

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2012 No. 280**

Issued by Authority of the Attorney-General

*Federal Court of Australia Act 1976*

*Federal Magistrates Act 1999*

*Federal Court and Federal Magistrates Court Regulation 2012*

Subsection 60(1) of the *Federal Court of Australia Act 1976* (the Federal Court Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Federal Court Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to that Act, and in particular, prescribing the fees to be paid in respect of proceedings in the Federal Court or the service or execution of process of the court by officers of the court.

The power under subsection 60(1) of the Federal Court Act also extends to making provision for remuneration and allowances payable to jurors in criminal proceedings in the Federal Court. The power also extends to prescribing a monetary limit for contracts able to be made by the Chief Justice of the Federal Court providing for payments to be made or received by the Commonwealth.

Subsection 120(1) of the *Federal Magistrates Act 1999* provides that the Governor-General may make regulations prescribing matters required or permitted by the Federal Magistrates Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to that Act and, in particular, subsection 120(3) provides for the prescribing of fees to be paid in respect of proceedings in the Federal Magistrates Court (the FMC), including fee waivers, exemptions and refunds.

Pursuant to subsection 60(1) of the Federal Court Act and subsection 120(1) of the Federal Magistrates Act, the Governor-General made the *Federal Court of Australia Regulations 2004* (the Federal Court Regulations) and the *Federal Magistrates Regulations 2000*, prescribing the fees to be paid in respect of proceedings in the Federal Court and FMC respectively, and making provision in relation to payment of those fees.

The Federal Court Regulations also made provision for remuneration and allowances payable to jurors in criminal proceedings in the Federal Court, and prescribed an upper limit of \$1,000,000 for contracts able to be made by the Chief Justice of the Federal Court providing for payments to be made or received by the Commonwealth.

The purpose of the *Federal Court and Federal Magistrates Court Regulation 2012* (the Regulation) is to repeal and replace the Federal Court Regulations and the Federal Magistrates Regulations with a consolidated regulation about fees for proceedings in the Federal Court and the FMC (other than in family law) and also to implement a range of reforms to court fees, including:

- increasing existing fees by 15 percent, increasing fees payable by corporations by around 40 percent, and introducing a separate higher fee for a corporation that is a publicly listed company
- removing the reduced fee of \$100 now payable by legal aid recipients and people on Commonwealth income support, and providing that those persons need not pay court fees (other than some photocopying fees), and
- introducing new fees targeting resource intensive processes to encourage court users to utilise alternative dispute resolution processes.

These measures are part of wider reforms announced in the 2012-13 Budget which also include similar reforms for the High Court of Australia, the Family Court of Australia and family law proceedings in the FMC.

The Regulation also retains provisions in the Federal Court Regulations and the Federal Magistrates Regulations that do not relate to the administration of fees.

The Federal Court of Australia and the Federal Magistrates Court of Australia were consulted on the content of the Regulation. The consultation involved exchange of correspondence and discussions.

The Office of Best Practice Regulation was consulted on the measures announced in the 2012-13 Budget and advised that no Regulation Impact Statement was required.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 1 January 2013.

Details of the Regulation are as follows:

#### Part 1 – Preliminary

##### **Section 1.01 – Name of regulation**

This section provides that the title of the Regulation is the *Federal Court and Federal Magistrates Court Regulation 2012*.

##### **Section 1.02 – Commencement**

This section provides that the Regulation commences on 1 January 2013.

### **Section 1.03 – Definitions**

This section provides for definitions of terms used in the Regulation. Significant new or amended definitions are explained below.

#### *‘general federal law proceeding’*

The term is defined to mean a proceeding in the Federal Court, and a proceeding in the FMC that is not a proceeding under the *Family Law Act 1975*. Section 1.05 applies Parts 1 and 2 of the Regulation to documents filed or services requested in relation to a general federal law proceeding. The *Family Law (Fees) Regulation 2012* applies to the documents filed or services requested in a Family Law Act proceeding, including such a proceeding in the FMC.

#### *‘interlocutory application’*

The term is defined to mean an application, other than a cross-claim, in a proceeding that has already commenced. Item 111 of Schedule 1 provides for a fee for filing an interlocutory application in the Federal Court.

