

AUSTRALIAN CAPITAL TERRITORY

MAGISTRATES COURT ACT 1930

DETERMINATION OF FEES AND CHARGES APPLICABLE IN THE
MAGISTRATES COURT AND THE SMALL CLAIMS COURT

NO. 34 OF 1994

EXPLANATORY STATEMENT

The *Magistrates Court Act 1930* (the Act) was amended by the *Magistrates Court (Amendment) Act 1994* which inserted a general fees and charges determining power - see subsection 248A(1) of the Act. That subsection 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

Subsection 248A(2) of the Act provides that a determination made under subsection 248A(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

A combined effect of the *Magistrates Court (Amendment) Act 1994*, the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1994* and the *Small Claims (Amendment) Act 1994* was to remove the fee determining powers contained in the Act, the *Magistrates Court (Civil Jurisdiction) Act 1982* and the *Small Claims Act 1974* and to place them in an upgraded provision within the Act. That provision which is, as indicated above, located within new section 248A of the *Magistrates Court Act*, contains a wide power to determine fees and charges. Consequential amendment of the *Magistrates Court (Civil Jurisdiction) Act* and the *Small Claims Act* mean that it is now possible to make one determination under the Act covering all matters in the *Magistrates Court* and the *Small Claims Court*. The *Magistrates Court*, in effect, sits as the *Small Claims Court* when hearing matters under the *Small Claims Act* and the new arrangement of having only one determination should overcome any confusion that may have been caused by the previous need for three determinations.

This Determination comes into effect on 1 July 1994 and upon its coming into effect Determination No 28 of 1993, made under section 257 of the *Magistrates Court Act 1930*, Determination No 29 of 1993 made under section 307B of the *Magistrates Court (Civil Jurisdiction) Act 1982* and Determination No. 30 of 1993, made under section 50A of the *Small Claims Act 1974* will cease to have effect - see section 13 of the *Magistrates Court (Amendment) Act 1994*, section 12 of the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1994* and section 9 of the *Small Claims (Amendment) Act 1994*

The fees determined are set out below with the previously determined fees shown in brackets. Some fees are the same as those previously determined. Where fees have been increased, they have been increased by 3% (the expected increase in the Consumer Price Index for 1993/94) and rounded off.

ITEM	MATTER IN RESPECT OF WHICH A FEE IS PAYABLE	FEE PAYABLE (\$)
1	For the laying of an information under section 26 of the <i>Magistrates Court Act 1930</i>	27.00 (26.00)

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 Act provides that the fee is not payable in some circumstances

2. Subject to item 4, for the provision of a certificate 20.00 (Nil)
under subsection 143(1) of the *Magistrates Court Act 1930*

Where an information has been dismissed against a defendant, section 143 provides for the Court to give a defendant, on application, a certificate to that effect signed by the adjudicating Magistrate or the Registrar. This new 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 20 00 (19.60)
document referred to in paragraph 144(1)(a), (c) or
(d) of the *Magistrates Court Act 1930* where the
provision of the copy requires the drawing up of a
relevant document

Section 144 of the Magistrates Court Act allows the Registrar of the Magistrates Court, 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 fees 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 *Magistrates Court Act 1930*, 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 1.00 (1.00)
accordance with the application referred
to in paragraph 4(a)

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

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| 5 | For the purposes of subsection 147(2C) of the <i>Magistrates Court Act 1930</i> | 52.00 (50.00) |
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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. This item does not apply in respect of a judgment or an order in respect of a claim or relating to a payment under the *Maintenance Act 1968* or the *Lunacy Act 1898* (NSW) in its application in the Territory.

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| 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 306(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 Small Claims 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 Small Claims Court or done by persons using the Courts' photocopying machines.

- 8 (a) For the purposes of section 255C of the *Magistrates Court Act 1930* -
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| (i) for each page of a transcript (including preparation of the transcript) | 8.25 (8.25) |
| (ii) for each page of a copy of the transcript | 1.00 (1.00) |
- (b) The fees determined in paragraph 8(a) apply also in respect of the provision of transcripts and copies of transcripts of proceedings in the Small Claims Court. As above

Subsection 255C(1) of the Magistrates Court Act provides that a person may make application to the Registrar for a copy or a transcript of a record of proceedings. Item 8 sets out the fees applicable in the Magistrates Court and the Small Claims Court.

