



Western Australia

Family Court Regulations 1998

Compare between:

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Western Australia

Family Court Act 1997

Family Court Regulations 1998

Part 1 — Preliminary

[Heading inserted in Gazette 13 May 2011 p. 1738.]

1. Citation

These regulations may be cited as the *Family Court Regulations 1998*¹.

2. Commencement

These regulations come into operation on the day on which the *Family Court Act 1997* comes into operation¹.

3. Terms used

- (1) In these regulations, unless the contrary intention appears —
authorised officer, in relation to a power or function, means ~~a person designated as~~ —

(a) in relation to the Family Court of Western Australia —
an officer of that Court authorised ~~officer~~ by the
Principal Registrar of that Court, or the executive
manager appointed under
~~regulation 17B~~ section 25(1)(c), to exercise the power or
carry out the function; or

(b) in relation to the Magistrates Court — an officer of that court authorised by the Principal Registrar, or a registrar, of that court to exercise the power or carry out the function;

court has the meaning referred to in section 8;

Family Law Regulations means the *Family Law Regulations 1984* of the Commonwealth;

Family Law Rules means the *Family Law Rules 2004* of the Commonwealth;

section means section of the Act.

- (2) A reference in a Family Law Regulation adopted or applied under these regulations —
- (a) to the Family Court is to be treated as a reference to the Family Court of Western Australia; and
 - (b) to a registrar is to be treated as a reference to a registrar of the Family Court of Western Australia; and
 - (c) to a Registry of the Family Court is to be treated as a reference to the registry of the Family Court of Western Australia; and
 - (d) to a form in a Schedule of the Family Law Regulations or the Family Law Rules is to be treated as a reference to the form with the appropriate modifications for the purposes of the Act; and
 - (e) to a Part, Division, section, Schedule or other provision of the Family Law Act is to be treated as a reference to the provision of the *Family Court Act 1997* with which the provision is comparable; and
 - (f) to the Act is to be treated as a reference to the *Family Court Act 1997*; and
 - (g) to Part VIII is to be treated as a reference to Part 5A.

- (3) Subject to this regulation, a Family Law Regulation adopted or applied under these regulations is adopted or applied in the form in which it is in force from time to time.

[Regulation 3 amended in Gazette 29 Nov 2002 p. 5663-4; 14 Jul 2006 p. 2561; 13 May 2011 p. 1738; [14 Dec 2012 p. 6235-6.](#)]

Part 2 — General

[Heading inserted in Gazette 13 May 2011 p. 1738.]

4. Dispensing with compliance with these regulations

A court may dispense with compliance with any requirement of these regulations, either before or after the occasion for compliance has arisen.

5. Court registry

The registry of the Family Court is to be in Perth.

6. Fees of Marshal

The fees payable to the Marshal are to be in accordance with Part III of the Fifth Schedule² to the *Rules of the Supreme Court 1971*.

7. Recording and transcripts of proceedings

- (1) All proceedings in a court are, where practicable, to be fully recorded.
- (2) A record of proceedings need be transcribed only where a court or a registrar so orders or directs.
- (3) A party to proceedings may request a copy of a transcript of the proceedings.
- (4) A fee is payable by a person who makes a request under subregulation (3) of an amount equal to the actual cost to the court of transcribing the record of proceedings.

[Regulation 7 amended in Gazette 13 May 2011 p. 1738.]

8. Family Law Regulations Part 5 adopted

Part 5 of the Family Law Regulations is adopted.

[Regulation 8 inserted in Gazette 14 Jul 2006 p. 2561.]

[8A. Deleted in Gazette 14 Jul 2006 p. 2561.]

9. Family Law Regulation 7 adopted (Act s. 65D)

Family Law Regulation 7 is adopted for the purposes of section 65D.

[Regulation 9 inserted in Gazette 14 Jul 2006 p. 2561.]

10. Matters prescribed (Act s. 66H(7)(b))

Before giving a certificate under section 66H(7)(b) a family law dispute resolution practitioner is to have regard to the following matters —

- (a) a history of family violence among the parties;
- (b) the likely safety of the parties;
- (c) the equality of bargaining power among the parties (for example, whether a party is economically or linguistically disadvantaged in comparison with another party);
- (d) the risk that a child may suffer abuse;
- (e) the emotional, psychological and physical health of the parties;
- (f) any other matter that the family dispute resolution practitioner considers relevant.

