

AUSTRALIAN CAPITAL TERRITORY

Magistrates Court Act 1930 *Coroners Act 1956*

DETERMINATION OF FEES AND CHARGES APPLICABLE IN THE MAGISTRATES COURT, THE SMALL CLAIMS COURT AND THE CORONER'S COURT

NO. 166 OF 1996

EXPLANATORY STATEMENT

BACKGROUND

POWER TO MAKE FEES AND CHARGES

Magistrates Court and Small Claims Court

Subsection 248A(1) of the *Magistrates Court Act 1930* provides that the Minister 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 service and execution of the process of the Court; and
 - (ii) 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 the Act, the *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Small Claims Act 1974* and rules and regulations made under the Act and any of those Acts.

Subsection 248A(2) of the *Magistrates Court Act* provides that a determination made under subsection 248A(1) may provide for matters such as the exemption from liability to pay certain fees, in whole or in part, and for the remission or refund and the deferral of liability for the payment of fees and charges, in whole or in part, by the Registrar in particular circumstances.

Coroner's Court

Subsection 74(1) of the *Coroners Act 1956* provides that the Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Coroner's Court, and matters incidental to such proceedings, including the service and execution of the process of the Coroner's Court;
- (b) facilities and services provided by the Coroner's Court;
- (c) the general purposes of the Act and the regulations.

This Determination, for convenience, covers the Coroner's Court as well as the Magistrates Court and the Small Claims Court. Previously, fees and charges for the Coroner's Court were determined separately.

Overview of increases in fees and charges and new fees

Some fees are the same as those previously determined. Where fees have been increased they have generally been increased by 3% and rounded off where appropriate. The fee for execution of process of the Magistrates Court (item 13) has been brought into line with the increased fee applicable in the Supreme Court. Some new fees have been introduced. Those new fees for the issue of a summons (item 19) are the same as those applying in a civil claim in the New South Wales Local Courts. The fees determined are set out below with the previously determined fees shown in brackets.

Commencement of Determination

This Determination comes into effect on 29 July 1996 and upon its coming into effect Determination No. 65 of 1995 and Determination No. 61 of 1995 will cease to have effect.

ITEM	MATTER IN RESPECT OF WHICH A FEE IS PAYABLE	FEE PAYABLE (\$)
1.	For the laying of an information under section 26 of the <i>Magistrates Court Act 1930</i>	29.00 (28.00)

An information may be laid before a Magistrate under section 26 where a person has committed, or is suspected of having committed, certain offences. Item 1 determines the fee payable for the laying of the information. The *Magistrates Court Act 1930* provides that the fee is not payable in some circumstances.

2.	Subject to item 4, for the provision of a certificate under subsection 143(1) of the <i>Magistrates Court Act 1930</i>	22.00 (21.00)
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Where an information has been dismissed against a defendant, section 143 of the *Magistrates Court Act* provides for the Court to give a defendant, on application, a certificate to that effect signed by the adjudicating Magistrate or the Registrar. This item determines the fee payable for provision of the certificate and is set at the same level as that applying in item 3.

3.	Subject to item 4, for the provision of a copy of a document referred to in paragraph 144(1)(a), (c) or (d) of the <i>Magistrates Court Act 1930</i> where the provision of the copy requires the drawing up of a relevant document.	22.00 (21.00)
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Section 144 of the *Magistrates Court Act* allows the Registrar, on application by a person, to give to that person a copy of an information, minute or memorandum of conviction or order, etc. Item 3 determines the fee payable for the provision of the copy where it is first necessary to draw up the document to which the application relates.

4.	Where, for the purposes of subsections 143(1) or 144(1) of the <i>Magistrates Court Act 1930</i> , a copy can be provided by the photocopying of another document -	
	(a) in respect of the application for a copy	2.00 (2.00)
	(b) for each page of copy provided in accordance with the application referred to in paragraph 4(a)	1.00 (1.00)

Item 4 determines the fees payable for the provision of a copy of a document under subsection 143(1) or 144(1) where all that is required in order to provide a copy is to photocopy an existing document.

