



Government Gazette

OF THE STATE OF
NEW SOUTH WALES

Number 100
Wednesday, 10 August 2005

Published under authority by Government Advertising and Information

SPECIAL SUPPLEMENT

Proclamations



New South Wales

Proclamation

under the

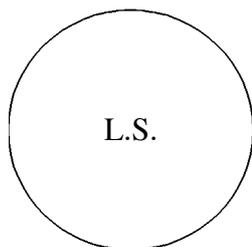
Civil Procedure Act 2005

MARIE BASHIR, Governor

I, Professor Marie Bashir AC, Governor of the State of New South Wales, with the advice of the Executive Council, and in pursuance of section 2 of the *Civil Procedure Act 2005*, do, by this my Proclamation, appoint 15 August 2005 as the day on which that Act commences, except for the following provisions:

- (a) sections 8 and 17,
 - (b) Schedule 2,
 - (c) Schedule 5.3 [1], [2], [3] and [4], 5.15 [4], 5.17 [3], 5.30 [8], 5.43 and 5.44.
- Signed and sealed at Sydney, this 10th day of August 2005.

By Her Excellency's Command,



BOB DEBUS, M.P.,
Attorney General

GOD SAVE THE QUEEN!

Explanatory note

The object of this Proclamation is to commence certain provisions of the *Civil Procedure Act 2005*. The remaining provisions have already commenced, will commence automatically on 15 August 2005 as a consequence of this Proclamation or will commence automatically in the future as a consequence of the commencement of other legislation.

Regulations



New South Wales

Civil Procedure Amendment (Application of Act) Regulation 2005

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*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to amend Schedule 1 to the *Civil Procedure Act 2005* so as to apply Parts 3–9 of that Act to civil proceedings under the *Property (Relationships) Act 1984* that are commenced in a Local Court.

This Regulation is made under the *Civil Procedure Act 2005*, including section 4 (Application of Parts 3–9 of the Act).

Clause 1 Civil Procedure Amendment (Application of Act) Regulation 2005

Civil Procedure Amendment (Application of Act) Regulation 2005

under the

Civil Procedure Act 2005

1 Name of Regulation

This Regulation is the *Civil Procedure Amendment (Application of Act) Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Amendment of Schedule 1 to Civil Procedure Act 2005

Schedule 1 to the *Civil Procedure Act 2005* is amended by inserting the following words at the end of the matter appearing in Column 2 in relation to a Local Court:

All civil proceedings under the *Property (Relationships) Act 1984*



New South Wales

Civil Procedure Regulation 2005

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*.

BOB DEBUS, M.P.,
Attorney General

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) savings and transitional matters (Part 5),
- (e) other minor, consequential and ancillary matters (Parts 1 and 6).

This Regulation is made under the *Civil Procedure Act 2005*, including section 18 (Fees) and clause 1 of Schedule 6 (Savings and transitional provisions).

Civil Procedure Regulation 2005

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Civil Procedure Regulation 2005

Clause 1

Preliminary

Part 1

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 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

Clause 3 Civil Procedure Regulation 2005

Part 1 Preliminary

- (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.

Civil Procedure Regulation 2005

Clause 4

Fees generally

Part 2

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,

Clause 5 Civil Procedure Regulation 2005

Part 2 Fees generally

- (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.

Civil Procedure Regulation 2005

Clause 9

Hearing allocation fees and hearing fees

Part 3

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.

Clause 11	Civil Procedure Regulation 2005
Part 4	Waiver, postponement and remission of fees

Part 4 Waiver, postponement and remission of fees

11 General power to waive, postpone and remit fees

- (1) 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 court 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.

Civil Procedure Regulation 2005

Clause 14

Savings and transitional provisions

Part 5

Part 5 Savings and transitional provisions

14 Existing writs of execution

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.

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*.

Clause 18	Civil Procedure Regulation 2005
Part 5	Savings and transitional provisions

- (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 Proceedings in District Court or Local Court taken to have been dismissed if no progress after 12 months

- (1) Any proceedings that, before the commencement of this clause, were commenced by statement of claim in the District Court or a Local Court are taken to have been dismissed if:
- (a) a defence or cross-claim has not been filed, or
 - (b) a default judgment has not been entered, or
 - (c) an order for judgment has not been made, or
 - (d) the proceedings have not otherwise been disposed of,
- within 12 months after the date on which the statement of claim was filed or within such further time as the Court may order.
- (2) Section 91 of the Act applies to any such proceedings in the same way as it applies to proceedings in respect of which an order for dismissal is made as referred to in subsection (2) of that section.

