



# Federal Court of Australia Regulations 2004

**Statutory Rules 2004 No. 291 as amended**

made under the

*Federal Court of Australia Act 1976*

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## Part 1 Preliminary

### 1 Name of Regulations [see Note 1]

These Regulations are the *Federal Court of Australia Regulations 2004*.

### 2 Commencement [see Note 1]

These Regulations commence as follows:

- (a) on 1 November 2004 — all provisions other than item 4 of Schedule 1;
- (b) on the commencement of item 1 of Schedule 1 to the *Law and Justice Legislation Amendment Act 2004* — item 4 of Schedule 1.

### 3 Definitions

- (1) In these Regulations:

*Act* means the *Federal Court of Australia Act 1976*.

*authorised officer*, in relation to a power or function under these Regulations, means an officer of the Court who is authorised by the Registrar to exercise the power or carry out the function.

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

*filing fee* means a fee prescribed by any of items 1 to 12 of Schedule 1.

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

*hearing fee* means a fee prescribed by item 14 or 15 of Schedule 1.

*notice of motion* means an application seeking interlocutory relief, including an interlocutory process within the meaning given by the *Federal Court (Corporations) Rules 2000*.

*prescribed*, in relation to a fee, means prescribed by these Regulations.

**Regulation 3**

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**Registrar** means the Registrar appointed under section 18C of the Act and includes:

- (a) an acting Registrar appointed under section 18M of the Act; and
- (b) a Deputy Registrar, District Registrar or Deputy District Registrar appointed under section 18N of the Act.

**setting-down fee** means a fee prescribed by item 13 of Schedule 1.

- (2) A reference in these Regulations to a **specified fee** is a reference to the specified fee as affected by regulation 8.

*Note* Several other words used in these Regulations have the meaning given by section 4 of the Act. For example:

- Court
- Full Court
- Judge
- proceeding.

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**Part 2 Court fees****4 Imposition of fees**

Schedule 1 sets out the fees payable, subject to these Regulations, for the following:

- (a) the filing of a document;
- (b) an action of:
  - (i) the Court; or
  - (ii) an officer of the Court; or
  - (iii) another person acting on behalf of the Court.

*Note* Fees are subject to increase under regulation 8.

**5 Fees other than setting-down fees and hearing fees — liability to pay**

- (1) Unless the Court, a Judge or the Registrar orders otherwise, a fee specified for filing a document is payable by the person who files the document.
- (2) Unless the Court, a Judge or the Registrar orders otherwise:
  - (a) a fee specified for an action, other than a setting-down fee or hearing fee, is payable by the person for whom the action is taken; or
  - (b) if the action taken is the action mentioned in item 22 of Schedule 1 (mediation), the specified fee is payable by the applicant in the proceeding to which that action relates; or
  - (c) if:
    - (i) the action taken is the action mentioned in item 20 or 21 of Schedule 1 (taxation of a bill of costs); and
    - (ii) the bill of costs has been the subject of an estimate under Order 62, paragraph 46 (3) (a) of the Federal Court Rules; and
    - (iii) a party has filed, and served on each other party, a notice of objection under paragraph 46 (3) (c) of that Order; and

**Regulation 6**

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(iv) the Registrar has directed, under paragraph 46 (3) (e) of that Order, that taxation of the bill proceed;

the specified fee is payable by the party that filed the notice of objection; or

(d) if:

(i) the action taken is the action mentioned in item 20 or 21 of Schedule 1 (taxation of a bill of costs); and

(ii) the bill of costs has been provisionally taxed under Order 62, paragraph 46 (4) (a) of the Federal Court Rules; and

(iii) a party has filed, and served on each other party, a notice requiring a full taxation of the bill under paragraph 46 (4) (c) of that Order;

the specified fee is payable by the party that filed the notice requiring a full taxation.

