

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2005 No. 110

Minute No.     of 2005 – Attorney General

Subject:       *Judiciary Act 1903*

*High Court of Australia (Fees) Amendment Regulations 2005 (No. 1)*

Section 88 of the *Judiciary Act 1903* (the Act) provides, in part, that the Governor-General may make regulations not inconsistent with the Act prescribing all matters which by the Act are required or permitted to be prescribed or necessary or convenient to be prescribed for giving effect to the Act, including prescribing certain fees in respect of proceedings in the High Court.

The *High Court of Australia (Fees) Regulations 2004* (the Principal Regulations) contain a fee waiver provision, under which the Registrar may waive, on the grounds of financial hardship, payment of a fee that would otherwise be payable. Under the existing fee waiver provision, the entire fee is waived and it is not possible for part of the fee to be waived.

The High Court has expressed concerns about the number of unmeritorious applications that are filed and that use valuable judicial resources. The availability of the waiver of the whole of the applicable court fee may encourage unmeritorious applications.

The purpose of the Regulations is to amend the Principal Regulations to introduce a one-third fee in the High Court in cases where imposing a full fee would cause financial hardship. An automatic exemption from the full fee continues to apply to particular groups, including for people in prison and other detention.

Details of the amendments are set out in the Attachment.

The Act does not specify any conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The High Court was consulted on the Regulations.

The Regulations will commence on 1 July 2005.

Authority:   Section 88 of the  
*Judiciary Act 1903*

Details of the *High Court of Australia (Fees) Amendment Regulations 2005 (No. 1)*

Regulation 1 – Name of Regulations

Regulation 1 provides that the Regulations be called the *High Court of Australia (Fees) Amendment Regulations 2005 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that the *High Court of Australia (Fees) Amendment Regulations 2005 (No. 1)* commence on 1 July 2005.

Regulation 3 – Amendment of *High Court of Australia (Fees) Regulations 2004*

Regulation 3 provides that the *High Court of Australia (Fees) Regulations 2004* (the Principal Regulations) are amended as set out in Schedule 1 to the Regulations.

Regulation 4 – Transitional – proceedings commenced before 1 July 2005

Regulation 4 provides that the previous fees under the Principal Regulations continue to apply to proceedings that commenced prior to the commencement date of the Regulations, that is, 1 July 2005.

Schedule 1 – Amendments

Schedule 1 to the Principal Regulations itemises the existing fees that apply to proceedings in the High Court.

Part 1 of Schedule 1 provides for filing fees and fees for other services.

Part 2 of Schedule 1 provides for fees for obtaining a document or service.

Part 3 of Schedule 1 provides for hearing fees.

Schedule 1 amends the Principal Regulations as follows:

*Item 1 – Subregulation 8(5)*

Item 1 substitutes subregulations 8(5) & (6) for previous subregulation 8(5).

Previous regulation 8 provided for the circumstances in which fees are not payable. Previous paragraph 8(5)(a) provided that a fee specified in Part 1 or 3 of Schedule 1 is not payable if the person liable to pay the fee is exempt from payment under regulation 9 of the Principal Regulations. Previous paragraph 8(5)(b) provided that these fees are not payable if the Registrar decides to waive payment of the fee, under regulation 10, on financial hardship grounds.

Subregulation 8(5) is in the same terms as previous paragraph 8(5)(a).

Subregulation 8(6) replaces previous paragraph 8(5)(b) and provides that if the Registrar waives payment of **part** of a fee specified in Part 1 or 3 of Schedule 1, that **part** of the fee is not payable.

It is necessary to replace the previous subregulation 8(5) with subregulations 8(5) and (6) because the exemption of the **whole** fee is retained while these Regulations provide for the waiver of **part** and not the whole fee.

*Item 2 - Regulation 10*

Item 2 substitutes regulation 10 for previous regulation 10.

Under previous regulation 10, the Registrar could waive payment of the **whole** of a fee specified in Part 1 or 3 of Schedule 1, on financial hardship grounds. Under regulation 10, the Registrar has the discretion to waive payment of only two-thirds of the amount of the applicable fee. That is, one-third of the amount of the applicable fee is payable.

*Item 3 - Regulation 11, heading*

Item 3 substitutes a heading for regulation 11 for the previous heading of regulation 11. The new heading for regulation 11 reads “Deferral of payment of fee or part of fee” to indicate that it is possible to pay part of a fee, under regulation 10.

*Item 4 – Subregulation 11(1)*

Item 4 substitutes subregulation 11(1) for previous subregulation 11(1). Subregulation 11(1) enables the Registrar to allow the deferral of payment of either the **whole** or **part** of a fee specified in Part 1 of Schedule 1 to the Principal Regulations.

*Item 5 - Subregulation 11(2)*

Item 5 includes the words “*whole or part of*” in previous subregulation 11(2) and replaces the word “fee” with the words “the amount deferred”. This is a technical drafting amendment.

*Item 6 - Regulation 13*

Item 6 substitutes regulation 13 for previous regulation 13.

Previous regulation 13 set out the circumstances in which a person is entitled to the refund of a fee.

Subregulation 13(1) is effectively the same as previous subregulation 13(1), but provides for the circumstance in which part of a hearing fee has been paid under regulation 10.

Subregulation 13(2) is effectively the same as previous paragraphs 13(2)(a) and 13(2)(b), but provide for the circumstance in which part of a hearing fee has been paid under regulation 10.

However, previous paragraph 13(2)(c) is not included in subregulation 13(2) but is in effect replaced by subregulation 13(3).

Subregulation 13(3) provides that a person who has paid a **hearing** fee would be entitled to a refund if the fee was not payable because of previous subregulations 8(1), (3), (4) and (5).

Previous subregulation 8(2) provides that a fee specified in Part 1 or 2 of Schedule 1 is not payable in the circumstance specified. Fees specified in Part 1 or 2 of Schedule 1 are not hearing fees. As subregulation 13(3) provides for the refund of a

**hearing** fee, there is no need to include a reference to previous subregulation 8(2) in subregulation 13(3).

Subregulation 13(4) provides that if the Registrar waived part of a hearing fee on the grounds of financial hardship, a person who has paid the hearing fee is entitled to a refund of that part of the hearing fee that was waived. The circumstance in which this would arise are where a person has paid the full hearing fee and subsequently the Registrar has waived part of the fee. The person would then be entitled to a refund of two-thirds of the hearing fee that has been paid.

Subregulation 13(5) is the same as previous subregulation 13(3), renumbered to take account of new subregulations 8(4) and 8(5).

*Item 7 - Subregulation 15(3)*

Regulation 15 provides for the review of a decision under regulation 10, that is the waiver provision, by the Administrative Appeals Tribunal.

Item 7 effectively replaces the word “fee” with the words “part of the fee” in previous subregulation 15(3), because under regulation 10 part of the fee and not all of the fee is waived.