

# Civil Procedure Regulation 2005

[2005-410]



New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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New South Wales

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# Civil Procedure Regulation 2005



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Civil Procedure Regulation 2005*.

### 2 Commencement

This Regulation commences on 15 August 2005.

### 3 Definitions

(1) In this Regulation:

**corporation** has the same meaning as in section 57A of the *Corporations Act 2001* of the Commonwealth.

**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 legal assistance through a community legal centre that complies with the requirements of section 48H of the *Legal Profession Act 1987* or section 240 of the *Legal Profession Act 2004*, as the case requires.

**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:

(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) The explanatory note, table of contents and notes in the text of this Regulation (other than notes in Schedule 1 or 2) do not form part of this Regulation.
- (3) Notes in Schedule 1 and 2 form part of those Schedules.

## **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 District Court,
  - (c) a Local Court.
- (2) Subject to this Regulation, the fee that a person must pay in respect of a matter referred to in Column 1 of Schedule 1 is:
  - (a) except as provided by paragraph (b), 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 1-3 of Schedule 1. The fees common to all courts are set out in Part 4 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 garnishee order,
  - (d) an application for a charging order,
  - (e) an application for a default judgment,
  - (f) an application to transfer proceedings from one Local Court to another,
  - (g) any application in relation to proceedings in a Local Court sitting in its Small Claims Division.

#### **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) 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.

## **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.

## **Part 3 Hearing allocation fees and hearing fees**

### **9 Payment of hearing allocation fees**

- (1A) This clause applies in relation to civil proceedings in the Supreme Court or the District Court.
- (1) A hearing allocation fee in relation to any proceedings is payable:
  - (a) except as provided by paragraph (b), 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.
- (2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for payment of the hearing allocation fee.
- (3) A hearing allocation fee is not payable in relation to any interlocutory hearing or to a trial for the assessment of damages only.
- (4) 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**

- (1A) This clause applies in relation to civil proceedings in the Supreme Court.
- (1) A hearing fee in relation to any proceedings is payable:
  - (a) except as provided by paragraph (b), 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.

- (2) If a person is acting as agent for a party to any proceedings, the person and the party are jointly and severally liable for payment of the hearing fee.
- (3) A hearing fee is not payable in relation to a hearing whose sole purpose is the delivery of a reserved judgment.
- (4) 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.

## **Part 5 Savings and transitional provisions**

### **14 Existing writs of execution**

- (1) Any writ of execution issued before the commencement of this clause by the Supreme Court, the District Court or a Local Court, being a writ of execution that was in force immediately before that commencement, continues in force until the expiry of 12 months from the date on which it was issued.
- (2) Sections 105, 105A, 105C and 105D of the *Real Property Act 1900*, as in force immediately before they were amended by Schedule 5.40 to the *Civil Procedure Act 2005*, continue to apply to a writ registered before 15 August 2005 as if those sections had not been amended.
- (3) Sections 105, 105A, 105C and 105D of the *Real Property Act 1900*, as amended by Schedule 5.40 to the *Civil Procedure Act 2005*, apply to a writ registered on or after 15 August 2005 regardless of when the writ was issued.

### **15 Time allowed for certain acts**

Anything to be done in relation to proceedings commenced before the commencement of this clause in the Supreme Court, the District Court or a Local Court, being something for the doing of which a period of time was allowed by the *Supreme Court Rules 1970*, the *District Court Rules 1973* or the *Local Courts (Civil Claims) Rules 1970*, as the case may be, may be done at any time within:

- (a) the time allowed by the relevant provision of those Rules, or
- (b) the time allowed by the *Uniform Civil Procedure Rules 2005*,

whichever is the longer.

### **16 Existing part confessions in District Court and Local Court proceedings**

- (1) This clause applies to proceedings in the District Court or a Local Court in which a confession as to part only of the amount of a claim had been filed in the Court before the commencement of this clause.
- (2) Part 14 rule 2 (5) of the *District Court Rules 1973* continues to apply to such proceedings in the District Court as if that provision had not been repealed.
- (3) Part 12 rule 2 (7) of the *Local Courts (Civil Claims) Rules 1988* continues to apply to

such proceedings in a Local Court as if those Rules had not been repealed.

