

AUSTRALIAN CAPITAL TERRITORY

Supreme Court Act 1933

DETERMINATION OF FEES AND CHARGES APPLICABLE IN THE SUPREME COURT

INSTRUMENT NO. 150 OF 1999

EXPLANATORY STATEMENT

Subsection 37(1) of the *Supreme Court Act 1933* (the Act) provides that the Attorney-General may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Court, and matters incidental to such proceedings, including -
 - (i) the admission and enrolment of legal practitioners;
 - (ii) the service and execution of the process of the Court; and
 - (iii) the taxation of costs by officers of the Court;
- (b) facilities and services provided by the Court, 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;
- (c) the general purposes of the Act, the Regulations or the Rules of Court.

Subsection 37(2) of the Act provides that a Determination made under subsection 37(1) 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.

Commencement of Determination

This Determination comes into effect on 1 July 1999 and upon its coming into effect Determination No. 96 of 1998 will cease to have effect.

Overview of increases in fees and charges

Fees have generally been increased by 2.5% and rounded up to the nearest five dollar multiple. A number of new fees have been introduced:

1. A fee where a matter is set down for hearing in the Supreme Court (item 2). A similar fee is required in the NSW Local Court (but not the NSW Supreme Court where the fees for commencing proceedings range from \$509 to \$2,320). The fee is introduced on the following grounds:
 - the fee imposes a levy when a proceeding reaches a point where it is more likely to utilise more expensive judicial rather than registry officer time;
 - the fee may serve to encourage the earlier settlement of matters (payment of a fee for this procedural step may encourage parties to settle prior to that stage rather than "at the door of the Court"); and

- the imposition of a fee at this stage will obviate the necessity of considering a graduated application fee scale as in NSW.

2. A fee for non-party production under Order 34B of the Supreme Court Rules (item 16). The fee is introduced on the basis that the Court is required to issue the notice for non-party production. As the Rules do not require the Court to hold documents, the fee is set at the same rate as for a sub-poena.

3. A new fee where a cross or counter claim is made (item 3). The fee is introduced on the following grounds:

- the NSW Supreme Court imposes a fee for such matters (in NSW the fee is set at the same rate for initiating a claim);
- such claims introduce new issues into the hearing of a case, and as a separate action could be taken out in lieu of filing these claims, it is appropriate to charge a filing fee equal to that charged to initiate the process; and
- the fee will discourage trivial but time-costly claims from being raised.

4. A fee for a registry search (other than by a party) (item 19). The fee is introduced on the basis that:

- a similar fee is charged in other courts (in NSW, a fee of \$63 is charged for a probate file search, in the Federal Court a \$20 search fee applies per file (except by a party));
- imposition of the fee is likely to reduce unnecessary searches; and
- searches involve registry and judicial time.

5. A fee for a certified copy of a document (item 20). It is introduced because it involves registry and judicial time.

6. A fee for the entry of judgment or consent order under Order 42 of the Supreme Court Rules where no certificate of readiness has been filed (item 17). It is introduced because it involves registry and judicial time.

Revenue/cost implications

Additional revenue of about \$200,000 in a full year.

Details

These are set out in the Attachment.

Circulated by authority of
Gary Humphries MLA
Attorney-General

The previous fee, if any, is set out in brackets immediately under each item.

1. On lodging for filing a document to commence a proceeding in the Court, including an application for probate, other than:
 - (a) in respect of a matter referred to in item 3, 4, 14 or 18;
or
 - (b) an interlocutory or incidental proceeding in the course of, or in connection with, a proceeding. \$520
(\$503)
2. On the fixing of a date for the hearing of a proceeding (other than an interlocutory or incidental proceeding):
 - (a) in a proceeding under the *Criminal Injuries Compensation Act 1983*; \$88
 - (b) in any other proceeding. \$550

The person liable to pay the fee is the plaintiff, the appellant or such other party to the application as is ordered by the Court (which for the purposes of this determination includes the Registrar and the Deputy Registrar) in such proportion ordered.