[Regulation 10 inserted in Gazette 14 Jul 2006 p. 2562.]

11. Registration of court decision (Act s. 176(6))

Family Law Regulation 12CC is adopted for the purposes of section 176(6).

[Regulation 11 inserted in Gazette 14 Jul 2006 p. 2562.]

12. Government agencies prescribed (Act s. 202K)

For the purposes of section 202K the following are prescribed government agencies —

- (a) the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;
- (b) the Police Force of Western Australia provided for by the *Police Act 1892*.

[Regulation 12 inserted in Gazette 14 Jul 2006 p. 2562.]

13. Third party expenses (Act s. 205ZLK)

Family Law Regulation 15AA is adopted for the purposes of section 205ZLK.

[Regulation 13 inserted in Gazette 14 Jul 2006 p. 2562.]

[14, 14A-14E. Deleted in Gazette 14 Jul 2006 p. 2561.]

14F. Pensions etc. prescribed (Act s. 205T *income tested pension, allowance or benefit*)

Family Law Regulation 12A is adopted and applies for the purposes of the definition of *income tested pension, allowance or benefit* in section 205T.

[Regulation 14F inserted in Gazette 29 Nov 2002 p. 5665.]

15. Parentage testing procedures

- (1) Family Law Regulation 21C is adopted and applies for the purposes of the definition of *parentage testing procedure* in section 5.
- (2) Family Law Regulations 21B, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21K and 21L are adopted and apply to a parentage testing procedure that is required to be carried out on a person under a parentage testing order made by a court under section 195.

16. Parentage testing reports

- (1) The Attorney General may appoint in writing a person or class of persons, being persons employed at a particular place, to prepare reports relating to the information obtained as the result of conducting parentage testing procedures.
- (2) An instrument of appointment under subregulation (1) is to be published in the *Gazette*.
- (3) Family Law Regulation 21M is adopted and applies for the purposes of section 200(b).

17. Registration in a court of orders etc. made by another court

- (1) An order under the Act referred to in section 223 in paragraph (f) of the definition of *order under this Act* may be registered by filing a sealed copy of the order in the registry of the first-mentioned court referred to in paragraph (g) of that definition.
- [(2) deleted]*
- (3) A decree within the meaning of section 209A may be registered in any court by filing a sealed copy of the order in the court's registry.

*[Regulation 17 amended in Gazette 29 Nov 2002 p. 5665;
14 Jul 2006 p. 2562.]*

Part 3 — Court fees

[Heading inserted in Gazette ~~13 May 2011~~ 14 Dec 2012
p. ~~1739~~ 6236.]

Division 1 — Preliminary

[Heading inserted in Gazette ~~13 May 2011~~ 14 Dec 2012
p. ~~1739~~ 6236.]

17A18. Terms used

In this Part —

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned;

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 at issue in the proceeding;

conciliation conference fee means the fee mentioned in Schedule 1 item 11;

eligible financial or parenting proceedings means proceedings under Part 5 or 5A of the Act;

filing fee means a fee mentioned in Schedule 1 item 1, 4 ~~or~~ 7;

~~*full fee* means a fee that has not been reduced or waived, 8, 9 or 12;~~

hearing fee means a fee mentioned in Schedule 1 item 3 or 6;

~~*reduced 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 5 or 5A of the 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;

liable person, in relation to a fee, means the ~~fee mentioned in Schedule 1 item 8~~ person who is required to pay the fee under regulation 20;

relevant court, in relation to a proceeding, means the court in which the proceedings are held;

setting-down fee means a fee mentioned in Schedule 1 item 2 or 5;

~~*working day* means a day on which the offices of the court are open.~~

~~[Regulation ~~17A~~18 inserted in Gazette 13 May 2011/14 Dec 2012 p. 1739/6236-7.]~~

~~**17B. — Authorised officers for these regulations**~~

~~The Principal Registrar may, in writing, designate an officer of the court to be an authorised officer for the purposes of these regulations.~~

~~[Regulation 17B inserted in Gazette 13 May 2011 p. 1739.]~~

Division 2 — Court fees payable Fees — general

[Heading inserted in Gazette 13 May 2011/14 Dec 2012 p. 1739/6237.]

~~18.~~ ~~Court fees payable~~ 19. Fees (Sch. 1)

(1) Schedule 1 sets out the fees payable ~~in proceedings under the Act for~~ —

~~(2) The~~ (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.

