



Civil Procedure Regulation 2012

under the

Civil Procedure Act 2005

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Civil Procedure Act 2005*.

GREG SMITH, MP
Attorney General

Explanatory note

The object of this Regulation is to remake the *Civil Procedure Regulation 2005* with minor changes. That Regulation will be repealed on 1 September 2012 under section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation deals with the following matters:

- (a) changes to the fees payable in connection with civil proceedings in the Supreme Court for filing certain originating processes in respect of an estate,
- (b) the prescription of the fees payable in connection with civil proceedings in the Supreme Court, the Land and Environment Court, the District Court or the Local Court, and of the fees payable in connection with functions exercised by the Sheriff,
- (c) the waiver, postponement and remission of such fees,
- (d) additional matters with respect to hearing allocation fees and hearing fees,
- (e) the types of proceedings that are excluded for the purposes of Part 2A of the *Civil Procedure Act 2005*,
- (f) other minor, consequential and ancillary matters.

This Regulation is made under the *Civil Procedure Act 2005*, including sections 18 and 18B (4) and clause 1 of Schedule 6.

The Regulation comprises matter set out in Schedule 3 to the *Subordinate Legislation Act 1989*—that is, matters of a machinery nature.

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Civil Procedure Regulation 2012

under the

Civil Procedure Act 2005

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Civil Procedure Regulation 2012*.

2 Commencement

This Regulation commences on 1 September 2012 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Civil Procedure Regulation 2005* which is repealed on 1 September 2012 by section 10 (2) of the *Subordinate Legislation Act 1989*.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.

grant of representation means a grant of probate, letters of administration or letters of administration with the will annexed.

hearing allocation fee means a fee for allocating a date for the hearing of proceedings.

hearing fee means a fee for the hearing of proceedings.

legally assisted person means a person who is receiving:

(a) legal assistance through a community legal centre that complies with the requirements of section 240 of the *Legal Profession Act 2004*, or

(b) legal aid under the *Legal Aid Commission Act 1979*.

pro bono party means a party to proceedings who is being represented under a pro bono scheme administered by the New South Wales Bar Association or the Law Society of New South Wales, or under a pro bono scheme established by rules of court, being a party in respect of whom a barrister or solicitor acting for the party in accordance with the scheme:

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Part 1 Preliminary

- (a) has certified in writing to the registrar of the court that the party is being so represented, and
- (b) has undertaken in writing to the registrar of the court:
 - (i) to pay the filing fee for the originating process by which the proceedings have been commenced, and
 - (ii) to pay any hearing allocation fee or hearing fee that becomes payable by the party in relation to the proceedings.

the Act means the *Civil Procedure Act 2005*.

- (2) Notes included in this Regulation do not form part of this Regulation.

Part 2 Fees generally

4 Fees payable in relation to court proceedings

- (1) This clause applies in relation to civil proceedings in the following courts:
 - (a) the Supreme Court,
 - (b) the Land and Environment Court,
 - (c) the District Court,
 - (d) the Local Court.
- (2) The fee that a person must pay in respect of a matter referred to in Column 1 of Schedule 1 is:
 - (a) the fee specified in respect of that matter in Column 2 of that Schedule, or
 - (b) if the person is a corporation and a fee is specified in respect of that matter in Column 3 of that Schedule, the fee so specified.

Note. The fees in relation to particular courts are set out in Parts 1–4 of Schedule 1. The fees common to all courts are set out in Part 5 of that Schedule.
- (3) For the avoidance of doubt, the fee payable by a corporation that commences or carries on proceedings in the name of a natural person pursuant to a right of subrogation is the fee applicable to a corporation.
- (4) Despite subclauses (2) and (3), the fee payable by a corporation that produces evidence, satisfactory to a registrar of the court:
 - (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,is the fee specified in Column 2 of Schedule 1.
- (5) Despite subclause (2), no fee is payable in relation to the filing of notice of motion for any of the following:
 - (a) an application for the issue of any process for which a fee is otherwise payable under Schedule 1,
 - (b) an application for an instalment order,
 - (c) an application for a writ of execution,
 - (d) an application for a garnishee order,
 - (e) an application for a charging order,
 - (f) an application for a default judgment,

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Part 2 Fees generally

- (g) any application in relation to proceedings in the Local Court sitting in its Small Claims Division other than an application for an examination order.
- (6) Despite subclause (2), no fee is payable in relation to the filing of an originating process by which a question of law is referred to the Supreme Court for decision under:
 - (a) section 61 of the *Australian Securities and Investments Commission Act 2001* of the Commonwealth, or
 - (b) section 659A of the *Corporations Act 2001* of the Commonwealth.