#### *‘publicly listed company’*

The term is defined to mean a company that is listed on a stock exchange or financial market in any country. Filing, setting down, hearing, subpoena and summons fees in Schedule 1 are set at higher levels for a publicly listed company.

#### *‘small claims proceeding’*

The term is defined to mean a proceeding for which the applicant wants the small claims procedure in section 548 of the *Fair Work Act 2009*, or section 199 of the *National Consumer Credit Protection Act 2009*, to apply. Items 211 to 214 of Schedule 1 and subsection 2.10(4) limit fees in small claims proceedings to a single lower filing fee.

### **Section 1.04 – Meaning of corporation**

This section provides that the term ‘corporation’, where it is used in the Regulation, includes the bodies mentioned in subsection 1.04(1), with the exceptions set out in subsection 1.04(2).

Paragraphs 1.04(1)(a) to (c), and (e), and the exception in paragraph 1.04(2)(a) in relation to corporation sole that is not a public authority, reflect the meaning of ‘corporation’ under section 57A of the *Corporations Act 2001*. While the term ‘corporation’ had been defined under the Federal Court Regulations to mean a corporation within the meaning of the Corporations Act, some strata corporations which satisfy that definition are excluded by State laws from the Corporations Act. Additionally, some incorporated trade unions sought to pay court fees under the

Federal Court Regulations at the non-corporate rate on the basis that a trade union cannot be registered under the Corporations Act.

Paragraph 1.04(1)(d) also includes a public authority, defined as a body or authority of the Commonwealth or of a State or Territory, within the meaning of the term ‘corporation’, so that government agencies will pay fees under the Regulation at the corporation rate.

Paragraphs 1.04(2)(b) and (c) provide that a small business and an unincorporated not-for-profit association is not a corporation for the purpose of court fees. A small business is defined as a business with no more than 19 employees, and a total turnover of less than \$2 million each financial year. A not-for-profit association is defined as a society, club, association or body that is not formed for the purpose of trading or securing pecuniary profit from its transactions for its members. A corporation that is a small business or an unincorporated not-for-profit association pay fees under the Regulation at the non-corporate rate.

## **Section 1.05 – Application—Parts 1 and 2**

Subsection 1.05(1) provides for the application of the court fee provisions in Parts 1 and 2 of the Regulation. Those Parts apply to a fee for a service requested or a fee for the filing of a document lodged in relation to a general federal law proceeding on or after 1 January 2013. The term ‘general federal law proceeding’ is defined in section 1.03 to mean a proceeding in the Federal Court, and a proceeding in the FMC that is not a proceeding under the Family Law Act.

Subsection 1.05(2) provides for the application of particular provisions of Parts 1 and 2 of the Regulation to some services requested before 1 January 2013.

In the case of a service requested before 1 January 2013, subsection 1.05(2)(a) permits payment of the fee for the service to be deferred under section 2.15 (for example, payment of the fee would, because of subsection 2.15(4), be able to be deferred, after 1 January 2013, for a second time).

In the hearing days scheduled in 2012 to be heard on or after 1 January 2013, paragraph 1.05(2)(b), where the hearing of the proceeding commences, entitles a person to a refund of fees paid for any unused hearing days in 2013 if the proceeding settles or is discontinued or, for some other reason, the hearing day does not proceed.

In the case of a mediation requested before 1 January 2013 but scheduled after that date, paragraph 1.05(2)(c), where the mediation does not proceed, entitles a person to a refund of the fee for that mediation ordered by a court, judge, federal magistrate or registrar.

## **Part 2 – Fees**

### **Division 2.1 – Fees—general**

#### **Section 2.01 – Purpose of Part**

This section provides that Part 2 of the Regulation sets out matters relating to fees in the Federal Court and in a proceeding in the FMC that is not a proceeding under the Family Law Act.

### **Section 2.02 – Fees**

Subsection 2.02(1) provides for Schedule 1 to the Regulation to set out court fees payable in the Federal Court, and in a proceeding in the FMC that is not a proceeding under the Family Law Act.

Subsection 2.02(2) provides that the rate of the fee charged depends on whether the person being charged is a publicly listed company, a corporation or an individual. Some fee items do not have separate rates for publicly listed companies and corporations and the fee rate is the rate specified.

