



Federal Court of Australia Amendment Regulations 2010 (No. 2)¹

Select Legislative Instrument 2010 No. 243

I, QUENTIN BRYCE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Federal Court of Australia Act 1976*.

Dated 14 October 2010

QUENTIN BRYCE
Governor-General

By Her Excellency's Command

ROBERT McCLELLAND
Attorney-General

1 Name of Regulations

These Regulations are the *Federal Court of Australia Amendment Regulations 2010 (No. 2)*.

2 Commencement

These Regulations commence on 1 November 2010.

3 Amendment of *Federal Court of Australia Regulations 2004*

Schedule 1 amends the *Federal Court of Australia Regulations 2004*.

4 Transitional

Subregulation 11 (2) and paragraphs 1 (1) (a) to (c) of Schedule 3 to the *Federal Court of Australia Regulations 2004*, as in force on 31 October 2010, apply to proceedings commenced before 1 November 2010.

Schedule 1 Amendments

(regulation 3)

[1] Subregulation 3 (1), after definition of *filing fee*

insert

full fee means a fee (other than the fee mentioned in item 28 of Schedule 1) that has not been reduced or waived.

[2] Subregulation 3 (1), after definition of *prescribed*

insert

reduced fee means the fee mentioned in item 28 of Schedule 1.

[3] Subregulation 3 (1), after definition of *setting-down fee*

insert

working day, for a hearing, means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the place where the hearing is to take place.

[4] Regulation 8

substitute

8 Biennial adjustment of amount of fee

The amount of each fee mentioned in Schedule 1 (other than the fees mentioned in items 2, 3, 4, 21 and 28 of that Schedule) is increased in accordance with Schedule 2 on each biennial anniversary of 1 July 2010.

[5] Subregulation 9 (4)

omit

[6] Subregulation 10 (1)

omit

the Registrar,

insert

the Registrar or an authorised officer,

[7] Subregulation 10 (1)

omit

Registrar:

insert

Registrar or the authorised officer:

[8] Subregulations 10 (2) and (3)

omit

Registrar

insert

Registrar or the authorised officer

[9] Subregulation 11 (2)

substitute

- (2) The fee mentioned in item 20 of Schedule 1 for making copies of a document is payable in all proceedings, unless the fee is:
- (a) either:
 - (i) a fee to which clause 1 of Schedule 3 applies; or
 - (ii) payable by a person to whom regulation 11A or 11B applies; and
 - (b) either:
 - (i) for a first copy of the document; or
 - (ii) for a copy required for the preparation of appeal papers.

[10] After regulation 11

insert

11A 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) for the proceeding; or
 - (b) the person has been granted assistance under Part 11 of the *Native Title Act 1993* for the proceeding by:
 - (i) a representative body, within the meaning of the Act; or

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- (ii) a person or body to whom money has been granted under section 203FE of that Act for the purpose of enabling the person or body to perform some or all of the functions of a representative body; or
- (c) the person is:
- (i) the holder of any of the following cards issued by the Department of Families, Housing, Community Services and Indigenous Affairs:
 - (A) a health care card;
 - (B) a pensioner concession card;
 - (C) a Commonwealth seniors health card; or
 - (ii) the holder of any other card issued by the Department of Families, Housing, Community Services and Indigenous Affairs, or the 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*; or
 - (vi) receiving benefit under ABSTUDY, within the meaning of the *Social Security Act 1991*.
- (2) In paragraph (1)(c), **holder**, of a card does not include a dependant of the holder.
- (3) The reduced fee is payable, instead of a 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 20) are payable by the person in connection with the proceeding.

(6) The Registrar or an authorised officer may waive payment of a fee (other than a fee mentioned in item 20 of Schedule 1 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.

Note If the Registrar or authorised officer decides not to waive the fee in the related proceeding, the fee is payable by the person in accordance with subregulations (3), (4) and (5).

(7) In considering whether to waive payment of a fee in the 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.

11B Reduction of fees — hardship

- (1) If the Registrar or an authorised officer, having regard to the income, day-to-day living expenses, liabilities and assets of an individual or a corporation liable to pay a fee mentioned in Schedule 1 (other than the fee mentioned in item 20), considers that payment of the fee would cause financial hardship to the individual or corporation, the Registrar or authorised officer may:
 - (a) if the fee is less than the reduced fee — impose the fee on each occasion the fee is payable; and
 - (b) in any other case — 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.

11C Change in circumstances

- (1) Subregulation 11A (5) applies to a person as if the person had paid a fee under subregulation 11A (3) or (4) if:
 - (a) the person pays a full fee, or a reduced fee under regulation 11B, in a proceeding; and
 - (b) after the fee has been paid, the person becomes eligible under subregulation 11A (1) to pay the reduced fee.
- (2) However, if a person's circumstances change so that subregulation 11A (1) no longer applies to the person, the person is liable to pay all fees that become payable after the change in circumstances.

[11] Paragraph 15 (1) (b)

omit

orders; or

insert

orders.

[12] Paragraph 15 (1) (c)

omit

[13] After subregulation 15 (1)

insert

- (1A) A person is entitled to a refund of the whole or part of a fee (the ***refund amount***) if the person pays more than the person is required to pay for the fee under these Regulations.
- (1B) The refund amount is the difference between the fee paid by the person and the amount that the person is required to pay for the fee.

[14] Subregulation 15 (4)

omit

[15] Paragraphs 16 (1) (a) and (b)

substitute

- (a) regulation 10, 11A or 11B or subregulation 15 (2); or
- (b) subclause 1 (3) of Schedule 3.

[16] Paragraph 16 (3) (a)

omit

1 (4)

insert

1 (3)

[17] Paragraph 16 (3) (b)

omit

waived.

insert

waived; or

[18] After paragraph 16 (3) (b)*insert*

(c) the decision is that the fee concerned is not to be reduced.

[19] Subregulation 17*omit*

paragraph 18A (4) (b)

insert

subsection 18A (4)

[20] Schedule 1, item 1*after*

4,

insert

5,

[21] Schedule 1, after item 27*insert*

28 Reduced fee

\$100

[22] Schedule 1, at the foot*insert**Note* The fees mentioned in this Schedule (other than the fees mentioned in items 2, 3, 4, 21 and 28) are subject to biennial increase under regulation 8.**[23] Schedule 2, clause 1, definition of fee***omit*

4 or 21

insert

4, 21 or 28

[24] Schedule 2, clause 1, definition of *relevant period*

omit each mention of

2004

insert

2010

[25] Schedule 3, subclause 1 (1)

omit

[26] Schedule 3, subclause 1 (2)

renumber as subclause (1)

[27] Schedule 3, subclause 1 (3)

omit

(4)

insert

(3)

[28] Schedule 3, subclause 1 (3)

renumber as subclause (2)

[29] Schedule 3, subclause 1 (4)

after

Registrar

insert

or authorised officer

[30] Schedule 3, paragraph 1 (4) (b)*omit*

(3)

insert

(2)

[31] Schedule 3, subclause 1 (4)*renumber as subclause (3)***[32] Schedule 3, subclause 1 (5)***omit*

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.