Civil Procedure Regulation 2005

Clause 19

Miscellaneous

Part 6

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 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

Schedule 1 Court fees

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 items 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

Civil Procedure Regulation 2005

Court fees

Schedule 1

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
(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 an associate judge	\$1,216	\$2,432
11 Filing a requisition for trial by jury	\$774	\$1,548
12 For jury retention of 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.	\$353 per day	\$706 per day
13 On referral of proceedings for 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 Note. 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 an associate judge, for each half day of hearing on or after the 11th day Note. 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)	\$81	—
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

Civil Procedure Regulation 2005

Schedule 1 Court fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
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

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)	\$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 Note. 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 proceedings for 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

Part 3 Local Courts

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
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

Civil Procedure Regulation 2005

Court fees

Schedule 1

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
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

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
1 Issuing a subpoena (for production, to give evidence, or both)	\$57	\$114
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>	\$57	\$114
3 Issuing an examination order	\$30	\$60
4 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

Civil Procedure Regulation 2005

Schedule 1 Court fees

Column 1	Column 2	Column 3
Matter for which fee payable	Standard fee	Corporation fee
5 Opening or keeping open the registry or part of the registry on a Saturday, Sunday or public holiday or on any other day before 9 am or after 5 pm	\$506	\$1,012
6 Requesting production to the court of documents held by another court	\$43	\$86
7 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	—
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	\$36 per cassette	—
11 Supplying a transcript of any proceedings:		
(a) where the matter being transcribed is under 3 months old	\$66, plus an additional \$7.90 for each page after the first 8 pages	—
(b) where the matter being transcribed is 3 months old or older	\$78, plus an additional \$9.00 for each page after the first 8 pages	—
12 Providing any service for which a fee is not otherwise imposed by this Schedule	\$30	\$60
Note. A fee may not be imposed under this item except with the approval of the registrar.		

Civil Procedure Regulation 2005

Sheriff's fees

Schedule 2

Schedule 2 Sheriff's fees

(Clause 5)

Column 1	Column 2
Matter for which fee payable	Fee
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> Note. 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 on a Saturday, Sunday or public holiday or on any other day before 9 am or after 5 pm	\$506



New South Wales

Criminal Procedure Regulation 2005

under the

Criminal Procedure Act 1986

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Criminal Procedure Act 1986*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal and remake the *Criminal Procedure Regulation 2000*. The new Regulation deals with the following matters:

- (a) prescribing procedural matters relating to the listing of criminal proceedings for hearing,
- (b) prescribing the fees payable in relation to criminal proceedings in the Supreme Court, in the District Court and in Local Courts,
- (c) declaring a circle sentencing intervention program to be an intervention program for the purposes of Part 4 of Chapter 7 of the *Criminal Procedure Act 1986*,
- (d) prescribing offences for which the District Court does not have jurisdiction,
- (e) requiring notice of an accused person's intention to adduce evidence of substantial impairment at his or her trial to be given to the Director of Public Prosecutions at least 35 days before the date on which the trial is listed to commence,
- (f) prescribing procedural matters relating to the summary disposal of indictable offences,
- (g) other procedural matters.

This Regulation is made under the *Criminal Procedure Act 1986*, including sections 3 (1), 4 (the general regulation-making power), 44 (1), 46 (2), 114 (2), 121, 151 (1), 187 (5), 218 (2), 220, 265 (1) (b), 266 (2) (a) and (b), 279 (5) (b), 284 (2), 336 and 337 and Part 4 of Chapter 7 of that Act.

This Regulation is made in connection with the staged repeal of subordinate legislation under the *Subordinate Legislation Act 1989*.

