



High Court of Australia (Fees) Regulations 2004

Statutory Rules 2004 No. 372¹

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Judiciary Act 1903*.

Dated 16 December 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

PHILIP RUDDOCK
Attorney-General

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Part 1 Preliminary

1 Name of Regulations

These Regulations are the *High Court of Australia (Fees) Regulations 2004*.

2 Commencement

These Regulations commence on 1 January 2005.

3 Repeal

The *High Court of Australia (Fees) Regulations 1991* are repealed.

4 Transitional

Despite the repeal of the *High Court of Australia (Fees) Regulations 1991* by regulation 3, those Regulations, as in force immediately before 1 January 2005, continue to apply in relation to any fee payable before the commencement of these Regulations.

5 Interpretation

- (1) In these Regulations:

Act means the *Judiciary Act 1903*.

corporation means a corporation within the meaning given by section 57A of the *Corporations Act 2001*.

half day means a period of up to 3 hours in a scheduled hearing day.

hearing fee means a fee specified in Part 3 of Schedule 1.

proceeding includes action, appeal, application, cause, matter or suit.

Regulation 5

Registrar means the Chief Executive and Principal Registrar, the Senior Registrar or a Deputy Registrar appointed under the *High Court of Australia Act 1979* and includes a person appointed to act in any of those positions.

Rules means the Rules of Court made under section 86 of the Act.

- (2) A term or expression used in these Regulations and in the Rules of Court made under section 86 of the Act has the same meaning in these Regulations as it has in those Rules.

Part 2 Fees

6 Filing fees and fees for other services

- (1) Subject to these Regulations, a fee is payable for filing, issuing or sealing a document in a Registry of the Court, or for obtaining a document or service, of a kind specified in column 2 of an item in Part 1 of Schedule 1, being the fee specified in column 3 of that item.
- (2) Subject to these Regulations, a fee is payable for obtaining a document or service of a kind specified in column 2 of an item in Part 2 of Schedule 1, being the fee specified in column 3 of that item.
- (3) Unless the Court, a Justice or a Registrar orders otherwise, a fee under this regulation is payable by the person for whom:
 - (a) the document is filed, issued or sealed; or
 - (b) the document or service is obtained.

Note Fees are subject to increase under regulation 14.

- (4) If the person liable to pay a fee in relation to a document specified in column 2 of item 101, 102, 103, 105 or 106 in Part 1 of Schedule 1 (or, if more than one person is liable, any of them) is a corporation, the fee payable is the fee specified for a corporation in column 3 of that item.

7 Hearing fees

- (1) Subject to these Regulations, a fee is payable for a hearing of a kind specified in column 2 of an item in Part 3 of Schedule 1, being the fee specified in column 3 of that item.

Note Fees are subject to increase under regulation 14.
- (2) The person liable to pay a hearing fee is:
 - (a) the person initiating the proceeding for which the fee is payable; or

Regulation 8

- (b) if the Court, a Justice or a Registrar so orders:
 - (i) another party to the proceeding; or
 - (ii) each of 2 or more of the parties to the proceeding, including the person initiating the proceeding, in the proportions ordered.
- (3) If the person liable to pay a fee for a hearing specified in column 2 of item 302, 303 or 304 in Part 3 of Schedule 1 (or, if more than one person is liable, any of them) is a corporation, the fee payable is the fee specified for a corporation in column 3 of that item.
- (4) A hearing fee specified in item 301 or 302 of Schedule 1 is payable at the time when the document to which the hearing relates is filed.
- (5) A hearing fee specified in item 303 or 304 of Schedule 1 must be paid:
 - (a) if the day to which the fee relates is the next working day after a scheduled hearing day for the proceeding — no later than 9.30 am on the day to which the fee relates; and
 - (b) if the day to which the fee relates is not the next working day after a scheduled hearing day for the proceeding:
 - (i) if the day to which the fee relates is earlier than 2 working days after the day on which the document initiating the proceeding is filed — at the time when that document is filed; or
 - (ii) in any other case — not later than 2 working days before the day, half day or part of a day to which the fee relates.

8 Circumstances in which fees are not payable

- (1) A fee is not payable by a person who is liable to pay the fee if the fee has been paid by another person.
- (2) A fee specified in Part 1 or 2 of Schedule 1 is not payable in a proceeding in respect of which a Convention to which Australia is a party provides that no fee is to be payable.
- (3) The hearing fee specified in item 301 or 302 of Schedule 1 is not payable for the hearing of an interlocutory proceeding.