5 Fees payable in relation to functions exercised by Sheriff

The fee that a person must pay in relation to a matter referred to in Column 1 of Schedule 2 is the fee specified in respect of that matter in Column 2 of that Schedule.

6 Fees payable in relation to functions exercised by Marshal in Admiralty

- (1) In any civil proceedings in the Admiralty List in the Equity Division of the Supreme Court, a fee is payable to the Marshal in Admiralty in relation to any matter for which a fee is payable to the Sheriff in any other civil proceedings.
- (2) The fee payable to the Marshal in Admiralty in relation to any such matter is the same as the fee payable to the Sheriff in relation to that matter.

7 Persons by and to whom fees are payable

- (1) Any fee imposed by Schedule 1 or 2 (other than a hearing allocation fee or hearing fee) is payable, by the person at whose request the relevant document is filed or service rendered:
 - (a) in the case of a fee imposed by Schedule 1, to the registrar of the court, and
 - (b) in the case of a fee imposed by Schedule 2, to the registrar of the court or to the Sheriff.
- (2) For the purposes of subclause (1), the fee imposed by item 2 of Part 5 of Schedule 1 is taken to be payable by the person who served the notice to produce under Part 34 of the *Uniform Civil Procedure Rules 2005*.
- (3) If a document is filed or service rendered at the request of a person acting as agent for another person, each of those persons is jointly and severally liable for payment of any such fee.

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- (4) For the purposes only of subclause (2), a solicitor or other person by whom a person is carrying on proceedings is taken to be acting as an agent for that person.

8 When fees become due

- (1) A fee imposed by Schedule 1 or 2 (other than a hearing allocation fee or hearing fee) becomes due when the document concerned is filed or the service concerned is rendered.
- (2) Despite subclause (1), a registrar who is requested to file a document or render a service may require any fee for the document or service to be paid before the document is filed or the service rendered.

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Clause 9 Civil Procedure Regulation 2012

Part 3 Hearing allocation fees and hearing fees

Part 3 Hearing allocation fees and hearing fees

9 Payment of hearing allocation fees

- (1) This clause applies in relation to civil proceedings in the Supreme Court or the District Court.
- (2) A hearing allocation fee in relation to any proceedings is payable:
 - (a) by the plaintiff, or
 - (b) if the court makes any order as to the payment of the fee, by the parties and in the proportions so ordered.
- (3) If a party is carrying on proceedings by a solicitor or other person, the party and solicitor or other person are jointly and severally liable for the payment of the hearing allocation fee.
- (4) A hearing allocation fee is not payable in relation to any interlocutory hearing or to a trial for the assessment of damages only.
- (5) A hearing allocation fee 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.

10 Payment of hearing fees

- (1) This clause applies in relation to civil proceedings in the Supreme Court.
- (2) A hearing fee in relation to any proceedings is payable:
 - (a) by the plaintiff, or
 - (b) if the court makes any order as to the payment of the fee, by the parties and in the proportions so ordered.
- (3) If a party is carrying on proceedings by a solicitor or other person, the party and solicitor or other person are jointly and severally liable for the payment of the hearing fee.
- (4) A hearing fee is not payable in relation to a hearing whose sole purpose is the delivery of a reserved judgment.
- (5) A hearing fee becomes payable when the court or a registrar gives written notice to the person liable to pay the hearing fee of the amount of the fee payable.

Part 4 Waiver, postponement and remission of fees

11 General power to waive, postpone and remit fees

- (1) The registrar of the court may, by order in writing, direct that the whole or any part of any fee payable to the registrar be waived, postponed or remitted, subject to such conditions (if any) as the registrar thinks fit to impose.
- (2) The Sheriff may, by order in writing, direct that the whole or any part of any fee payable to the Sheriff be waived, postponed or remitted, subject to such conditions (if any) as the Sheriff thinks fit to impose.
- (3) The powers conferred by this clause are to be exercised in accordance with such guidelines as may from time to time be published by the Attorney General.

12 Postponement of fees for pro bono parties

- (1) The taking of any fee in respect of the business of the court in relation to proceedings involving a pro bono party is, if the fee is payable by the party, 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:
 - (a) judgment is against the pro bono party, or
 - (b) judgment is in favour of the pro bono party, but:
 - (i) damages are not awarded (or only nominal damages are awarded) in his or her favour, and
 - (ii) costs are not awarded in his or her favour.