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

(a) the fee mentioned in Schedule 1 item 8; and

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

(3) If under regulation 20, 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.

[Regulation 19 inserted in Gazette 14 Dec 2012 p. 6237-8.]

Division 3 — Liability to pay fee

[Heading inserted in Gazette 14 Dec 2012 p. 6238.]

20. Persons liable to pay a fee is~~—~~

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

(a) for the fee mentioned in Schedule 1 item 4 (filing a response to an application) or item 8 (filing an interim order application) — the person for whom the document is filed; and

(b) for the fee mentioned in Schedule 1 item 10 (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 the Principal 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 subregulation (1).

[Regulation 20 inserted in Gazette 14 Dec 2012 p. 6238-9.]

Division 4 — Exemptions from liability to pay fee

[Heading inserted in Gazette 14 Dec 2012 p. 6239.]

21A. Persons exempt from paying fee — general

(1) A person is exempt from paying a fee mentioned in Schedule 1 if ~~the fee is a filing fee, the person seeking to file the application or response; or~~

~~(b) if the fee is a setting down or hearing fee, the person who initiated the proceedings or lodged the appeal; or~~

~~(c) if the court or a registrar so orders —~~

~~(i) another party to the proceedings or appeal; or~~

~~(ii) each of 2 or more parties to the proceedings or appeal, including the person initiating the proceedings or lodging the appeal in the proportions ordered.~~

~~(3) A filing fee is payable, at the time when the application or appeal is filed.~~

~~(3A) A setting down fee is payable —~~

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- ~~— (a) if a court or a registrar directs a time within which the fee must be paid — within that time; or~~
- ~~— (b) in any other case — at the time when a date is fixed for the hearing of the proceedings.~~
- ~~— (4) A hearing the fee is payable —~~
- ~~— (a) if a court or a registrar directs a time within which the fee must be paid — within that time; or~~
- ~~— (b) in any other case — at the time when a date is fixed for the hearing of the proceedings.~~
- ~~— (5) A registrar must not accept an application or appeal for filing in any registry unless any filing fee for the application or appeal mentioned in Schedule 1 has been paid.~~
- ~~— (6) If, in relation to an application, a hearing fee payable under subregulation (1) is unpaid —~~
- ~~— (a) a court may order that no proceedings, or no proceedings other than specified proceedings, are to take place, except by leave, in the matter to which the application relates; and~~
- ~~— (b) a person other than the person liable to pay the fee may pay the fee without affecting any power of the court to make an order for costs for the fee; and~~
- ~~— (c) the court may vacate the date fixed for hearing.~~
- ~~— (6A) If a fee remains unpaid after the time mentioned in subregulation (3) or (4) or the end of a period mentioned in regulation 18D(3), the unpaid fee is recoverable in a court of competent jurisdiction as a debt due to the State.~~
- ~~— (7) A fee mentioned in Schedule 1 is not payable if the fee has already been paid in relation to the proceedings by a person other than the person liable to pay the fee.~~
- ~~— (8) If —~~
- ~~— (a) a fee referred to in Schedule 1 has been paid; and~~

- ~~———— (b) — the fee is not payable under subregulation (7);~~
- ~~———— a registrar must refund to the applicant, or other person who paid the fee, an amount equal to the amount of the fee.~~
- ~~— (8A) — A person is entitled to a refund of the whole or part of a fee mentioned in Schedule 1 (the *refund amount*) if the person pays , one or more than the person is required to pay for the fee under these regulations.~~
- ~~— (8B) — The refund amount is the difference between the fee paid by the person and the amount the person is required to pay for the fee.~~
- ~~— (9) — Upon written notice to a registrar, a person who has paid a setting down fee is entitled to a refund of the fee if —~~
- ~~———— (a) — notice that the hearing for which the fee was paid will not proceed is given to the registrar —~~
- ~~———— (i) — if the hearing date was fixed less than 20 working days before that date — at least 2 working days before that date; or~~
- ~~———— (ii) — in any other case — at least 10 working days before the hearing date;~~
- ~~———— and~~
- ~~———— (b) — the hearing —~~
- ~~———— (i) — does not proceed; or~~
- ~~———— (ii) — is conducted only to formalize the making of final orders.~~
- ~~— (10) — A person who has paid a hearing fee for the whole or part of a hearing is entitled to a refund of —~~
- ~~———— (a) — if the hearing is conducted only to formalise the making of final orders — the hearing fee; or~~
- ~~———— (b) — if the hearing does not proceed on a particular hearing day — the hearing fee for that day.~~
- ~~— (11) — In this regulation —~~

