



District Court Amendment (Court Fees) Regulation 2003

under the

District Court Act 1973

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *District Court Act 1973*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to amend the *District Court Regulation 2000* with respect to fees payable in relation to certain proceedings in the District Court's civil jurisdiction. The amendments propose:

- (a) to introduce a hearing allocation fee for the allocation of a date to hear proceedings of \$900 (in the case of a corporation) or \$450 (in any other case), and
- (b) to introduce a hearing fee for the 6th and each subsequent day of a hearing of \$235 per half day (in the case of a corporation) or \$117.50 per half day (in any other case), and
- (c) to introduce a uniform fee for issuing a subpoena of \$106 (in the case of a corporation) or \$53 (in any other case), and
- (d) to remove the corporate rate (being twice the individual rate) in relation to fees for service or attempted service of any process or other document or for the execution or attempted execution of any writ or warrant.

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

Item 18 in Schedule 1 [13] of the District Court Amendment (Court Fees) Regulation 2003 published in Government Gazette No 154 of 26 September 2003, page 9531 was disallowed in the Legislative Council on 20 November 2003.

2003 No 702

Clause 1 District Court Amendment (Court Fees) Regulation 2003

District Court Amendment (Court Fees) Regulation 2003

under the

District Court Act 1973

1 Name of Regulation

This Regulation is the *District Court Amendment (Court Fees) Regulation 2003*.

2 Commencement

This Regulation commences on 1 October 2003.

3 Amendment of District Court Regulation 2000

The *District Court Regulation 2000* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Interpretation

Insert in alphabetical order in clause 3 (1):

criminal proceedings means proceedings in the Court's criminal jurisdiction within the meaning of section 9 (2) of the Act.

hearing allocation fee means a fee referred to in item 17 of Schedule 1.

hearing fee means a fee referred to in item 18 of Schedule 1.

the Act means the *District Court Act 1973*.

[2] Clause 3 (2)

Omit the subclause. Insert instead:

- (2) Notes in the text of this Regulation (other than those in Schedule 1) do not form part of this Regulation.

[3] Clause 5 Fees not chargeable to the Crown

Omit clause 5 (2). Insert instead:

- (2) No hearing allocation fee or hearing fee is chargeable to any of the following parties to proceedings or to agents acting on their behalf in those proceedings:
- (a) the Government of New South Wales,
 - (b) any New South Wales Government Department,
 - (c) any statutory body whose expenditure is paid out of the Consolidated Fund.
- (3) A registrar may require evidence to be furnished for the purpose of deciding whether a statutory body's expenditure is paid out of the Consolidated Fund.
- (4) This clause does not prevent the recovery from any person by the Crown or by any such statutory body of any such fee that, had it been paid, would have been recoverable from that person.

2003 No 702

District Court Amendment (Court Fees) Regulation 2003

Schedule 1 Amendments

[4] Clause 6 Pro bono cases

Insert “, or a hearing allocation fee or hearing fee in any such proceedings,” after “party to proceedings” in clause 6 (1).

[5] Clause 6 (3A)

Insert after clause 6 (3):

- (3A) Despite clause 9A, the Court must not refuse to allocate a date for hearing proceedings or refuse to hear those proceedings merely because, in accordance with this clause, a hearing allocation fee or hearing fee has not been taken on behalf of a pro bono party to those proceedings.

[6] Clause 6 (4) (b)

Insert “, or the hearing allocation fee or hearing fee,” after “that document”.

[7] Clause 7 Postponement of fees in certain other cases

Insert after clause 7 (3):

- (3A) Despite clause 9A, the Court must not refuse to allocate a date for hearing proceedings or refuse to hear those proceedings merely because, in accordance with this clause, a hearing allocation fee or hearing fee has not been taken on behalf of a legally assisted party to those proceedings.

[8] Clause 8 Persons by and to whom fees payable (other than hearing allocation or hearing fees)

Insert after clause 8 (3):

- (4) This clause:
- (a) does not apply to hearing allocation fees or hearing fees, and
 - (b) is subject to any provision to the contrary in Schedule 1.

