

Land and Environment Court Regulation 2005

Note:

The *Land and Environment Court Regulation 2005* made under the *Land and Environment Court Act 1979* is on and from 28.1.2008 taken to be a regulation made under the *Civil Procedure Act 2005*. See clause 14 of Schedule 6 to the *Civil Procedure Act 2005 No 28*.

1 Name of Regulation

This Regulation is the *Land and Environment Court Regulation 2005*.

2 Commencement

This Regulation commences on 1 July 2005.

This Regulation repeals and replaces the *Land and Environment Court Regulation 2000* which would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.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. "**the Act**" means the *Civil Procedure Act 2005*. This Regulation was originally made under the *Land and Environment Court Act 1979* but on and from 28 January 2008 is taken to be made under the *Civil Procedure Act 2005* (see clause 14 of Schedule 6 to that Act).

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

4 Fees generally

(1) The fees to be taken in respect of the matters set out in Schedule 1 are the fees specified in that Schedule.

(2) (Repealed)

5 Persons by and to whom fees payable

(1) A fee charged under this Regulation for a document or service is payable to the registrar by the person at whose request the document is filed or the service rendered.

(1A) (Repealed)

(2) If a document is filed or a service rendered at the request of a person acting as an agent for another person, each of those persons is jointly and severally liable for payment of the fee.

(2A) 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.

(3) (Repealed)

6 Fee not chargeable for transcript--appeal to Court of Criminal Appeal

No fee is chargeable to a person convicted of an offence in proceedings before the Court for a transcript or diskette of the proceedings if:

(a) the person has filed a notice of appeal, notice of intention to appeal, notice of application for leave to appeal or notice of intention to apply for leave to appeal with the Court of Criminal Appeal against the conviction or a sentence imposed by the Court in respect of the conviction, or

(b) the person is a respondent to an appeal against such a sentence.

7 Postponement or waiver of fees in certain cases

(1) The taking of the fee for filing initiating process to commence proceedings in Class 5, 6 or 7 of the Court's jurisdiction is to be postponed until judgment is given in the

proceedings if the process is filed by or on behalf of:

- (a) a pro bono party to the proceedings, or
- (b) a pensioner party to the proceedings, or
- (c) a legally assisted party to the proceedings.

(2) The fee is not to be taken at all, or if taken must be remitted, if, in relation to the proceedings:

- (a) judgment is against the party concerned, or
- (b) judgment is in favour of that party, but costs are not awarded in his or her favour.

(3) Despite clause 8 (2), the registrar must not refuse to file or issue any document, or render a service, relevant to proceedings merely because, in accordance with this clause, a fee has not been taken for the filing of any initiating process on behalf of a pro bono party, a pensioner party or a legally assisted party to the proceedings concerned.

(4) For the purposes of this clause:

(a) a party to proceedings is a "**pro bono party**" if he or she is being represented under the pro bono scheme of the Law Society of New South Wales or the pro bono scheme of the New South Wales Bar Association and a legal practitioner acting for the party:

- (i) certifies in writing to the registrar on behalf of the party that the party is being so represented, and
- (ii) undertakes in writing to the registrar to pay the filing fee for that document if, at the conclusion of the proceedings, subclause (2) does not apply, and

(b) a party to proceedings is a "**pensioner party**" if he or she is the holder of any card issued by the Commonwealth Government that entitles the holder to Commonwealth health concessions, and

(c) a party to proceedings is a "**legally assisted party**" if he or she is receiving legal assistance through a community legal centre within the meaning of section 48H of the *Legal Profession Act 1987* or section 240 of the *Legal Profession Act 2004*.

8 When fees payable

(1) A fee charged under this Regulation becomes payable when the document concerned is filed or the service concerned is rendered.

(2) However, the registrar:

- (a) may require a fee for the document or service to be paid before the document is filed or the service rendered, or
- (b) may, by order in writing, direct that the whole or any part of such a fee be postponed, waived or remitted, subject to such conditions (if any) as the registrar thinks fit to impose.

(3) The registrar may delegate his or her power under this clause to direct that the whole or any part of any fee be postponed to any public servant holding office as, or appointed to act temporarily as, a grade 5/6 administrative or clerical officer or above.

(4) The registrar may delegate his or her power under this clause to direct that the whole or any part of any fee be waived or remitted to any public servant holding office as, or appointed to act temporarily as, a grade 7/8 administrative or clerical officer or above.

(5) A reference in subclause (2) to the registrar includes a reference to a person to whom the registrar delegates his or her powers in accordance with this clause.

(6) This clause is subject to clause 7.

9 Repeal and saving

(1) The *Land and Environment Court Regulation 2000* is repealed.

(2) Any act, matter or thing that, immediately before the repeal of the *Land and Environment Court Regulation 2000*, had effect under that Regulation is taken to have

effect under this Regulation.

Schedule 1 Court fees

(Clause 4)

Fees that are payable in relation to proceedings before the Court in Class 1, 2, 3 or 4 of its jurisdiction are set out in regulations under the *Civil Procedure Act 2005*.

Item	Column 1	Column 2
	Matter for which fee payable	Fee
1	Filing an originating process in Class 5 of the Court's jurisdiction	\$718
2	Filing an originating process in Class 6 or 7 of the Court's jurisdiction	\$718

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
ClI	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Land and Environment Court Regulation 2005 (297)*. GG No 78 of 29.6.2005, p 3211. Date of commencement, 1.7.2005, cl 2. This Regulation has been amended as follows:

2006	(366)	<i>Land and Environment Court Amendment (Fees) Regulation 2006</i> . GG No 84 of 30.6.2006, p 4845. Date of commencement, 1.7.2006, cl 2.
2007	(13)	<i>Land and Environment Court Amendment (Court Fees) Regulation 2007</i> . GG No 11 of 19.1.2007, p 165. Date of commencement, 2.2.2007, cl 2.
	(291)	<i>Land and Environment Court Amendment (Fees) Regulation 2007</i> . GG No 83 of 29.6.2007, p 4069. Date of commencement, 1.7.2007, cl 2.
2008	(238)	<i>Land and Environment Court Amendment (Fees) Regulation 2008</i> . GG No 76 of 27.6.2008, p 6083. Date of commencement, 1.7.2008, cl 2.
	No 62	<i>Statute Law (Miscellaneous Provisions) Act 2008</i> . Assented to 1.7.2008. Date of commencement of Sch 2.31, assent, sec 2 (2).

Table of amendments

Cl 3	Am 2008 No 62, Sch 2.31.
Cl 4	Am 2008 (238), Sch 1 [1].
Cl 5	Am 2007 (291), Sch 1 [1] [2]; 2008 (238), Sch 1 [2].
Cl 7	Am 2008 (238), Sch 1 [3].

Sch 1	Subst 2006 (366), Sch 1. Am 2007 (13), Sch 1 [1] [2]. Subst 2007 (291), Sch 1 [3]; 2008 (238), Sch 1 [4].
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