Subsection 2.02(3) provides that where multiple persons are liable to pay the fee, then the fee rate charged is the highest rate. For example, if a document is filed by two applicants – a corporation and a natural person – the fee charged is the rate for a corporation.

### Division 2.2 – Liability to pay fee

#### **Section 2.03 – Persons liable to pay fee**

This section specifies the persons who are liable to pay a fee set out in Schedule 1 to the Regulation, unless a court, judge, federal magistrate or registrar orders otherwise.

Subsection 2.03(2) provides that a filing fee is payable by the person for whom a document is filed.

Subsection 2.03(3) provides that a hearing fee or a setting down fee, except for a hearing for a cross-claim or cross-appeal only, is payable by the person who has commenced a proceeding. The cross-claimant is liable to pay these fees for a cross-claim, and the cross-appellant is liable to pay them for a cross-appeal. A new rule is introduced for an interlocutory application, with the person who made the interlocutory application being liable to pay the fees for the hearing of such an application.

Subsection 2.03(4) provides for only one setting down or hearing fee to be payable for two or more proceedings set down for hearing together where the hearings are not consolidated. The amount of each fee is apportioned equally between the persons required to pay the fee.

Subsection 2.03(5) provides that a mediation fee is payable by the applicant in the proceeding to which the mediation relates.

Subsections 2.03(6) and (7) provide that the fee for taxation of a bill of costs by the Federal Court is payable by the person or persons who object to an estimate or

require a full taxation of the bill in accordance with the *Federal Court Rules 2011*, apportioned if necessary by the registrar of the court.

Subsection 2.03(8) provides that, for other services for which a fee is payable under Schedule 1, the person for whom the service is provided pays the fee.

#### **Section 2.04 – Fee for producing file and copying document**

This section provides that the fee for photocopying and production of a file is payable in all proceedings. This includes where a party is exempt from other court fees.

The only circumstance where the fee for the production of a file and photocopying can be exempt is where both conditions below are met:

- the person is exempt from payment of court fees under section 2.05 (they fall into specific categories of persons) or section 2.06 (payment of fees would cause financial hardship), and
- the document is a first copy requested by that person or is required for preparing appeal papers.

#### Division 2.3 – Exemptions from liability to pay fee

#### **Section 2.05 – Persons exempt from paying fee—general**

This section provides a fee exemption for the same categories of persons who paid the reduced fee under regulation 11A of the Federal Court Regulations and regulation 8D of the Federal Magistrates Regulations. These categories of persons are:

- recipients of legal aid under a scheme or service approved by the Attorney-General
- persons holding certain concession cards
- persons serving a term of imprisonment or otherwise detained in a public institution
- persons aged less than 18 years
- persons receiving youth allowance, Austudy payments or benefits under the ABSTUDY scheme, and
- persons who have been granted assistance under Part 11 of the *Native Title Act 1993*.

The *Federal Court of Australia Amendment Regulations 2010 (No. 2)* and the *Federal Magistrates Amendment Regulations 2010 (No. 2)*, commencing on 1 November 2010, introduced a reduced fee of \$100 for persons in the above

categories. Prior to 1 November 2010, persons in those categories did not pay court fees (other than for photocopying). This section effectively reverts to the arrangements existing prior to introduction of the reduced fee.

### **Section 2.06 – Persons exempt from paying fee—financial hardship**

This section provides a fee exemption where the registrar or authorised officer is of the opinion that payment of the fee would cause financial hardship to an individual. In considering whether payment of a fee would have that effect, the registrar or authorised officer is required to consider the individual's income, day-to-day living expenses, liabilities and assets. These considerations are the same as those considered in exercising the power under regulation 11B of the Federal Court Regulations and regulation 9 of the Federal Magistrates Regulations to reduce court fees on the basis of hardship.

#### Division 2.4 – When fee is not payable

### **Section 2.07 – Fee not payable by liable person if already paid**

This section provides that a person who is liable to pay the fee does not have to pay the fee if another person has paid the fee. This can include another party to the proceedings or a person unrelated to the proceeding. For example, the applicant does not have to pay the fee where a respondent pays a mediation fee to ensure the matter proceeds.