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~~— *appeal* includes cross appeal.~~

~~— [Regulation 18 amended in Gazette 29 Nov 2002 p. 5665; 14 Jul 2006 p. 2562-3; 9 Nov 2010 p. 5629; 13 May 2011 p. 1739-42.]~~

18A. — Reduced fees for certain people; waiving certain fees

~~— (1) This regulation applies to a person if — 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 law;~~ or

~~(ii) approved by the Attorney-General of the Commonwealth for the proceeding; or~~

~~for the proceedings for which the fee would otherwise be payable;~~

(b) the person is —

~~(i) the holder of any of the following cards issued by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs —~~

~~(i) a health care card;~~

~~(ii) a pensioner concession card;~~

~~(iii) a Commonwealth seniors health card;~~

~~— or~~

~~(ii) the holder of (iv) any other card issued by the Commonwealth Department of Families, Housing, Community Services and Indigenous Affairs, or the Commonwealth Department of Veterans' Affairs, that certifies the holder's entitlement to Commonwealth health concessions; or~~

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

~~(iv)~~ aged less (d) the person is younger than
18 years; ~~or~~

~~(v)~~ e the person is receiving youth
allowance or ~~austudy payment, within the~~
~~meaning of~~ Austudy payments under the *Social*
Security Act 1991 (Commonwealth); or

~~(vi)~~ receiving benefit benefits under the ABSTUDY, ~~within~~
~~the meaning of the~~ *Social Security Act 1991*
(Commonwealth). Scheme.

(2) In subregulation (1)(b) —

holder, of a card, does not include a dependant of the ~~holder~~.

~~(3)~~ ~~Other than in relation to~~ person who is issued the
fee mentioned in Schedule 1 item 7, ~~the reduced fee is payable~~
~~instead of the full fee on the first occasion the full fee would~~
~~otherwise be payable by the person in a proceeding~~ card.

~~(4)~~ ~~However, if the full fee for the proceeding mentioned in~~
~~subregulation (3) is less than the reduced fee, the full fee is~~
~~payable by the person.~~

~~(5)~~ ~~If a fee mentioned in subregulation (3) or (4) is paid by the~~
~~person in a proceeding, or if a fee is waived under~~
~~subregulation (6), no other fees mentioned in Schedule 1 (other~~
~~than a fee mentioned in item 7) are payable by the person in~~
~~connection with the proceeding.~~

~~(6)~~ ~~A~~ [Regulation 21A inserted in Gazette
14 Dec 2012 p. 6239-40.]

21B. Persons exempt from paying fee — financial hardship

(1) If —

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

(b) in the opinion of a registrar or an authorised officer ~~may waive payment of a fee (other than a fee mentioned in Schedule 1 item 7 or a fee for an appeal), payable by a person in a proceeding related to a proceeding mentioned in subregulation (3), if the~~ 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 considers that the proceedings are closely connected and that the waiver of the fee is appropriate~~ may exempt the individual from paying the fee.

~~(7)~~ (2) In considering whether ~~to waive~~ payment of a fee ~~in a related proceeding~~ would cause financial hardship to an individual, the registrar or authorised officer must ~~take into account the following factors~~ —

~~(a) whether the dispute is between the same parties;~~

~~(b) whether the dispute arises from the same circumstances;~~

~~(c) the length of time since the first proceeding was commenced;~~

~~(d) whether the manner in which the proceedings have been brought is an efficient use of the court's resources;~~

~~(e) whether the litigation would be in the public interest;~~

~~(f) the capacity of the person to pay the fee.~~

~~(8) In this regulation, an appeal is to be treated as a new proceeding.~~

~~[Regulation 18A inserted in Gazette 13 May 2011 p. 1742-3.]~~

~~18B. Reducing fees due to hardship~~

~~(1) If a registrar or an authorised officer, having regard to~~ the ~~consider the individual's~~ consider the individual's income, day-to-day living expenses, liabilities and assets ~~of a person liable to pay a fee mentioned in Schedule 1 (other than a fee mentioned in item 7), considers that~~

~~payment of the fee would cause financial hardship to the person, the registrar or authorised officer may impose the reduced fee on each occasion the fee is payable instead of the fee for which the person would otherwise be liable.~~

