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County Court (Fees) Regulations 2018

S.R. No.

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STATUTORY RULES 2018

Sixteenth Draft 23/8/2018

S.R. No.

County Court Act 1958

County Court (Fees) Regulations 2018

The Governor in Council makes the following Regulations:

Dated:

Responsible Minister:

MARTIN PAKULA
Attorney-General

Clerk of the Executive Council

1 Objective

The objective of these Regulations is to prescribe the fees payable in respect of matters in the County Court.

2 Authorising provision

These Regulations are made under section 79A of the **County Court Act 1958**.

3 Commencement

These Regulations come into operation on 14 December 2018.

4 Revocation

The County Court (Fees) Interim Regulations 2017¹ are **revoked**.

5 Definitions

In these Regulations—

Chapter I means the County Court Civil Procedure Rules 2008²;

commencement fee means the applicable fee specified in item 1, 2, 3, 4, or 5 of Schedule 1 payable for the commencement of a proceeding;

concession fee payer means a person who holds a current health care card within the meaning of the Social Security Act 1991 of the Commonwealth at the time a fee is payable;

corporate fee payer means an entity other than a standard fee payer or a concession fee payer;

court official means a registrar and a deputy registrar;

judicial officer means a judge, an associate judge and a judicial registrar;

mediation fee means the fee payable under item 8 of Schedule 1;

other hearing fee means the applicable fee specified in item 24 of Schedule 1 arising from the conduct of a hearing on the second or subsequent days (other than a trial day) of a matter referred to in the item 6, 9, 10, 11, 12, 15, 17 or 18 of that Schedule;

standard fee payer means—

- (a) a natural person other than a natural person acting in the capacity of a statutory office holder; or
- (b) an entity registered under the Australian Charities and Not-for-Profit Commission Act 2012 of the Commonwealth; or

- (c) an entity that has a turnover of less than \$200 000 in the financial year before the financial year in which a fee in Schedule 1 is to be paid;

the Act means the **County Court Act 1958**.

6 No fee payable in certain proceedings

- (1) Unless an application to which a fee relates is an application under Chapter I, no fee is payable under these Regulations in respect of the following—
 - (a) a criminal proceeding under the **Criminal Procedure Act 2009**;
 - (b) a matter under the **Sentencing Act 1991**;
 - (c) an appeal from the Magistrates' Court or the Children's Court;
 - (d) a matter to which Chapter III (the County Court Criminal Procedure Rules 2009³) applies;
 - (e) any application made by the Office of Public Prosecutions or the Commonwealth Director of Public Prosecutions.
- (2) Despite subregulation (1), in any proceeding referred to in that subregulation, the applicable fee in item 25, 26 or 30 of Schedule 1 is payable.

7 Fees in Schedule 1

- (1) The fees set out in Schedule 1 are payable in the court as specified in that Schedule and in accordance with these Regulations.
- (2) For a corporate fee payer, the fee for an item specified in column 2 of Schedule 1 is the corresponding fee in column 3 of that Schedule.

- (3) For a standard fee payer, the fee for an item specified in column 2 of Schedule 1 is the corresponding fee in column 4 of that Schedule.
- (4) For a concession fee payer, the fee for an item specified in column 2 of Schedule 1 is the corresponding fee in column 5 of that Schedule.

8 Payment of fees generally

- (1) Subject to subregulation (2) and regulations 11 and 12, fees are payable by the party, person or other entity at whose request the document is filed or the service rendered.
- (2) Where a fee is payable as a result of an order or a direction made on the court's own motion, the fee is payable by the party which commenced the proceeding, unless the court otherwise orders.

9 Fees and multiple parties

If a request to file a document or render a service is made on behalf of multiple parties in a proceeding a single fee is payable and—

- (a) if one or more of the parties making the request is a corporate fee payer, the fee applicable to a corporate fee payer is to be paid; or
- (b) if none of the parties making the request is a corporate fee payer and one or more of the parties making the request is a standard fee payer, the fee applicable to a standard fee payer is to be paid.

