

FEDERAL COURT AND FEDERAL CIRCUIT AND FAMILY COURT

REGULATIONS 2022

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

under section 60 of the *Federal Court of Australia Act 1976* and

under section 285 of the *Federal Circuit and Family Court of Australia Act 2021*

PURPOSE AND OPERATION OF THE INSTRUMENT

Section 60 of the *Federal Court of Australia Act 1976* (Federal Court Act) provides, in part, that the Governor-General may make regulations prescribing the fees to be paid in respect of proceedings in the Federal Court of Australia or the service or execution of the process of the Court by officers of the Court. Section 285 of the *Federal Circuit and Family Court of Australia Act 2021* (FCFCOA Act) provides, in part, that the Governor-General may make regulations prescribing the fees payable in respect of proceedings in the Federal Circuit and Family Court of Australia (FCFCOA) and the service and execution of the process of the FCFCOA. They may also provide for the exemption, waiver or refund of those fees.

The *Federal Court and Federal Circuit and Family Court Regulations 2022* (the instrument) sets out the fees payable for filing documents in a proceeding in the Federal Court of Australia and in the FCFCOA (Division 2), other than a family law proceeding, and for the service and execution of the process of both courts. The instrument also contains provisions regarding the administration of fees, including the indexation of fees and how fees may be deferred, refunded, reduced or waived. Part 1 of Schedule 1 lists the fees payable for proceedings in the Federal Court and Part 2 of Schedule 1 lists the fees payable for proceedings in the FCFCOA (Division 2), other than family law proceedings.

The instrument repeals and replaces the *Federal Court and Federal Circuit and Family Court Regulations 2012* (the 2012 instrument) which was due to sunset on 1 April 2023 as a result of section 50 of the *Legislation Act 2003*. Section 50 of the Legislation Act provides that all legislative instruments registered after 1 January 2005 are automatically repealed on the first 1 April or 1 October falling on or after the tenth anniversary of their registration. The instrument remakes the 2012 instrument in substantially the same form, with minor changes to clarify the operation of the provisions, modernise the language used and bring the instrument in line with the Office of Parliamentary Counsel's current drafting practices. The instrument is a legislative instrument for the

purposes of the *Legislative Instruments Act 2003*. The replacement instrument will commence when the 2012 instrument is repealed on 1 April 2023.

CONSULTATION

Consistent with the requirements under section 17 of the Legislation Act, consultations occurred from January to September 2022 with the Federal Court, the FCFCOA and with relevant line areas of the Australian Attorney-General's Department. Consultations involved the exchange of correspondence and discussions. Stakeholders were asked to provide input into the remake of the instrument and to identify any areas that may require amendments. As a result of the consultation, minor amendments were made to the 2012 instrument to clarify the operation of certain provisions.

REGULATION IMPACT STATEMENT

The Office of Best Practice Regulation (OBPR) assessed that a Regulation Impact Statement was not required for this instrument as it is unlikely to have more than a minor regulatory impact (OBPR reference 22-01769).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Federal Court and Federal Circuit and Family Court Regulations 2022

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Federal Court and Federal Circuit and Family Court Regulations* (the instrument) sets out the fees payable for filing documents in a proceeding in the Federal Court of Australia and in the Federal Circuit and Family Court of Australia (FCFCOA) (Division 2), other than a family law proceeding, as well as the fees payable for the service and execution of the process of both courts. The instrument also contains provisions regarding the administration of fees, including the indexation of fees and how fees may be deferred, refunded, reduced or waived. Part 1 of Schedule 1 lists the fees payable for proceedings in the Federal Court and Part 2 of Schedule 1 lists the fees payable for proceedings in the FCFCOA (Division 2), other than family law proceedings.

The instrument replaces the *Federal Court and Federal Circuit and Family Court Regulations 2012* which will be repealed on its sunset date of 1 April 2023. This is due to the operation of section 50 of the *Legislation Act 2003*. Section 50 of the Legislation Act provides that all legislative instruments registered after 1 January 2005 are automatically repealed on the first 1 April or 1 October falling on or after the tenth anniversary of their registration. The *Federal Court and Federal Circuit and Family Court Regulations 2012* remained fit-for-purpose and has therefore been remade as the *Federal Court and Federal Circuit and Family Court Regulations 2022*.

