

Civil Procedure Regulation 2017

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New South Wales

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Civil Procedure Regulation 2017



New South Wales

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Civil Procedure Regulation 2017



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Civil Procedure Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note—

This Regulation replaces the *Civil Procedure Regulation 2012*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.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.

the Act means the *Civil Procedure Act 2005*.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(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 or an incorporated partnership 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 or an incorporated partnership 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 or an incorporated partnership.
- (4) Despite subclauses (2) and (3), the fee payable by a corporation or an incorporated partnership that produces evidence, satisfactory to a registrar of the court:
 - (a) that its turnover, in the financial year of the corporation or incorporated partnership immediately preceding the financial year in which the fees are to be taken, was less than \$200,000, or
 - (b) if the corporation or incorporated partnership 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,
 - (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.
- (7) Despite subclause (2), no fee is payable by any of the following in relation to industrial proceedings (within the meaning of Chapter 6A of the *Industrial Relations Act 1996*) unless Schedule 1 expressly says so:
- (a) any industrial organisation within the meaning of that Act,
 - (b) any association registered under Chapter 6 of that Act.

Note—

Industrial proceedings are proceedings before the Supreme Court under certain industrial legislation such as the *Industrial Relations Act 1996*.

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 the 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 fee.
- (4) For the purposes only of subclause (3), 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 the fee 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

- (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) if the court makes an order as to the payment of the fee—by the parties in the proportions so ordered, or
 - (b) if the hearing involves a cross-claim only—by the cross-claimant, or
 - (c) in any other case—by the plaintiff (and not by any cross-claimant).
- (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 an 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 or the District Court.
- (2) A hearing fee in relation to any proceedings is payable:
 - (a) if the court makes an order as to the payment of the fee—by the parties in the proportions so ordered, or
 - (b) if the hearing involves a cross-claim only—by the cross-claimant, or
 - (c) in any other case—by the plaintiff (and not by any cross-claimant).
- (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 that has as its sole purpose 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 part of a fee payable to the registrar be waived, postponed or remitted, subject to any conditions the registrar thinks fit to impose.
- (2) The Sheriff may, by order in writing, direct that the whole or part of a fee payable to the Sheriff be waived, postponed or remitted, subject to any conditions the Sheriff

thinks fit to impose.

- (3) The powers conferred by this clause are to be exercised in accordance with any guidelines published by the Attorney General.

12 Postponement of fees for pro bono parties

- (1) The taking of a 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.
- (3) In this clause, **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, the Law Society of New South Wales or the court.

13 Postponement of fees for legally assisted persons

- (1) The taking of a 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 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.
- (3) In this clause, **legally assisted person** means a person who is receiving:
- (a) legal assistance through a community legal service within the meaning of the [Legal Profession Uniform Law \(NSW\)](#), or
 - (b) legal aid under the [Legal Aid Commission Act 1979](#).

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 Certain domestic and personal violence proceedings excluded from certain provisions of Parts 3-9 of Act

Any civil proceedings for which the Local Court has jurisdiction under section 91 of the *Crimes (Domestic and Personal Violence) Act 2007* are excluded from the operation of sections 19-86 and 88-149 of the Act.

17 Savings

Any act, matter or thing that, immediately before the repeal of the *Civil Procedure Regulation 2012*, 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)	\$1,101	\$3,014
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	\$733	—

	(c) is \$250,000 or more but less than \$500,000	\$995	—
	(d) is \$500,000 or more but less than \$1,000,000	\$1,525	—
	(e) is \$1,000,000 or more but less than \$2,000,000	\$2,032	—
	(f) is \$2,000,000 or more but less than \$5,000,000	\$3,387	—
	(g) is \$5,000,000 or more	\$5,646	—
3	Filing in the Court of Appeal a notice of intention to appeal	\$315	\$720
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	\$1,125	\$2,203
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	\$1,441	\$2,922
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	\$2,221	\$4,504
	(b) in proceedings where a notice of intention to appeal has been filed by the same party	\$3,347	\$6,709
	(c) in any other proceedings	\$3,662	\$7,427
7	Allocating a date for hearing of the proceedings by one or more judges, a judge and jury or an associate judge	\$2,197	\$5,022
8	Filing a requisition for trial by jury	\$1,136	\$2,272
	Retaining a jury after the first day of trial		
9	Note— The fees under this item are to be paid by the party requesting a jury for the trial.	\$518 per day	\$1,036 per day
10	Referring proceedings for arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$849	—

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>	\$646	\$1,292
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	\$875	\$2,009
	(b) on the 5th, 6th, 7th, 8th or 9th day	\$1,407	\$3,490
	(c) on or after the 10th day	\$2,833	\$6,886
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	\$770	\$1,540
14	Preparing appeal papers (for the number of copies the registrar orders to be printed) in volumes of not more than 250 pages	\$742 per volume	\$1,484 per volume
15	Filing a notice of motion	\$403	\$923
16	Preparing a copy of a will	\$60	—
17	Conducting a genealogical search on a probate file (for each file searched)	\$118	—
18	Conducting a search for an application for a grant of representation or reseal of a grant of representation (for each file searched)	\$60	—
19	Lodging a caveat against an application for a grant of representation or reseal of a grant of representation	\$43	\$86
20	Conducting an adoption search (for each file searched)	\$60	—
21	Issuing a registrar's certificate as to the signature of a public notary	\$60	—
22	Reissuing a court document to a party that is legally represented due to an error caused by the party which necessitated correction to the document	\$43	\$86
23	Publishing on the NSW Online Registry website a notice of intention to apply for a grant of representation or reseal of a grant of representation	\$45	—
24	Publishing on the NSW Online Registry website a notice of intended distribution	\$45	—
25	Publishing on the NSW Online Registry website a notice of application for passing accounts	\$45	—

26	Republishing on the NSW Online Registry website a notice of intention to apply for a grant of representation or reseal of a grant of representation	\$18.50	—
27	Republishing on the NSW Online Registry website a notice of intended distribution	\$18.50	—
28	Republishing on the NSW Online Registry website a notice of application for passing accounts	\$18.50	—

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 2017*.