Examples

- 1 There are 2 plaintiffs in a proceeding and one is a corporate fee payer and one is a standard fee payer: a single fee is payable and that fee is the fee applicable to the corporate fee payer.
- 2 There are 2 plaintiffs in a proceeding and one is a concession fee payer and the other is a standard fee payer: a single fee is payable and that fee is the fee applicable to the standard fee payer.

10 When fees are payable

Unless the court otherwise orders or a court official otherwise determines, a fee fixed by these Regulations (other than a hearing fee, setting down fee or mediation fee) is payable—

- (a) subject to paragraph (b), when—
 - (i) the relevant document is filed; or
 - (ii) the relevant service is rendered; or
 - (iii) the relevant event takes place; or
- (b) if a court official who is requested by a party to file a document or render a service requires a fee to be paid before the document is filed or the service is rendered, at the time of the request.

11 Payment of setting down fee

- (1) Subject to any order of the court, an applicable setting down fee in relation to any proceeding is payable by the party seeking the hearing, being—
 - (a) the party which commenced the proceeding; or
 - (b) if the party seeking the hearing is not the party referred to in paragraph (a), that other party.

Example

If a proceeding is set down for trial and the only remaining issues to be tried are those brought by counterclaim by the defendant, the defendant is the party seeking the hearing and not the plaintiff who commenced the proceeding.

- (2) A setting down fee is payable—
 - (a) no later than 6 weeks prior to the date fixed for the hearing to commence; or

- (b) if, at the time the date is fixed for hearing there is less than 6 weeks until the date fixed, the day after the matter is set down for hearing.
- (3) A setting down fee is payable only once in relation to a trial regardless of whether the date for hearing is later adjourned, vacated and relisted or the trial is heard in parts at different times.

12 Payment of hearing fees

- (1) Subject to any order of the court and subregulation (2), an applicable hearing fee in relation to any proceeding is payable by the party seeking the hearing, being—
 - (a) the party which commenced the proceeding; or
 - (b) the party which made the interlocutory application; or
 - (c) if the party seeking the hearing is not the party referred to in paragraph (a) or (b), that other party.

Example

A defendant files an application for summary judgment and that application proceeds to a second day of hearing: the second day hearing fee is payable by the defendant.

- (2) A hearing fee is not payable if the sole purpose of the hearing is the delivery of a reserved judgment.
- (3) An applicable first trial day hearing fee is payable—
 - (a) no later than 5 days prior to the date set down for hearing; or
 - (b) if at the time the date is fixed for hearing there are less than 5 days until the date fixed, the day after the matter is set down for hearing.

- (4) An applicable hearing fee, other than the first trial day hearing fee, is payable no later than the day before the hearing day to which it relates.

13 Payment of mediation fees

- (1) A mediation fee is payable by the party which commenced the proceeding.
- (2) A mediation fee, based on the estimated duration of the mediation, is payable—
- (a) no later than 5 days prior to the date fixed for mediation; or
 - (b) if at the time the date is fixed for mediation there are less than 5 days until the date fixed, the day after the date for mediation is fixed.
- (3) Any further mediation fee based on the duration of the mediation exceeding the estimated duration is payable by the day after the day of mediation to which it relates.
- (4) A mediation fee is not payable if a judicial officer orders a mediation hearing to take place.

14 Waiver of fees

- (1) Subject to subregulation (2), a fee which is payable under these Regulations is waived if, at the time the fee is payable, the party, person or other entity—
- (a) is legally represented in the proceeding under a pro bono scheme administered by or on behalf of—
 - (i) the Victorian Bar Inc., an association incorporated under the **Associations Incorporation Reform Act 2012**; or
 - (ii) the Law Institute of Victoria Limited ACN 075 475 731; or

- (iii) Justice Connect ABN 54 206 789 276;
or
 - (b) is legally represented in the proceeding on a pro bono basis by a member of the Federation of Community Legal Centres Vic Inc., an association incorporated under the **Associations Incorporation Reform Act 2012** ABN 30 036 539 902; or
 - (c) has been granted legal aid under a legal aid scheme established under the law of the Commonwealth or of a State or Territory for the proceeding for which the fee would otherwise be payable; or
 - (d) is serving a sentence of imprisonment or is otherwise detained in a detention facility, however described.
- (2) Any fee payable under item 25, 26 or 30 of Schedule 1 is not waived unless it is waived in accordance with section 79A(6) of the Act.