**6 Setting-down fees — liability to pay**

(1) The person liable to pay a setting-down fee is:

(a) the applicant or appellant; or

(b) if the hearing is for a cross-claim or cross-appeal only — the cross-claimant or cross-appellant; or

(c) if the Court, a Judge or the Registrar so orders:

(i) another party to the proceeding; or

(ii) each of 2 or more of the parties to the proceeding, including the applicant or appellant, in the proportions ordered.

(2) If the fee specified in item 22 of Schedule 1 (the *mediation fee*) has been paid for mediation in relation to the proceeding, the setting-down fee is reduced by the amount of the mediation fee.

(3) If 2 or more proceedings are set down for hearing together, but the proceedings are not consolidated:

(a) 1 setting-down fee only is payable for all the proceedings; and

(b) the amount of the setting-down fee is apportioned equally between the applicants or appellants.

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**Regulation 9**

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- (4) In paragraph (1) (a):  
*appellant* does not include a cross-appellant.  
*applicant* does not include a cross-claimant.

**7 Hearing fees — liability to pay**

- (1) The person liable to pay a hearing fee is:
- (a) the applicant or appellant; or
  - (b) if the hearing is for a cross-claim or cross-appeal only — the cross-claimant or cross-appellant; or
  - (c) if the Court, a Judge or the Registrar so orders:
    - (i) another party to the proceeding; or
    - (ii) each of 2 or more of the parties to the proceeding, including the applicant or appellant, in the proportions ordered.
- (2) If 2 or more proceedings are set down for hearing together, but the proceedings are not consolidated:
- (a) 1 hearing fee only is payable for all the proceedings; and
  - (b) the amount of the hearing fee is apportioned equally between the applicants or appellants.
- (3) In paragraph (1) (a):  
*appellant* does not include a cross-appellant.  
*applicant* does not include a cross-claimant.

**8 Biennial adjustment of amount of fee**

On each biennial anniversary of 1 July 2004, the amount of each fee specified in Schedule 1 (except the fees specified in items 2, 3 and 17 of that Schedule) increases in accordance with Schedule 2.

**9 When must fees be paid?**

- (1) Subject to regulations 10 and 12, the prescribed fee for the filing of a document in a Registry of the Court, or the provision of a service mentioned in item 19, 20, 21, 22 or 23 of

**Regulation 10**

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Schedule 1, is payable before the document is filed or the service provided.

- (2) Subject to regulations 10 and 12, the setting-down fee applying under these Regulations in relation to a proceeding is payable:
  - (a) if the hearing date is earlier than 30 days after the day on which the proceeding is set down for hearing — within the period specified by the Registrar; or
  - (b) in any other case — within 30 days after a date is fixed for the hearing of the proceeding.
- (3) Subject to regulations 10 and 12, a hearing fee applying under these Regulations in relation to a proceeding is payable:
  - (a) if the hearing to which the fee relates is set down for a day that is earlier than 2 working days after the document initiating the proceeding is filed — at the time when that document is filed; or
  - (b) if the hearing day is 2 or more working days after the document initiating the proceeding is filed — not later than 2 working days before the hearing day; or
  - (c) if the hearing day is the next working day after an earlier scheduled hearing day for the proceeding — not later than 9.30 am on the later hearing day.
- (4) 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 is to take place.

**10 Deferral of fees**

- (1) Subject to subregulation (2), all or part of the following prescribed fees may be deferred by the Registrar, subject to conditions (if any) determined by the Registrar:
  - (a) a filing fee, setting-down fee or hearing fee;
  - (b) the fee for the provision of a service mentioned in item 19, 20, 21, 22 or 23 of Schedule 1.

**Regulation 11**

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- (2) Deferral is available if:
- (a) in the opinion of the Registrar:
    - (i) in the case of a filing fee, the need to file the document is so urgent as to override the requirement to pay the filing fee at the time of filing; or
    - (ii) it would, having regard to the financial circumstances of the person liable to pay the fee, be oppressive or otherwise unreasonable to require payment in accordance with regulation 9; or
  - (b) in the case of a setting-down fee, the date of the hearing is more than 6 months after the day on which the proceeding is set down for hearing; or
  - (c) the person liable to pay the fee is represented by a practitioner who is acting *pro bono*.
- (3) If payment of a fee has been deferred under this regulation, the fee must be paid within 30 days after the date of deferral or such other period as is specified by the Registrar in writing.