	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)	\$937	\$1,874
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 or to a building application, and where the value of the development or building:		
	(a) is less than \$500,000	\$937	\$1,874
	(b) is \$500,000 or more but less than \$1,000,000	\$4,284	\$5,690
	(c) is \$1,000,000 or more	\$5,352	\$7,108
3	Filing an originating process in Class 2 of the Court's jurisdiction (other than an originating process referred to in item 4)	\$937	\$1,874
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>	\$244	\$488
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)	\$937	\$1,874

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	\$329	\$658
	(b) is \$500,000 or more but less than \$1,000,000	\$518	\$1,036
	(c) is \$1,000,000 or more	\$937	\$1,874
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	\$937	\$1,874
	(b) is \$500,000 or more but less than \$1,000,000	\$4,284	\$5,690
	(c) is \$1,000,000 or more	\$5,352	\$7,108
8	Filing an originating process in Class 4 of the Court's jurisdiction	\$937	\$1,874
9	Filing an originating process in Class 8 of the Court's jurisdiction where the matter relates to small-scale title within the meaning of the <i>Mining Act 1992</i>	\$244	\$488
10	Filing an originating process in Class 8 of the Court's jurisdiction (other than an originating process referred to in item 9)	\$937	\$1,874
11	Filing a process to commence an appeal to the Court under section 56A of the <i>Land and Environment Court Act 1979</i>	\$2,189	\$4,378
12	Filing a notice of motion	\$218	\$436

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)	\$668	\$1,336
2	Filing an originating process in relation to an appeal	\$275	\$550

3	Allocating a date for hearing of the proceedings by a judge, a judge and jury or a judicial registrar	\$714	\$1,428
4	Filing a requisition for trial by jury	\$1,142	\$2,284
	Retaining a jury after the first day of trial		
5	Note— The fees under this item are to be paid by the party requesting a jury for the trial.	\$518 per day	\$1,036 per day
6	Referring proceedings for arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$845	—
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>	\$646	\$1,292
8	Filing a notice of motion	\$86	\$172
9	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	\$418	\$836
	(b) on the 5th, 6th, 7th, 8th or 9th day	\$731	\$1,462
	(c) on or after the 10th day	\$1,045	\$2,090

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	\$244	\$488
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	\$99	\$198
3	Filing an application notice under Part 4 of the <i>Local Court Act 2007</i>	\$93	—
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>	\$427	\$854
5	Serving or attempting service by post of originating process by the Local Court	\$42 for each address to which process posted	—
6	Filing a notice of motion	\$86	\$172

7	Filing a notice of appeal, or application for leave to appeal, to the District Court under Part 3 of the Crimes (Appeal and Review) Act 2001 , as applied to proceedings under Part 4 of the Local Court Act 2007 :		
	(a) in relation to a single notice	\$115	—
	(b) in relation to more than 1 notice arising from the same court appearance	\$60	—

Part 5 Miscellaneous court fees

Item	Column 1 Matter for which fee payable	Column 2 Standard fee	Column 3 Corporation fee
1	Issuing a subpoena (for production, to give evidence, or both)	\$102	\$204
2	Receipt by the registrar of a document or thing produced in compliance with a notice to produce under Part 34 of the Uniform Civil Procedure Rules 2005	\$84	\$168
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 Civil Procedure Act 2005	\$92	\$184
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	\$736	\$1,472
5	Requesting production to the court of documents held by another court	\$60	\$120
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	\$60	—
7	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 6, 8 and 10)	\$13, plus \$7 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 an off-site storage facility:		

	(a) standard retrieval request	\$80	—
	(b) 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)	The additional fee incurred by a court	—
9	Supplying a duplicate recording of sound-recorded evidence—per disc	\$52	—
10	Supplying a copy of a transcript of any proceedings:		
	(a) where the matter being transcribed is under 3 months old	\$89, plus an additional \$11 for each page after the first 8 pages	—
	(b) where the matter being transcribed is 3 months old or older	\$109, plus an additional \$13 for each page after the first 8 pages	—
	Note—		
	A person who is supplied with a copy of a transcript of any court proceedings by a third party provider (not being a court or the Department of Justice’s Reporting Services Branch) may be liable to pay a fee stipulated by that provider for that service. Such a fee is not subject to this item.		
11	Conducting a civil litigation search	\$43 for each name of company or individual searched	\$86
12	Amending on the NSW Online Registry website any document (for each document amended)	\$18.50	—
	Providing any service for which a fee is not otherwise imposed by this Schedule		
13	Note—	\$43	\$86
	A fee may not be imposed under this item except with the approval of the registrar.		

Schedule 2 Sheriff’s fees

(Clause 5)

Column 1	Column 2
Item	Matter for which fee payable
Item	Fee

1	Serving or attempting service of any document, including service by post and preparation of affidavit of service	\$66 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>	\$84 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>	\$346 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>	\$84 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.	\$84 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)	\$346 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>	\$850
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>	\$26
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>	\$464 per sheriff's officer per day
10	Attending a view by a jury in civil proceedings	\$184
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	\$744
12	Conducting a debt search on a judgment debt registered with the Sheriff's office for enforcement	\$60 for each name of company or individual searched
13	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided by item 8)	\$13, plus \$7 for each 10 pages (or part of 10 pages) after the first 20 pages