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Family Court Act 1997

Family Court Amendment Regulations 2012

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Family Court Amendment Regulations 2012*.

2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on 1 January 2013.

3. Regulations amended

These regulations amend the *Family Court Regulations 1998*.

4. Regulation 3 amended

In regulation 3(1) delete the definition of *authorised officer* and insert:

authorised officer, in relation to a power or function, means —

- (a) in relation to the Family Court of Western Australia — an officer of that Court authorised by the Principal Registrar of that Court, or the executive manager appointed under

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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;

5. Part 3 replaced

Delete Part 3 and insert:

Part 3 — Court fees**Division 1 — Preliminary****18. 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;

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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, 7, 8, 9 or 12;

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

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 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.

Division 2 — Fees — general**19. Fees (Sch. 1)**

- (1) Schedule 1 sets out the fees payable for —
 - (a) the filing of a document; or

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- (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.

Division 3 — Liability to pay fee**20. Persons liable to pay fee**

- (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.

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- (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).

Division 4 — Exemptions from liability to pay fee**21A. Persons exempt from paying fee — general**

- (1) A person is exempt from paying a fee mentioned in Schedule 1 if, at the time the fee is payable, one or more 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; or
 - (ii) approved by the Attorney-General of the Commonwealth,for the proceedings for which the fee would otherwise be payable;
 - (b) the person is the holder of any of the following cards issued by the Commonwealth —
 - (i) a health care card;
 - (ii) a pensioner concession card;
 - (iii) a Commonwealth seniors health card;
 - (iv) any other card that certifies the holder's entitlement to Commonwealth health concessions;

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- (c) the person is serving a sentence of imprisonment or is otherwise detained in a public institution;
 - (d) the person is younger than 18 years;
 - (e) the person is receiving youth allowance or Austudy payments under the *Social Security Act 1991* (Commonwealth) or benefits under the ABSTUDY Scheme.
- (2) In subregulation (1)(b) — **holder**, of a card, does not include a dependant of the person who is issued the card.

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 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 may exempt the individual from paying the fee.
- (2) In considering whether payment of a fee would cause financial hardship to an individual, the registrar or authorised officer must consider the individual's income, day-to-day living expenses, liabilities and assets.

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Division 5 — When fee is not payable**21C. Fee not payable by liable person if already paid**

A fee mentioned in Schedule 1 is not payable by the liable person if another person has paid the fee.

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;

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- (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.

Division 6 — Payment of fees**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 authorised officer of the relevant court for the payment of that fee;
 - (b) in any other case — no later than 28 days before the hearing day.

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- (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.

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 payment of a fee under subregulation (1) if, in the opinion of the registrar or authorised officer —
- (a) 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

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- overrides the requirement to pay the filing fee before the document is filed; or
- (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 21E.
- (3) If payment of a fee is deferred, the fee must be paid —
 - (a) within 28 days after the day the payment is deferred; or
 - (b) within another period 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.

21G. 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.

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- (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.

Division 7 — Miscellaneous**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 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

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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 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.

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- (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.

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;
March quarter means a period of 3 months ending at the end of March;
relevant period means a 2 year period beginning on 1 July 2012 or on each second 1 July following that day.
- (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.

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

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

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.

- (5) The amount of the fee worked out under subregulation (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;
 - (c) if the amount to be rounded is 50 cents, the amount is to be rounded down.
- (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 CPI number is disregarded for the purposes of this regulation.

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- (7) However, if the Australian Statistician changes the reference base for the Consumer Price Index, then for the application of this regulation after the change is made, regard must be had only to CPI numbers published in terms of the new reference base.

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.

6. Regulation 23 inserted

After regulation 22 insert:

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

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

7. Schedule 1 replaced

Delete Schedule 1 and insert:

Schedule 1 — Fees

[Part 3]

Item	Document or action	Fee
1.	Filing an application for final orders in eligible financial or parenting proceedings	\$305
2.	Setting-down for hearing in eligible financial or parenting proceedings, if defended, for final orders — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$765 \$560
3.	Hearing in eligible financial or parenting 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	\$765 \$560
4.	Filing a response to an application for final orders in eligible financial or parenting proceedings	\$305
5.	Setting-down for hearing in an appeal under section 211 from a decree of a Magistrates Court, unless the fee mentioned in item 12 has been paid	\$765
6.	Hearing in an appeal under section 211 from a decree of a Magistrates Court — for each hearing day, or part of a hearing day, excluding the first hearing day	\$765

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Item	Document or action	Fee
7.	Filing an application for a consent order	\$145
8.	Filing an interim order application	\$105
9.	Filing an application for both a 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)	\$500
10.	For issuing a subpoena	\$50
11.	For listing a conciliation conference	\$350
12.	Filing an application for leave to appeal under section 211 from an interlocutory order of a Magistrates Court	\$765

By Command of the Governor,

G. MOORE, Clerk of the Executive Council.