### **Section 2.08 – Fee not payable in Federal Court proceeding**

This section provides that no fees are payable for particular proceedings in the Federal Court. It enlarges the range of proceedings exempt from fees under clause 1 of Schedule 3 to the Federal Court Regulations to include:

- proceedings relating to an election petition under the *Aboriginal and Torres Strait Islander Act 2005*
- appeals from an application under section 539 of the *Fair Work Act 2009* if the applicant has been dismissed from employment in alleged contravention of section 772 of that Act
- an application to set aside a subpoena by a party to the proceeding in which the subpoena was issued
- proceedings under the *Child Support (Registration and Collection) Act 1988*, and
- proceedings for which an international convention to which Australia is party provides that no fee is payable.

### **Section 2.09 – Fee not payable in Federal Magistrates Court proceeding**

This section provides that no fees are payable for particular proceedings or matters in the FMC. It enlarges the range of proceedings and matters exempt from fees under regulation 7(2) of the Federal Magistrates Regulations to include:

- an application to set aside a subpoena, and
- objections to a subpoenaed document being inspected or copied.

### **Section 2.10 – When only filing fee is payable**

This section provides that only the initiating filing fee is payable in relation to particular proceedings. It enlarges the range of proceedings for which only such a fee is currently payable to include a small claims proceeding, brought in relation to fair work and consumer credit claims, in the FMC. This is consistent with the small claims procedure being a streamlined process where costs are kept to a minimum.

### **Section 2.11 – When filing fee is not payable**

This section provides that a filing fee is not payable for particular proceedings in the Federal Court and the FMC. The range of proceedings for which a filing fee is not payable reflects the proceedings exempt from payment of filing fees under clause 2 of Schedule 3 to the Federal Court Regulations and regulation 8A of the Federal Magistrates Regulations.

### **Section 2.12 – When setting down fee is not payable**

This section provides that a setting down fee is not payable for particular proceedings in the Federal Court and the FMC. The range of proceedings for which a setting down fee is not payable reflects the proceedings exempt from payment of setting down fees under clause 3 of Schedule 3 to the Federal Court Regulations and regulation 8B of the Federal Magistrates Regulations.

### **Section 2.13 – When hearing fee is not payable**

This section provides that a hearing fee is not payable for particular proceedings in the Federal Court and the FMC. The range of proceedings for which a hearing fee is not payable reflects the proceedings exempt from payment of setting down fees under clause 4 of Schedule 3 to the Federal Court Regulations and regulation 8C of the Federal Magistrates Regulations.

## Division 2.5 – Payment of fees

### **Section 2.14 – When fee must be paid**

#### *Filing fee*

Subsection 2.14(1) provides that the fee for filing a document must be paid before the document is filed.



### *Setting down fee*

Subsection 2.14(2) provides that the fee for setting down a proceeding for a hearing must be paid no later than 28 days before the hearing day or, for a proceeding set down for hearing within 28 days, within the period or at the time approved by the registrar or authorised officer of the court.

### *Hearing fee*

Subsection 2.14(3) provides that the fee for a hearing of a proceeding must be paid no later than close of business on the day that is two business days before the hearing day or, for a hearing fixed within two business days, no later than 9.30am on the hearing day.

### *Fee for service or execution of process, or seizure and sale of goods*

Subsection 2.14(4) provides that fees for the service or execution (or attempted service or execution) of a process, or the seizure and sale of goods by an officer of the court, must be paid within the time approved by the registrar or authorised officer of the court.

### *Fee for other service*

Subsection 2.14(5) provides that fees for other services must be paid before the service is provided.

## **Section 2.15 – Deferral of payment of fees**

This section allows a registrar or an authorised officer to defer the time for payment of a fee, other than photocopying and service and execution of process fees.

Subsection 2.15(2) allows the time for payment of a fee to be deferred where a registrar or authorised officer is of the opinion that:

- it would be oppressive or otherwise unreasonable, having regard to the financial circumstances of the person required to pay the fee, to require payment of the fee at the time required under section 2.14, or
- in the case of a fee for the filing of a document, the need to file the document is so urgent that it overrides the requirement to pay the fee before the document is filed.

Subsection 2.15(2) also allows the time for payment of a fee to be deferred where the person required to pay the fee in relation to the proceeding is represented by a lawyer who is not charging the person a fee in relation to that proceeding.