Human rights implications

The instrument does not engage any of the applicable rights or freedoms.

The fee amounts payable by court users will continue to be indexed annually in line with the Consumer Price Index. There are no other fee increases introduced by the instrument. The instrument will also continue to provide fee exemptions for eligible persons and fee reductions for persons who, by reason of financial hardship, are unable to pay the full fee amount. The instrument does not engage any of the applicable rights or freedoms, including the implied right to access justice.

Conclusion

The instrument is compatible with human rights as it does not raise any human rights issues.

Details of the instrument are set out in **Attachment A**.

Details of the *Federal Court and Federal Circuit and Family Court Regulations 2022*

PART 1 – Preliminary

Section 1.01 – Name

This section provides that the title of the instrument is the *Federal Court and Federal Circuit and Family Court Regulations 2022*.

Section 1.01A - Commencement

This section provides that the instrument commences on 1 April 2023.

Section 1.02 – Authority

This section provides that the instrument is made under the *Federal Court of Australia Act 1976* and the *Federal Circuit and Family Court of Australia Act 2021*.

Section 1.02A – Schedule 3

This section provides that each instrument that is specified in Schedule 3 is amended or repealed as set out in the items in that Schedule, and that any other item in that Schedule has effect according to its terms. In accordance with Schedule 3, the *Federal Court and Federal Circuit and Family Court Regulations 2012* is repealed.

Section 1.03 – Definitions

This section provides definitions for terms commonly used in the instrument.

Note 1 was inserted to provide a non-exhaustive list of expressions used in the instrument that are defined in the Federal Court Act, including ‘*juror*’ and ‘*potential juror*’. Note 2 also provides a non-exhaustive list of expressions used in the instrument that are defined in the FCFCOA Act. This includes the expression ‘*Chief Executive Officer*’ which is defined in the FCFCOA Act as the Chief Executive Officer and Principal Registrar of the FCFCOA (Division 1).

This section also clarifies that expressions used in this instrument that are defined in the Federal Court Act and the FCFCOA Act has the meaning given by whichever of those Acts is appropriate in the context of the application and operation of the provision.

Section 1.04 – Meaning of *corporation*

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

Per paragraph 1.04(2)(b), a corporation does not include a ‘*small business*’. Subsection 1.04(3) provides the meaning of ‘*small business*’ for the purpose of paragraph 1.04(2)(b). A ‘*small business*’ is a business with no more than 19 employees and a total turnover of less than \$2 million each year.

Per paragraph 1.04(2)(c), a corporation does not include ‘*an unincorporated not-for-profit association*’. Subsection 1.04(4) provides the meaning of a ‘*not-for-profit association*’. It is a society, club, institution or body that is not formed for the purpose of trading or securing pecuniary profit from its transactions for its members.

Per paragraph 1.04(2)(d), a corporation does not include ‘*a public authority*’. The definition of ‘*public authority*’ is provided for in the main definitions section (s 1.03). ‘*Public authority*’ means a body or authority of the Commonwealth or of a State or Territory, a person representing a body or authority of the Commonwealth or of a State or Territory, a Minister for the Commonwealth or for a State or Territory, and a statutory office holder.

PART 2 – Fees

Division 2.1 – General

Section 2.01 – Purpose of this Part

This section provides that Part 2 of the instrument sets out matters relating to court fees for the purposes of section 60 of the Federal Court Act and section 285 of the FCFCOA Act.

Section 2.01A – Application of this Part

Section 2.01A provides that Part 2 of the instrument apply to a fee for a service that is requested, or for the filing of a document that is lodged, in relation to:

- a proceeding in the Federal Court; and
- a proceeding in the FCFCOA (Division 2) (other than a proceeding under the *Family Law Act 1975*).

The note under this section refers to the *Family Law (Fees) Regulations 2022* for information about fees relating to proceedings under the Family Law Act.

Section 2.02 – Fees

Subsection 2.02(1) provides that Schedule 1 to the instrument sets out the fees payable for the filing of a document in relation to a proceeding or for the provision of a service by the relevant court, an officer of the relevant court or another person acting on behalf of the relevant court.