13 Postponement of fees for legally assisted persons

- (1) The taking of any fee in respect of the business of the court in relation to proceedings involving a party who is a legally assisted person is, if the fee is payable by the party, 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:
 - (a) judgment in the proceedings is against the legally assisted person, or
 - (b) judgment is in favour of the legally assisted person, but:
 - (i) damages are not awarded (or only nominal damages are awarded) in his or her favour, and
 - (ii) costs are not awarded in his or her favour.

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Clause 14 Civil Procedure Regulation 2012

Part 5 Miscellaneous

Part 5 Miscellaneous

14 Percentage of income from deposited funds payable to Consolidated Fund

A registrar must deduct, for payment into the Consolidated Fund, 2.5% of any amount received by way of interest or dividends on funds that are paid into court.

15 Delegation of functions

- (1) The registrar of a court may delegate to any person the exercise of any of the functions conferred on the registrar by this Regulation, other than this power of delegation.
- (2) The Sheriff may delegate to any person the exercise of any of the functions conferred on the Sheriff by this Regulation, other than this power of delegation.

16 Excluded proceedings under Part 2A of Act

Any civil proceedings in the Supreme Court are declared to be excluded proceedings for the purposes of Part 2A of the Act.

Note. Section 18B (2) (b) of the Act provides that a civil dispute is an excluded dispute for the purposes of Part 2A of the Act where the dispute involves claims that may result in the commencement of excluded proceedings if the issues in dispute are not resolved or narrowed.

17 Savings

Any act, matter or thing that, immediately before the repeal of the *Civil Procedure Regulation 2005*, had effect under that Regulation continues to have effect under this Regulation.

Schedule 1 Court fees

(Clause 4)

Part 1 Supreme Court

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Filing an originating process (other than an originating process referred to in items 2–6)	\$951	\$2,281
2	Filing an originating process by which an application for a grant of representation, or reseal of a grant of representation, in respect of an estate the sworn gross value of which:		
	(a) is less than \$100,000	Nil	—
	(b) is \$100,000 or more but less than \$250,000	\$650	—
	(c) is \$250,000 or more but less than \$500,000	\$900	—
	(d) is \$500,000 or more but less than \$1,000,000	\$1,350	—
	(e) is \$1,000,000 or more but less than \$2,000,000	\$1,800	—
	(f) is \$2,000,000 or more but less than \$5,000,000	\$3,000	—
	(g) is \$5,000,000 or more	\$5,000	—
3	Filing in the Court of Appeal a notice of intention to appeal	\$272	\$544
4	Filing in the Court of Appeal a summons seeking leave to appeal or a cross-summons seeking leave to cross-appeal in proceedings where a notice of intention to appeal has been filed by the same party	\$973	\$1,667
5	Filing in the Court of Appeal a summons seeking leave to appeal or a cross-summons seeking leave to cross-appeal in proceedings where a notice of intention to appeal has not been filed by the same party	\$1,245	\$2,211

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Schedule 1 Court fees

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
6	Filing in the Court of Appeal a notice of appeal or notice of cross-appeal:		
	(a) in proceedings where leave to appeal has been granted	\$1,921	\$3,408
	(b) in proceedings where a notice of intention to appeal has been filed by the same party	\$2,894	\$5,075
	(c) in any other proceedings	\$3,166	\$5,619
7	Allocating a date for hearing of the proceedings by one or more judges, a judge and jury or an associate judge	\$1,900	\$3,800
8	Filing a requisition for trial by jury	\$1,006	\$2,012
9	Retaining a jury after the first day of trial Note. The fees under this item are to be paid by the party requesting a jury for the trial.	\$459 per day	\$918 per day
10	Referring proceedings for arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$752	—
11	Filing an application for an order for the rehearing of proceedings under Division 3 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$573	\$1,148
12	Hearing of proceedings by one or more judges, for each day of hearing or part of a day of hearing:		
	(a) on the 2nd, 3rd or 4th day	\$757	\$1,520
	(b) on the 5th, 6th, 7th, 8th or 9th day	\$1,217	\$2,640
	(c) on or after the 10th day	\$2,450	\$5,210
13	Hearing of proceedings by an associate judge, for each day of hearing or part of a day of hearing on or after the 2nd day	\$682	\$1,364
14	Preparing appeal papers (for such number of copies as the registrar orders to be printed) in volumes of not more than 250 pages	\$658 per volume	\$1,316 per volume
15	Filing a notice of motion	\$349	\$698
16	Preparing a copy of a will	\$54	—

