



New South Wales

# Civil Procedure Regulation 2005

under the

Civil Procedure Act 2005

## Explanatory note

The object of this Regulation is to make provision with respect to fees payable in connection with civil proceedings in the Supreme Court, the District Court or a Local Court, and for the fees payable in connection with functions exercised by the Sheriff. The Regulation deals with the following matters:

- (a) the prescription of the amounts of such fees, and the manner in which such fees are to be paid (Part 2 and Schedules 1 and 2),
- (b) the waiver, postponement and remission of such fees (Part 3),
- (c) additional matters with respect to hearing allocation fees and hearing fees (Part 4),
- (d) other minor, consequential and ancillary matters (Parts 1 and 5).

This Regulation is made under the *Civil Procedure Act 2005*, including section 18 (Fees).

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Clause 1            Civil Procedure Regulation 2005

Part 1             Preliminary

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## Civil Procedure Regulation 2005

under the

Civil Procedure Act 2005

### Part 1 Preliminary

#### 1 Name of Regulation

This Regulation is the *Civil Procedure Regulation 2005*.

#### 2 Commencement

This Regulation commences on [*date to be inserted*].

#### 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 person who is a party to proceedings in a court and who is being represented under the pro bono scheme of the Law Society of New South Wales, or under the pro bono scheme of the New South Wales Bar Association, being a party in respect of whom a solicitor or barrister acting for the party in accordance with that 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.

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*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,

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Part 2             Fees generally

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- (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**

- (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**

- (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.

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Part 4          Waiver, postponement and remission of fees

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## **Part 4    Waiver, postponement and remission of fees**

### **11    General power to waive, postpone and remit fees**

- (1) A registrar 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 Marshal in Admiralty may, by order in writing, direct that the whole or any part of any fee payable to the Marshal in Admiralty be waived, postponed or remitted, subject to such conditions (if any) as the Marshal in Admiralty thinks fit to impose.
- (4) 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 to proceedings 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



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Clause 13

Waiver, postponement and remission of fees

Part 4

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(ii) costs are not awarded in his or her favour.

Clause 14 Civil Procedure Regulation 2005

Part 5 Miscellaneous

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## **Part 5 Miscellaneous**

### **14 Percentage of income from deposited funds payable to Treasurer**

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

### **15 Repeals**

The following regulations are repealed:

- (a) the *Supreme Court Regulation 2000*,
- (b) the *District Court Regulation 2000*,
- (c) the *Local Courts (Civil Claims) Regulation 2000*.

Civil Procedure Regulation 2005

Court fees

Schedule 1

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## Schedule 1 Court fees

(Clause 4)

### Part 1 Supreme Court

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Filing an originating process (other than an originating process referred to in item 2–9)	\$638	\$1,276
2 Filing an originating process in the Equity Division for entry in the Commercial List or the Technology and Construction List	\$1,457	\$2,914
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	\$563	—
(c) is \$250,000 or more but less than \$500,000	\$710	—
(d) is \$500,000 or more but less than \$1,000,000	\$1,070	—
(e) is \$1,000,000 or more	\$1,424	—
5 Filing in the Court of Appeal a holding summons for leave to appeal or cross-appeal	\$125	\$250
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	\$584	\$1,168
7 Filing any other summons in the Court of Appeal	\$708	\$1,416
8 Filing a notice of appeal without appointment in the Court of Appeal	\$282	\$564
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	\$1,489	\$2,978
(b) in proceedings in which a notice of appeal without appointment has been filed	\$1,915	\$3,830

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Civil Procedure Regulation 2005

Schedule 1      Court fees

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**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>
(c) in any other proceedings	\$2,196	\$4,392
10 Allocating a date for hearing of the proceedings by one or more judges, a judge and jury or a master	\$1,216	\$2,432
11 Filing a requisition for trial by jury	\$777	\$1,554
12 For jury retention of jury after the first day of trial <b>Note.</b> The fees under this item are to be paid by the party requesting a jury for the trial.	\$353 per day	\$706 per day
13 On referral of an action to arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$578	—
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>	\$441	\$882
15 Hearing of proceedings by one of more judges, for each half day of hearing on or after the 11th day <b>Note.</b> 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.	\$227	\$454
16 Hearing of proceedings by a master, for each half day of hearing on or after the 11th day <b>Note.</b> 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.	\$204	\$408
17 Preparing appeal papers (for such number of copies as the registrar orders to be printed) in volumes of not more than 250 pages	\$506 per volume	\$1,012 per volume
18 Filing a notice of motion	\$147	\$294
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	\$31	—
20 Preparing a copy of a will	\$43	—
21 Conducting a genealogical search on a probate file (for each file searched)	\$43	—
22 Conducting a search for an application for a grant or resealing of probate (for each file searched)	\$43	—
23 Lodging a caveat against an application for a grant or resealing of probate	\$30	\$60