Criminal Procedure Regulation 2005

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Criminal Procedure Regulation 2005

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Clause 1	Criminal Procedure Regulation 2005
Part 1	Preliminary

Criminal Procedure Regulation 2005

under the

Criminal Procedure Act 1986

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Criminal Procedure Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Definitions

(1) In this Regulation:

Criminal Listing Director has the same meaning that it has in Part 3 of Chapter 3 of the Act.

the Act means the *Criminal Procedure Act 1986*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

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

Criminal Procedure Regulation 2005

Clause 4

Listing of criminal proceedings

Part 2

Part 2 Listing of criminal proceedings

4 Information for Criminal Listing Director

- (1) The Criminal Listing Director may direct any of the following persons to give to the Director such information to assist the Director in making arrangements for the listing of criminal proceedings as the Director reasonably requires:
 - (a) a prosecuting authority,
 - (b) an accused person or appellant,
 - (c) a solicitor acting for an accused person or appellant,
 - (d) a registrar.
- (2) A person to whom such a direction is given must comply with the direction without delay.
- (3) The Criminal Listing Director must not give to a prosecuting authority any information furnished to the Director by an accused person or appellant (or by the solicitor of an accused person or appellant) in response to a direction under this clause except with the consent of the accused person, appellant or solicitor.
- (4) The Criminal Listing Director must not give to an accused person or appellant (or to any person acting in the interest of an accused person or appellant) any information furnished to the Director by a prosecuting authority in response to a direction under this clause except with the consent of the prosecuting authority.

5 Notice of appearance

- (1) A solicitor:
 - (a) who acts for an accused person or appellant in any criminal proceedings, and
 - (b) who has not filed a notice of appearance in the proceedings in the Local Court that led to those criminal proceedings,must file a notice of appearance, in the court in which the criminal proceedings are to be heard, as soon as practicable after accepting instructions to so act.
- (2) A notice of appearance must be in the form of a document signed by or on behalf of the solicitor filing it containing:
 - (a) the full name of the accused person or appellant for whom the solicitor acts, and
 - (b) the full name, address and telephone number of the solicitor.

Clause 6 Criminal Procedure Regulation 2005

Part 2 Listing of criminal proceedings

- (3) A solicitor who ceases to act for an accused person or appellant in any criminal proceedings must file a notice of ceasing to act, in the court in which the proceedings are to be heard, as soon as practicable after ceasing to so act.
- (4) Subclause (3) does not apply if a notice of appearance for the accused person or appellant has already been filed by another solicitor.
- (5) As soon as practicable after a notice under this clause is filed, the registrar with whom the notice is filed must give a copy of the notice to the Director of Public Prosecutions and to the Criminal Listing Director.

6 Transcript

- (1) The Director of Public Prosecutions must notify the Criminal Listing Director and the registrar of the relevant Local Court:
 - (a) if a written transcript of the proceedings in the Local Court that led to the committal for trial of an accused person is not received by the Director of Public Prosecutions within the prescribed time after the accused person was committed for trial, or
 - (b) if a written transcript of the proceedings in the Local Court that led to an appeal is not received by the Director of Public Prosecutions within the prescribed time after the appellant lodged notice of the appeal under Part 3 of the *Crimes (Local Courts Appeal and Review) Act 2001*.
- (2) For the purposes of this clause, the *prescribed time* is:
 - (a) 2 weeks, in the case of an accused person (being a juvenile) who is in custody for the offence the subject of the proceedings, or
 - (b) 4 weeks, in any other case.
- (3) The Criminal Listing Director must take information received under this clause into account in fixing any date for the hearing or mention of the matter before the Supreme Court or the District Court.

7 Notice of readiness

- (1) As soon as practicable after determining that criminal proceedings are ready to proceed on the part of the Crown, the Director of Public Prosecutions must give to the Criminal Listing Director a notice of readiness for the proceedings.
- (2) The notice must be in the form approved for the time being by the Criminal Listing Director and must be accompanied by a draft of the indictment proposed to be presented in the proceedings.

