



New South Wales

Land and Environment Court Regulation 2005

under the

Land and Environment Court Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Land and Environment Court Act 1979*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake the *Land and Environment Court Regulation 2000*, which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

This Regulation makes provision for the fees that are payable in respect of the business of the Land and Environment Court. It increases, in line with the Consumer Price Index, the fees that are currently payable in respect of that business. It also makes provision for the postponement or waiver of fees in certain cases.

This Regulation is made under the *Land and Environment Court Act 1979*, including section 78 (the general regulation-making power).

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Land and Environment Court Regulation 2005

under the

Land and Environment Court Act 1979

1 Name of Regulation

This Regulation is the *Land and Environment Court Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

Note. This Regulation repeals and replaces the *Land and Environment Court Regulation 2000* which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

- (1) In this Regulation:
corporation has the same meaning as in section 57A of the *Corporations Act 2001* of the Commonwealth.
the Act means the *Land and Environment Court Act 1979*.
- (2) Notes included in this Regulation do not form part of this Regulation.

4 Fees generally

- (1) The fees to be taken in respect of the matters set out in Schedule 1 are the fees specified in that Schedule.
- (2) However, a reference in that Schedule to a corporation does not include a reference to a corporation that produces evidence, satisfactory to the registrar:
 - (a) that its turnover, in the financial year of the corporation immediately preceding the financial year in which the fees are to be taken, was less than \$200,000, or
 - (b) if the corporation has not been in existence for a full financial year—that its turnover in its first financial year is likely to be less than \$200,000.

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5 Persons by and to whom fees payable

- (1) A fee charged under this Regulation for a document or service is payable to the registrar by the person at whose request the document is filed or the service rendered.
- (2) If a document is filed or a service rendered at the request of a person acting as an agent for another person, each of those persons is jointly and severally liable for payment of the fee.
- (3) A reference in Schedule 1 to a fee payable in the case of a corporation is a reference to a corporation on whose behalf a request is made to file a document or render a service.

6 Fee not chargeable for transcript—appeal to Court of Criminal Appeal

No fee is chargeable to a person convicted of an offence in proceedings before the Court for a transcript or diskette of the proceedings if:

- (a) the person has filed a notice of appeal, notice of intention to appeal, notice of application for leave to appeal or notice of intention to apply for leave to appeal with the Court of Criminal Appeal against the conviction or a sentence imposed by the Court in respect of the conviction, or
- (b) the person is a respondent to an appeal against such a sentence.

7 Postponement or waiver of fees in certain cases

- (1) The taking of the fee for filing initiating process to commence proceedings in any Class of the Court's jurisdiction is to be postponed until judgment is given in the proceedings if the process is filed by or on behalf of:
 - (a) a pro bono party to the proceedings, or
 - (b) a pensioner party to the proceedings, or
 - (c) a legally assisted party to the proceedings.
- (2) The fee is not to be taken at all, or if taken must be remitted, if, in relation to the proceedings:
 - (a) judgment is against the party concerned, or
 - (b) judgment is in favour of that party, but costs are not awarded in his or her favour.
- (3) Despite clause 8 (2), the registrar must not refuse to file or issue any document, or render a service, relevant to proceedings merely because, in accordance with this clause, a fee has not been taken for the filing of any initiating process on behalf of a pro bono party, a pensioner party or a legally assisted party to the proceedings concerned.

- (4) For the purposes of this clause:
- (a) a party to proceedings is a *pro bono party* 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 legal practitioner acting for the party:
 - (i) certifies in writing to the registrar on behalf of the party that the party is being so represented, and
 - (ii) 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, and
 - (b) a party to proceedings is a *pensioner party* if he or she is the holder of any card issued by the Commonwealth Government that entitles the holder to Commonwealth health concessions, and
 - (c) a party to proceedings is a *legally assisted party* if he or she is receiving legal assistance through a community legal centre within the meaning of section 48H of the *Legal Profession Act 1987* or section 240 of the *Legal Profession Act 2004*.

8 When fees payable

- (1) A fee charged under this Regulation becomes payable when the document concerned is filed or the service concerned is rendered.
- (2) However, the registrar:
 - (a) may require a fee for the document or service to be paid before the document is filed or the service rendered, or
 - (b) may, by order in writing, direct that the whole or any part of such a fee be postponed, waived or remitted, subject to such conditions (if any) as the registrar thinks fit to impose.
- (3) The registrar may delegate his or her power under this clause to direct that the whole or any part of any fee be postponed to any public servant holding office as, or appointed to act temporarily as, a grade 5/6 administrative or clerical officer or above.
- (4) The registrar may delegate his or her power under this clause to direct that the whole or any part of any fee be waived or remitted to any public servant holding office as, or appointed to act temporarily as, a grade 7/8 administrative or clerical officer or above.
- (5) A reference in subclause (2) to the registrar includes a reference to a person to whom the registrar delegates his or her powers in accordance with this clause.
- (6) This clause is subject to clause 7.