Where the filing fee in respect of the proceedings has been waived or the person commencing the proceedings is exempt from payment of a filing fee (other than in respect of a proceeding under the *Criminal Injuries Compensation Act 1983*), no fee is payable under this item.

(Note: see section 37B of the *Supreme Court Act 1933* in relation to waivers and exemptions.)

3. On filing a cross claim or counter claim in any proceeding. \$520
4. On lodging for filing a document to commence an appeal from the Master or the Registrar in an interlocutory proceeding. \$115
(\$111)
5. On lodging for filing a document to commence an appeal from the Master or the Registrar in a proceeding other than an interlocutory proceeding. \$520
(\$503)
6. For each request for a copy or copies of a document or documents (regardless of the number of documents to which the request relates). \$2.00
(\$2.00)
7. For each page of copy provided in accordance with a request referred to in the previous item. \$1.00
(\$1.00)

8. For the issue under Order 39 Rule 25 of the *Supreme Court Rules* of a subpoena in a civil proceeding:
- (a) to give evidence; \$25
 - (b) for production and to give evidence; (\$24)
 - (c) for production. \$50
- (\$46)
- \$50
- (\$46)
- No fee is payable under this item if no fee for filing a document in relation to the proceeding is payable.
9. On lodging for taxation a bill of costs as between party and party that, as lodged, exceeds \$2,000. \$230
- (\$222)
10. For up to 3 attempts to serve process at the same address, whether or not the service is successful. \$60
- (\$58)
11. For up to 3 attempts to execute process at the same address, whether or not the execution is successful. \$195
- (\$186)
12. For expenses reasonably incurred by the Court in the execution of process or attempted execution of process for which a fee is payable under the previous item. The amount of the expenses.
13. For opening the offices of the Court -
- between 9.00 am and 9.15 am or between 4.15 pm and 5.00 pm on a day other than a Saturday, Sunday or public holiday; \$60
 - (\$58)
 - at any time -
 - on a Saturday, Sunday or public holiday; or
 - outside the hours of 9.00 am to 5.00 pm on a day of the week other than a day referred to in subparagraph 13(II)(A). \$120
 - (\$114)
14. On lodging an application for admission to practice or for enrolment under the *Legal Practitioners Act 1970* or on lodging a notice seeking registration under the Mutual Recognition Scheme. \$235
- (\$228)
15. For the certification of judgments or the provision of certified copies of judgments (including the supply of an additional certificate of enrolment or registration referred to in the previous item). \$40
- (\$35)

16.	For non-party production under order 34B of the <i>Supreme Court Rules</i> .	\$26
17.	On lodging for the entry of judgment or consent order under order 42 of the <i>Supreme Court Rules</i> .	\$50
18.	For the making of an application for the removal or transfer to the Supreme Court of proceedings commenced in the Magistrates Court.	\$265 (\$255)
	No fee is payable in the Supreme Court where no filing fee was payable for the commencement of the proceedings in the Magistrates Court.	
19.	For undertaking a registry search (other than by a party to the proceedings to which the search relates).	\$20
20.	For providing a certified copy of a document.	\$20

EXEMPTION FROM LIABILITY FOR PAYMENT

The Determination provides an exemption from payment of a filing fee or fee for the service or execution of process by any person in relation to proceedings under the *Birth (Equality of Status) Act 1988*. Other exemptions from payment are set out in section 37B of the *Supreme Court Act 1933*.

DEFERRAL OF LIABILITY FOR PAYMENT

Paragraph 37(2)(d) of the *Supreme Court Act 1933* provides that a determination may provide for the deferral of liability by the Registrar for the payment of fees and charges, in whole or in part, in particular circumstances. The Determination provides that the Registrar of the Supreme Court may defer liability for payment for a period not in excess of 14 days if, in the Registrar's opinion, payment cannot be made at the time that a request is made for the performance of a function or the provision of a facility or service but payment could be made within 14 days after the request being made. The Registrar will be able to defer payment, for example, where a person wishes to institute proceedings but has not brought sufficient funds with him or her.