Subsection 2.15(3) requires, where the time for payment of a fee has been deferred, the fee to be paid within 28 days after the day payment is deferred, or within another

period approved in writing by a registrar or authorised officer. These time periods apply instead of the time for payment of the fee under section 2.14.

Subsection 2.15(4) clarifies that the time for payment of a fee may be deferred more than once.

Subsection 2.15(5) permits a registrar or authorised officer to impose conditions on the deferral of the time for payment of a fee.

### **Section 2.16 – Payment of fee on invoice**

This section allows fees in relation to a proceeding in a court to be paid on invoice by a person or lawyer approved, under subsection 2.16(5), by a registrar of that court as an approved user of court services.

When invoiced, subsection 2.16(3) gives the approved user of court services 30 days to pay the fee.

Subsection 2.16(6) sets out matters that a registrar must consider in deciding whether to approve a person or lawyer as an approved user of court services, including the frequency of the person's or lawyer's dealings with the court.

Subsection 2.16(7) permits a registrar to impose conditions on the approval of a person or lawyer.

### **Section 2.17 – Payment of fee in advance**

This section allows a person approved under subsection 2.16(5) as an approved user of court services for a court, with the authorisation of a registrar, to pay a fee in relation to a proceeding in the court in advance of the time liability for the fee arises.

### **Section 2.18 – What happens if fee is not paid**

This section sets out what happens if a fee is not paid and it is not deferred under section 2.15 or invoiced under section 2.16.

Subsection 2.18(2) provides that if the fee must be paid before or at the time of the filing of a document or the provision of the service for which the fee is payable, the document must not be filed or the service provided until the whole fee is paid.

Subsection 2.18(3) permits the court for the relevant proceeding, a judge, federal magistrate or a registrar of that court, to allow the document to be filed or the service to be provided even though the fee, or part of the fee, has not been paid.

Subsection 2.18(4) provides that, in the case of an unpaid (or partially unpaid) setting down fee or hearing fee for a hearing in relation to a proceeding:

- the relevant court, a judge, federal magistrate or a registrar of that court may order that no proceeding, or no proceeding other than a specified proceeding, is to take place without permission
- a person, other than the person required to pay the fee, may pay the fee (without affecting any power for the making of an order for costs for the fee), and
- the relevant court, a judge, federal magistrate or a registrar of that court may vacate the hearing day.

## Division 2.6 - Miscellaneous

### **Section 2.19 – Refund of fees**

This section sets out the circumstances when a fee can be refunded.

#### *General*

Subsections 2.19(1) and (2) provide an entitlement to a refund of an amount in relation to the payment of a fee if a person pays more than he or she is required to pay for the fee under the Regulation. The amount to be refunded, under that entitlement, is the difference between the amount paid by the person and the amount the person is required to pay for the fee.

Subsection 2.19(3) provides an entitlement to a refund of the amount paid by a person as a fee where another person has paid the fee, or where the fee is not payable under the Regulation.

#### *Setting down fee*

Subsection 2.19(4) provides that a setting down fee is not refundable if the first hearing day fixed by the setting down, or a hearing day scheduled in place of that first hearing date, does not occur.

Refunds are still available for second and subsequent hearing days, in accordance with the Regulation.

#### *Hearing fees – hearing not commenced*

Subsection 2.19(5) provides an entitlement to a refund of a hearing fee paid by a person for a hearing that has not commenced in relation to a proceeding if the person notifies the registrar or authorised officer in writing at least 10 business days before the hearing day that the hearing will not occur, or will occur only for the making of formal orders. In the case of any hearing day fixed less than 10 business days before the hearing day, the person must have notified the registrar or authorised officer in writing at least two business days before the hearing day.

A registrar or authorised officer has, under subsection 2.19(7), a discretion to refund a hearing fee for a hearing that has not commenced in relation to a proceeding if the person, through no fault on his or her part, has not notified the registrar or authorised officer in writing, within the relevant time limit, that the hearing will not occur (or will occur only for the making of formal orders).

Subsection 2.19(8) defines ‘formal orders’ for the purposes of subsections 2.19(5) and 2.19(7) as orders finalising the proceedings that were to be the subject of the hearing.

