



Family Law (Divorce Fees Validation) Bill 2007

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Law and Bills Digest Section

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Family Law (Divorce Fees Validation) Bill 2007

Date introduced: 7 February 2007

House: House of Representatives

Portfolio: Attorney-General

Commencement: The Act commences on the day it receives Royal Assent but has retrospective effect (1 July 2005 to 9 October 2006).

Purpose

To retrospectively validate fee increases for divorce proceedings in the Family Court of Western Australia.

Background

Commonwealth family law is primarily set out in the *Family Law Act 1975*, the *Family Law Regulations 1984* and the *Marriage Act 1961*. In all States and Territories except Western Australia, individuals may apply for a divorce through either the Family Court of Australia, or the Federal Magistrates Court.¹

In 1976, under section 41 of the *Family Law Act 1975*, Western Australia established the only State family court in Australia – the Family Court of Western Australia.²

It is the Commonwealth government's intention to have a divorce fee which is consistent throughout Australia.³ Accordingly, the filing fee for a divorce in the Family Court of Western Australia matches the equivalent fee in the Federal Magistrates Court.

The filing fees for a divorce order in the Family Court of Australia and the Family Court of Western Australia are set by the *Family Law Regulations 1984*. Filing fees for the Federal Magistrates Court are set by the *Federal Magistrates Regulations 2000*.

However, when the filing fee for a divorce application in the Federal Magistrates Court was raised on 1 July 2005, the Family Law Regulations applying to the Family Court of Western Australia were not amended accordingly.

The Family Court of Western Australia began charging the increased fee, on the assumption that the amendment to the regulations had been made. The mistake was realised in 2006 and in on 9 October 2006 the regulations were amended. During the period 1 July 2005 to 9 October 2006 the Family Court of Western Australia charged

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applicants the correct fee – ie mirroring that of the Federal Magistrates Court – but did so without legal authority.

The purpose of the bill is to validate the fees which were charged during that period.

A divorce application to the Federal Magistrates Court and the Family Court of Western Australia now costs \$405. Fees for an application for divorce in the Family Court of Australia (as opposed to the simpler process available through the Federal Magistrates Court) are \$639.⁴

There has been no comment on the bill specifically, or on divorce fees more generally, from political parties or interest groups in the past few months.

Main provisions

Section 3 of the bill provides retrospective cover for the fees charged by the Family Court of Western Australia for a divorce order from 1 July 2005 to 9 October 2006.

As there were two fee increases, two periods are covered:

- between 1 July 2005 and 30 June 2006 the fee payable was \$334 (Section 3(1)).
- between 1 July 2006 and 9 October 2006 the fee payable was \$352 (Section 3 (2)).

On 9 October 2006 the fee was raised to \$405 (the current fee). This new fee for both courts was covered in the relevant regulations.

Endnotes

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1. Further information on Australia's family law system is available on the Attorney-General's internet site: http://www.ag.gov.au/www/agd/agd.nsf/Page/Families_Familylawsystem, accessed 12 February 2007.
 2. Hon. Phillip Ruddock MP, Attorney-General, 'Second reading speech: Family Law (Divorce Fees Validation) Bill 2007', 7 February 2007, House of Representatives, *Debates*, p. 1.
 3. Second reading speech, op. cit., p. 1.
 4. Family Court of Australia, *Family Court Fees*, available at: http://www.familycourt.gov.au/presence/connect/www/home/forms_fees/fees/main_page_court_fees, accessed 12 February 2007.

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