Criminal Procedure Regulation 2005

Clause 8

Listing of criminal proceedings

Part 2

-
- (3) As soon as practicable after receiving the notice, the Criminal Listing Director:
 - (a) must give a copy of the notice, and of the draft indictment which accompanies the notice, to the registrar of the relevant court, and
 - (b) must give a copy of the draft indictment to each accused person or the accused person's solicitor.
 - (4) As soon as practicable after determining that the indictment to be presented in any criminal proceedings is to depart in any material particular from the draft indictment that accompanied the notice of readiness for the proceedings, the Director of Public Prosecutions must give to the Criminal Listing Director a draft of the indictment then proposed to be presented in the proceedings.
 - (5) The later draft must contain a notice, in the form approved for the time being by the Criminal Listing Director, indicating the nature and extent of the departures from the earlier draft.
 - (6) As soon as practicable after receiving a draft indictment under subclause (4), the Criminal Listing Director must give a copy of the draft indictment to the registrar and to each accused person or the accused person's solicitor.

8 Application to stay indictment

- (1) This clause applies to:
 - (a) any application to the Supreme Court or District Court for an order staying or quashing an indictment, and
 - (b) any demurrer to an indictment.
- (2) Unless the court otherwise orders, an application or demurrer to which this clause applies must not be listed for hearing unless it has been filed within the prescribed time after a copy of the draft indictment was given to the accused person or the accused person's solicitor under clause 7 (3) or (6).
- (3) For the purposes of this clause, the *prescribed time* is:
 - (a) 1 month, in the case of an accused person who is in custody for the offence to which the indictment relates, or
 - (b) 3 months, in any other case.

9 Notice of listing

- (1) As soon as practicable after fixing a date for the hearing or mention of any criminal proceedings, the Criminal Listing Director must give notice of the listing to the registrar of the relevant court.

Clause 9 Criminal Procedure Regulation 2005

Part 2 Listing of criminal proceedings

- (2) As soon as practicable after receiving notice of the listing, the registrar must cause written notice of the listing to be served, in accordance with the rules of court, on the Director of Public Prosecutions and each accused person or appellant in the proceedings.

Criminal Procedure Regulation 2005

Clause 10

Penalty notice offences

Part 3

Part 3 Penalty notice offences

10 Penalty notice offences

- (1) For the purposes of section 336 of the Act, each offence created by a provision specified in Column 1 of Schedule 2 is prescribed as a penalty notice offence.
- (2) For the purposes of section 337 of the Act, the prescribed penalty for any such offence is the amount specified in Column 2 of Schedule 2 opposite the offence.

11 Limitation of areas in which penalty notices may be issued

The provisions of the Act relating to penalty notice offences and penalty notices are to apply, for the period ending on 30 June 2006, only to offences dealt with in that period in the areas of New South Wales covered by the following police Local Area Commands:

- (a) Albury,
- (b) Bankstown,
- (c) Blacktown,
- (d) Brisbane Waters,
- (e) City Central,
- (f) Lake Illawarra,
- (g) Lake Macquarie,
- (h) Miranda,
- (i) Parramatta,
- (j) Penrith,
- (k) The Rocks,
- (l) Tuggerah Lakes.

12 Repeal of Part and Schedule 2

This Part and Schedule 2 are repealed on 30 June 2006.

Clause 13 Criminal Procedure Regulation 2005

Part 4 Fees

Part 4 Fees

13 Amounts payable in relation to court proceedings

The fee that a person must pay to the Supreme Court, the District Court or a Local Court in respect of a matter referred to in Column 1 of Part 1 of Schedule 3 is the fee specified in respect of that matter in Column 2 of that Part.

14 Amounts payable in relation to Sheriff's functions

The fee that a person must pay to the Sheriff in relation to a matter referred to in Column 1 of Part 2 of Schedule 3 is the fee specified in respect of that matter in Column 2 of that Part.

15 Persons by and to whom fees are payable

- (1) Any fee imposed by Schedule 3 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 Part 1 of Schedule 3, to the registrar of the court concerned, and
 - (b) in the case of a fee imposed by Part 2 of Schedule 3, to the Sheriff or the registrar of the court concerned.
- (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.

16 When fees become due

- (1) A fee imposed by Schedule 3 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.

17 General power to waive, postpone and remit fees

- (1) A court may, by order in writing, direct that the whole or any part of any fee payable to the court be waived, postponed or remitted, subject to such conditions (if any) as the court 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.