#### *Hearing fees – hearing commenced*

Subsection 2.19(9) provides an entitlement to a refund of a hearing fee for any unused hearing days where the hearing has commenced. For example, if a person were to pay hearing fees for 20 hearing days in advance, but the proceeding settles or discontinues after 10 hearing days (or if the proceedings are fully heard within those 10 hearing days), the person would be entitled to a refund of the hearing fees paid for unused hearing days. As it is anticipated that the entitlement would usually arise when a multi-day hearing finishes early, no advance written notification to the registrar is required. The provision enables litigants to be able to prepay all their hearing fees in one transaction rather than paying individually each day, and be assured that the hearing fees paid for any unused hearing days is refundable.

#### *Mediation fee*

Subsection 2.19(10) provides an entitlement to a refund of a mediation fee where the mediation does not proceed on the occasion for which the fee was paid, and the relevant court or a judge, a federal magistrate or a registrar of that court, orders the refund of the fee.

### **Section 2.20– Biennial increase in fees**

This section provides for the automatic biennial increase of the court fees set out in Schedule 1 to the Regulation, commencing from 1 July 2014. The fees will be increased biennially in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician.

### **Section 2.21 – Notice of decision and AAT review**

This section (subsections 2.21(1) and (5)) provides for rights of appeal to the Administrative Appeals Tribunal (AAT) from a decision of a registrar or authorised officer about the payment of a fee under:

- sections 2.06 (exemption from payment on the ground of financial hardship)
- section 2.15 (deferral of the time for payment of a fee)
- subsection 2.08(4) (exemptions for certain related tax appeals), and

- subsection 2.19(7) (refund of a hearing fee where notification within required time limit has not occurred).

The section requires a registrar or authorised officer to give a notice of the decision to the person required to pay the fee (subsection 2.21(1)) within 28 days after making the decision (subsection 2.21(2)) setting out the decision and, for particular decisions, a statement that the person may apply to the AAT for review of the decision and the reasons for the decision (subsections 2.21(3) and (4)).

Subsection 2.21(6) provides that failure to advise of rights of appeal to the AAT does not affect the validity of the decision made by the registrar or authorised officer.

### **Section 2.22 – Debt due to Commonwealth**

This section provides that if a fee is not paid in accordance with the Regulation, then it immediately becomes a debt due to the Commonwealth. This would include where a fee is not paid at the end of an invoice period or deferral period (and no further deferral is granted).

### **Part 3 – Remuneration and allowances for jurors and potential jurors—Federal Court**

Part 3 provides for remuneration and allowances for jurors and potential jurors.

#### **Section 3.01 – Purpose of Part**

Part 3 provides for the remuneration and allowances payable to jurors and potential jurors in relation to proceedings in the Federal Court.

#### **Section 3.02 – Remuneration**

This section provides for Schedule 2 to the Regulation to set out the remuneration payable to jurors and potential jurors. The amounts set out in Schedule 2 include travel and refreshment allowances (subsection 3.03(1)).

Subsection 3.02(2) provides for the amounts set out in Schedule 2 to be payable for each day that a juror or potential juror attends court and for each day, up to a maximum of five days, that a juror or potential jurors is not required to attend court.

#### **Section 3.03 – Allowances**

This section provides for reimbursement of travel costs for a juror or potential juror who is required to travel more than 30 kilometres to attend court.

Subsection 3.03(2) allows the juror or potential juror to apply to the sheriff of the Federal Court for reimbursement of reasonable travel costs.

Under subsection 3.03(3), the sheriff has power to approve when a claim for reimbursement of travel costs may be submitted, the form in which it must be submitted and the supporting material that must be submitted with the claim.

If the sheriff does not approve when a claim may be submitted, subsection 3.03(4) provides that a claim for reimbursement of travel costs is able to be submitted within five days of the juror or potential juror incurring the travel costs.

#### **Section 3.04 – Biennial increase in juror’s remuneration.**

This section provides for the automatic biennial increase of the remuneration set out in Schedule 2 to the Regulation, commencing from 1 July 2014. The remuneration will be increased biennially in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician.

#### Part 4 – Miscellaneous

##### **Section 4.01 – Prescribed contract limit—Federal Court**

Section 4.01 specifies the amount of the prescribed contract limit for subsection 18A(4) of the Federal Court Act. This section has the same operation as regulation 17 of the Federal Court Regulations.

