

AUSTRALIAN CAPITAL TERRITORY

*Magistrates Court Act 1930*  
*Coroners Act 1997*

DETERMINATION OF FEES AND CHARGES APPLICABLE IN THE MAGISTRATES  
COURT AND THE CORONER'S COURT

INSTRUMENT NO. 21 OF 1998

EXPLANATORY STATEMENT

**Background**

The purpose of the determination is twofold. Firstly, to reflect the repeal of the *Small Claims Act 1974* by the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997* and the insertion into the *Magistrates Court (Civil Jurisdiction) Act 1982* of a new Part relating to small claims. The Magistrates Court, when exercising jurisdiction under the new Part XXII, is to be known as the Small Claims Court.

Secondly, to reflect the repeal of the *Coroners Act 1956* by the *Coroners Act 1997*. Subsection 107(1) of the *Coroners Act 1997* preserves the operation of the determination made pursuant to subsection 74(1) of the *Coroners Act 1956*. This determination is made under the provisions of the new Act.

Subject to two exceptions, the determination does not alter any fees or charges but remakes the fees and charges specified in determination number 106 of 1997 to reflect the effect of the new legislation referred to above.

The exceptions relate to claims for \$10,000. The relevant parts of items 9 and 10 of Determination number 106 of 1997, with the emphasis added, provide for the following filing fees:

9. For the institution of proceedings under the *Magistrates Court (Civil Jurisdiction) Act 1982* -
  - (a) where the amount in dispute is \$10,000 or more 283.00
  - (b) where the amount in dispute is less than \$10,000 79.00
  - (c) ...
  - (d) ...
  
10. For the institution of proceedings under the *Small Claims Act 1974* -
  - (a) where the amount in dispute is \$2,000 or more 79.00
  - (b) where the amount in dispute is less than \$2,000 32.00
  - (c) ...

During the passage of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997* the jurisdiction of the Small Claims Court was increased from \$5,000 to \$10,000. Consequently, if the determination were altered to only reflect a change in the enabling legislation, a claim for \$10,000 would attract different filing fees depending upon in which court it is commenced.

To remove the anomaly items 9(a) and 10(a) of the accompanying determination provide that the higher filing fee applies where the amount specified is more than \$10,000 or \$2,000, respectively. Consequential amendments are made to items 9(b) and 10(b).

Matters arising under the *Common Boundaries Act 1981* are determined by the Magistrates Court. The *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997* provides for these matters to be determined under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*. The filing fee for these matters is not altered and is specified at item 10(d) of the Determination.

This Determination, for convenience, covers the Magistrates Court as well as the Coroner's Court.

#### **Power to determine fees and charges - Magistrates Court**

Subsection 248A(1) of the *Magistrates Court Act 1930* provides that the Minister 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 service and execution of the process of the Court; and
  - (ii) 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 *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Small Claims Act 1974* and rules and regulations made under the Act and any of those Acts.

The reference to the *Small Claims Act 1974* in subsection 248A(1) of the *Magistrates Court Act 1930* will be omitted on the commencement of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997*.

#### **Power to determine fees and charges - Coroner's Court**

Subsection 94(1) of the *Coroners Act 1997* provides that the Minister may, by notice in writing published in the *Gazette*, determine fees and charges for any of the following purposes:

- (a) proceedings in the Coroner's Court, and matters incidental to such proceedings, including the service and execution of the process of the Coroner's Court;
- (b) facilities and services provided by the Coroner's Court;
- (c) the general purposes of the Act and the regulations.

**Fees and charges - exemption, remission, refund or deferral**

Subsection 248A(2) of the Magistrates Court Act and subsection 94(2) of the Coroners Act provide 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.

**Commencement of Determination**

This Determination comes into effect on the commencement of section 6 of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1997* and, upon its coming into effect, Determination No. 106 of 1997 will cease to have effect.

**Revenue/cost implications**

Nominal.

**Details**

These are set out in the attachment.

Circulated by authority of  
Gary Humphries MLA  
Attorney-General

The previous fee in respect of each item is in brackets immediately after that item.

Item	Matter in respect of which fee is payable	Fee payable \$
1.	For the laying of an information under section 26 of the <i>Magistrates Court Act 1930</i>	30.00 (30.00)

An information may be laid before a Magistrate under section 26 where a person has committed, or is suspected of having committed, certain offences. Item 1 determines the fee payable for the laying of the information. The *Magistrates Court Act 1930* provides that the fee is not payable in some circumstances.

2.	Subject to item 4, for the provision of a certificate under subsection 143(1) of the <i>Magistrates Court Act 1930</i>	23.00 (23.00)
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Where an information has been dismissed against a defendant, section 143 of the *Magistrates Court Act* provides for the Court to give a defendant, on application, a certificate to that effect signed by the adjudicating Magistrate or the Registrar. This item determines the fee payable for provision of the certificate and is set at the same level as that applying in item 3.