Note

Section 79A(6) of the Act provides a power to waive fees if it is established that the payment of a fee would cause financial hardship to a person.

15 Reduction of standard fee to concession fee

- (1) A court official may reduce a fee for a person who is required to pay a fee as a standard fee payer to the corresponding fee payable by a concession fee payer—
- (a) if the person has applied for waiver of a fee which has been rejected; and
 - (b) if the court official is of the opinion that the person has sufficient means to pay a concession fee without financial hardship.

- (2) If a court official reduces a fee under subregulation (1), the person is liable to pay the applicable concession fee specified in column 5 of Schedule 1.

16 Refund of fees

- (1) Subject to this regulation, if a fee was paid which was not payable under these Regulations, the fee is to be refunded.
- (2) If a fee higher than that required to be paid was paid by mistake, the difference between the fee to be paid and fee paid by mistake is to be refunded.
- (3) If a fee has been paid for commencement of a proceeding and the matter is subsequently transferred to a lower court, no refund is payable.
- (4) No refund is payable for a setting down fee if the matter does not proceed to hearing.
- (5) No refund is payable for a hearing fee, or a fee which encompasses the first day of hearing, if the hearing does not proceed.
- (6) No refund is payable for a mediation fee if the mediation does not proceed.
- (7) In addition to subregulations (1) to (6), a court official may refund a fee if satisfied there are exceptional reasons justifying the refund of the fee in a particular case.

17 Establishing appropriate fee status

- (1) This regulation applies to—
 - (a) a standard fee payer; and
 - (b) concession fee payer; and
 - (c) any fee payer claiming or entitled to a waiver or refund of a fee specified in Schedule 1.

- (2) A fee payer to whom this regulation applies must provide to a court official, when requested to do so, information or evidence that establishes, as the case requires, that the fee payer is—
 - (a) a standard fee payer; or
 - (b) a concession fee payer; or
 - (c) entitled to a waiver or refund of a fee in Schedule 1.
- (3) If a court official is satisfied that the information or evidence provided under subregulation (2)—
 - (a) establishes the fee payer's status as a standard fee payer, the fee payer is liable to pay the applicable standard fee specified in column 4 of Schedule 1; or
 - (b) establishes the fee payer's status as a concession fee payer, the fee payer is liable to pay the applicable concession fee specified in column 5 of Schedule 1; or
 - (c) entitles the fee payer to a waiver or refund of a fee specified in Schedule 1, the fee is waived or refunded as appropriate.
- (4) If a lower fee has been charged or paid in accordance with this regulation and the fee payer should have paid a higher fee or was not entitled to the relevant status—
 - (a) a court official may reinstate the correct fee and require its payment; and
 - (b) the fee payer is liable for the reinstated fee and must pay the difference between the fee originally paid (if any) and the reinstated fee.

County Court (Fees) Regulations 2018
S.R. No.

Schedule 1—County Court fees

Schedule 1—County Court fees

Reg. 6

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item No.</i>	<i>Item</i>	<i>Corporate fee payer</i>	<i>Standard fee payer</i>	<i>Concession fee payer</i>
	COMMENCEMENT FEES			
1	Commencement of any proceeding or matter, including counterclaim, defence and counterclaim, third party and subsequent party notices, not referred to in items 2 to 5	98 fee units	49 fee units	17.3 fee units
2	Commencement of proceeding in Adoption List, including Substitute Parentage Order applications	N/A	33.3 fee units	17.3 fee units
3	Commencement of proceeding in Commercial Division Expedited Cases List	196 fee units	98 fee units	17.3 fee units
4	Transfer of proceeding into Commercial Division Expedited Cases List	98 fee units	49 fee units	17.3 fee units
5	On transfer of a proceeding from the Magistrates' Court	98 fee units, less any fee paid in the Magistrates' Court on commencement of the proceeding in that Court	49 fee units, less any fee paid in the Magistrates' Court on commencement of the proceeding in that Court	17.3 fee units, less any fee paid in the Magistrates' Court on commencement of the proceeding in that Court