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9 Repeal and saving

- (1) The *Land and Environment Court Regulation 2000* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Land and Environment Court Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.

Schedule 1 Court fees

(Clause 4)

	\$
1 Filing a process to commence proceedings in Class 1 of the Court's jurisdiction (other than proceedings referred to in item 2 or 3)	639.00
2 Filing a process to commence proceedings in Class 1 of the Court's jurisdiction where the matter relates to a development application (other than a development application relating to the subdivision of land) or to a building application, and where the value of the development or building:	
(a) is less than \$50,000	188.00
(b) is \$50,000 or more but less than \$500,000	639.00
(c) is \$500,000 or more but less than \$1,000,000	2,914.00
(d) is \$1,000,000 or more	3,640.00
3 Filing a process to commence proceedings in Class 1 of the Court's jurisdiction where the matter relates to an appeal under section 96AA or 98 of the <i>Environmental Planning and Assessment Act 1979</i>	188.00
4 Filing a process to commence proceedings in Class 2 of the Court's jurisdiction (other than proceedings referred to in item 5)	639.00
5 Filing a process to commence proceedings in Class 2 of the Court's jurisdiction where the matter relates to a development application (other than a development application relating to the subdivision of land) or to a building application, and where the value of the development or building is less than \$50,000	188.00
6 Filing a process to commence proceedings in Class 3 of the Court's jurisdiction (other than proceedings referred to in item 7, 8 or 9)	639.00
7 Filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to an appeal, reference or other matter under the <i>Crown Lands Act 1989</i> , the <i>Crown Lands (Continued Tenures) Act 1989</i> , the <i>Roads Act 1993</i> , the <i>Water Act 1912</i> , the <i>Water Management Act 2000</i> or the <i>Western Lands Act 1901</i>	90.00
8 Filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to an appeal or objection against a valuation of land, and where the value of the land, as determined by the respondent valuing authority:	

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Schedule 1 Court fees

	\$
(a) is less than \$100,000	165.00
(b) is \$100,000 or more but less than \$500,000	223.00
(c) is \$500,000 or more but less than \$1,000,000	353.00
(d) is \$1,000,000 or more	500.00
9 Filing a process to commence proceedings in Class 3 of the Court's jurisdiction where the matter relates to a claim for compensation for the compulsory acquisition of land, as referred to in section 24 of the <i>Land and Environment Court Act 1979</i> , and where the amount offered as compensation by the resuming or constructing authority:	
(a) is less than \$50,000	188.00
(b) is \$50,000 or more but less than \$500,000	639.00
(c) is \$500,000 or more but less than \$1,000,000	2,914.00
(d) is \$1,000,000 or more	3,640.00
10 In respect of item 6, 8 or 9, if the registrar determines that, because of the substance of the matter and its lack of complexity, the fee referred to in the item is not appropriate	90.00
11 Filing a process to commence proceedings in Class 4 of the Court's jurisdiction	639.00
12 Filing a process to commence proceedings in Class 5 of the Court's jurisdiction	639.00
13 Filing a process to commence proceedings in Class 6 or 7 of the Court's jurisdiction	188.00
14 Filing a process to commence an appeal to the Court under section 56A of the <i>Land and Environment Court Act 1979</i>	777.00
15 Filing a process to commence proceedings for modification of a development consent, or for modification of an approval, granted by the Court on appeal	116.00 or 30% of the original filing fee paid to the Court (whichever is the greater)
16 Production of a document, by an officer of the Court, elsewhere than at the place at which the Court sits and elsewhere than at the office of the registrar	53.00
17 Making a copy of a document, for each page (minimum fee of \$10.00)	2.00

	\$
18	Supplying a copy of the transcript/diskette of proceedings:
(a)	for each page (or equivalent) where the matter being transcribed is under 3 months old (minimum fee for 1 to 8 pages (or equivalent) of \$66.00) 7.90
(b)	for each page (or equivalent) where the matter being transcribed is 3 months old or older (minimum fee for 1 to 8 pages (or equivalent) of \$78.00) 9.00
(c)	for each diskette also supplied (in addition to fee under paragraph (a) or (b)) 5.40
19	Furnishing a party to proceedings with a second or subsequent copy of the written opinion or reasons for opinion of a Judge or of a Commissioner or other officer of the Court in relation to the proceedings, for each copy 50.00
20	Furnishing a person (other than a party to proceedings) with a first or subsequent copy of the written opinion or reasons for opinion of a Judge or of a Commissioner or other officer of the Court in relation to any proceedings, for each copy 50.00
21	Opening, or keeping open, the office of the registrar: 506.00
(a)	on a Saturday, Sunday or public holiday, or
(b)	on any other day before 8.30 am or after 5 pm
22	Supplying a duplicate tape recording of sound-recorded evidence, for each cassette 43.00
23	To issue a subpoena (for production, to give evidence, or both) 114.00 (in the case of a corporation) or 57.00 (in any other case)
24	Retrieving a document from archival storage, for each document 26.00