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, there is only one fee payable and 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 fees

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 instrument, unless the relevant court, or a judge or relevant registrar of that court, orders otherwise.

Filing fees

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

Setting down fees and hearing fees

Subsection 2.03(3) provides that a hearing fee or a setting down fee is payable by the person who has commenced the proceeding, with the exceptions that the hearing and setting down fees for a cross-claim is payable by the cross-claimant, the hearing and setting down fees for a cross-appeal is payable by the cross-appellant and the hearing and setting down fees for an interlocutory application is payable by the person who made the interlocutory application.

Subsection 2.03(4) provides for only one setting down fee and one set of hearing fees 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. This provision is intended to cover the event of two or more proceedings being heard together, even though they may not have been formally consolidated, in order to ensure only one setting down fee and one set of hearing fees is payable, with liability to be apportioned equally.

Mediation fees

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

Fees for taxation of bill of costs – Federal Court

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 relevant registrar of the court.

Fees for other service

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 – When fees for producing files and copying documents are payable

This section provides that the fee for producing files and copying documents is payable in all proceedings. This includes where a party is exempt from other court fees.

The fee for copying documents can be exempt where the conditions below are met:

- either 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
- either the document is a first copy requested by that person or is required for preparing appeal papers.

Division 2.3 – Exemptions and reduced fees

Section 2.05 – Persons exempt from paying fee—general

This section provides that a person is exempt from paying a fee mentioned in Schedule 1 (except for the fees mentioned in item 115C or 214A) if, at the time the fee is payable, the person:

- has been granted legal aid for the proceeding under a legal aid scheme or service established under a law of the Commonwealth or of a State or Territory or approved by the Attorney-General;

- is the holder of any of the following cards issued by the Commonwealth: a health care card, a pensioner concession card, a Commonwealth seniors health card and any other card that certifies the holder's entitlement to Commonwealth health concessions;
- is serving a sentence of imprisonment or is otherwise detained in a public institution or is in immigration detention (within the meaning of the *Migration Act 1958*);
- is younger than 18 years old;
- is receiving youth allowance or Austudy payment under the *Social Security Act 1991* or benefits under the ABSTUDY Scheme; or
- has received funding for the proceeding under Part 11 of the *Native Title Act 1993*.

Individuals in closed detention and those permitted to live in the community while under a residence determination would be covered by the exemption in subparagraph 2.05(1)(c).

Subsection 2.05(2) clarifies that the exemption under subsection 2.05(2) covers the holder of a card but does not include a dependant of the person who is issued the card.

For the purpose of sub-paragraph 2.05(1)(a)(ii), the list of legal aid schemes and services approved by the Attorney-General can be found on the Attorney-General's Department's website.

Section 2.06 – Persons exempt from paying fee—financial hardship

This section provides that if a fee mentioned in Schedule 1 (other than the fee mentioned in items 115C, 201A or 214A) is payable by an individual in relation to a proceeding and the relevant Registrar or authorised officer of the relevant court is of the opinion that payment of the fee would cause financial hardship to the individual, the individual is exempt from paying the fee. In considering whether payment of a fee would have that effect, the relevant registrar or authorised officer is required to consider the individual's income, day-to-day living expenses, liabilities and assets.

The note under this section also specifies that a decision made under subsection (2) is reviewable by the Administrative Appeals Tribunal (AAT) under section 2.21.

Section 2.06A – Reduced fee or fee exemption for migration proceedings—financial hardship

This section provides for reduced fees or fee exemptions in relation to migration proceedings in the FCFCOA (Division 2).

Subsection 2.06A(1)(a) provides that the fee reduction or exemption in section 2.06A applies to the filing fee for filing a migration application of the kind mentioned in fee item 201A.

Subsection 2.06A(1)(b) to (d) provides that if the relevant Registrar or authorised officer of the FCFCOA (Division 2) is satisfied that payment of the full fee under item 201A would cause the individual financial hardship, the individual may instead pay the reduced fee. The individual is exempt from paying both the full fee and the reduced fee if the relevant Registrar or authorised officer is satisfied that payment of the reduced fee would also cause financial hardship.