5. For the purposes of subsection 147(2C) of the *Magistrates Court Act 1930* 56.00
(54.00)

Section 147 of the Magistrates Court Act provides, among other things, for the committal to prison of a person who is in default of the provisions of a conviction or order. In default of compliance with an order, a person also becomes liable to pay the determined fee. This item does not apply in respect of a judgment or an order in respect of a claim or relating to a payment under the *Maintenance Act 1968*.

6. In respect of requests for copies of documents, not being applications under subsections 143(1), 144(1) or 255C(1) of the *Magistrates Court Act 1930* or applications under subsection 418(1) of the *Magistrates Court (Civil Jurisdiction) Act 1982* -
- (a) for each request for a copy or copies of a document or documents (regardless of the number of documents to which the request relates) 2.00
(2.00)
- (b) for each page of copy provided in accordance with a request referred to in paragraph 6(a) 1.00
(1.00)
7. For each page of copy of a document or documents copied by a person, other than an officer of the Magistrates Court, Small Claims Court or the Coroner's Court, using a Court photocopier 0.20
(0.20)

Items 6 and 7 determine the fees applicable in respect of photocopying requested of the Magistrates Court, the Small Claims Court and the Coroner's Court or done by persons using the Courts' photocopying machines.

8. For the purposes of section 255C of the *Magistrates Court Act 1930* or for the supply of a copy of a transcript or a copy thereof of an inquest or inquiry in the Coroner's Court -
- (a) for each page of a transcript (including preparation of the transcript) 8.25
(8.25)
- (b) for each page of a copy of the transcript 1.00
(1.00)

The fees in this item apply also in respect of the provision of transcripts and copies of transcripts of proceedings in the Small Claims Court.

9. For the institution of proceedings under the *Magistrates Court (Civil Jurisdiction) Act 1982* -
- | | |
|---|--------------------|
| (a) where the amount in dispute is \$10,000 or more | 278.00
(270.00) |
| (b) where the amount in dispute is less than \$10,000 | 77.00
(75.00) |
| (c) for an application to the Magistrates Court where no amount of money is in dispute | 77.00
(75.00) |
| (d) for an application under subsection 13A(1) of the <i>Motor Traffic Act 1936</i> or under subsection 36(2) or 40(1) of the <i>Motor Traffic (Alcohol and Drugs) Act 1977</i> | 77.00
(75.00) |

This item sets the fees for instituting a proceeding before the Magistrates Court either by way of lodging an originating process or filing an application.

10. For the institution of proceedings under the *Small Claims Act 1974* -
- | | |
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| (a) where the amount in dispute is \$2,000 or more | 77.00
(75.00) |
| (b) where the amount in dispute is less than \$2,000 | 31.00
(30.00) |
| (c) in the case of proceedings where no money amount is in dispute | 31.00
(30.00) |

This item sets the fees for instituting proceedings before the Small Claims Court.

11. For serving, and for each attempt to serve, by post, originating process under section 24 of the *Magistrates Court (Civil Jurisdiction) Act 1982*
- | | |
|--|------------------|
| | 12.00
(11.00) |
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Under subsection 24(1) of the *Magistrates Court (Civil Jurisdiction) Act 1982*, a plaintiff in proceedings may apply for postal service of an originating process. The Registrar may serve the process by post on the defendant. This item determines a fee for the purposes of that provision.

12. For up to 3 attempts to serve, otherwise than by post, an originating process, a summons, a notice or other civil process at the same address, whether or not the service is successful
- | | |
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| | 56.00
(54.00) |
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Where the Magistrates Court arranges service of an originating process, etc, for a plaintiff, other than by post, the fee set out above is payable for that service. The fee covers up to three attempts at service at the same address. No fee is payable for service of a claim by the Registrar of the Small Claims Court or where a fee for execution of process is payable under item 13.