##### **Section 4.02 – Modification of *Legislative Instruments Act 2003*—Federal Magistrates Court**

Section 4.02 has the same operation as, and amalgamates, regulation 16 and Schedule 2 to the Federal Magistrates Regulations. This modification to the *Legislative Instruments Act 2003* as it applies to the FMC applies to all proceedings in the FMC, including in family law.

#### Part 5 – Repeal and transitional

##### **Section 5.01 – *Federal Court of Australia Regulations 2004***

Subsection 5.01(1) repeals the Federal Court Regulations.

Subsection 5.01(2) provides that the Federal Court Regulations continue to apply to a fee or a service requested prior to 1 January 2013. A refund of a setting down fee under those continued provisions is only available if the fee was paid before 1 January 2013.

##### **Section 5.02 – *Federal Magistrates Regulations 2000***

Subsection 5.02(1) repeals the Federal Magistrates Regulations.

Subsection 5.02(2) provides that the Federal Magistrates Regulations continue to apply to a fee or a service requested prior to 1 January 2013, and that regulation 8 of the Federal Magistrates Regulations providing for fee exemptions for certain categories of persons specified in the Federal Magistrates Regulations, continues to apply for proceedings commenced before 1 November 2010. A refund of a setting

down fee under those continued provisions of the Federal Magistrates Regulations is only available if the fee was paid before 1 January 2013.

## Schedule 1 – Fees

### Part 1 – Fees for proceedings in Federal Court

Schedule 1 lists the fees payable for the filing of documents or provision of a service by the Federal Court or the FMC. The fees listed are the fees prescribed under the Federal Court Regulations and the Federal Magistrates Regulations, as increased every two years in accordance with regulation 8 of the Federal Court Regulations and regulation 14 of the Federal Magistrates Regulations, with the following changes:

- fee amounts are updated to reflect fee increases as part of the 2012-13 Budget, with fees generally increased by 15 percent and by 40 percent for corporations. These increases apply to fee amounts listed in the *Australian Government Notices Gazette*, No. GN 22, 6 June 2012
- introduction of a separate fee category for publicly listed companies, set at 150 percent of the fee for a corporation
- introduction of new fee items as part of the 2012-13 Budget
- removal of item 5 of Schedule 1 to the Federal Court Regulations which specifies a fee for filing an election petition under Schedule 4 to the *Aboriginal and Torres Strait Islander Act 2005*; no fees are payable for these matters, and
- removal of the reduced fee.

Specific changes to fee items and new fee items are set out below.

#### *Item 105 – Filing of a bill of costs*

This item introduces a fee for the filing of a bill of costs. There is no separate fee for corporations or publicly listed companies.

#### *Item 115 – Urgent applications without notice*

This item introduces a fee for urgent pre-filing injunctions namely:

- for the detention, custody, preservation or inspection of property
- to authorise any person to enter any land, or do any other act or thing, for the purpose of giving effect to the order, or
- if the matter relates to the right of a prospective applicant to an amount in a fund - that the amount in the fund be paid into court or otherwise secured.

These orders reflect the orders that can be sought under sub-rules 7.01(b) and (c) of the *Federal Court Rules 2011* (the Federal Court Rules).

*Item 115A - Orders restraining or preventing a person from dealing with property*

This item introduces a fee for an application for an order to restrain a person from dealing with assets. This item also introduces a fee for an application for an order to prevent the court's process being frustrated or inhibited by a judgement or prospective judgement of the court being wholly or partly unsatisfied.

This fee item would be charged for such applications in any proceeding or in anticipation of any proceeding in the court, with or without notice.

These orders reflect freezing orders that can be sought under rule 7.32 of the Federal Court Rules.

*Item 115B - Orders securing or preserving evidence*

This item introduces a fee for an application for an order to secure or preserve evidence. This fee item would be charged for such application in any proceeding or in anticipation of any proceeding in the court, with or without notice.

These orders reflect search orders that can be sought under rule 7.42 of the Federal Court Rules.

*Item 117 – For the hearing of an application under subsection 35A(5) of the Federal Court Act*

This item updates fee item 16 of Schedule 1 to the Federal Court Regulations by providing for a daily fee, rather than a half day fee.