[9] Clause 8A

Insert after clause 8:

8A Persons by and to whom hearing allocation or hearing fees payable

- (1) A hearing allocation fee or hearing fee charged under this Regulation:
 - (a) is payable by the person made liable to pay the fee under item 17 or 18 respectively of Schedule 1, and
 - (b) is payable to a registrar.
- (2) If a person is acting as an agent for a party to any proceedings (being a party by whom a hearing allocation fee or hearing fee is payable under Schedule 1), the person and the party are jointly and severally liable for payment of the hearing allocation fee or hearing fee.

[10] Clause 9 Time for payment of fees

Omit clause 9 (1). Insert instead:

- (1) A fee charged under this Regulation (other than a hearing allocation fee or hearing fee) becomes payable when the document concerned is filed or the service concerned is rendered.
- (1A) A hearing allocation fee charged under this Regulation becomes payable:
 - (a) immediately after a date is allocated for hearing the proceedings, or
 - (b) when the Court or a registrar notifies the parties in writing of the Court's intention to allocate a date for hearing the proceedings,whichever first occurs.
- (1B) A hearing fee charged under this Regulation becomes payable when the Court or a registrar notifies the person liable to pay the hearing fee in writing of the amount of the fee payable.

2003 No 702

District Court Amendment (Court Fees) Regulation 2003

Schedule 1 Amendments

[11] Clause 9A

Insert after clause 9:

9A Action available if hearing allocation or hearing fee not paid

If a hearing allocation fee or hearing fee is not paid by the due date for its payment, the Court may refuse to hear or continue to hear the proceedings concerned until the fee is paid.

[12] Schedule 1 Court fees

Omit items 7 and 8. Insert instead:

| | | |
|---|---|-------|
| 7 | Service or attempted service of any process or other document, including service by post and preparation of an affidavit of service—for each address at which service of the process or other document is effected or attempted | 42.00 |
| 8 | Execution or attempted execution of any writ or warrant—for each address at which execution of the writ or warrant is effected or attempted | 53.00 |

[13] Schedule 1, items 16–18

Omit item 16. Insert instead:

| | | |
|----|---|---|
| 16 | To issue a subpoena (for production, to give evidence, or both) | 106.00 (in the case of a corporation) or 53.00 (in any other case) |
| 17 | For allocation of a date for hearing the proceedings by a judge or a judge and jury | 900.00 (in the case of a corporation) or 450.00 (in any other case) |

Note 1. The hearing allocation fee is payable by the plaintiff or appellant in the proceedings. If the Court or a registrar so orders, the fee is payable by another party to the proceedings or by any parties to the proceedings in the proportions ordered.

Note 2. A hearing allocation fee is payable for proceedings allocated a date for hearing after 1 October 2003 whether the proceedings were initiated before or after that date.

Note 3. A hearing allocation fee is not payable:

- (a) in criminal proceedings, or
- (b) if the proceedings are of an interlocutory nature only.

Note 4. A hearing allocation fee is not payable and, if paid, is to be remitted, if:

- (a) the proceedings do not proceed on the allocated date for hearing, and
- (b) a registrar is satisfied that the adjournment was due to circumstances beyond the control of the parties to the proceedings.

| | | |
|----|--|---|
| 18 | For the hearing of proceedings by a judge or judge and jury—each half day of hearing on or after the 6th day | 235.00 (in the case of a corporation) of 117.50 (in any other case) |
|----|--|---|

Note 1. A half day is 3 hours or part of 3 hours. That 3-hour period includes any short adjournment of less than 30 minutes.

Note 2. The hearing fee is payable by the plaintiff or appellant in the proceedings. If the Court or a registrar so orders, the fee is payable by another party to the proceedings or by any parties to the proceedings in the proportions ordered.

Note 3. A hearing fee is not payable:

- (a) in criminal proceedings, or
- (b) if the sole purpose of the hearing is the delivery of a reserved judgement, or
- (c) if a date for hearing the proceedings was allocated before 1 October 2003.

Note 4. If a matter is heard by a judge and jury, a hearing fee may be payable in addition to the daily retention fee for the jury.