Regulation 9

- (4) The hearing fee specified in item 303 or 304 of Schedule 1 is not payable for a hearing if the sole purpose of the hearing is the delivery of a reserved judgment.
- (5) A fee specified in Part 1 or 3 of Schedule 1 is not payable if:
 - (a) the person liable to pay the fee is exempt from payment under regulation 9; or
 - (b) the Registrar decides under regulation 10 to waive payment of the fee.

9 Persons exempt from payment of fees

- (1) A person is exempt from payment of a fee specified in Part 1 or 3 of Schedule 1 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, for the proceeding for which the fee would otherwise be payable; or
 - (b) the person is:
 - (i) the holder of a concession card; or
 - (ii) an inmate of a prison or otherwise lawfully held in a public institution; or
 - (iii) a child under the age of 18; or
 - (iv) in receipt of youth allowance, or an austudy payment, within the meaning of the *Social Security Act 1991*; or
 - (v) in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme.
- (2) In this regulation:
concession card means:
 - (a) any of the following cards issued by Centrelink:
 - (i) a health care card;
 - (ii) a pensioner concession card;
 - (iii) a seniors health card; or

Regulation 10

- (b) any other card issued by Centrelink or the Department of Veterans' Affairs that certifies entitlement to Commonwealth health concessions.

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

10 Waiver of fee

If, having regard to the income, day-to-day living expenses, liabilities and assets of a person liable to pay a fee specified in Part 1 or 3 of Schedule 1, a Registrar is of the opinion that payment of the fee would cause financial hardship to the person, the Registrar may waive payment of the fee.

11 Deferral of payment of fee

- (1) A Registrar may allow the payment of a fee specified in Part 1 of Schedule 1 to be deferred if, in the Registrar's opinion, there is an urgency that overrides the requirement to pay the fee at the time that, but for the deferral, the fee would be payable.
- (2) If payment of a fee has been deferred, the fee:
- (a) must be paid within 30 days of deferral; and
 - (b) if not paid within that period, is a debt due to the Commonwealth that may be recovered in a court of competent jurisdiction.

12 Consequences of non-payment of fee

- (1) A document of a kind specified in column 2 of an item in Part 1 of Schedule 1 must not be filed, issued or sealed, and a service of a kind mentioned in Part 1 or 2 of Schedule 1 must not be provided, if the fee payable for that document or service has not been paid.
- (2) If a hearing fee that is payable is unpaid:
- (a) the Court or a Justice may, on application by a party to the proceeding, order that no proceeding or no proceeding other than a specified proceeding, is to take place in the proceeding except by leave; and

Regulation 14

- (b) a person other than the person liable to pay the fee may pay the fee without affecting any power of the Court or a Justice to make an order for costs for the fee; and
- (c) the Court or a Justice may, on application by a party to the proceeding, vacate the date fixed for hearing.

13 Refund of fee

- (1) A person who has paid a hearing fee is entitled to a refund of the amount of the fee if:
 - (a) notice that the hearing will not proceed is given to a Registrar:
 - (i) if the date for hearing was fixed less than 10 working days before that date — not less than 2 working days before the date for hearing; or
 - (ii) in any other case — not less than 10 working days before the date for hearing; and
 - (b) the hearing does not proceed.
- (2) A person who has paid a hearing fee is entitled to a refund of the amount of the fee if:
 - (a) despite a notice being given to the Registrar under paragraph (1) (a) — a hearing is conducted for the purpose of making formal orders; or
 - (b) a date has not been fixed for hearing and the proceeding is discontinued or otherwise determined; or
 - (c) the fee was not payable because of regulation 8.
- (3) In this regulation:

working day, in relation to a hearing, means a day that is not:

 - (a) a Saturday or Sunday; or
 - (b) a public holiday in the place where the hearing was to have taken, or took, place.

14 Biennial increase in fees

On each biennial anniversary of 1 July 2004, the amount of each fee specified in Schedule 1 increases in accordance with Schedule 2.

Regulation 15

Part 3 Miscellaneous**15 Notice of decision — review by the Administrative Appeals Tribunal**

- (1) A Registrar must give notice of a decision under regulation 10 to the person liable to pay the fee to which the decision relates.
- (2) Application may be made to the Administrative Appeals Tribunal for review of the decision.
- (3) If the decision is not to waive payment of the fee, the notice must:
 - (a) set out written reasons for the decision; and
 - (b) contain, or be accompanied by, a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision.
- (4) The notice must be given within 28 days after the date of the decision.
- (5) Failure to comply with paragraph (3) (b) does not affect the validity of the decision.