**11 Exemption from liability to pay fee**

- (1) Subject to subregulation (2), a fee is not payable if it is a fee to which clause 1 of Schedule 3 applies.
- (2) Subregulation (1) does not apply to the fee applicable under item 16 of Schedule 1 for making copies of a document, other than:
  - (a) a first copy of the document; or
  - (b) a copy required for the preparation of appeal papers.
- (3) A filing fee is not payable:
  - (a) for a proceeding or matter mentioned in clause 2 of Schedule 3; or
  - (b) in respect of a proceeding commenced on or before 31 March 1992 for an action to which item 9 or 10 of Schedule 1 applies.
- (4) A setting-down fee is not payable for a proceeding or matter mentioned in clause 3 of Schedule 3.

**Regulation 12**

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- (5) A hearing fee is not payable for a proceeding or matter mentioned in clause 4 of Schedule 3.

**12 Payment on invoice**

- (1) Subject to subregulation (4), regulation 9 does not apply to a person liable to pay a fee who, at the time when the fee mentioned in subregulation 9 (1), (2) or (3) would otherwise be payable:
- (a) is an approved user of court services; or
  - (b) is represented by a legal practitioner who is an approved user of court services.
- (2) If a person liable to pay a fee has not paid that fee, the Court may, from time to time, invoice, for that fee:
- (a) if paragraph (1) (a) applies — the person; or
  - (b) if paragraph (1) (b) applies — either:
    - (i) the person; or
    - (ii) the legal practitioner mentioned in that paragraph.
- (3) An approved user who is invoiced for unpaid fees must pay the fees within 30 days after receiving the invoice.
- (4) Subregulation (1) ceases to apply to a person mentioned in paragraph (1) (a) or (b) at the end of the period mentioned in subregulation (3) if the invoiced fees are not paid.
- (5) For this regulation, *approved* means approved by the Registrar.
- (6) In deciding whether to approve a user for the purpose of this regulation, the Registrar may have regard to the following matters:
- (a) the user's financial history with the Court, including frequency of dealings and whether fees have been paid or not;
  - (b) whether the user provides a guarantee;
  - (c) whether the user is, or is likely to be, a regular user of court services;
  - (d) the financial circumstances of the user;
  - (e) any other matter the Registrar considers relevant.

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- (7) An approval may be made subject to conditions specified in the approval.

**13 Payment in advance**

- (1) With the written authorisation of the Registrar, a user of court services may pay an amount to the Court on account of fees for which liability is expected to arise.
- (2) An authorisation may be made subject to conditions specified in the authorisation.
- (3) If an amount is paid to the Court under subregulation (1), any fees payable by the user must be charged against that amount until the amount is exhausted.

**14 What happens if fees are unpaid**

- (1) Subject to regulations 10 and 12 and subregulation (2), if a fee mentioned in subregulation 9 (1) in relation to the filing of a document, or the provision of a service, is unpaid, the document must not be filed or the service provided.
- (2) The Court, a Judge or the Registrar, may allow the filing of a document or the provision of a service even if the relevant fee is unpaid.
- (3) Subject to regulations 10 and 12, if a setting-down fee or hearing fee for a matter is unpaid, the following actions become available:
- (a) the Court, a Judge or the Registrar may order that no proceeding, or no proceeding other than a specified proceeding, is to take place, except by leave, in the matter to which the application or appeal relates;
  - (b) a person other than the person who is liable to pay the fee may pay the fee without affecting any power of the Court, a Judge or the Registrar to make an order for costs for the fee;
  - (c) the Court, a Judge or the Registrar may vacate the date fixed for hearing.