- ~~(2) However, if subregulation (1) applies, the reduced fee is payable only once for setting down, and no fee is payable for a hearing, regardless of the number of hearing days.~~

~~[Regulation ~~18B~~21B inserted in Gazette
13 May 2011/14 Dec 2012 p. 1743-46240.]~~

18C. Application of r. 18A(Division 5); liability for fees after change of circumstances

- ~~(1) Regulation 18A(5) applies to a person as if the person had paid a When fee under regulation 18A(3) or (4) if—~~
- ~~(a) the person pays a full fee, or a reduced fee under regulation 18B, in a proceeding; and~~
 - ~~(b) after the fee has been paid, the person becomes eligible under regulation 18A(1) to pay the reduced fee.~~

~~(2) However, if a person's circumstances change so that regulation 18A(1) no longer applies to the person, the person is liable to pay all fees that become not payable after the change in circumstances.~~

~~[Regulation ~~18C~~Heading inserted in Gazette
13 May 2011/14 Dec 2012 p. 17446241.]~~

18D. Deferring payment of fees

- ~~(1) Subject to subregulation (2), all or part of a21C. Fee not payable by liable person if already paid~~

~~A fee mentioned in these regulations may be deferred by a Schedule 1 is not payable by the liable person if another person has paid the fee.~~

[Regulation 21C inserted in Gazette 14 Dec 2012 p. 6241.]

21D. Proceedings in which fee is not payable

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

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

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

(c) 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 Act about any of the following —

(a) a parenting plan;

(b) child maintenance;

(c) a recovery order;

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

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

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

(g) a maintenance order made by a court in Australia and enforceable overseas;

(h) de facto partner maintenance;

(i) leave, under section 217 or 218, for a child to be examined;

(j) an application for enforcement of an order;

(k) contravention of an order;

(l) contempt of court;

(m) an application for an injunction under section 235A;

(n) costs;

(o) a procedural matter.

[Regulation 21D inserted in Gazette 14 Dec 2012 p. 6241-2.]

Division 6 — Payment of fees

[Heading inserted in Gazette 14 Dec 2012 p. 6242.]

21E. When fee must be paid

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

(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 ~~an~~ authorised officer, subject to any conditions determined by the ~~the~~ of the relevant court for the payment of that fee;

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

(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 a.m. on the hearing day.

(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.

(5) A fee for a service —

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

(b) not otherwise mentioned in this regulation,

must be paid before the service is provided.

[Regulation 21E inserted in Gazette 14 Dec 2012 p. 6242-3.]

21F. Deferral of payment of fees

(1) Regulation 21E 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 ~~whole or part of a fee if~~ payment of a fee under subregulation (1) if, in the opinion of the registrar or authorised officer —

(a) ~~the registrar or authorised officer considers that —~~

~~(i) for a filing fee for a document (other than the fee mentioned in Schedule 1 item 4) — the need to file the document is so urgent that it overrides the requirement to pay the filing fee at before the time of filing document is filed; or~~

~~(ii) it would, having regard to (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 regulation ~~18(3), (3A) or (4);~~ 21E.~~

~~or~~

~~(b) for a setting down fee the date of the hearing is more than 6 months after the day on which the proceeding is set down for hearing.~~

(3) If payment of a fee ~~has been~~is deferred ~~under this regulation~~, the fee must be paid ~~—~~

(a) within—

~~(a) 30 28 days after the date of deferral~~day the payment is deferred; or

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

(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.

*[Regulation ~~18D~~21F inserted in Gazette
13 May 2011 14 Dec 2012 p. 1744-56243-4.]*

Division 3 — Automatic variation of fees

~~*[Heading inserted in Gazette 13 May 2011 p. 1745.]*~~

19. — Biennial increases of fees

A21G. What happens if fee is not paid

(1) This regulation applies if the payment of a fee is not deferred under regulation 21F.

(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 the principal 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) Subregulation (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 the principal 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 the principal registrar of that court, to make an order for costs for the fee; and

(c) the relevant court, or the principal registrar of that court, may vacate the day scheduled for the hearing or conciliation conference.

[Regulation 21G inserted in Gazette 14 Dec 2012 p. 6244-5.]

Division 7 — Miscellaneous

[Heading inserted in Gazette 14 Dec 2012 p. 6245.]

