
JUSTICE

JU301*

Family Court Act 1997

Family Court Amendment Regulations 2011

Made by the Lieutenant-Governor and Administrator in Executive Council.

1. Citation

These regulations are the *Family Court Amendment Regulations 2011*.

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 the day after that day.

3. Regulations amended

These regulations amend the *Family Court Regulations 1998*.

4. Part 1 heading inserted

Before regulation 1 insert:

Part 1 — Preliminary

5. Regulation 3 amended

- (1) In regulation 3 delete the definition of *Centrelink*;
- (2) In regulation 3 insert in alphabetical order:

authorised officer means a person designated as an authorised officer under regulation 17B;

6. Part 2 heading inserted

After regulation 3 insert:

Part 2 — General

7. Regulation 7 amended

After regulation 7(2) insert:

- (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.

8. Part 3 heading and Part 3 Division 1 inserted

After regulation 17 insert:

Part 3 — Court fees**Division 1 — Preliminary****17A. Terms used**

In this Part —

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;

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

reduced fee means the fee mentioned in Schedule 1 item 8;

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.

17B. Authorised officers

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

9. Part 3 Division 2 heading inserted

Before regulation 18 insert:

Division 2 — Court fees payable**10. Regulation 18 amended**

(1) Delete regulation 18(1) and insert:

(1) Schedule 1 sets out the fees payable in proceedings under the Act.

- (2) Delete regulation 18(2) and insert:
- (2) The person liable to pay a fee is —
- (a) 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) In regulation 18(3) after “application” insert:
- or appeal
- (4) After regulation 18(3) insert:
- (3A) A setting-down 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) Delete regulation 18(5) and insert:
- (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) In regulation 18(6) delete “Subject to subregulation (7), if,” and insert:
- If,

- (7) Delete regulation 18(7) and (7a) and insert:
- (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) In regulation 18(8)(a) delete “subregulation (1)” and insert:
- Schedule 1
- (9) After regulation 18(8) insert:
- (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 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.
- (10) In regulation 18(9):
- (a) delete “hearing fee” and insert:
- setting-down fee
- (b) in paragraph (a)(ii) delete “20” and insert:
- 10
- (11) After regulation 18(9) insert:
- (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 —
appeal includes cross-appeal.

11. Regulations 18A, 18B, 18C and 18D inserted

After regulation 18 insert:

18A. Reduction of fees — general

- (1) This regulation applies to a person if —
- (a) the person has been granted legal aid (under a legal aid scheme or service established under Commonwealth, State or Territory law, or approved by the Attorney-General of the Commonwealth for the proceeding; or
 - (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 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) serving a sentence of imprisonment, or otherwise lawfully detained in a public institution; or
 - (iv) aged less than 18 years; or
 - (v) receiving youth allowance or austudy payment, within the meaning of the *Social Security Act 1991* (Commonwealth); or
 - (vi) receiving benefit under ABSTUDY, within the meaning of the *Social Security Act 1991* (Commonwealth).

- (2) In subregulation (1)(b) —
holder, of a card, does not include a dependant of the holder.
- (3) Other than in relation to 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.
- (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 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 registrar or authorised officer considers that the proceedings are closely connected and that the waiver of the fee is appropriate.
- (7) In considering whether to waive payment of a fee in a related proceeding, 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.

18B. Reduction of fees — hardship

- (1) If a registrar or an authorised officer, having regard to the 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.

18C. Change in circumstances

- (1) Regulation 18A(5) applies to a person as if the person had paid a 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 payable after the change in circumstances.

18D. Deferral of fees

- (1) Subject to subregulation (2), all or part of a fee mentioned in these regulations may be deferred by a registrar or an authorised officer, subject to any conditions determined by the registrar or authorised officer.
- (2) The registrar or authorised officer may defer the whole or part of a fee if —
 - (a) the registrar or authorised officer considers that —
 - (i) for a filing fee — the need to file the document is so urgent that it overrides the requirement to pay the filing fee at the time of filing; or
 - (ii) it would, having regard to the financial circumstances of the person liable to pay the fee, be oppressive or otherwise unreasonable to require payment in accordance with regulation 18(3), (3A) or (4);

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 deferred under this regulation, the fee must be paid within —
 - (a) 30 days after the date of deferral; or
 - (b) another period specified in writing by the registrar or authorised officer.

12. Part 3 Division 3 heading inserted

Before regulation 19 insert:

Division 3 — Automatic variation of fees

13. Regulation 19 replaced

Delete regulation 19 and insert:

19. Biennial increases

A fee mentioned in Schedule 1 (other than a fee mentioned in item 8) is increased in accordance with this Division on each biennial anniversary of 1 July 2010.

14. Regulation 20 amended

- (1) In regulation 20(1) delete the definition of *fee* and insert:

fee means a fee mentioned in Schedule 1 (other than the fee mentioned in item 8);

- (2) In regulation 20(1) in the definition of *relevant period*:

- (a) in paragraph (a) delete “1998;” and insert:

2010;

- (b) in paragraph (b) delete “1998.” and insert:

2010.

15. Part 4 heading inserted

Before regulation 21 insert:

Part 4 — Review

16. Regulation 21 replaced

Delete regulation 21 and insert:

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.

17. Part 5 heading inserted

After regulation 21 insert:

Part 5 — Transitional provisions

18. Regulation 22 replaced

Delete regulation 22 and insert:

22. Transitional provisions relating to the *Family Court Amendment Regulations 2011*

- (1) In these regulations —
commencement day means the day on which the *Family Court Amendment Regulations 2011* regulation 10 comes into operation.
- (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.

19. Schedule 1 inserted

At the end of the regulations insert:

Schedule 1 — Fees

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

Item	Document or action	Fee
1.	Filing an application for final orders in Part 5A proceedings or for a parenting order	\$243
2.	Setting-down for hearing in Part 5A proceedings or for a parenting order, if defended, for final orders — (a) for a hearing before a judge (b) for a hearing before a magistrate	\$608 \$444
3.	Hearing in Part 5A proceedings or for a parenting order, 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	\$608 \$444
4.	Filing a response to an application for final orders in Part 5A proceedings or for a parenting order	\$243
5.	Setting-down for hearing in an appeal under section 211 from a decree of a Magistrates Court	\$608
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	\$608
7.	Filing an application for a consent order	\$80
8.	Reduced fee	\$60

By Command of the Lieutenant-Governor and Administrator,

PETER CONRAN, Clerk of the Executive Council.