

1993

**LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**SUPREME COURT (AMENDMENT) BILL (No. 3) 1993**

**EXPLANATORY MEMORANDUM**

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## **SUPREME COURT (AMENDMENT) BILL (No. 3) 1993**

### **OUTLINE**

The *Supreme Court Act 1933* (the Principal Act) constitutes the Supreme Court of the Australian Capital Territory and its Judges, Master and officers. It sets out the Court's jurisdiction and specifies many procedural matters.

Section 37 of the Principal Act provides that the Executive may make regulations prescribing the fees or other payments to be paid to officers of the Court in respect of certain matters and making provision for the payment or remission of such fees or other payments. The Supreme Court (Amendment) Bill (No 3) 1993 will amend the Principal Act to introduce a new fees and charges regime providing for a wide power to set fees and charges by determination rather than regulation and for a review mechanism of decisions that are made in relation to fees and charges and which introduces other new provisions in respect of fees and charges.

### **FINANCIAL CONSIDERATIONS**

The amendments themselves have some financial impact in that they provide for exemptions from payment and remission or refund of fees and for some measures for the protection of the revenue. The determinations of fees and charges that may be made under the determining power will have financial implications for parties before the Court or for those who may wish to use Court facilities or service.

### **DETAILS OF INDIVIDUAL CLAUSES**

Clauses 1, 2 and 3 are formal provisions relating to the short title of the Bill and its commencement and defining the term "Principal Act" to mean the *Supreme Court Act 1933*.

Clause 4 will amend the Principal Act to introduce a new fees and charges regime which provides for fees and charges to be set by Ministerial determination rather than prescribed by regulation, provides a wide power to determine fees and charges and introduces new provisions in respect of fees and charges. The clause will repeal the present section 37 and insert a new section 37 and sections 37A, 37B, 37C and 37D.

#### **Section 37**

This section deals with the determination of fees and charges.

Subsection 37(1) provides the power for the Attorney-General to determine fees and charges by notice in writing published in the *Gazette*. This provision, in effect, replaces section 37 of the Principal Act with a provision enabling the determination of fees and charges in respect of any matter associated with or incidental to proceedings in and the operation of the Court.

Subsection 37(2) allows a high degree of flexibility by providing that a determination may provide for exemptions from payment, in whole or in part, of any filing fees or fees for the service or execution of process and for the remission, refund or deferral of liability for the payment of fees or charges, in whole or in part, by the Registrar of the Court.

Determinations will, under subsection 37(3), be disallowable instruments for the purposes of section 10 of the *Subordinate Laws Act 1989*.

#### **Section 37A**

This section deals with the payment of fees and charges.

Subsection 37A(1) imposes the obligation, subject to section 37A, to pay a fee or charge, and to pay that fee or charge in advance, in accordance with the determination. Subregulation 2(2) of the Supreme Court (Fees) Regulations presently provides that a document shall not be filed in the Registry of the Court unless any filing fee has been paid.

Subsection 37A(2) requires payment to be made on notification from the Registrar if a fee or charge cannot be calculated until a function is performed or a facility or service provided.

Subsection 37A(3) makes it clear that the Registrar or the Court is not obliged to perform a function or provide a facility or service if a fee or charge payable in advance is not paid when due.

#### **Section 37B**

This section deals with the circumstances when fees and charges are not required to be paid.

Subsection 37B(1) provides that a fee or charge may be remitted, refunded or liability for its payment deferred in accordance with the determination.

Subsection 37B(2) deals with the circumstances, additional to those which might be set out in a determination, in which determined fees and charges are not payable. No determined fee or charge will be payable by a person-

(a) if the person otherwise liable to pay the fee or charge is -

- (i) exempt from paying the fee or charge under subsection 93(1) of the *Legal Aid Act 1977*; or
- (ii) legally assisted under a scheme or service provided or approved by the Attorney-General; or

(b) if the Registrar waives payment of the fee or charge in whole or in part because he or she considers that it would impose hardship on the person liable to pay the fee or charge - to the extent of the waiver.