**Regulation 15**

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- (4) If any fee remains unpaid after the time mentioned in regulation 9 or the end of the period mentioned in subregulation 10 (3) or 12 (3) or, if subregulation (2) applies, after the filing of the document or the provision of the service, the unpaid fee is recoverable by the Commonwealth as a debt due to the Commonwealth.
- (5) In this regulation:  
*unpaid*, in relation to a fee, includes incompletely paid.

**15 Refund of a fee**

- (1) A person who has paid a setting-down fee or a hearing fee is entitled to a refund of the fee if:
- (a) the Registrar is given a complying notice in relation to a hearing, and the hearing does not occur; or
  - (b) the Registrar is given a complying notice in relation to a hearing, and the hearing occurs solely for the purpose of making formal orders; or
  - (c) the fee is not payable, because of the operation of regulation 11.
- (2) The Registrar may refund a setting-down fee or a hearing fee if, although the Registrar is not given a complying notice:
- (a) the hearing:
    - (i) does not proceed; or
    - (ii) proceeds solely for the purpose of making formal orders; and
  - (b) the Registrar is satisfied that the failure to provide a complying notice did not arise out of any fault on the part of the person who paid the setting-down fee or the hearing fee.
- (3) For this regulation, a *complying notice* is a notice to the effect that the hearing of the application or appeal will not proceed, that is given to the Registrar:
- (a) if the hearing day was fixed later than 10 working days in advance — no later than 2 working days before the hearing day; or

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- (b) in any other case — no later than 10 working days before the hearing day.
- (4) 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 place.

**Regulation 16**

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**Part 3                      Miscellaneous****16                      AAT review of a decision**

- (1) Subject to the *Administrative Appeals Tribunal Act 1975*, a person whose interests are affected by a decision of the Registrar may apply to the Administrative Appeals Tribunal for review of the decision if it is a decision under:
  - (a) regulation 10 or subregulation 15 (2); or
  - (b) paragraph 1 (1) (d), or subclause 1 (4), of Schedule 3.
- (2) Within 28 days of such a decision, the Registrar must give the person who is liable for payment of the fee concerned written notice of:
  - (a) the decision; and
  - (b) the person's right to apply to the Administrative Appeals Tribunal for review of the decision.

*Note* The *Code of Practice for Notification of Reviewable Decisions and Rights of Review* determined under subsection 27B (1) of the *Administrative Appeals Tribunal Act 1975* sets out certain matters to which regard must be had in relation to notification.

- (3) The notice must set out the reasons for the decision, if:
  - (a) the decision is that the Registrar is not satisfied that, in relation to an appeal, the circumstances set out in subclause 1 (4) of Schedule 3 exist; or
  - (b) the decision is that the fee concerned is not to be waived.
- (4) Failure to comply with paragraph (2) (b) does not affect the validity of the decision.

**17                      Prescribed contract limit (Act s 18A (4))**

For paragraph 18A (4) (b) of the Act, the higher amount of \$1 000 000 is prescribed.

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**Regulation 19****18**      ***Federal Court of Australia Regulations 1978* — repeal**

The following Statutory Rules are repealed:

- 1978 No. 36
- 1979 No. 43
- 1982 No. 245
- 1983 No. 339
- 1985 No. 178
- 1987 Nos. 22, 171 and 198
- 1989 Nos. 154 and 328
- 1991 No. 448
- 1992 No. 405
- 1995 No. 417
- 1996 Nos. 189, 254, 266 and 321
- 1997 Nos. 107 and 249
- 1998 No. 55
- 2000 Nos. 15, 37, 45 and 244
- 2001 No. 172.

**19**      **Transitional**

Despite the repeal of the *Federal Court of Australia Regulations 1978* by regulation 18, those Regulations continue to apply in relation to any fee incurred before the commencement of these Regulations.

