

Court Procedures (Fees) Determination 2016

Disallowable instrument DI2016–035

made under the

Court Procedures Act 2004, s 13 (Determination of fees)

EXPLANATORY STATEMENT

The Minister has power to determine fees for the purposes of this Act.

This instrument revokes DI2015–137, the *Court Procedures (Fees) Determination 2015* (Fees Determination 2015). This instrument only differs from the Fees Determination 2015 in the following ways:

1. exempts the Commissioner for Social Housing (the housing commissioner) from liability to pay fees at the corporation rate, instead requiring payment at the natural person rate;
2. exempts a person named on certain Commonwealth-issued concession cards from liability to pay all fees;
3. reduces the per-page cost of photocopies from 31 cents to 30 cents;
4. replaces the fee for filing a certificate of readiness in civil matters with a fee for lodging a listing hearing questionnaire;
5. creates an incentive for parties to use alternate dispute resolution (ADR) processes of matters in the Magistrates and Supreme Courts by amending the court hearing fees refund system; and
6. making minor amendments.

The housing commissioner

Exempting the housing commissioner from paying fees at the corporation rate aligns with the policy position to exclude not-for-profits, because the housing commissioner is not in a position to contribute to the administrative costs of the courts. The housing commissioner operates under the *Housing Assistance Act 2007*, which contains a list of charitable objects equivalent to the objects found in the constitutions of not-for-profits operating as charities. In order to fulfil its objects, the housing commissioner operates on a not-for-profit basis for people in need of community housing.

This exemption requires the housing commissioner to pay fees at the natural person rate. This exemption applies to proceedings commenced on or after the commencement day of this instrument.

Exemption for holders of Commonwealth-issued concession cards

This exemption applies for a person named on a current Commonwealth-issued:

- (1) Health Care Card;
- (2) Low Income Health Care Card; or
- (3) Pensioner Concession Card.

This exemption is aimed at simplifying the fee waiver process for the most financially disadvantaged users of the ACT Courts and Tribunal.

This exemption applies to proceedings commenced on or after the commencement day of this instrument.

Holders of other concession cards (including a Seniors Health Care Card, a Foster Child Health Care Card or an Ex-Carer Allowance Health Care Card), or people who do not hold a concession card, may still apply for a fee waiver pursuant to section 15(2)(b) of the *Court Procedures Act 2004*.

Photocopies

Items 1014 and 1306 set a per-page fee for photocopies generated by ACT Courts and Tribunal photocopiers. When fees were increased on 1 July 2015 by the Wage Price Index, this fee was increased from 30 cents per page to 31 cents per page. This is inconsistent with current practice in the ACT Magistrates and Supreme Courts, where photocopy cards charge 30 cents per page.

This instrument sets the photocopy charge at 30 cents per page.

Certificate of readiness

Items 1103, 1104, 1201 and 1202 of the Fees Determination 2015 require fees to be paid at the time of filing a certificate of readiness. However, pursuant to *Practice Direction 2 of 2014* a certificate of readiness is no longer required in civil matters commencing by originating claim in the Supreme and Magistrates Courts.

This instrument requires the fee to be paid on the filing of a Listing Hearing Questionnaire, or when filing an application to have a matter listed for hearing without filing a listing hearing questionnaire, or where a Listing Hearing Questionnaire is not required, at a specified time before a hearing or after a hearing date is listed.

Refund of hearing fees

Items 1104 and 1202 require the Supreme and Magistrates Courts to refund:

1. 90 per cent of the hearing fee if a matter settles via ADR and the client notifies the Court within 14 days of settlement but no later than seven days prior to the first date allocated for the hearing;
2. 75 per cent of the hearing fee if a matter settles without a formal ADR mechanism and the client notifies the Court at least 42 days before the first date allocated for the hearing; and
3. 50 per cent of the hearing fee if a matter settles without a formal ADR mechanism and the client notifies the Court at least 35 days before the first date allocated for the hearing.

The higher refund for matters settling via a formal ADR mechanism is intended to provide an incentive to settle matter through ADR and to offset part of the cost associated with court mandated ADR.

Minor amendments

This instrument also amends the Fees Determination 2015 as follows:

1. item 1101.1 refers to 'Nil' rather than 'No Fee'. This amendment was made to ensure consistency of language;
2. item 1101.2 was added to specify the practice of the Magistrates Court not to charge for applications made under the *Domestic Violence and Protection Orders Act 2008*;
3. the explanatory note was moved from its position under item 1101.1 to a new position under item 1101, as that note applies to item 1101;
4. item 1107 no longer refers to the *Magistrates Court Act 1930*, as that item relates generally to cross-claims and counter-claims lodged in the Magistrates Court; and
5. item 1107.1 was amended to clarify that it does not apply to matters where no fee is payable for commencing a proceeding.