9. For the institution of proceedings under the *Magistrates Court (Civil Jurisdiction) Act 1982* -
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| (a) where the amount in dispute is \$10,000 or more | 260.00 (250.00) |
| (b) where the amount in dispute is less than \$10,000 | 72 00 (70.00) |
| (c) for an application to the Magistrates Court where no amount of money is in dispute | 72.00 (70.00) |
| (d) for an application under subsection 13A(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> | 72 00 (70.00) |

This item sets the fees for instituting a proceeding before the Magistrates Court either by way of lodging an originating process or filing an application.

10. For the institution of proceedings under the *Small Claims Act 1974* -
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| (a) where the amount in dispute is \$2,000 or more | 72.00 (70.00) |
| (b) where the amount in dispute is less than \$2,000 | 29.00 (28.00) |
| (c) in the case of proceedings where no money amount is in dispute | 29.00 (28.00) |

This item sets the fees for instituting proceedings before the Small Claims Court.

- 11 For serving, and for each attempt to serve, by post, originating process under section 22 of the *Magistrates Court (Civil Jurisdiction) Act 1982* 10.30 (10.00)

Under subsection 22(1) of the *Magistrates Court (Civil Jurisdiction) Act*, a plaintiff in proceedings may apply for postal service of an originating process. The Registrar may serve the process by post on the defendant. The above item determines a fee for the purposes of that provision.

- 12 For up to 3 attempts to serve, otherwise than by post, an originating process, a summons, a notice or other process at the same address, whether or not the service is successful 52.00 (50.00)

Where the *Magistrates Court* arranges service of an originating process etc for a plaintiff other than by post the above fee is payable for that service. The fee covers up to three attempts at service at the same address. No fee is payable for service of a claim by the Registrar of the Small Claims Court

13. For up to 3 attempts to execute process at the same address, whether or not the execution is successful 52.00 (50.00)

In this context, section 162 of the *Magistrates Court Act 1930* 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 above fees relate to

the administrative expenses of officers of the Court involved in the execution and are additional to those contemplated by section 162. The fee for execution of process covers up to three attempts at execution at the same address.

14. For the purposes of subsection 306(1) of the *Magistrates Court (Civil Jurisdiction) Act 1982* -
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| (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 14(a) | 1.00 (1.00) |

This item determines the fees applicable in respect of providing certificates or certified copies of judgments or orders of the Magistrates Court or the Small Claims Court or of documents filed in proceedings

15. For the review of an order, direction or other act of the Registrar of the Magistrates Court 72.00 (Nil)

This is a new fee applicable 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 of the Small Claims Court.

16. For an inspection, under section 306A of the *Magistrates Court (Civil Jurisdiction) Act 1982* of a record of the Magistrates court that contains particulars of - 10.30 (10 00)

(a) a judgment that has been entered under section 41 of the *Magistrates Court Civil Jurisdiction) Act 1982*; or

b) the setting aside of such a judgment under section 219 of the *Magistrates Court Civil Jurisdiction) Act 1982*

Any person may inspect a record of the Magistrates Court 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. Under section 306A, the entitlement is to inspect the register or relevant documents in the register. On commencement of this Determination, however, amendments of section 306A will commence providing that the entitlement is an entitlement to inspect records as indicated in the Determination. The amendment of section 306A recognizes that there is no register as such. The fee also applies to inspections under the *Small Claims Act 1974*.

17 On filing for taxation a bill of costs as between party and party that, as filed, exceeds \$2,000 200.00 (Nil)

This is a new fee and 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 matters in the Small Claims Court.

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 Act 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 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 them.

Revenue/cost implications

The increases in fees and charges and the introduction of some new fees and charges will result in about \$95,000 in additional revenue in a full year.

Circulated by authority of
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