3.	Subject to item 4, for the provision of a copy of a document referred to in paragraph 144(1)(a), (c) or (d) of the <i>Magistrates Court Act 1930</i> where the provision of the copy requires the drawing up of a relevant document	23.00 (23.00)
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Section 144 of the *Magistrates Court Act* allows the Registrar, on application by a person, to give to that person a copy of an information, minute or memorandum of conviction or order, etc. Item 3 determines the fee payable for the provision of the copy where it is first necessary to draw up the document to which the application relates.

4.	Where, for the purposes of subsections 143(1) or 144(1) of the <i>Magistrates Court Act 1930</i> , a copy can be provided by the photocopying of another document -	
	(a) in respect of the application for a copy	2.00 (2.00)
	(b) for each page of copy provided in accordance with the application referred to in paragraph 4(a)	1.00 (1.00)

Item 4 determines the fees payable for the provision of a copy of a document under subsection 143(1) or 144(1) where all that is required in order to provide a copy is to photocopy an existing document.

5.	For the purposes of subsection 147(2C) of the <i>Magistrates Court Act 1930</i>	57.00 (57.00)
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Section 147 of the *Magistrates Court Act* provides, among other things, for the committal to prison of a person who is in default of the provisions of a conviction or order. In default of compliance with an order, a person also becomes liable to pay the determined fee.

Item	Matter in respect of which fee is payable	Fee Payable \$
Item 5 does not apply in respect of a judgment or an order in respect of a claim or relating to a payment under the <i>Maintenance Act 1968</i> .		
6.	In respect of requests for copies of documents, not being applications under subsections 143(1), 144(1) or 255C(1) of the <i>Magistrates Court Act 1930</i> or applications under subsection 418(1) of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> -	
	(a) 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)
	(b) for each page of copy provided in accordance with a request referred to in paragraph 6(a)	1.00 (1.00)
7.	For each page of copy of a document or documents copied by a person, other than an officer of the Magistrates Court or the Coroner's Court, using a Court photocopier	0.20 (0.20)

Items 6 and 7 determine the fees applicable in respect of photocopying requested of the Magistrates Court and the Coroner's Court or done by persons using the Courts' photocopying machines.

8.	For the purposes of section 255C of the <i>Magistrates Court Act 1930</i> or for the supply of a copy of a transcript or a copy thereof of the hearing of an inquest or inquiry in the Coroner's Court -	
	(a) for each page of a transcript (including preparation of the transcript)	8.25 (8.25)
	(b) for each page of a copy of the transcript	1.00 (1.00)

Item 8 relates to the provision of copies of transcripts of proceedings in the Magistrates Court and transcripts of the hearing of an inquest or an inquiry in the Coroner's Court.

Item	Matter in respect of which fee is payable	Fee Payable \$
9.	For the institution of proceedings under the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> , other than the institution of proceedings under Part XXII of that Act -	
	(a) where the amount in dispute is more than \$10,000	283.00 (283.00)
	(b) where the amount in dispute is \$10,000 or less	79.00 (79.00)
	(c) for an application to the Magistrates Court where no amount of money is in dispute	79.00 (79.00)
	(d) for an application under subsection 11A(1) of the <i>Motor Traffic Act 1936</i> or under subsection 36(2) or 40(1) of the <i>Motor Traffic (Alcohol and Drugs) Act 1977</i>	79.00 (79.00)

Item 9 sets the fees for instituting a proceeding before the Magistrates Court, other than small claims proceedings commenced under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*, either by way of lodging an originating process or filing an application. (Item 9(d) relates to special licences to drive. Subsection 13A of the *Motor Traffic Act 1936* was renumbered as section 11A by the *Motor Traffic (Amendment) Act 1997*. The determination reflects the change in section numbering.)

10.	For the institution of proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> -	
	(a) where the amount in dispute is more than \$2,000	79.00 (79.00)
	(b) where the amount in dispute is \$2,000 or less	32.00 (32.00)
	(c) subject to item 10(d), in the case of proceedings where no money amount is in dispute	32.00 (32.00)
	(d) for a determination under the <i>Common Boundaries Act 1981</i>	79.00 (79.00)

Item 10 sets the fees for instituting small claims proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

11.	For serving, and for each attempt to serve, by post, originating process under section 24 of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i>	13.00 (13.00)
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Under subsection 24(1) of the *Magistrates Court (Civil Jurisdiction) Act 1982*, a plaintiff in proceedings may apply for postal service of an originating process. The Registrar may serve the process by post on the defendant. This item determines a fee for the