(c) No filing fees or fees in respect of the service or execution of process will be payable in relation to proceedings:

- (i) in a criminal matter, including an appeal;
- (ii) under the *Coroners Act 1956*;
- (iii) under Part V (Discipline) of the *Legal Practitioners Act 1970*;
- (iv) under Part X (Restraining Orders) of the *Magistrates Court Act 1930*;
- (v) under any of the following Acts;
  - (A) the *Adoption Act 1993*;
  - (B) the *Children's Services Act 1986*;
  - (C) the *Criminal Injuries Compensation Act 1983*;
  - (D) the *Domestic Violence Act 1986*;
  - (E) the *Guardianship and Management of Property Act 1991*;
  - (F) the *Maintenance Act 1968*;
  - (G) the *Mental Health Act 1983*;
  - (H) the *Testamentary Guardianship Act 1984*;
- (vi) on appeals in respect of the following matters:
  - (A) a matter under the *Children's Services Act 1986*;
  - (B) a matter under the *Mental Health Act 1983*;
  - (C) a decision of the Guardianship and Management of Property Tribunal;
- (vii) on a matter that has been remitted to the Court by the High Court under section 44 of the *Commonwealth Judiciary Act 1903*;
- (viii) in respect of which a Convention to which Australia is a party provides that a fee is not to be payable; or

(ix) on an application to the Court for an extension of the time within which a proceeding may be commenced.

The exemption contained in subparagraph 37B(2)(a)(i) reflects an exemption currently contained in regulation 5(a)(i) of the Supreme Court (Fees) Regulations. Subsection 93(1) of the *Legal Aid Act 1977* provides, in effect, that no fees are payable in respect of a proceeding on behalf of a legally assisted person in a court or tribunal. Regulation 5(a)(ii) currently provides an exemption similar to, but slightly narrower than, that contained in subparagraph 37B(2)(a)(ii). The exemption referred to in paragraph 37B(2)(b) reflects that currently contained in regulation 5(b) but introduces the concept that fees or charges may be waived in part. The requirement in regulation 5 that the Registrar issue a certificate in relation to the above matters has not been continued. The exemptions contained in paragraph 37B(2)(c) are the same as those set out in regulation 2(2) of the Supreme Court (Fees) Regulations with two exceptions. Firstly, these exemptions are now to be in respect of filing fees and service and execution of process fees rather than just filing fees and, secondly, the discontinuance of the certification requirement contained in regulation 5 means that it is unnecessary to retain the exemption contained in regulation 2(2)(i) in respect of an application to the Court or a Judge for a direction to the Registrar to issue a certificate in accordance with regulation 5.

#### **Section 37C**

This section deals with recovery of filing fees and fees for the service and execution of process where they are not otherwise payable in certain circumstances. This is a new provision reflecting the policy underlying subsection 292(4A) of the *Magistrates Court (Civil Jurisdiction) Act 1982*. That provision is proposed to be replaced by section 248D by the *Magistrates Court (Amendment) Bill (No 3) 1993*.

Section 37C provides that, in the circumstances where, in civil proceedings, a filing fee or a fee for the service or execution of process is not payable because of the application of an exemption provided for in a determination or in circumstances where a party has received legal assistance or because the fee has been remitted, refunded or waived in whole or in part, and judgment is given or entered in favour of that party and that party's costs are payable by the other party, that other party is liable to pay to the Registrar an amount equal to the fees that would otherwise have been payable by the successful party.

#### **Section 37D**

Section 37D provides a person who claims to be entitled to a remission, refund, deferral of liability for payment or waiver of payment of fees and charges with a right to apply to the Master or a Judge for a review of the decision of the Registrar. No fee or charge is payable in relation to an application for review.

**Clause 5** will ensure that the Supreme Court (Fees) Regulations remain in force until the first determination under subsection 37(1), as amended, commences.