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| 13. | For up to 3 attempts to execute process, other than of the Small Claims Court, at the same address, whether or not the execution is successful | 180.00
(54.00) |
| 14. | For up to 3 attempts to execute process of the Small Claims Court, at the same address, whether or not the execution is successful | 56.00
(54.00) |

In this context, section 371 of the *Magistrates Court (Civil Jurisdiction) Act 1982* provides for the costs actually incurred in effecting a sale of seized goods and chattels, when executing a warrant of execution, to be deducted from the sale price. The fees in items 13 and 14 relate to the administrative expenses of officers of the Court involved in the execution and are additional to those contemplated by section 371. The fee for execution of process covers up to three attempts at execution at the same address. Different fees have been determined for executing process of the Magistrates Court and the Small Claims Court.

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| 15. | For the purposes of subsection 418(1) of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> - | |
| | (a) in respect of an application (regardless of the number of documents to which the application relates) | 2.00
(2.00) |
| | (b) for each page of copy provided in accordance with an application referred to in paragraph 15(a) | 1.00
(1.00) |

This item determines the fees applicable in respect of providing certificates or certified copies of judgments or orders of the Magistrates Court or the Small Claims Court or of documents filed in proceedings.

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| 16. | For the review of an order, direction or other act of the Registrar of the Magistrates Court | 77.00
(75.00) |
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This fee applies when the Magistrates Court, on application from a party to proceedings, reviews an order, direction or other act of the Registrar of that Court and is set at the lower level of the fees to institute a proceeding before that Court. No fee is payable for a review of an order, direction or other act of the Registrar of the Small Claims Court.

17. For an inspection, under section 419 of the *Magistrates Court (Civil Jurisdiction) Act 1982* of a record of the Magistrates court that contains particulars of - 12.00
(11.00)
- (a) a judgment that has been entered under section 43 of the *Magistrates Court Civil Jurisdiction) Act 1982*;
- (b) the setting aside of such a judgment under section 221 of the *Magistrates Court Civil Jurisdiction) Act*

Any person may inspect a record of the Magistrates Court containing particulars of judgments entered in default on special claims or where such judgment has been set aside. This item sets the fee for each such inspection. The fee also applies to inspections under the *Small Claims Act 1974*.

18. On filing for taxation a bill of costs as between party and party that, as filed, exceeds \$2,000 214.00
(208.00)

This fee reflects, and is set at the same level as, the fee payable for a party/party taxation in the Supreme Court. No fee is payable in respect of matters in the Small Claims Court.

19. For the issue of a summons under subsection 187(1) of the *Magistrates Court (Civil Jurisdiction) Act 1982* or under section 20 of the *Small Claims Act 1974*:
- (a) to give evidence 11.00
- (b) for production and to give evidence 22.00
- (c) for production 22.00

These are new fees for the issue of a summons by the Magistrates Court or the Small Claims Court. The fees are not payable if a filing fee is not payable in respect of a matter.

20. For the supply of a duplicate audio tape recording of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per cassette 30.00
21. For the supply of a duplicate video tape recording of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per cassette 40.00
22. For the supply of a computer disk containing a record of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per cassette 10.00

Items 20, 21 and 22 are new fees which apply to the provision of an audio cassette, videotape or computer disk containing a record of a proceeding or of part of a proceeding or of a matter incidental to a proceeding.

EXEMPTION FROM LIABILITY FOR PAYMENT

The Determination provides an exemption from payment of a filing fee or fee for the service or execution of process in relation to proceedings under the *Birth (Equality of Status) Act 1988*.

DEFERRAL OF LIABILITY FOR PAYMENT

Paragraph 248A(2)(d) of the *Magistrates Court Act 1930* and paragraph 74(2)(d) of the *Coroner's Court Act 1956* provide that a determination may provide for the deferral of liability by the Registrar for the payment of fees and charges, in whole or in part, in particular circumstances. The Determination provides that the Registrar of the Magistrates Court, the Registrar of the Small Claims Court and the Registrar of the Coroner's Court may defer liability for payment for a period not in excess of 14 days if, in the Registrar's opinion, payment cannot be made at the time that a request is made for the performance of a function or the provision of a facility or service, but payment could be made within 14 days after the request being made. The Registrar will be able to defer payment, for example, where a person wishes to institute proceedings, but has not brought sufficient funds with him or her.

REVENUE / COST IMPLICATIONS

The increases in fees and charges will result in about \$39,600 in additional revenue in a full year.

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