Subsection 2.06A(2) provides that the relevant Registrar or authorised officer must consider the individual's income, day-to-day living expenses, liabilities and assets in considering whether payment of either the full fee or reduced fee would cause financial hardship.

The note under this section also specifies that a decision made under subsection (2) is reviewable by the AAT under section 2.21 of the instrument.

Division 2.4 – When fees are not payable

Section 2.07 – Fees not payable 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 already 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 mediation fee where a respondent has already paid it in order to ensure the matter proceeds.

Section 2.08 – Fees not payable in certain Federal Court proceedings

This section lists certain Federal Court proceedings which do not attract a fee. These include:

- proceedings lodged under particular Acts;
- applications to set aside a subpoena;
- proceedings for which an international convention that is in force for Australia provides that no fee is to be payable; and
- particular taxation proceedings.

The previous reference to 'an international convention *to which Australia is party*' in the 2012 instrument has been changed to 'an international convention *that is in force for Australia*'. This is the more accurate wording given Australia could be party to a convention that is not yet in force for Australia.

Section 2.09 – Fees not payable in certain Federal Circuit and Family Court of Australia (Division 2) proceedings

This section lists certain proceedings in the FCFCOA (Division 2) which do not attract a fee. These include:

- applications for extensions of time;
- applications to set aside subpoenas;
- proceedings for which an international convention that is in force for Australia provides that no fee is payable; and
- certain child support and administrative law matters.

As with the previous section, the previous reference to ‘an international convention *to which Australia is party*’ in this section has been changed to ‘an international convention *that is in force for Australia*’. This is the more accurate wording given Australia could be party to a convention that is not yet in force for Australia.

Section 2.10 – When only filing fees are payable

This section provides that only the filing fee is payable in relation to particular proceedings. These include certain proceedings brought under the *Australian Human Rights Commission Act 1986*, the *Fair Work Act 2009* and small claims proceedings.

Section 2.11 – When filing fees are not payable

This section provides that a filing fee (other than the fee to file an application to register a New Zealand judgment under the *Trans-Tasman Proceedings Act 2010*) is not payable in the Federal Court and the FCFCOA (Division 2) in relation to specified proceedings.

This section limits the power of the FCFCOA (Division 2) to transfer proceedings by ensuring a matter will only be transferred if the order is confirmed by the Federal Court. This also ensures court users who have already paid a filing fee to commence a proceeding in the FCFCOA (Division 2) are not liable to pay another filing fee upon a court-directed transfer of their proceeding to the Federal Court.

Section 2.12 – When setting down fees are not payable

This section provides that a setting down fee is not payable for particular proceedings in the Federal Court and the FCFCOA (Division 2).

This section limits the power of the FCFCOA (Division 2) to transfer proceedings by ensuring a matter will only be transferred if the order is confirmed by the Federal Court. This also ensures court users who have already paid a setting down fee to commence a proceeding in the FCFCOA (Division 2) are not liable to pay another setting down fee upon a court-directed transfer of their proceeding to the Federal Court.

Section 2.13 – When hearing fees are not payable

This section provides that a hearing fee is not payable in the Federal Court and the FCFCOA (Division 2) in relation to specified proceedings.

This section limits the power of the FCFCOA (Division 2) to transfer proceedings by ensuring a matter will only be transferred if the order is confirmed by the Federal Court. This also ensures court users who have already paid a setting down fee to commence a proceeding in the FCFCOA (Division 2) are not liable to pay another hearing fee upon a court-directed transfer of their proceeding to the Federal Court.

Division 2.5 – Payment of fees

Section 2.14 – When fees must be paid

This section specifies when fees are payable.

Filing fee

Subsection 2.14(1) provides that filing fees must be paid before the relevant document is filed.

Setting down fee

Subsection 2.14(2) provides that the fee for setting down a proceeding for 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 relevant Registrar or authorised officer of the relevant court.

Subsection 2.14(3) was inserted and minor changes to subsection 2.14(2) were made to make it clear that a setting down fee must be paid as soon as the proceeding is fixed for hearing and that it remains payable whether or not the proceeding is heard on the fixed days, on later days, or not at all.