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Civil Procedure Regulation 2005

Court fees

Schedule 1

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**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>
24 Conducting an adoption search (for each file searched)	\$43	—
25 Issuing a registrar's certificate as to the signature of a public notary	\$43	—

**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)	\$454	\$908
2 Filing an originating process in relation to an appeal	\$188	\$376
3 Allocating a date for hearing of the proceedings by one or more judges, a judge and jury or a judicial registrar	\$486	\$972
4 Filing a requisition for trial by jury	\$777	\$1,554
5 For jury retention of jury after the first day of trial <b>Note.</b> The fees under this item are to be paid by the party requesting a jury for the trial.	\$353 per day	\$706 per day
6 On referral of an action to arbitration under Division 2 of Part 5 of the <i>Civil Procedure Act 2005</i>	\$578	—
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>	\$441	\$882
8 Filing a notice of motion	\$59	\$118

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Civil Procedure Regulation 2005

Schedule 1      Court fees

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**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 <i>Local Courts Act 1982</i> , in a Local Court sitting in its General Division	\$168	\$336
2 Filing an originating process, under Part 7 of the <i>Local Courts Act 1982</i> , in a Local Court sitting in its Small Claims Division	\$68	\$136
3 Filing an application notice under Part 6 of the <i>Local Courts Act 1982</i>	\$65	—
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>	\$291	\$582
5 Serving or attempting service by post of originating process by a Local Court	\$29 for each address to which process posted	—
6 Filing a notice of motion	\$59	\$118
7 Filing a notice of appeal, or application for leave to appeal, to 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	\$79	—
(b) in relation to appellant's second or subsequent such notice	\$43	—

**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)	\$57	\$114
2 Issuing an examination order	\$30	\$60

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Civil Procedure Regulation 2005

Court fees

Schedule 1

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## Part 4 Miscellaneous court fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
3 Filing or registering a copy or certificate of judgment, order or determination of any other court under section 133 of the <i>Civil Procedure Act 2005</i>	\$65	\$131
4 Opening or keeping open the registry or part of the registry: (a) on a Saturday, Sunday or public holiday, or (b) on any other day before 9 am or after 5 pm	\$506	\$1,012
5 Requesting production to the court of documents held by another court	\$43	\$86
6 Furnishing a 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.	\$43	—
7 Making a copy of any document (otherwise than as provided for by item 6)	\$2 per page	—
8 Supplying a duplicate tape recording of sound-recorded evidence, for each cassette	\$36	—
9 Supplying a copy of the transcript of any proceedings: (a) where the matter being transcribed is under 3 months old (b) where the matter being transcribed is 3 months old or older	\$66, plus an additional \$7.90 for each page after the first 8 pages \$78, plus an additional \$9.00 for each page after the first 8 pages	— —
10 Providing any service for which a fee is not otherwise imposed by this Schedule <b>Note.</b> A fee may not be imposed under this item except with the approval of the registrar.	\$30	\$60

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Civil Procedure Regulation 2005

Schedule 2 Sheriff's fees

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## 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	\$46 for each address at 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>	\$57 for each address at 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>	\$237
4 Executing or attempting execution of a writ of delivery under Part 8 of the <i>Civil Procedure Act 2005</i>	\$57 for each address at 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> <b>Note.</b> The 3% levy in Column 2 is not payable in relation to writs executed by the Marshal in Admiralty	\$57 for each address at 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)	\$237
7 Providing Sheriff's officers to guard property seized under a writ of execution under Part 8 of the <i>Civil Procedure Act 2005</i>	\$316 per Sheriff's officer per day
8 Attending a view by a jury in civil proceedings	\$126
9 Opening or keeping open the Sheriff's office: (a) on a Saturday, Sunday or public holiday, or (b) on any other day before 9 am or after 5 pm	\$488