21H. Refund of fee

(1) A person is entitled to a refund of an amount in relation to the payment of a fee mentioned in ~~item 8) is increased~~ 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 these regulations.
- (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.
- (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 ~~this Division on each biennial anniversary of 1 July 2010~~ subregulation (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 subregulation (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 subregulations (5)(a) and (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) In subregulations (5) and (7) —

formal orders means orders finalising the proceedings that were to be the subject of the hearing.

(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.

(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.

*[Regulation 1921H inserted in Gazette
13 May 2011 14 Dec 2012 p. 17456245-7.]*

20. — Calculation of 21I. Biennial increase in fees

(1) In this regulation —

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;

fee ~~March quarter~~ means a ~~fee mentioned in Schedule 1 (other than period of 3 months ending at the fee mentioned in item 8); end of March;~~

relevant period means ~~any of the following periods —~~

~~(a) — the 2-year period commencing on beginning on 1 July 2012 or on each second 1 July 2010; following that day.~~

~~(b) after that period — each 2 year period commencing on a biennial anniversary of 1 July 2010.~~

~~(2)~~ (2) The amount of each fee mentioned in Schedule 1 is increased on 1 July 2014, and on each second 1 July following that day.

(3) Subregulations (4) and (5) apply to a fee mentioned in Schedule 1.

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

$$\frac{\text{fee x latest CPI number}}{\text{earlier CPI number}}$$

$$\frac{\text{fee x latest CPI number}}{\text{earlier CPI number}}$$

where: —

earlier CPI number is the CPI number for the last March quarter before the beginning 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.

~~(3) If, apart from this subregulation, the~~ (5) The amount of a ~~the~~ fee ~~increased~~worked out under subregulation ~~(2)~~ would ~~(4)~~ 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 ~~and;~~ ;

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

~~(4) Subject to subregulation (5), if at any time, whether before or after the commencement of this regulation,~~ (6) ~~If~~ the Australian Statistician publishes for a particular March quarter a CPI number in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later ~~index~~CPI number is ~~to be~~ disregarded for the purposes of this regulation.

~~(5) If, at any time, whether before or after the commencement of this regulation,~~ 7) ~~However, if~~ the Australian Statistician changes the reference base for the Consumer Price Index, then, for the ~~purposes of the~~ application of this regulation after the change is made, regard ~~shall~~must be had only to CPI numbers published in terms of the new reference base.

*[Regulation ~~20 amended~~21I inserted in Gazette
~~13 May 2011~~14 Dec 2012 p. ~~1745~~6247-9.]*

21J. Recovery of fees due

Any fee mentioned in Schedule 1 that is not paid in accordance with this regulation is recoverable in a court of competent jurisdiction by the State as a debt due to the State.

[Regulation 21J inserted in Gazette 14 Dec 2012 p. 6249.]

Part 4 — Review

[Heading inserted in Gazette 13 May 2011 p. 1746.]

21. Review of decisions under these regulations

A decision made by a registrar or authorised officer under these regulations is reviewable as if it were an order or direction made by the Principal Registrar, registrar or deputy registrar under the *Family Court Rules 1998* rule 25.

[Regulation 21 inserted in Gazette 13 May 2011 p. 1746.]

Part 5 — Transitional provisions

[Heading inserted in Gazette 13 May 2011 p. 1746.]

22. Family Court Amendment Regulations 2011, transitional provisions for

- (1) In these regulations —
commencement day means the day on which the *Family Court Amendment Regulations 2011* regulation 10 comes into operation¹.
- (2) Regulation 18(7)(a) and (b) of these regulations as in force immediately before commencement day continues to apply to proceedings commenced before commencement day.
- (3) Regulation 18(9) of these regulations as in force immediately before commencement day continues to apply to —
 - (a) a hearing fee paid before 1 July 2010; and
 - (b) a hearing fee, for the first day of hearing, paid before commencement day.
- (4) Regulation 18(10), inserted by the *Family Court Amendment Regulations 2011* regulation 10(11), applies to a hearing fee for the second and subsequent days of a hearing, paid before commencement day.

[Regulation 22 inserted in Gazette 13 May 2011 p. 1746-7.]

23. Family Court Amendment Regulations 2012, transitional provisions for

- (1) These regulations, as in force immediately before 1 January 2013 (the *old regulations*), continue to apply to and in relation to a service requested before 1 January 2013.
- (2) However, regulation 18(9) of the old regulations continues to apply to a setting down requested before 1 January 2013 only if the setting down fee (within the meaning of the old regulations) was paid before 1 January 2013.