*Item 120 – Hearing days 10 to 14*

This item only applies to hearing days that are the 10<sup>th</sup> to 14<sup>th</sup> hearing day. There is a separate higher fee for the 15<sup>th</sup> and subsequent days.

*Item 121 – Hearing days 15 and subsequent*

This item introduces a higher daily fee for hearing days that are the 15<sup>th</sup> hearing day or more.

*Item 122 – Examinations in bankruptcy and winding up*

This item introduces a daily hearing fee for examinations by a registrar in corporations (winding up) and bankruptcy matters.

*Item 123 – Photocopying and production of files*



The Federal Court Regulations prescribed separate fees for the production of a file and the request for photocopying. This fee item amalgamates the previous request for photocopying fee with the fee for the production of files of the court. Each time a person seeks production of the file to photocopy documents in the file they will pay a single fee to cover the request for photocopying and production of the file and then a fee for each page photocopied.

*Item 126 – Issuing a subpoena*

The Federal Court Regulations specified the same fee rate for both corporations and other litigants. This fee item introduces a higher fee rate for subpoenas issued at the request of a corporation.

The description of this fee is changed to ensure that all types of subpoenas (subpoena to produce; subpoena to give evidence; and subpoena to produce and give evidence) are covered by the fee.

*Item 127 – Bankruptcy summons*

This item introduces a fee for issuing a summons to a person to attend for examination about a debtor's examinable affairs.

*Items 128, 129, 130 and 131 – High value bills of costs*

The Federal Court Regulations charged fees for bills of costs below \$10,000 and above \$10,000.

Item 128 retains the fee category for bills up to \$10,000 and items 129, 130 and 131 introduces three new categories of fees for bills above \$10,000.

*Item 132 – Mediation*

This item updates the mediation fee in item 26 of Schedule 1 to the Federal Court Regulations so that the fee charged is for each attendance rather than for just the first attendance.

Part 2 – Fees for proceedings in Federal Magistrates Court

The fee amounts are updated to reflect fee increases as part of the 2012-13 Budget. The fees prescribed do not differ from those in the Federal Magistrates Regulations except for the following:

*Item 203 – Filing of a bill of costs*

This item introduces a fee for the filing of a bill of costs. There is no separate fee for corporations or publicly listed companies.

*Item 213 – Consumer credit small claims proceedings*

This item introduces a lower fee for consumer credit matters utilising the small claims procedure, with the fee amount set at the same rate as fee items 211 and 212 for applications under the *Fair Work Act 2009*.

*Item 217 – Examinations in bankruptcy and winding up*

This item introduces a daily hearing fee for examinations by a registrar in corporations (winding up) and bankruptcy matters.

*Item 218 – For the hearing of an application under subsection 104(3) of the Federal Magistrates Act*

This item introduces a daily hearing fee for a review under subsection 104(3) of the Federal Magistrates Act. Hearing fees for reviewing a decision of a registrar are charged in the Federal Court.

*Item 219 – Production of file and photocopying*

This item clarifies that there is a fee for photocopying in the FMC. This fee is at the same rate as the Federal Court fee and is structured consistently with how it is charged in the Federal Court where the fee for each page is charged in addition to the fee which covers the production of the file and request for photocopying.

*Item 222 – Fee for issuing a subpoena*

This item introduces a specific fee for issuing a subpoena in the FMC. This is consistent with the Federal Court where a fee is charged for issuing a subpoena.

*Item 223 – Bankruptcy summons*

This item introduces a fee for issuing a summons to a person to attend for examination about a debtor's examinable affairs.

*Item 224 – Mediation*

This item updates the mediation fee in item 14 of Schedule 1 to the Federal Magistrates Regulations so that the fee charged is for each attendance rather than for just the first attendance.

Schedule 2 – Remuneration and allowances

Part 3 of the Regulation prescribes that remuneration and allowances are payable for jurors and potential jurors, as set out in Schedule 2.

Schedule 2 updates the amounts payable for jurors' remuneration and allowances as provided in Schedule 4 to the Federal Court Regulations to reflect the biennial increase on 1 July 2012, in accordance with regulation 15B of the Federal Court Regulations.