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
17	Conducting a genealogical search on a probate file (for each file searched)	\$104	—
18	Conducting a search for an application for a grant of representation or reseal of a grant of representation (for each file searched)	\$54	—
19	Lodging a caveat against an application for a grant of representation or reseal of a grant of representation	\$38	\$76
20	Conducting an adoption search (for each file searched)	\$54	—
21	Issuing a registrar's certificate as to the signature of a public notary	\$54	—

Part 2 Land and Environment Court

Note. Fees that are payable in relation to proceedings before the Land and Environment Court in Class 5, 6 or 7 of its jurisdiction are set out in Part 1 of Schedule 2 to the *Criminal Procedure Regulation 2010*.

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Filing an originating process in Class 1 of the Court's jurisdiction (other than an originating process referred to in item 2)	\$829	\$1,658
2	Filing an originating process in Class 1 of the Court's jurisdiction under section 97 of the <i>Environmental Planning and Assessment Act 1979</i> 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 \$500,000	\$829	\$1,658
	(b) is \$500,000 or more but less than \$1,000,000	\$3,795	\$5,039
	(c) is \$1,000,000 or more	\$4,740	\$6,297

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Schedule 1 Court fees

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
3	Filing an originating process in Class 2 of the Court's jurisdiction (other than an originating process referred to in item 4)	\$829	\$1,658
4	Filing an originating process in Class 2 of the Court's jurisdiction where the matter relates to an application under the <i>Trees (Disputes Between Neighbours) Act 2006</i>	\$217	\$434
5	Filing an originating process in Class 3 of the Court's jurisdiction (other than an originating process referred to in item 6 or 7)	\$829	\$1,658
6	Filing an originating process 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:		
	(a) is less than \$500,000	\$291	\$582
	(b) is \$500,000 or more but less than \$1,000,000	\$459	\$918
	(c) is \$1,000,000 or more	\$829	\$1,658
7	Filing an originating process 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 \$500,000	\$829	\$1,658
	(b) is \$500,000 or more but less than \$1,000,000	\$3,795	\$5,039
	(c) is \$1,000,000 or more	\$4,740	\$6,297
8	Filing an originating process in Class 4 of the Court's jurisdiction	\$829	\$1,658
9	Filing an originating process in Class 8 of the Court's jurisdiction	\$217	\$434

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
10	Filing a process to commence an appeal to the Court under section 56A of the <i>Land and Environment Court Act 1979</i>	\$1,939	\$3,878
11	Filing a notice of motion	\$192	\$384

Part 3 District Court

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Filing an originating process (other than an originating process referred to in item 2)	\$591	\$1,182
2	Filing an originating process in relation to an appeal	\$244	\$488
3	Allocating a date for hearing of the proceedings by a judge, a judge and jury or a judicial registrar	\$632	\$1,264
4	Filing a requisition for trial by jury	\$1,011	\$2,022
5	Retaining a jury after the first day of trial Note. The fees under this item are to be paid by the party requesting a jury for the trial.	\$459 per day	\$918 per day
6	Referring proceedings for arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$748	—
7	Filing an application for an order for the rehearing of proceedings under Division 3 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$573	\$1,146
8	Filing a notice of motion	\$76	\$152

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Schedule 1 Court fees

Part 4 Local Court

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Filing an originating process, under Part 3 of the <i>Local Court Act 2007</i> , in the Local Court sitting in its General Division	\$217	\$434
2	Filing an originating process, under Part 3 of the <i>Local Court Act 2007</i> , in the Local Court sitting in its Small Claims Division	\$88	\$176
3	Filing an application notice under Part 4 of the <i>Local Court Act 2007</i>	\$83	—
4	Filing an application for an order for the rehearing of proceedings under Division 3 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$379	\$758
5	Serving or attempting service by post of originating process by the Local Court	\$37 for each address to which process posted	—
6	Filing a notice of motion	\$76	\$152
7	Filing a notice of appeal, or application for leave to appeal, to the District Court under Part 3 of the <i>Crimes (Appeal and Review) Act 2001</i> , as applied to proceedings under Part 4 of the <i>Local Court Act 2007</i> :		
	(a) in relation to a single notice	\$102	—
	(b) in relation to more than 1 notice arising from the same court appearance	\$54	—

Part 5 Miscellaneous court fees

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
1	Issuing a subpoena (for production, to give evidence, or both)	\$74	\$148

