

1993

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

SUPREME COURT ACT 1933

SUPREME COURT (FEES) REGULATIONS (AMENDMENT)

EXPLANATORY STATEMENT

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Terry Connolly
ATTORNEY GENERAL

SUPREME COURT (FEES) REGULATIONS (AMENDMENT)

Section 37 of the *Supreme Court Act 1933* (the Act) provides that the Executive may make regulations prescribing the fees or other payments to be paid to officers of the Court in respect of certain matters and making provision in relation to the payment or remission of such fees or other payments. (The fee making power was vested in the Executive by Subordinate Law No. 10 of 1993 which amended the Self-Government (Transitional Provisions) Regulations.)

These regulations amend the Supreme Court (Fees) Regulations (the Principal Regulations) made under section 37. With the exception of regulation 6, which relates to fees for opening the offices of the Court out of normal hours, the regulations commence on 1 April 1993. Regulation 6 commences on a day to be fixed by notice in the *Gazette* as a complementary amendment of the Supreme Court Rules of Court is required.

Subregulation 2(1) of the Principal Regulations, as amended by these Regulations provides that, subject to these Regulations, the fees payable in respect of proceedings in the Court or the service or execution of the process of the Court by officers of the Court are the fees respectively specified in the Schedule in respect of the matters in relation to which they are so specified. Regulation 7 repeals the Schedule to the Principal Regulations specifying the fees and substitutes a new Schedule. The substituted Schedule introduces new fees in respect of appeals from decisions of the Master or the Registrar, for the supply of certificates of enrolment additional to that provided on admission to practise, enrolment or registration and for the taxing of party/party bills of costs in excess of \$2,000 as filed. The Schedule fees are set out below, previous fees are shown in brackets.

SCHEDULE FEES

\$

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|---|-----------|
| 1. On filing a document whereby a proceeding in the Court (other than a motion referred to in item 4 or an interlocutory or incidental proceeding in the course of, or in connection with, a proceeding) is commenced | 330 (300) |
| 2. On filing a document to commence an appeal from the Master or the Registrar in an interlocutory proceeding | 100 (Nil) |
| 3. On filing a document to commence an appeal from the | 330 (Nil) |

Master or the Registrar in a proceeding other than an interlocutory proceeding

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|--|-------------|
| 4. On filing a notice of motion for admission to practise or for enrolment, or on lodging an application for registration, under the <i>Legal Practitioners Act 1970</i> | 200 (100) |
| 5. For the supply of each certificate of enrolment additional to a certificate of enrolment provided on such admission, enrolment or registration | 30 (Nil) |
| 6. On filing for taxation a solicitor's bill of costs as between party and party that, as filed, exceeds \$2,000 | 200 (Nil) |
| 7. 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 (0.60) |
| 8. For each page included in a copy furnished in accordance with a request referred to in item 7 | 1 (0.20) |
| 9. For each page copied by a person, other than an officer of the Court, using a photocopier at the offices of the Court | 0.20 (0.20) |
| 10. For - | 50 (20) |
| (a) each service of process, including up to 2 attempts to serve; or | |
| (b) up to 3 attempts to serve process: | |

Apart from new regulation 5 (which remakes subregulation 2(4) of the Principal Regulations), which provides for where fees are not payable on basically hardship grounds, the circumstances in which a fee is not payable upon the filing of certain documents are set out in subregulation 2(2) of the Principal Regulations. Regulation 4 amends the list of exemptions from payment of the fee. The fee will not be payable upon the filing of document relating to -

- (i) an appeal in relation to a matter under the *Children's Services Act 1986* or the *Mental Health Act 1983*;

- (ii) an application under section 35 or 36 of the *Coroners Act 1956*;
- (iii) an appeal to the Court from a decision of the Guardianship and Management of Property Tribunal;
- (iv) a proceeding under the *Children's Services Act 1986*, the *Criminal Injuries Compensation Act 1983*, the *Domestic Violence Act 1986*, the *Guardianship and Management of Property Act 1991*, the *Maintenance Act 1968*, the *Mental Health Act 1983* or Part X of the *Magistrates Court Act 1930*;

The general exemptions in paragraphs 2(2)(a), (b) and (c) of the previous Regulations are removed and replaced by the above specific exemptions.

- (v) adoption proceedings or proceedings under the *Testamentary Guardianship Act 1984*;

The specific reference to the *Adoption of Children Act 1965* in this exemption has been removed and proceedings under the Testamentary Guardianship Act added.

- (vi) a proceeding under Part V of the *Legal Practitioners Act 1970*;
- (vii) a matter that has been remitted to the Court by the High Court in pursuance of section 44 of the *Judiciary Act 1903*;
- (viii) an appeal or other proceeding in respect of a criminal matter;

This exemption has been clarified consequent upon the repeal of paragraph 2(2)(a) to make it clear that it includes all criminal matters before the Court.

- (ix) a proceeding in respect of which a Convention to which Australia is a party provides that a fee shall not be payable;
- (x) an application to the Court or a Judge for a direction to the Registrar that he issue a certificate in accordance with regulation 5;
- (xi) an application to the Court for an extension of the time within which a proceeding may be commenced.

This is a new exemption.

Regulation 5 repeals regulation 3 of the Principal Regulations which is now an obsolete provision and substitutes new regulations 3, 4 and 5.

New regulation 3 introduces a hearing fee payable, unless the Court or Registrar orders that another party to the proceedings pay the fee, by the person who initiated the proceedings, when a date is fixed for the hearing of a matter for which a filing fee is payable. The fee is not payable on filing a notice of motion for admission to practise under the *Legal Practitioners Act 1970*. The hearing fee is set at \$500 and is to be refunded, less \$50, if the Registrar is notified not later than 10 days (excluding Saturdays, Sundays and public holidays) before the date fixed for the hearing, that the hearing will not proceed, and -

(a) the hearing does not proceed; or

(b) the hearing is conducted for the purpose of making consent orders only.

New regulation 4 sets a fee of \$50 for each execution, including for up to 3 attempted executions, of process of the Court. The fee is in addition to the existing requirement (previously set out in the Schedule) for payment of an amount equal to the amount of any expenses reasonably incurred by an officer of the Court in the execution or attempted execution of the process of the Court. This regulation also introduces a fee of \$50 to be payable in respect of each redirection; that is, when execution has to be attempted at an address other than that indicated in the process.

New regulation 5 provides that fees are not payable if the Registrar issues a certificate certifying basically that the person is legally assisted or that payment would impose hardship. This provision is not new and appears in the Principal Regulations as subregulation 2(4) in basically the same terms.

At present, the Rules of Court of the Supreme Court set out the hours the offices of the Court shall be open and the fees for opening those offices at other times for the transaction of business. For the sake of convenience, fees for opening the offices out of hours will be included in these Regulations. Regulation 6, setting the fees, will commence on a later date to enable a complementary amendment of the Rules of Court to be made. The fees will not be altered and will remain -

(a) \$50 for opening the offices of the Court between 9.00 a.m. and 9.15 a.m. or between 4.15 p.m. and 5.00 p.m. on a day other than a Saturday, Sunday or public holiday; or

(b) \$100 at any time on a Saturday, Sunday or public holiday or outside the hours of 9.00 a.m. to 5.00 p.m. on a day of the week other than a day referred to in (a) above.

Revenue/cost implications

The amendments will return some additional revenue.