Hearing fee

Subsection 2.14(4) provides that the fee for a hearing of a proceeding must be paid no later than close of business on the day that is 2 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(5) provides that fees for the service or execution of a process, or the seizure and sale of goods under items 124, 125, 220 and 221, must be paid within the time specified by the relevant Registrar or authorised officer of the relevant court for the payment of the fee.

Fee for other service

Subsection 2.14(6) specifies that a fee for a service mentioned in Schedule 1 and not otherwise mentioned in this section must be paid before the service is provided.

Section 2.15 – Deferral of payment of fees

This section allows a relevant Registrar or authorised officer of the relevant court to defer the time for payment of a fee mentioned in Schedule 1 (apart from the fees mentioned in items 123 to 125 and 219 to 221). In such cases, section 2.14 does not apply.

Subsection 2.15(2) allows the relevant Registrar or authorised officer to defer the time for payment of a fee if the liable person for the fee is represented by a lawyer who is not charging the person in relation to the proceeding, or where a relevant Registrar or authorised officer is of the opinion that:

- in the case of a fee for filing a document – the need to file the document is so urgent that it overrides the requirement to pay the filing fee before the document is filed; or
- 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.

Subsection 2.15(3) requires that, where the time for payment of a fee has been deferred, the fee must be paid within 28 days after the day the payment is deferred or within another period approved in writing by the relevant Registrar or authorised officer. These time periods apply instead of the time for payment of the fee under section 2.14.

In accordance with this subsection, if the deferred fee is in relation to a setting down fee for a hearing and the hearing does not occur, the setting down fee is still payable.

Subsection 2.15(4) clarifies that a fee may be deferred more than once.

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

The note at the end of this section clarifies that a decision made under this section is reviewable by the AAT under section 2.21 of the instrument. The decision to impose conditions on the deferral of the fee payment in subsection (5) is not by itself subject to merits review. Imposing conditions on the fee deferral is part of the overall decision to be made under this section and will therefore be assessed in the merits review.

Section 2.16 – Payment of fees on invoice

Payment of fee by approved user of court services

This section provides that the requirement to pay a fee at a certain time under section 2.14 does not apply to a person liable to pay a fee if at the time the fee is payable, the person is an ‘*approved user of court services*’ or is represented by a lawyer who is an ‘*approved user of court services*’ in relation to the relevant court. If the liable person has not yet paid the fee, the relevant court may invoice the liable person for the fee or the lawyer representing the liable person.

Subsection 2.16(3) provides that the liable person or the lawyer must pay the fee within 30 days after the day they receive the invoice.

Approved user of court services

Subsection 2.16(4) provides that a person is an ‘*approved user of court services*’ if the relevant Registrar of that court has approved that person for the purposes of this section.

Subsection 2.16(5) sets out factors the relevant Registrar must consider when deciding whether to approve a person for this section. These factors include the person’s financial history with the court, whether the person has agreed to be responsible for, and guarantees, the payment of fees, their frequency of dealings with the court and their financial circumstances.

Subsection 2.16(6) allows the relevant Registrar to impose conditions on the approval of the person or lawyer. The decision to impose conditions on the approval is not subject to merits review by the AAT. This is a preliminary or procedural decision that is likely to have limited impact given the applicant would still be required to pay the relevant fee, whether the original decision not to approve them as a ‘*user of court services*’ was upheld or reversed.

Section 2.17 – Payment of fees in advance

This section allows a person approved under subsection 2.16(4) as an approved user of court services, with the authorisation of a relevant Registrar, to pay an amount on account to a relevant court in relation to a proceeding. Subsection 2.17(3) allows the relevant Registrar to impose conditions on the authorisation of a person for this section.

Section 2.18 – What happens if fees are not paid

This section applies if the payment is not deferred under section 2.15 and cannot be 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 fee is paid.

Subsection 2.18(3) permits the relevant court for the proceeding, a Judge or relevant 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, or a Judge or relevant 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, or a Judge or relevant 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 they are required to pay for the fee under the instrument. 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 instrument.

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.