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
2	Receipt by the registrar of a document or thing produced in compliance with a notice to produce under Part 34 of the <i>Uniform Civil Procedure Rules 2005</i>	\$74	\$148
3	Filing or registering a copy or certificate of a judgment, order, determination, decree, adjudication or award of any other court or person under section 133 of the <i>Civil Procedure Act 2005</i>	\$82	\$164
4	Opening or keeping open the registry or part of the registry: (a) on a Saturday, Sunday or public holiday (b) on any other day before 9 am or after 5 pm	\$653	\$1,306
5	Requesting production to the court of documents held by another court	\$54	\$108
6	Furnishing one or more sealed or certified copies of a judgment or order, or of the written opinion or reasons for opinion of any judicial or other officer of the court	\$54	—
7	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 6, 8 and 10)	\$11.40, plus \$5.65 for each 10 pages (or part of 10 pages) after the first 20 pages	—
8	Retrieving and providing access to, but not furnishing a copy of, any file or box of files, where the file or box of files is retrieved from: (a) the Government Records Repository or any other off-site storage facility (other than the State Archives): (i) standard retrieval request	\$12.30 per file or box of files	—

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Schedule 1 Court fees

	Column 1	Column 2	Column 3
Item	Matter for which fee payable	Standard fee	Corporation fee
	(ii) non-standard retrieval request (including an urgent, high or after hours priority retrieval request or a retrieval request for delivery to or from a regional location outside the Sydney metropolitan area)	Such additional fee incurred by a court	—
	(b) the State Archives—standard retrieval request	\$30.85 per file or box of files	—
9	Supplying a duplicate recording of sound-recorded evidence—per cassette tape or disc	\$46.75	—
10	Supplying a copy of a transcript of any proceedings:		
	(a) where the matter being transcribed is under 3 months old	\$79, plus an additional \$9.70 for each page after the first 8 pages	—
	(b) where the matter being transcribed is 3 months old or older	\$97, plus an additional \$11.00 for each page after the first 8 pages	—
11	Providing any service for which a fee is not otherwise imposed by this Schedule Note. A fee may not be imposed under this item except with the approval of the registrar.	\$38	\$76

Schedule 2 Sheriff's fees

(Clause 5)

	Column 1	Column 2
Item	Matter for which fee payable	Fee
1	Serving or attempting service of any document, including service by post and preparation of affidavit of service	\$59 for each address at which, and each occasion on which, service is effected or attempted
2	Executing or attempting execution of an arrest warrant under section 97 of the <i>Civil Procedure Act 2005</i>	\$74 for each address at which, and each occasion on which, execution is effected or attempted
3	Executing or attempting execution of a writ of possession under Part 8 of the <i>Civil Procedure Act 2005</i>	\$307 for each address at which, and each occasion on which, execution is effected or attempted
4	Executing or attempting execution of a writ of delivery under Part 8 of the <i>Civil Procedure Act 2005</i>	\$74 for each address at which, and each occasion on which, execution is effected or attempted
5	Executing or attempting execution of a writ for the levy of property under Part 8 of the <i>Civil Procedure Act 2005</i> Note. The 3% levy in Column 2 is not payable in relation to writs executed by the Marshal in Admiralty.	\$74 for each address at which, and each occasion on which, execution is effected or attempted, plus 3% of the proceeds of enforcement
6	Executing or attempting execution of any court process (other than a warrant or writ referred to in item 2, 3, 4 or 5)	\$307 for each address at which, and each occasion on which, execution is effected or attempted
7	Preparing for sale of land following receipt of notice of sale from judgment creditor under rule 39.22 of the <i>Uniform Civil Procedure Rules 2005</i>	\$753
8	Furnishing a certified copy of a writ for the levy of property for registration under section 105A of the <i>Real Property Act 1900</i>	\$22
9	Providing Sheriff's officers to guard property seized under a writ of execution under Part 8 of the <i>Civil Procedure Act 2005</i>	\$411 per Sheriff's officer per day
10	Attending a view by a jury in civil proceedings	\$163

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Schedule 2 Sheriff's fees

Column 1		Column 2
Item	Matter for which fee payable	Fee
11	Opening or keeping open the Sheriff's office on a Saturday, Sunday or public holiday or on any other day before 9 am or after 5 pm	\$659
12	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided by item 8)	\$11.40, plus \$5.65 for each 10 pages (or part of 10 pages) after the first 20 pages