Schedule 1 Fees

(regulations 6 and 7)

Part 1 Filing fees and fees for other services

Item	Document or service	Fee
101	Application for an order to show cause in relation to a writ of certiorari, a writ of mandamus, a writ of habeas corpus or an order for production, a writ of prohibition or an information of quo warranto or like relief	(a) for a corporation \$2 422 (b) in any other case \$1 211
102	Writ of summons or petition	(a) for a corporation \$2 422 (b) in any other case \$1 211
103	Civil leave or civil special leave application	(a) for a corporation \$2 422 (b) in any other case \$1 211
104	Criminal special leave application	\$76
105	Application initiating a proceeding (including removals under section 40 of the Act, but not including an application referred to in another item of this Schedule)	(a) for a corporation \$2 422 (b) in any other case \$1 211
106	Civil notice of appeal	(a) for a corporation \$2 422 (b) in any other case \$1 211
107	Criminal notice of appeal	\$445
108	Certificate of the Registrar other than a certificate of taxation	\$43
109	Taxing a bill of costs for every \$100, or part of \$100	\$9

Note The fees specified in this Part are subject to increase under regulation 14.

Part 2 Fees for obtaining a document or service

Item	Document or service	Fee
201	Searching or inspecting a document mentioned in rule 4.07.4 of the Rules — for each hour or part of an hour	\$14
202	Making a photocopy or office copy of any document — for each page	\$3
203	Copy of reasons for judgment:	
	(a) for each copy issued to a person not a party to the proceedings; and	\$3
	(b) for each copy in excess of one copy issued to a party to the proceeding; and	\$3
	(c) in respect of each copy issued:	
	(i) for each page in excess of 10 pages; or	\$1
	(ii) maximum per copy	\$30
204	Annual subscription for copies of reasons for judgments	\$521
205	Copy of transcript of proceedings prepared by the Court Reporting Service — for each page	\$8

Note The fees specified in this Part are subject to increase under regulation 14.

Part 3 Hearing fees

Item	Hearing	Fee
301	For the hearing before the Full Court of a notice of appeal in relation to a criminal proceeding	\$746
302	For the hearing before the Full Court of:	(a) for a corporation \$3 633 (b) in any other case \$1 817
	(a) a notice of appeal in relation to a civil proceeding; or	
	(b) a petition; or	
	(c) a writ of summons	

Item	Hearing	Fee
303	For the hearing before a single Justice of: (a) an application for an order to show cause in relation to a writ of certiorari, a writ of mandamus, a writ of habeas corpus or an order for production, a writ of prohibition or an information of quo warranto or like relief; or (b) a petition; or (c) a writ of summons; or (d) a summons (other than a summons for directions or a summons mentioned in rule 25.03.1 of the <i>High Court Rules 2004</i>); for each half day or part of a half day	(a) for a corporation \$606 (b) in any other case \$303
304	For the hearing of a proceeding before the Full Court (other than an application for leave or special leave to appeal, or a criminal appeal, or an application for removal under section 40 of the Act) — for each day or part of a day (including the first day of the hearing), in addition to any fee payable under item 302	(a) for a corporation \$1 817 (b) in any other case \$908

Note The fees specified in this Part are subject to increase under regulation 14.

Schedule 2 Formula for calculating biennial increase of fees

(regulation 14)

- 1 In this Schedule:

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 means a fee specified in Schedule 1.

relevant period means any of the following periods:

- (a) the 2 year period commencing on 1 July 2004;
- (b) after that period — each 2 year period commencing on a biennial anniversary of 1 July 2004.

- 2 If, in a relevant period, the latest CPI number is greater than the earlier CPI number, a fee is taken to increase, on 1 July immediately following the end of the period, in accordance with the formula:

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

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 during 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 clause, the amount of a fee increased under clause 2 would be an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.

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- 4 Subject to clause 5, if at any time, whether before or after the commencement of these Regulations, 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 number is to be disregarded for the purposes of this Schedule.
 - 5 If, at any time, whether before or after the commencement of these Regulations, the Australian Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Schedule after the change is made, regard shall be had only to numbers published in terms of the new reference base.

Note

1. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.