Criminal Procedure Regulation 2005

Clause 18

Fees

Part 4

-
- (3) The senior judicial officer of any court may, by instrument in writing:
 - (a) direct that any function of the court under this clause may be exercised by such registrars or other officers of the court, and in such circumstances and subject to such conditions, as are specified in the instrument, and
 - (b) vary or revoke any such instrument.
 - (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.

18 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 costs are not awarded in his or her favour.
- (3) In this clause:

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.

Clause 19 Criminal Procedure Regulation 2005

Part 5 Intervention programs

Part 5 Intervention programs

19 Circle sentencing intervention program

- (1) Schedule 4 has effect for the purposes of Part 4 of Chapter 7 of the Act.
- (2) For the purposes of section 347 of the Act, the program of measures described in Part 4 of Schedule 4 for dealing with offenders is declared to be an intervention program for the purposes of Part 4 of Chapter 7 of the Act.

Criminal Procedure Regulation 2005

Clause 20

Miscellaneous

Part 6

Part 6 Miscellaneous

20 Public officers

The following bodies are declared to be public bodies for the purposes of paragraph (f) of the definition of *public officer* in section 3 (1) of the Act:

- (a) the Independent Commission Against Corruption,
- (b) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (c) the Animal Welfare League NSW,
- (d) the Australian Federal Police,
- (e) the Australian Securities and Investments Commission.

21 Certificate by Attorney General or Director of Public Prosecutions that no further proceedings to be taken

For the purposes of section 44 (1) of the Act, Form 1 is the prescribed form of certificate.

22 Offences not within jurisdiction of District Court

For the purposes of section 46 (2) of the Act, the offences referred to in sections 12 and 19A of the *Crimes Act 1900* are prescribed as being offences that are not within the jurisdiction of the District Court.

23 Notice of intention to adduce evidence of substantial mental impairment

For the purposes of section 151 (1) of the Act, notice of an accused person's intention to adduce evidence of substantial mental impairment at his or her trial for murder:

- (a) must be in Form 2, and
- (b) must be given to the Director of Public Prosecutions at least 35 days before the date on which the trial is listed to commence.

24 Offences for which briefs of evidence not required

For the purposes of section 187 (5) of the Act, proceedings for offences for which a penalty notice may be issued (other than offences set out in Schedule 2) are prescribed as proceedings of a kind in which a prosecutor is not required to serve a brief of evidence.

25 Exclusion of indemnity for personal liability for costs

An officer or employee of any of the following bodies is prescribed as a person who is not a *public officer* for the purposes of section 218 (2) of the Act:

Clause 26 Criminal Procedure Regulation 2005

Part 6 Miscellaneous

- (a) the Royal Society for the Prevention of Cruelty to Animals, New South Wales,
- (b) the Animal Welfare League NSW.

26 Issue of subpoenas in AVO proceedings

For the purposes of section 220 of the Act, proceedings for or relating to an apprehended violence order commenced under Part 15A of the *Crimes Act 1900* are prescribed as proceedings to which Part 3 of Chapter 4 of the Act applies.

27 Prescribed form of words

For the purposes of section 265 (1) (b) of the Act, Form 3 is the prescribed form of words for the statement about a person's right to make an election and the consequences of not making an election.

28 Form and manner of election and withdrawal of election

- (1) For the purposes of section 266 (2) (a) of the Act, an election may be made orally to a Local Court or by filing a written notice with the Court.
- (2) For the purposes of section 266 (2) (b) of the Act, the withdrawal of an election may be made orally to a Local Court or by filing a written notice with the Court.

29 Compellability of spouses to give evidence in certain proceedings

For the purposes of section 279 (5) (b) of the Act, Form 4 is the prescribed form in which a court's reasons are to be recorded.

30 Depositions by persons dangerously ill

For the purposes of section 284 (2) of the Act, Form 5 is the prescribed form in which a deposition must be taken.

31 Repeal and savings

- (1) The *Criminal Procedure Regulation 2000* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Criminal Procedure Regulation 2000*, had effect under that Regulation continues to have effect under this Regulation.

Criminal Procedure Regulation 2005

Forms

Schedule 1

Schedule 1 Forms

(Clause 3 (2))

Form 1

(Clause 21)

Certificate of Attorney General or Director of Public Prosecutions

(Criminal Procedure Act 1986: section 44 (1))

This is to certify that no further proceedings are to be taken with respect to , a person who is in custody on remand in the correctional centre at , under the order of , a Judge of the Supreme Court, or , Justice, on the following charge:
.....