Item	Matter in respect of which fee is payable	Fee Payable \$
	purposes of that provision. The fee does not apply to small claims proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> as section 24 does not apply to proceedings under that Part - see new subsection 395(2). The note in the determination is advisory only.	
12.	For up to 3 attempts to serve at the same address, otherwise than by post, an originating process, a summons, a notice or other civil process, whether or not the service is successful	57.00 (57.00)
	This item does not apply in relation to small claims proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> or in those instances where a charge under item 13 is also payable.	
	Where the Magistrates Court arranges service of an originating process, etc, for a plaintiff, other than by post, the fee set out above is payable for that service. The fee covers up to three attempts at service at the same address. No fee is payable in relation to small claims proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> or where a fee for execution of process is payable under item 13.	
13.	For up to 3 attempts to execute process at the same address, other than the execution of process in relation to proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> , whether or not the execution is successful	183.00 (183.00)
14.	For up to 3 attempts to execute process at the same address in relation to proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> , whether or not the execution is successful	57.00 (57.00)
	Items 13 and 14 relate to the enforcement of the Court's judgements. In this context, section 371 of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> provides for the costs actually incurred in effecting a sale of seized goods and chattels, when executing a warrant of execution, to be deducted from the sale price. The fees in items 13 and 14 relate to the administrative expenses of officers of the Court involved in the execution and are additional to those contemplated by section 371. The fee for execution of process covers up to three attempts at execution at the same address. A lower fee is determined for executing process in relation to small claims proceedings under Part XXII of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> .	
15.	For the purposes of subsection 418(1) of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> -	
	(a) in respect of an application (regardless of the number of documents to which the application relates)	2.00 (2.00)
	(b) for each page of copy provided in accordance with an application referred to in paragraph 15(a)	1.00 (1.00)

Item	Matter in respect of which fee is payable	Fee Payable \$
This item determines the fees applicable in respect of providing certificates or certified copies of judgments or orders of the Magistrates Court or documents filed in proceedings.		

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| 16. | For the review of an order, direction or other act of the Registrar of the Magistrates Court | 79.00<br>(79.00) |
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This item does not apply to the review of an order, direction or other act of the Registrar in relation to proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

This fee applies when the Magistrates Court, on application from a party to proceedings, reviews an order, direction or other act of the Registrar of that Court and is set at the lower level of the fees to institute a proceeding before that Court. No fee is payable for a review of an order, direction or other act of the Registrar to in relation to small claims proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

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| 17. | For an inspection, under section 419 of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> of a record of the Magistrates court that contains particulars of - |  |
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- (a) a judgment that has been entered under section 43 of the *Magistrates Court Civil Jurisdiction) Act 1982*;
- (b) the setting aside of such a judgment under section 221 of the *Magistrates Court Civil Jurisdiction) Act*; or
- (c) a Default Judgement within the meaning of Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982* or a Restoration Order under section 443 of that Act setting aside such a judgment

13.00  
(13.00)

Any person may inspect a record of the Magistrates Court, including in relation to small claims proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*, containing particulars of judgments entered in default on special claims or where such judgment has been set aside. This item sets the fee for each such inspection.

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| 18. | On filing for taxation a bill of costs as between party and party that, as filed, exceeds \$2,000 | 218.00<br>(218.00) |
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This item does not apply in relation to proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

This fee reflects, and is set at the same level as, the fee payable for a party/party taxation in the Supreme Court. No fee is payable in respect of small claims proceedings under Part XXII of the *Magistrates Court (Civil Jurisdiction) Act 1982*.



Item	Matter in respect of which fee is payable	Fee Payable \$
19.	For the issue of a summons under subsection 187(1) or subsection 444(1) of the <i>Magistrates Court (Civil Jurisdiction) Act 1982</i> -	
	(a) to give evidence	12.00 (12.00)
	(b) for production and to give evidence	23.00 (23.00)
	(c) for production	23.00 (23.00)

No fee is payable if no fee for the filing of a document in the proceeding is payable.

Item 19 relates to the fees for the issue of summonses to give evidence and produce documents or things in proceedings under the *Magistrates Court (Civil Jurisdiction) Act 1982*. No fee is payable if no fee for the filing of a document in the proceeding is payable.

20.	For the supply of a duplicate audio tape recording of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per cassette	31.00 (31.00)
21.	For the supply of a duplicate video tape recording of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per tape	41.00 (41.00)
22.	For the supply of a computer disk containing a record of a proceeding or of part of a proceeding or of a matter incidental to a proceeding - per disk	11.00 (11.00)

Items 20, 21 and 22 relate to obtaining a copy of court proceedings other than by way of a copy of a transcript of proceedings (see item 8).

#### **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 in relation to proceedings under the *Birth (Equality of Status) Act 1988*.

#### **DEFERRAL OF LIABILITY FOR PAYMENT**

Paragraph 248A(2)(d) of the *Magistrates Court Act 1930* and paragraph 94(2)(d) of the *Coroner's Court Act 1956* provide 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 Magistrates Court and the Registrar of the Coroner's 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

Item	Matter in respect of which fee is payable	Fee Payable \$
	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.	