### **17 Effect of order for judgment given by District Court or Local Court**

- (1) Subject to subclause (2), judgment is taken to have been given against a party for the purposes of Part 30 of the *Uniform Civil Procedure Rules 2005* if, before the commencement of this clause, an order for judgment had been given against that party:
  - (a) by the District Court under Part 11 rule 1 of the *District Court Rules 1973*, or
  - (b) by a Local Court under Part 10 rule 1 of the *Local Courts (Civil Claims) Rules 1988*.
- (2) Unless the District Court or Local Court orders otherwise, the judgment is taken to have been set aside if, before the trial of the proceedings under Part 30 of the *Uniform Civil Procedure Rules 2005*, the party against whom the order was made files a defence in the proceedings.

### **18 (Repealed)**

## **Part 6 Miscellaneous**

### **19 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.

### **20 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.

## **Schedule 1 Court fees**

(Clause 4)

### **Part 1 Supreme Court**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Matter for which fee payable</b>	<b>Standard fee</b>	<b>Corporation fee</b>
<sup>1</sup> Filing an originating process (other than an originating process referred to in items 2-9)	\$659	\$1,318

2	Filing an originating process in the Equity Division for entry in the Commercial List or the Technology and Construction List	\$1,506	\$3,012
3	Filing an originating process in the Equity Division for entry in the Admiralty List	\$606	\$1,453
4	Filing an originating process by which an application for a grant or resealing of probate in respect of an estate the sworn gross value of which:		
	(a) is less than \$50,000	Nil	—
	(b) is \$50,000 or more but less than \$250,000	\$582	—
	(c) is \$250,000 or more but less than \$500,000	\$734	—
	(d) is \$500,000 or more but less than \$1,000,000	\$1,106	—
	(e) is \$1,000,000 or more	\$1,472	—
5	Filing in the Court of Appeal a holding summons for leave to appeal or cross-appeal	\$129	\$258
6	Filing in the Court of Appeal an ordinary summons for leave to appeal or cross-appeal in respect of an application initiated by a holding summons	\$604	\$1,208
7	Filing any other summons in the Court of Appeal	\$732	\$1,464
8	Filing a notice of appeal without appointment in the Court of Appeal	\$291	\$582
9	Filing a notice of appeal with appointment in the Court of Appeal:		
	(a) in proceedings in which a summons has been filed in the Court of Appeal	\$1,539	\$3,078
	(b) in proceedings in which a notice of appeal without appointment has been filed	\$1,980	\$3,960
	(c) in any other proceedings	\$2,270	\$4,540
10	Allocating a date for hearing of the proceedings by one or more judges, a judge and jury or an associate judge	\$1,257	\$2,514
11	Filing a requisition for trial by jury	\$800	\$1,600

	For retention of jury after the first day of trial		
	<b>Note—</b>		
12	The fees under this item are to be paid by the party requesting a jury for the trial.	\$365 per day	\$730 per day
13	On referral of proceedings for arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$598	—
14	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>	\$456	\$912
	Hearing of proceedings by one of more judges, for each half day of hearing on or after the 11th day		
	<b>Note—</b>		
15	For the purposes of this item, a half day comprises a period of 3 hours or less, such period to include any adjournment of less than half an hour.	\$234	\$468
	Hearing of proceedings by an associate judge, for each half day of hearing on or after the 11th day		
	<b>Note—</b>		
16	For the purposes of this item, a half day comprises a period of 3 hours or less, such period to include any adjournment of less than half an hour.	\$211	\$422
17	Preparing appeal papers (for such number of copies as the registrar orders to be printed) in volumes of not more than 250 pages	\$523 per volume	\$1,046 per volume
18	Filing a notice of motion	\$152	\$304
19	Lodging a will otherwise than as an attachment to an originating process by which an application for a grant or resealing of probate is made	\$32	—
20	Preparing a copy of a will	\$44	—
21	Conducting a genealogical search on a probate file (for each file searched)	\$84	—
22	Conducting a search for an application for a grant or resealing of probate (for each file searched)	\$44	—
23	Lodging a caveat against an application for a grant or resealing of probate	\$31	\$62
24	Conducting an adoption search (for each file searched)	\$44	—
25	Issuing a registrar's certificate as to the signature of a public notary	\$44	—