To their Honours the Judges of the }
Supreme Court.

.....
Attorney General or Director of Public Prosecutions

Date:

Form 2

(Clause 23)

Notice of intention to adduce evidence of substantial impairment

(Criminal Procedure Act 1986: section 151 (1))

R v (insert name of defendant)

To the Director of Public Prosecutions:

The defendant has been committed for trial on a charge of murder. The trial is listed for hearing on at

In accordance with section 151 of the *Criminal Procedure Act 1986*, notice is given to the Director of Public Prosecutions that the defendant intends to adduce evidence tending to prove a contention by the defendant that the defendant is not liable to be convicted of murder by virtue of section 23A of the *Crimes Act 1900*.

Criminal Procedure Regulation 2005

Schedule 1 Forms

The defendant intends to rely on the evidence of the following persons in support of that contention:

[List the name, occupation and address of each person to be called by the defendant, and include (in relation to each such person) a short statement of the particulars of the evidence that the person proposes to give. If more space is needed, attach material to this form.]

.....
Defendant/defendant's legal practitioner

Date:

Form 3

(Clause 27)

Important information about your rights
(Criminal Procedure Act 1986: section 265 (1) (b))

To
charged with the offence of
.....
before the (name of Court).

You have a right to make an election

The offence with which you have been charged is an indictable offence. That means that you may be dealt with by a jury.

If you want to be dealt with by a jury you must elect to have the offence dealt with that way. If you are dealt with by a jury and are found guilty the maximum penalty/term is

If you do not elect to be dealt with by a jury, you will be dealt with summarily by a Magistrate of the Local Court sitting alone.

If the offence is dealt with summarily by a Magistrate and you are found guilty, the maximum penalty/term is

You will shortly be provided with a copy of the brief of evidence against you and with your criminal history.

You have to make your decision within days of being served with a copy of the brief of evidence.

You may wish to seek legal advice before you make an election.

Regardless of what you do, the prosecuting authority can elect to have the offence dealt with on indictment.

Criminal Procedure Regulation 2005

Forms

Schedule 1

Form 4

(Clause 29)

Reasons for excusing a spouse from giving evidence for the prosecution in a domestic violence or child assault case

(Criminal Procedure Act 1986: section 279 (5) (b))

On this date, I, the undersigned, a Judge of the Supreme Court/Judge of the District Court/Magistrate, sitting at in the State of New South Wales, dealt with an application under section 279 of the *Criminal Procedure Act 1986*, that be excused from giving evidence for the prosecution in proceedings against charged with the following offence:

I am satisfied, for the reasons stated below, that the application to be excused was made freely and independently of threat or any other improper influence by any person and that:

- (a) it is relatively unimportant to the case to establish the facts in relation to which it appears that the husband or wife is to be asked to give evidence or there is other evidence available to establish those facts, and
- (b) the offence with which the accused person is charged is of a minor nature.

Reasons:

.....
Judge/Magistrate

Date:

Form 5

(Clause 30)

Form of deposition

(Criminal Procedure Act 1986: section 284 (2))

The deposition of , a person now dangerously ill, taken before the undersigned Justice at which said , being duly sworn, states as follows:

.....
.....
[The witness's statement is to be in the first person, and should be reasonably full as to all material facts. The statement should be signed by the witness.]

Criminal Procedure Regulation 2005

Schedule 1 Forms

And I hereby certify that I have taken this deposition under section 284 of the *Criminal Procedure Act 1986* because it has been made to appear to me that the deponent is dangerously ill and that his or her evidence, if not immediately taken, will probably be lost.

.....
Justice

Date:

[If the deposition is by affirmation or declaration, the form is to be varied accordingly.]