## Schedule 1 Fees

(regulation 4)

Item	Document or service	Fee
1	Filing of a document by which a proceeding in the Court is commenced, except: <ul style="list-style-type: none"> <li>(a) a proceeding or application mentioned in item 2, 3 or 11; or</li> <li>(b) an appeal from a judgment of the Court or of another court; or</li> <li>(c) an application for leave or special leave to appeal; or</li> <li>(d) an incidental proceeding in the course of, or in connection with, a proceeding</li> </ul>	<ul style="list-style-type: none"> <li>(a) for a corporation \$1 762</li> <li>(b) in any other case \$735</li> </ul>
2	Filing of an application under section 46PO or 46PP of the <i>Human Rights and Equal Opportunity Commission Act 1986</i>	\$50
3	Filing of an application under section 663 of the <i>Workplace Relations Act 1996</i>	The fee payable under subsection 644 (2) or (3) of the <i>Workplace Relations Act 1996</i>
4	Filing of an election petition under Schedule 4 to the <i>Aboriginal and Torres Strait Islander Commission Act 1989</i>	\$30
5	Filing of an affidavit or other document originating an application for leave or special leave to appeal	<ul style="list-style-type: none"> <li>(a) for a corporation \$1 171</li> <li>(b) in any other case \$585</li> </ul>

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<b>Item</b>	<b>Document or service</b>	<b>Fee</b>	
6	Filing of a notice of appeal instituting an appeal from a judgment of the Court or another court where no fee has been paid under item 5	(a) for a corporation	\$2 936
		(b) in any other case	\$1 469
7	Filing of a notice of appeal instituting an appeal from a decision of the Administrative Appeals Tribunal	(a) for a corporation	\$2 936
		(b) in any other case	\$1 469
8	Filing of a notice of appeal in a proceeding in relation to which a fee has been paid under item 5	(a) for a corporation	\$1 765
		(b) in any other case	\$882
9	Filing of an application to review a decision of the Registrar, under subsection 35A (5) of the Act	(a) for a corporation	\$718
		(b) in any other case	\$359
10	Filing of a notice of motion	(a) for a corporation	\$540
		(b) in any other case	\$270
11	Filing of an application for an order for substituted service of a bankruptcy notice	(a) for a corporation	\$361
		(b) in any other case	\$181
12	Filing of a cross-claim	(a) for a corporation	\$1 762
		(b) in any other case	\$735
13	Setting down for hearing a proceeding (including an application, appeal, cross-claim or cross-appeal) or an issue in question in a proceeding	(a) for a corporation	\$2 936
		(b) in any other case	\$1 469
14	For the hearing of an application (including a cross-claim) under subsection 35A (5) of the Act (review of exercise of power of the Registrar) — for each half day, or part of a half day	(a) for a corporation	\$586
		(b) in any other case	\$293

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Item	Document or service	Fee
15	For the hearing of an application (including a cross-claim) other than an application mentioned in item 14, an issue or question in such an application or an appeal (including a cross-appeal) — for each day, or part of a day, other than the first day of hearing	(a) for a corporation \$1 174 (b) in any other case \$585
16	On request, making of a copy or copies of a document or documents filed in, lodged with, or produced to, the Court (regardless of the number of documents to which the request relates)	(a) for the request \$3 (b) for each page included in a copy made in accordance with the request \$1
17	For each service or execution, or attempted service or execution, of process of the Court by an officer of the Court	An amount equal to the amount of any expenses reasonably incurred by that officer in the service or execution, or attempted service or execution, of the process, together with a charge calculated at the hourly rate of salary payable to the officer for the time involved in the service or execution, or attempted service or execution
18	For the seizure and sale of goods by an officer of the Court in the execution of process of the Court (except in relation to a proceeding under the <i>Admiralty Act 1988</i> )	\$639
19	For issuing a subpoena to produce or give evidence	\$60
20	For taxation of a bill of costs in which the amount claimed in the bill is \$10 000 or less	\$698
21	For taxation of a bill of costs in which the amount claimed in the bill is more than \$10 000	\$1 674

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<b>Item</b>	<b>Document or service</b>	<b>Fee</b>	
22	For mediation by a court officer — for the first attendance at the mediation	(a) for a corporation	\$735
		(b) in any other case	\$367
23	On request, production of files of the Court relating to a proceeding or purported proceeding (unless request is by, or on behalf of, a party to the proceeding or purported proceeding) for search and inspection	\$29	

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*Note* The fees specified in this Schedule (except the fees mentioned in items 2, 3 and 17) are subject to biennial increase under regulation 8.