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<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item No.</i>	<i>Item</i>	<i>Corporate fee payer</i>	<i>Standard fee payer</i>	<i>Concession fee payer</i>
	CASE MANAGEMENT FEES			
6	Filing an interlocutory application within a proceeding by summons including the first day of hearing of that application	75 fee units	37.5 fee units	17.3 fee units
7	Ex parte applications	16.9 fee units	8.4 fee units	4.2 fee units
8	Mediation—per half day	37.5 fee units	18.7 fee units	9.3 fee units
	FEES FOR OTHER APPLICATIONS			
9	Appeal from or review of determination of the court constituted by a judicial registrar	75 fee units	37.5 fee units	17.3 fee units
10	Filing a summons under Order 71 of Chapter I for attachment of debt (Garnishee)	75 fee units	37.5 fee units	17.3 fee units
11	Filing a summons for oral examination under Rule 61.04 of Chapter I	75 fee units	37.5 fee units	17.3 fee units
12	Order for oral examination under Rule 67.02 of Chapter I	7.5 fee units	3.8 fee units	1.9 fee units
13	Filing an application for a warrant of seizure and sale under Order 69 of Chapter I	7.5 fee units	3.8 fee units	1.9 fee units
14	Filing an application for a warrant of possession of land under Order 70 of Chapter I	7.5 fee units	3.8 fee units	1.9 fee units
15	Filing an application for an attachment of earnings order under Order 72 of Chapter I	75 fee units	37.5 fee units	17.3 fee units

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Schedule 1—County Court fees

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item No.</i>	<i>Item</i>	<i>Corporate fee payer</i>	<i>Standard fee payer</i>	<i>Concession fee payer</i>
16	Filing an application under section 6 or 8 of the Judgment Debt Recovery Act 1984	4·9 fee units	2·4 fee units	1·2 fee units
17	For each sitting of a judicial officer or court official taking accounts or evidence, making enquires or acting as a special examiner	75 fee units	37·5 fee units	17·3 fee units
18	Application for assessment of damages or value	75 fee units	37·5 fee units	17·3 fee units
HEARING FEES				
19	Setting down for trial	90·2 fee units	45·1 fee units	17·3 fee units
20	Trial day 1	70 fee units	35 fee units	17·3 fee units
21	Trial days 2, 3 and 4—per day	100 fee units	50 fee units	17·3 fee units
22	Trial days 5, 6, 7, 8 and 9—per day	160 fee units	80 fee units	17·3 fee units
23	Trial day 10 and subsequent days—per day	220 fee units	110 fee units	17·3 fee units
24	Other hearing fee, other than trial days—per day	70 fee units	35 fee units	17·3 fee units
ADMINISTRATIVE FEES				
25	Search for paper file	4·9 fee units	2·4 fee units	1·2 fee units
26	Search for electronic file with a copy included	1 fee unit	1 fee unit	1 fee unit
27	For every certificate of the registrar	1 fee unit	1 fee unit	1 fee unit
28	To register an interstate judgment	3·1 fee units	1·6 fee units	1 fee unit

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Schedule 1—County Court fees

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>
<i>Item No.</i>	<i>Item</i>	<i>Corporate fee payer</i>	<i>Standard fee payer</i>	<i>Concession fee payer</i>
29	Issuing a subpoena	6 fee units	3 fee units	1.5 fee units
30	For photocopying any document	60 cents per page	60 cents per page	60 cents per page

Endnotes

¹ Reg. 4: S.R. No. 115/2017.

² Reg. 5 definition of *Chapter I*: S.R. No. 148/2008. Reprint No. 3 as at 1 March 2016. Reprinted to S.R. No. 162/2015. Subsequently amended by S.R. Nos 43/2016, 144/2016, 21/2017 and 36/2017.

³ Reg. 6(1)(d): S.R. No. 183/2009.

Fee Units

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2018 is \$14.45. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year.