Criminal Procedure Regulation 2005

Penalty notice offences

Schedule 2

Schedule 2 Penalty notice offences

(Clause 10 (1) and (2))

Column 1	Column 2
Offence	Amount of penalty
Crimes Act 1900	
section 61	\$400
section 117, where the value of the property or amount does not exceed \$300	\$300
section 527A	\$300
section 527C	\$350
Summary Offences Act 1988	
section 4 (1)	\$200
section 4A (1)	\$150
section 6	\$200
section 6A	\$250

Criminal Procedure Regulation 2005

Schedule 3 Fees

Schedule 3 Fees

(Clauses 13 and 14)

Part 1 Court fees

	Column 1	Column 2
Item	Matter for which fee payable	Fee
1	Filing a court attendance notice under Chapter 4 of the <i>Criminal Procedure Act 1986</i>	\$65
2	Filing application to Local Court for annulment of conviction or sentence under Part 2 of the <i>Crimes (Local Courts Appeal and Review) Act 2001</i>	\$65
3	Filing 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> :	
	(a) in relation to appellant's first such notice	\$79
	(b) in relation to appellant's second or subsequent such notice	\$43
4	To issue a certificate of conviction or dismissal	\$43
5	Retrieving, providing access to and furnishing a copy of any document (otherwise than as provided for by items 4, 6 and 8)	\$10, plus \$5 for each 10 pages (or part thereof) after the first 20 pages
6	Retrieving and providing access to, but not furnishing a copy of, any document	\$0
7	Supply of duplicate tape recording of sound-recorded evidence	\$36 per cassette
8	Copy of any deposition, transcript or diskette (unless otherwise provided for under any other Act):	
	(a) for each page, where the matter being transcribed is under 3 months old	\$66, plus \$7.90 per page for each page after the first 8 pages
	(b) for each page, where the matter being transcribed is 3 months old or older	\$78, plus \$9 per page for each page after the first 8 pages

Criminal Procedure Regulation 2005

Fees

Schedule 3

Part 2 Sheriff's fees

	Column 1	Column 2
Item	Matter for which fee payable	Fee
1	For attending a view by a jury in criminal proceedings	\$126

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

Schedule 4 Circle sentencing intervention program

(Clause 19)

Part 1 Interpretation

1 Definitions

In this Part:

Aboriginal Community Justice Group for a participating court means the Aboriginal Community Justice Group established for that court under Part 6.

Aboriginal person means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

circle sentencing group for a referred offender means a circle sentencing group convened under Part 4 for the offender.

guidelines means guidelines issued by the Minister under Part 7.

offender means a person who has pleaded guilty to, or has been found guilty of, an offence before a participating court where that offence is an offence in respect of which an intervention program may be conducted as provided by section 348 of the Act.

participating court means any Local Court declared by the Minister to be a participating court for the program by order published in the Gazette.

presiding Magistrate means the Magistrate presiding over the participating court that refers a referred offender.

program means the program of measures described in Part 4.

program participation order means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing the offender to participate in the program.

Project Officer for a participating court means the Project Officer (Circle Sentencing) for the court referred to in clause 19 (1).

referred offender means an offender who is the subject of:

- (a) a suitability assessment order, or
- (b) a program participation order.

Criminal Procedure Regulation 2005

Circle sentencing intervention program

Schedule 4

suitability assessment order means a grant of bail by, or other order of, a participating court made in respect of an offender for the purpose of allowing an assessment of the offender's capacity and prospects for participation in the program to be made.

victim has the same meaning as ***victim of crime*** has for the purposes of the *Victims Rights Act 1996*.

Part 2 Overview of process

2 Summary of process involved in entry into and participation in program

(1) The following is a summary of the process involved in referring an offender for participation in the program:

(a) **Suitability assessment order made**

A participating court makes a suitability assessment order in respect of the offender.

(b) **Project Officer convenes meeting of Aboriginal Community Justice Group**

The Project Officer for the court convenes a special meeting of the Aboriginal Community Justice Group for the court under Part 3 to assess whether the offender is a suitable candidate to participate in the program.

(c) **Aboriginal Community Justice Group assesses offender**

The Aboriginal Community Justice Group meets to assess the offender's suitability having regard to certain criteria. The Group may either assess the offender as being suitable or not suitable for participation. In either event, the Group must report its finding to the court that referred the offender.

(d) **Court determines whether program participation order should be made**

If the Aboriginal Community Justice Group assesses an offender as not being suitable for participation, the offender will not be eligible to participate in the program. However, if the Group assesses the offender to be suitable, the participating court may then make a program participation order if it is satisfied that the offender is otherwise eligible to participate and that it would be appropriate for the offender to participate in the program.