(3) If a service was requested before 1 January 2013 —

(a) payment for the fee for the service may be deferred under regulation 21F (regardless of whether the fee was also deferred before 1 January 2013); and

(b) regulation 21H(9) applies to any hearing days that were fixed for 1 January 2013 or after.

[Regulation 23 inserted in Gazette 14 Dec 2012 p. 6249-50.]

Schedule 1 — Fees

~~[r. 18, 18A, 18B, 18C and 18D]~~

[Part 3]

[Heading inserted in Gazette ~~13 May 2011~~ 14 Dec 2012 p. 17476250.]

Item	Document or action	Fee
1.	Filing an application for final orders in Part 5A proceedings <u>eligible financial</u> or for a parenting order proceedings	\$2433 <u>05</u>
2.	Setting-down for hearing in Part 5A proceedings <u>eligible financial</u> or for a parenting order proceedings , if defended, for final orders — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$6087 <u>65</u> \$4445 <u>60</u>
3.	Hearing in Part 5A proceedings <u>eligible financial</u> or for a parenting order proceedings , if defended, for final orders — for each hearing day, or part of a hearing day, excluding the first hearing day — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$6087 <u>65</u> \$4445 <u>60</u>
4.	Filing a response to an application for final orders in Part 5A proceedings <u>eligible financial</u> or for a parenting order proceedings	\$2433 <u>05</u>
5.	Setting-down for hearing in an appeal under section 211 from a decree of a Magistrates Court, <u>unless the fee mentioned in item 12 has been paid</u>	\$608 <u>\$765</u>
6.	Hearing in an appeal under section 211 from a decree of a Magistrates Court — for each hearing day, or part of a	

Item	Document or action	Fee
	hearing day, excluding the first hearing day	\$608 65
<u>7.</u>	<u>Filing an application for a consent order</u>	<u>\$145</u>
<u>8.</u>	<u>Filing an interim order application</u>	<u>\$105</u>
79.	Filing an application for both a consent <u>final order under Part 5 and a final order under Part 5A Division 2 or Division 3 of the Act (other than for an order for the maintenance of a party to a de facto relationship)</u>	\$80 <u>\$500</u>
810.	Reduced fee <u>For issuing a subpoena</u>	\$60 <u>50</u>
<u>11.</u>	<u>For listing a conciliation conference</u>	<u>\$350</u>
<u>12.</u>	<u>Filing an application for leave to appeal under section 211 from an interlocutory order of a Magistrates Court</u>	<u>\$765</u>

[Schedule 1 inserted in Gazette ~~13 May 2011~~ 14 Dec 2012
p. ~~1747~~ 6250-1.]

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Notes

- ¹ This ~~reprint~~ is a compilation ~~as at 2 March 2012~~ of the *Family Court Regulations 1998* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Citation	Gazettal	Commencement
<i>Family Court Regulations 1998</i>	25 Sep 1998 p. 5303-9	26 Sep 1998 (see r. 2 and <i>Gazette</i> 25 Sep 1998 p. 5295)
<i>Family Court Amendment Regulations 2002</i>	29 Nov 2002 p. 5663-5	1 Dec 2002 (see r. 3 and <i>Gazette</i> 29 Nov 2002 p. 5651)
<i>Family Court Amendment Regulations 2006</i>	14 Jul 2006 p. 2560-3	15 Jul 2006 (see r. 2 and <i>Gazette</i> 14 Jul 2006 p. 2559)
Reprint 1: The Family Court Regulations 1998 as at 9 Feb 2007 (includes amendments listed above)		
<i>Family Court Amendment Regulations (No. 2) 2010</i>	9 Nov 2010 p. 5628-9	r. 1 and 2: 9 Nov 2010 (see r. 2(a)); Regulations other than r. 1 and 2: 10 Nov 2010 (see r. 2(b)(ii))
<i>Family Court Amendment Regulations 2011</i>	13 May 2011 p. 1737-47	r. 1 and 2: 13 May 2011 (see r. 2(a)); Regulations other than r. 1 and 2: 14 May 2011 (see r. 2(b))
Reprint 2: The Family Court Regulations 1998 as at 2 Mar 2012 (includes amendments listed above)		
<i>Family Court Amendment Regulations 2012</i>	14 Dec 2012 p. 6235-51	r. 1 and 2: 14 Dec 2012 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jan 2013 (see r. 2(b))

- ² Deleted by the *Supreme Court Amendment Rules (No. 5) 2001*.