## Schedule 2 Fees — formula for biennial increase

(regulation 8)

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 (except in item 2, 3 or 17).

**March quarter** means a period of 3 months ending at the end of March.

**relevant period** means any of the following periods:

- (a) the 2 year period starting on 1 July 2004;
- (b) each 2 year period starting 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, the amount of a fee increases, 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 start of the relevant period.

**fee** is the fee in force at the end of 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 taken 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, before or after the commencement of this Schedule, the Australian Statistician publishes for a particular March quarter a CPI number in substitution for a CPI number previously published for that quarter by the Statistician, the publication of the later number is disregarded for the purposes of this Schedule.
  - 5 If, at any time, before or after the commencement of this Schedule, the Australian Statistician changes the reference base for the Consumer Price Index, then, in applying this Schedule after the change is made, regard may be had only to CPI numbers published in terms of the new reference base.

## Schedule 3 Exemption from fees

(regulation 11)

### 1 Exemptions applying generally

- (1) A fee is not payable in relation to a proceeding if:
- (a) the person otherwise liable to pay the fee 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 otherwise liable to pay the fee 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 that Part; or
    - (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 otherwise liable to pay the fee is:
    - (i) the holder of any of the following cards issued by the Department of Family and Community Services:
      - (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 Family and Community Services, 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

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- (v) receiving youth allowance or Austudy payment, within the meaning given by the *Social Security Act 1991*; or
  - (vi) receiving benefit under ABSTUDY, within the meaning given by the *Social Security Act 1991*; or
  - (d) the person otherwise liable to pay the fee being an individual, the Registrar or an authorised officer, having regard to the income, day to day living expenses, liabilities and assets of the individual, waives payment because, in the opinion of the Registrar or authorised officer, payment would cause financial hardship to the individual; or
  - (e) the person otherwise liable to pay the fee being a corporation, the Registrar or an authorised officer, having regard to the income, liabilities and assets of the corporation, waives payment because, in the opinion of the Registrar or authorised officer, payment would cause financial hardship to the corporation.
- (2) A fee is not payable in relation to any of the following:
- (a) an application under section 46PO or 46PP of the *Human Rights and Equal Opportunity Commission Act 1986* (except the filing fee mentioned in item 2 of Schedule 1);
  - (b) an application under section 663 of the *Workplace Relations Act 1996* (except the filing fee mentioned in item 3 of Schedule 1);
  - (c) an appeal, of a kind that the Court has jurisdiction to hear and determine under subsection 24 (1) of the Act, from the judgment in an application mentioned in paragraph (a) or (b);
  - (d) a proceeding commenced under Division 3 of Part VIA of the *Workplace Relations Act 1996*, as in force before 31 December 1996, that is transferred to the Court from the Industrial Relations Court;
  - (e) an application to set aside a subpoena, if the applicant is not a party to the proceeding in which the subpoena is issued.

- (3) In the circumstances set out in subclause (4), a fee is not payable in relation to any of the following:
- (a) an appeal under section 14ZZ of the *Taxation Administration Act 1953*;
  - (b) an appeal from a decision of the Administrative Appeals Tribunal in its Taxation Appeals Division;
  - (c) an appeal from a single judge to the Full Court in relation to an appeal under section 14ZZ of the *Taxation Administration Act 1953*.
- (4) The circumstances are that the Registrar who receives the appeal is satisfied that:
- (a) the person lodging the appeal has lodged with the Court another appeal for which the prescribed fee has been paid; and
  - (b) the same paragraph of subclause (3) describes both appeals; and
  - (c) the appeal concerns an issue (other than a procedural issue) that is substantially the same as an issue of concern in the other appeal.
- (5) In paragraph (1) (c), *holder* of a card does not include a dependant of the holder of the card.