Hearing fees – hearings 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. The person is entitled to a refund if they notify the relevant Registrar or authorised officer of the relevant court 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 orders finalising the proceeding that was to be the subject of the hearing, and either the hearing does not occur or occurs only for the purpose of making those orders. In the case of any hearing day fixed less than 10 business days before the hearing day, the person must have notified the relevant Registrar or authorised officer in writing at least two business days before the hearing day.

A relevant Registrar or authorised officer can, under subsection 2.19(7), refund a hearing fee for a hearing that has not commenced in relation to a proceeding if the person, through no fault on their part, has not notified the relevant 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 orders finalising the proceeding that was to be the subject of the hearing). A decision of the relevant Registrar or authorised officer under subsection 2.19(7) is reviewable by the AAT.

Hearing fees – hearings commenced

Subsection 2.19(8) provides an entitlement to a refund of a hearing fee for a hearing day, or part of a hearing day, in respect of a hearing that has already commenced if the proceeding is settled or discontinued before the hearing day or the hearing day does not proceed for some other reason. For example, if a person pays hearing fees in advance for 20 hearing days, but the proceeding finishes after 12 hearing days, a person is entitled to a refund of the hearing fees paid for 8 hearing days.

Mediation fee

Subsection 2.19(9) 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, or relevant Registrar of that court, orders the refund of the fee.

Section 2.20– Annual increase in fees

This section provides for the automatic annual increase of the court fees set out in Schedule 1 of the instrument, commencing from 1 July 2023. The fees are increased annually in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician. The fees in Schedule 1 reflect the indexation for the 2022-23 financial year.

To provide an example on the operation of subsection 2.20(3), if the amount to be rounded is \$52.50, the amount is to be rounded down to \$50. If the amount to be rounded is \$18.50, the amount is to be rounded down to \$18.

Section 2.21 – Notice of decision and AAT review

This section provides that a person can apply to the AAT for review of a decision of a relevant Registrar or authorised officer about the payment of a fee under:

- sections 2.06 and 2.06A (exemptions from payment on the ground of financial hardship)
- subsection 2.08(3) (exemptions for certain taxation proceedings)
- section 2.15 (deferral of the time for payment of a fee), or
- subsection 2.19(7) (refund of a hearing fee where notification within a required time limit has not occurred).

The section requires a relevant 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 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)).

Subsection 2.21(4) provides that failure to advise of rights of appeal to the AAT does not affect the validity of the decision made by the relevant 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 instrument, then it 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 – Jurors’ remuneration

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 and allowance – base amount

This section provides that Schedule 2 of the instrument sets out the remuneration payable to a person who is a juror or potential juror.

The amounts set out in Schedule 2 include the amounts payable for attendance and non-attendance.

Section 3.03 – Remuneration and allowances – reimbursement of additional travel costs

This section provides for reimbursement of travel costs for a person who is a juror or potential juror who is required to travel more than 30 kilometres to attend court. It allows the person to apply to the Sheriff of the Federal Court for reimbursement of reasonable travel costs.

Under subsection 3.03(2), 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(3) 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 – Annual increase in remuneration and allowances

This section provides for the automatic annual increase of the fees set out in Schedule 2 of the instrument, commencing from 1 July 2023. Similar to the fee amounts in Schedule 1, the fee amounts in Schedule 2 are increased annually in accordance with upwards movement in the All Groups Consumer Price Index published by the Australian Statistician. The fees in Schedule 2 reflect the indexation for the 2022-23 financial year.

PART 4 – Jurisdiction

Section 4.02 – Leave to appeal required for some family law and child support proceedings – prescribed judgments

This section prescribes judgments of the FCFCOA (Division 2) which require leave to appeal to the FCFCOA (Division 1) for the purposes of paragraphs 28(1)(b) and 28(3)(e) of the FCFCOA Act.

This section also sets out the meaning of ‘*child welfare matter*’ to mean a matter related to the person or persons with whom a child is to live, the person or persons with whom a child is to spend time or communicate, or any other aspect of parental responsibility (within the meaning of Part VII of the Family Law Act) for a child.