## Part 2 District Court

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Matter for which fee payable</b>	<b>Standard fee</b>	<b>Corporation fee</b>
1	Filing an originating process (other than an originating process referred to in item 2)	\$469	\$938
2	Filing an originating process in relation to an appeal	\$194	\$388
3	Allocating a date for hearing of the proceedings by a judge, a judge and jury or a judicial registrar	\$502	\$1,004
4	Filing a requisition for trial by jury	\$803	\$1,606
	For retention of jury after the first day of trial		
	<b>Note—</b>		
5	The fees under this item are to be paid by the party requesting a jury for the trial.	\$365 per day	\$730 per day
6	On referral of proceedings for arbitration under Division 2 of Part 5 of the <a href="#">Civil Procedure Act 2005</a>	\$598	—
7	Filing an application for an order for the rehearing of proceedings under Division 3 of Part 5 of the <a href="#">Civil Procedure Act 2005</a>	\$456	\$912
8	Filing a notice of motion	\$61	\$122

## Part 3 Local Courts

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Matter for which fee payable</b>	<b>Standard fee</b>	<b>Corporation fee</b>
1	Filing an originating process, under Part 7 of the <a href="#">Local Courts Act 1982</a> , in a Local Court sitting in its General Division	\$173	\$346
2	Filing an originating process, under Part 7 of the <a href="#">Local Courts Act 1982</a> , in a Local Court sitting in its Small Claims Division	\$70	\$140
3	Filing an application notice under Part 6 of the <a href="#">Local Courts Act 1982</a>	\$67	—
4	Filing an application for an order for the rehearing of proceedings under Division 3 of Part 5 of the <a href="#">Civil Procedure Act 2005</a>	\$301	\$602
5	Serving or attempting service by post of originating process by a Local Court	\$30 for each address to which process posted	—

6	Filing a notice of motion	\$61	\$122
7	Filing a notice of appeal, or application for leave to appeal, to the District Court under Part 3 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i> , as applied to proceedings under Part 6 of the <i>Local Courts Act 1982</i>		
	(a) in relation to appellant's first such notice	\$82	—
	(b) in relation to appellant's second or subsequent such notice	\$44	—

## Part 4 Miscellaneous court fees

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Matter for which fee payable</b>	<b>Standard fee</b>	<b>Corporation fee</b>
1	Issuing a subpoena (for production, to give evidence, or both)	\$59	\$118
2	Issuing a notice to produce a document or thing to the court under Part 34 of the <i>Uniform Civil Procedure Rules 2005</i>	\$59	\$118
3	Issuing an examination order	\$31	\$62
4	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>	\$67	\$134
5	Opening or keeping open the registry or part of the registry:		
	(a) on a Saturday, Sunday or public holiday or	\$523	\$1,046
	(b) on any other day before 9 am or after 5 pm		
6	Requesting production to the court of documents held by another court	\$44	\$88
7	Furnishing a sealed or certified copy of a judgment or order, or of the written opinion or reasons for opinion of any judicial or other officer of the court	\$44	—
8	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by item 7)	\$10, plus \$5 for each 10 pages (or part thereof) after the first 20 pages	—
9	Retrieving and providing access to, but not furnishing a copy of, any document	\$0	—

10	Supplying a duplicate tape recording of sound-recorded evidence	\$37 per cassette	—
11	Supplying a transcript of any proceedings:		
	(a) where the matter being transcribed is under 3 months old	\$68, plus an additional \$8.20 for each page after the first 8 pages	—
	(b) where the matter being transcribed is 3 months old or older	\$81, plus an additional \$9.30 for each page after the first 8 pages	—
	Providing any service for which a fee is not otherwise imposed by this Schedule		
12	<b>Note—</b> A fee may not be imposed under this item except with the approval of the registrar.	\$31	\$62

## Schedule 2 Sheriff's fees

(Clause 5)

<b>Column 1</b>	<b>Column 2</b>
<b>Matter for which fee payable</b>	<b>Fee</b>
1 Serving or attempting service of any document, including service by post and preparation of affidavit of service	\$48 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>	\$59 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>	\$245 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>	\$59 for each address at which, and each occasion on which, execution is effected or attempted
5 <b>Note—</b> The 3% levy in Column 2 is not payable in relation to writs executed by the Marshal in Admiralty	\$59 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)                  | \$245 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 (UCPR rule 39.22)                                 | \$599   |
| 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> | \$16  |
| 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>     | \$327 per Sheriff's officer per day   |
| 10 | Attending a view by a jury in civil proceedings   | \$130   |
| 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      | \$523   |
| 12 | Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided by item 8)                            | \$10, plus \$5 for each 10 pages (or part thereof) after the first 20 pages                     |