

1994—No. 664

DISTRICT COURT ACT 1973—REGULATION

(Relating to fees in pro bono cases)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the District Court Act 1973, has been pleased to make the Regulation set forth hereunder.

JOHN HANNAFORD,
Minister for Justice.

Commencement

1. This Regulation commences on 1 January 1995.

Amendments

2. The District Court (Fees) Regulation 1993 is amended:

(a) by inserting after clause 4 the following clause:

Pro bono cases

4A. (1) The taking of the fee for the filing of any statement of claim or other originating process (or a notice of cross-claim) on behalf of a pro bono party to proceedings is to be postponed until judgment has been given in the proceedings.

(2) The fee is not to be taken at all, or if taken must be remitted, if in relation to the claim (or cross-claim):

(a) judgment is against that party; or

(b) judgment is in favour of that party, but damages are not awarded (or only nominal damages are awarded) in his or her favour and costs are not awarded in his or her favour.

(3) A registrar must not refuse to file or issue any document relevant to proceedings merely because, in accordance with this clause, a fee has not been taken for the filing of any originating process (or notice of cross-claim) on behalf of a pro bono party to those proceedings.

(4) Under this clause, a party is to be treated as a pro bono party to proceedings if he or she is being represented under the pro bono scheme of the Law Society of New South Wales or the pro bono scheme of the New South Wales Bar Association and a solicitor (in the case of the Law Society's scheme), or a barrister (in the case of the Bar Association's scheme), acting for the party:

- (a) certifies in writing to the registrar with whom the originating process (or notice of cross-claim) is lodged on behalf of the party that the party is being so represented; and
- (b) undertakes in writing to the registrar to pay the filing fee for that document if, at the conclusion of the proceedings, subclause (2) does not apply.

(b) by inserting after clause 7 (2) the following subclause:

(3) This clause is subject to clause 4A.

EXPLANATORY NOTE

The object of this Regulation is to insert provision for the postponement or waiver of filing fees for documents that initiate pro bono cases in the District Court.

Clause 4A (to be inserted in the District Court (Fees) Regulation 1993) provides that in general the filing fee for a document by which a party initiates pro bono proceedings (including proceedings involving a cross-claim) need only be paid when the proceedings conclude in favour of that party.

However, that clause also provides that the fee need not be paid even if judgment is in favour of the party as long as he or she recovers only nominal damages (or no damages) and costs are not awarded in his or her favour.

The fee, if already paid, is to be refunded in circumstances where, because of the outcome, it need not have been paid.

This Regulation is made under section 150 (Regulations: Court fees) of the District Court Act 1973.