This section was inserted by Item 1 of Schedule 3 of the FCFCOA Consequential Amendments Regulations. It reproduces previous section 15A of the *Family Law Regulations 1984* (Family Law Regulations) in amended form. Section 15A of the Family Law Regulations prescribed particular judgments which require leave to appeal to the then Family Court for the purposes of items 1 to 5 of the table in subsection 94AA(1) of the *Family Law Act 1975*. Section 94AA was repealed by the FCFCOA Consequential Amendments Regulation (Item 109 of Schedule 1) and was reproduced in amended form to reflect the continuation of the Family Court as the FCFCOA (Division 1), in section 28 of the FCFCOA Act.

As the authority to make section 15A moved from the Family Law Act to the FCFCOA Act, section 15A was therefore repealed and removed from the Family Law Regulations and reproduced in this instrument, which is made under the FCFCOA Act and the Federal Court Act (see item 75 of Schedule 2 of the FCFCOA Consequential Amendments Regulations).

PART 5 – Application, saving and transitional provisions

Division 5.1 – Application, saving and transitional provisions in relation to the commencement of this instrument

Section 5.01 – Definitions

This section provides that ‘*old regulations*’ means the *Federal Court and Federal Circuit and Family Court Regulations 2012* as in force immediately before the commencement day of this instrument.

Section 5.02 – Application provision

This section provides that the fees specified in the instrument apply to:

- a filing fee for filing a document filed on or after 1 April 2023;
- a setting down fee for a hearing if the hearing day is fixed on or after 1 April 2023;
- a hearing fee for a hearing day if the hearing day is fixed on or after 1 April 2023; and
- any other fee under the instrument for a document or service provided on or after 1 April 2023

Section 5.03 – Saving provision

This section clarifies that the *Federal Court and Federal Circuit and Family Court Regulations 2012* continues to apply in relation to the liability of a person to pay a fee incurred under that instrument before 1 April 2023. This means that unpaid fees, the liability for which were incurred under the 2012 instrument, remain payable even if the 2012 instrument is repealed.

This express saving provision is consistent with the operation of section 7 of the *Acts Interpretation Act 1901* which provides that a liability that is accrued or incurred under an original instrument is not affected by the subsequent repeal of that instrument. Section 7 of the Acts Interpretation Act applies to this instrument because of section 13 of the *Legislation Act 2003*.

Section 5.04 – Things done under the old regulations

This section provides that if something was done under the *Federal Court and Federal Circuit and Family Court Regulations 2012* and could be done for the same purpose under this instrument, the thing has effect for the purposes of this instrument, as if it had been done for that purpose under this instrument.

Subsection 5.03(2) provides that such a thing can include, but is not limited to, a notice or a determination being made or given.

Section 5.05 – Conduct, event or circumstances occurring before commencement

This section specifies that a function or duty may be performed, or a power exercised, under the instrument in relation to conduct, events or circumstances that arose before 1 April 2023. For example, a fee may be paid in accordance with section 2.15 if the Registrar deferred the payment of the fee before 1 April 2023, or a person may pay a reduced fee in respect of a hearing on or after 1 April 2023 if the Registrar determines before that day that the person may pay that fee.

Subsection 5.04(2) provides that this section does not limit section 5.04 of the instrument or section 7 of the *Acts Interpretation Act 1901*.

SCHEDULE 1 – Fees

Parts 1 and 2 of Schedule 1 list the fees payable for the filing of a document in relation to a proceeding in the Federal Court and in the FCFCOA (Division 2), other than a family law proceeding, and for the provision of a service by the Federal Court or the FCFCOA (Division 2). The fees listed in this Schedule are indexed every year in accordance with section 2.20 of the instrument. The fees reflect the indexed amounts for the 2022-23 financial year.

SCHEDULE 2 – Remuneration and allowances

Schedule 2 specifies the remuneration that is payable to jurors and potential jurors. The fees listed in this Schedule are also indexed every year in accordance with section 2.20 of the instrument. The fees reflect the indexed amounts for the 2022-23 financial year.

SCHEDULE 3 – Repeals

Schedule 3 provides that the whole of the *Federal Court and Federal Circuit and Family Court Regulations 2012* is repealed.