2) (a);
  - (ii) remitted or refunded (in whole or in part) under subsection 37B (1); or
  - (iii) the subject of waiver (in whole or in part) under paragraph 37B (2) (b);
- (b) judgment is given or entered in favour of the first party; and
- (c) the first party’s costs are payable by the second party.

“(2) Where this section applies, the second party shall pay to the Registrar an amount equal to the amount in relation to which the first party was exempted, or the amount of the remission, refund or waiver, as the case requires.

**Fees and charges—review of decisions**

“37D. (1) The following decisions of the Registrar are reviewable under this section:

- (a) a decision referred to in paragraph 37 (2) (c) in relation to the remission or refund of a fee or charge (in whole or in part);
- (b) a decision referred to in paragraph 37 (2) (d) in relation to the deferral of liability for the payment of a fee or charge (in whole or in part);
- (c) a decision under paragraph 37B (2) (b) in relation to the waiver of payment of a fee or charge (in whole or in part).

“(2) After making a reviewable decision, the Registrar shall give a written notice of the decision to the eligible person including a statement to the effect that—

- (a) the person may apply to the Registrar for a statement of reasons for the decision; and

(b) the person may apply to the Master or a Judge for review of the decision within the review period.

“(3) On written application by the eligible person within 28 days after the person’s receipt of a notice under subsection (2), the Registrar shall give the person a written statement of reasons for the relevant decision.

“(4) On written application by the eligible person within the review period, the Master or a Judge may review a reviewable decision.

“(5) On a review under subsection (4), the Master or the Judge may make such order as he or she considers appropriate.

“(6) No fee or charge is payable in relation to an application for review under subsection (4).

“(7) In this section—

‘eligible person’, in relation to a reviewable decision, means the person who claims to be entitled to the relevant remission, refund, deferral or waiver;

‘review period’, in relation to a reviewable decision, means—

- (a) the period of 28 days after receipt by the eligible person of notice of the decision under subsection (2); or
- (b) if the eligible person applies under subsection (3) for a statement of reasons for the decision—the period of 28 days after he or she receives the statement of reasons.”.

### **Saving**

**5.** Notwithstanding section 4, the Supreme Court (Fees) Regulations, as in force immediately before the commencement of this section, continue in force by virtue of this section until the first determination under subsection 37 (1) of the Principal Act as amended by this Act comes into effect .

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### **NOTE**

1. Reprinted as at 1 July 1992. See also Acts Nos. 59 and 91, 1993.

*[Presentation speech made in Assembly on 9 December 1993]*