

General Explanatory Notes

Note that the fee schedule has been substantially reorganised from previous years to accommodate lower courts and tribunals within the one instrument. The opportunity has been taken to group like items and remove a number of duplicative items.

The power to determine fees

The power to make fees for the lower courts and tribunals (and matters incidental to this) was substantially amended by the Justice and Community Safety Legislation Amendment Act 2000. This Act, which commenced on 1 July 2000, replaced fee-making powers in a number of Acts that formerly dealt with the magistrates court, the coroners court and ACT tribunals.

Part 13A of the Magistrates Court Act 1930 now provides uniform provisions for the determination of fees (s248A). It also deals with the payment of fees (s248B), the remission, refund, deferral, waiver and exemption of fees (s248C), the recovery of fees in non-criminal proceedings (s248D), the recovery of fees in criminal proceedings (s248E) and the review of decisions (s248F).

Subsection 248A(1) of the Magistrates Court Act 1930 provides that the Minister may, in writing, determine fees for the:

- (a) the coroner's court;
- (b) the magistrates court.
- (c) the administrative appeals tribunal;
- (d) the credit tribunal;
- (e) the discrimination tribunal;
- (f) the residential tenancies tribunal;
- (g) the tenancy tribunal.

for any of the following purposes:

- (h) proceedings in the court or tribunal, and matters incidental to such proceedings, including -
 - (i) the service and execution of the process of the court or tribunal; and
 - (ii) the taxation of costs by officers of the court or tribunal;
- (j) facilities and services provided by the court or tribunal, including the service and execution of the process of any court of the Commonwealth, a State or another Territory, or of any court of a foreign country;
- (k) general purposes.

Fees and charges - exemption, remission, refund or deferral

Subsection 248A(2) of the Magistrates Court Act 1930 provides that a determination may provide for matters such as the exemption from liability to pay certain fees, in whole or in part, and for the remission or refund and the deferral of liability for the payment of fees and charges, in whole or in part, by the Registrar in particular circumstances. Note that subsection 248C(2) provides for a number of exemptions (this is extracted for ease of access):

248C Remission, refund, deferral, waiver and exemption of fees

- (2) A determined fee is not payable—
 - (a) if the person otherwise liable to pay the fee is—
 - (i) exempt from liability to pay the fee under the determination that determined the fee; or
 - (ii) exempt from paying the fee under subsection 93 (1) of the Legal Aid Act 1977; or
 - (iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
 - (b) if the registrar of the court or tribunal waives payment by a person of the fee in whole or part because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or
 - (c) for the laying of an information—
 - (i) by the director of public prosecutions acting in the performance of an official function under a Territory law; or
 - (ii) by a police officer acting in the performance of an official function under a Territory law; or
 - (iii) for an offence against subsection 255 (1) (which is about contempt in the face of the court).

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Overview of increases in fees and charges

Fees have generally been increased by 2.5% and rounded to a five dollar multiple. For this reason, some fees will not increase this year (but may in future years).

Fees imposed in this instrument are exempted from GST by the "A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2000" made by the Commonwealth Treasurer under Division 81 of the A New Tax System (Goods and Services Tax) Act 1999.

The determination of certain administrative fees at a consistent rate across all lower courts and tribunals will have the effect of providing for fees (such as service and the provisions of copies of documents) in a number of tribunals where fees for such services were not previously specifically determined.

Commencement of Determination

This Determination comes into effect on 1 July 2000 and upon its coming into effect, Determinations No. 148 and 149 of 1999 will cease to have effect.

Revenue/cost implications

The increase in fees and charges will result in about \$50,000 per year in additional revenue.