## 2 Exemptions applying to filing fees

A filing fee is not payable for a document relating to any of the following:

- (a) a proceeding in relation to a criminal matter;
- (b) a matter remitted to the Court by the High Court under section 44 of the *Judiciary Act 1903*;
- (c) a matter referred to the Court by the High Court under subsection 354 (1) of the *Commonwealth Electoral Act 1918*;
- (d) a case stated, or a question reserved, for the consideration or opinion of the Court;
- (e) a reference to the Court of a question of law by a tribunal or body that, under a law of the Commonwealth, may refer questions of law to the Court;

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- (f) a proceeding in respect of which an international convention to which Australia is party provides that no fee is to be payable;
  - (g) a referral to the Court, by the Commissioner of Taxation, of an objection decision, within the meaning given by Part IVC of the *Taxation Administration Act 1953*;
  - (h) an application to the Court for an extension of time within which a particular proceeding may be commenced.

### **3 Exemptions applying to setting-down fees**

A setting-down fee is not payable in relation to a proceeding or matter if:

- (a) the proceeding is of an interlocutory nature only; or
- (b) a setting-down fee has been paid, under these Regulations, or under another law of the Commonwealth, for the application or appeal, and has not been refunded; or
- (c) the matter is an application for admission to practice as a barrister, solicitor or barrister and solicitor; or
- (d) the proceeding is of a kind mentioned in paragraph 2 (a), (d), (e), (f), (g) or (h) of this Schedule; or
- (e) the matter is of a kind mentioned in paragraph 2 (b) of this Schedule, and either:
  - (i) it was initiated in the High Court before the commencement of these Regulations; or
  - (ii) it was remitted by the High Court in its appellate jurisdiction for re-hearing by the Federal Court; or
- (f) the proceeding is an exercise by the Court of original jurisdiction vested in it by the *Bankruptcy Act 1966*.

### **4 Exemptions applying to hearing fees**

A hearing fee is not payable in relation to a proceeding or matter if:

- (a) the hearing is cancelled before the fee is paid; or
- (b) the sole purpose of the hearing is the delivery of a reserved judgment; or

- (c) a hearing fee has been paid, under these Regulations or another law of the Commonwealth, for the application or appeal, and has not been refunded; or
- (d) the matter is an application for admission to practice as a barrister, solicitor or barrister and solicitor; or
- (e) the proceeding is of a kind mentioned in paragraph 2 (a), (d), (e), (f), (g) or (h) of this Schedule; or
- (f) the matter is of a kind mentioned in paragraph 2 (b) of this Schedule, and either:
  - (i) it was initiated in the High Court before the commencement of these Regulations; or
  - (ii) it was remitted by the High Court in its appellate jurisdiction for re-hearing by the Federal Court; or
- (g) the proceeding is an exercise by the Court of original jurisdiction vested in it by the *Bankruptcy Act 1966*; or
- (h) the proceeding or matter commenced on or before 31 March 1992.

## Notes to the *Federal Court of Australia Regulations 2004*

### Note 1

The *Federal Court of Australia Regulations 2004* (in force under the *Federal Court of Australia Act 1976*) as shown in this compilation comprise Statutory Rules 2004 No. 291 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

### Table of Instruments

Year and Number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2004 No. 291	7 Sept 2004 (see <i>Gazette</i> 2004, No. S372)	Schedule 1 (item 4): 26 Nov 2004 (see r. 2) Remainder: 1 Nov 2004	
2006 No. 64	3 Apr 2006 (see F2006L00766)	1 May 2006	—
2006 No. 234	7 Sept 2006 (see F2006L02968)	1 Oct 2006	—
2006 No. 309	1 Dec 2006 (see F2006L03829)	2 Dec 2006	—

**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 2</b>	
R. 12 .....	am. 2006 No. 64
R. 15 .....	am. 2006 No. 64
<b>Schedule 1</b>	
Schedule 1 .....	rs. 2006 No. 234
<b>Schedule 3</b>	
Schedule 3 .....	am. 2006 No. 309

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