(e) **Offender enters into agreement to participate**

The offender enters into an agreement to participate in the program.

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

(f) **Project Officer convenes a circle sentencing group**

The Project Officer will then convene a circle sentencing group constituted as provided by Part 4 for the purpose of recommending an appropriate sentence and determining a treatment and rehabilitation plan for the offender. The Magistrate who refers the offender will preside over the circle sentencing group.

(g) **Offender must comply with program and any intervention plan**

An offender must comply with the program participation order and any intervention plan determined by the circle sentencing group. A failure to do so may result in the offender being returned to the participating court for the court to deal with the offender.

(h) **Court may pronounce a sentence**

The court that referred the offender may, if it agrees with the consensus of the circle sentencing group on the issue, impose a sentence on the offender in the terms recommended by the group following the conclusion of the circle. Any such sentence will be pronounced in open court.

- (2) This clause does not affect the meaning or interpretation of any provision of this Schedule that it summarises.

Part 3 Assessment of suitability to participate

3 Notification of suitability assessment order

A participating court that makes a suitability assessment order in respect of a referred offender must notify the Project Officer for the court of the order.

4 Convening of meeting of Aboriginal Community Justice Group

The Project Officer for the participating court must convene a meeting of the Aboriginal Community Justice Group for the court to assess the suitability of a referred offender to participate in the program as soon as practicable after being notified of a suitability assessment order in respect of the offender.

5 Meeting of Aboriginal Community Justice Group to assess referred offender

A meeting of an Aboriginal Community Justice Group convened by the Project Officer for a participating court under clause 4 is to be attended by at least 3 members of the Group chosen by the Project Officer.

Criminal Procedure Regulation 2005

Circle sentencing intervention program

Schedule 4

6 Role of Aboriginal Community Justice Group convened to assess referred offender

- (1) In assessing the suitability of a referred offender to participate in the program, the Aboriginal Community Justice Group to which the offender has been referred is to have regard to the following matters:
 - (a) the nature of the offence committed by the offender,
 - (b) whether the offender is part of an Aboriginal community in the trial location or has a close association or kinship with any such community,
 - (c) the impact of the offence on its victims and the Aboriginal community to which the offender belongs or with which the offender has a close association or kinship,
 - (d) the potential benefits to the offender, the victims, the Aboriginal community and the community generally should the offender participate in the program,
 - (e) any other matter that it considers relevant.
- (2) The Aboriginal Community Justice Group to which an offender has been referred must report to the participating court that made the suitability assessment order in the form approved by the Minister within 14 days (or such further period as the court may allow) after the Group has been convened.

Part 4 The circle sentencing intervention program

7 Objectives of the program

The objectives of the program are as follows:

- (a) to include members of Aboriginal communities in the sentencing process,
- (b) to increase the confidence of Aboriginal communities in the sentencing process,
- (c) to reduce barriers between Aboriginal communities and the courts,
- (d) to provide more appropriate sentencing options for Aboriginal offenders,
- (e) to provide effective support to victims of offences by Aboriginal offenders,
- (f) to provide for the greater participation of Aboriginal offenders and their victims in the sentencing process,

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

-
- (g) to increase the awareness of Aboriginal offenders of the consequences of their offences on their victims and the Aboriginal communities to which they belong,
 - (h) to reduce recidivism in Aboriginal communities.

8 Eligibility to participate in program

A person is eligible to participate in the program only if the person:

- (a) is an Aboriginal person, and
- (b) is an offender, and
- (c) has been assessed as suitable for participation in the program by the Aboriginal Community Justice Group for the court at a meeting convened in accordance with Part 3, and
- (d) enters into an agreement to participate in the program.

9 Measures that constitute the circle sentencing program

The program is constituted by the following measures:

(a) **Offender enters into agreement to participate in the program**

A participating court refers an offender for participation in a circle sentencing intervention program by making a program participation order and the offender enters into an agreement to participate in the program.

(b) **Constitution of circle sentencing group**

The Project Officer for the court, in consultation with the presiding Magistrate, convenes a circle sentencing group for the referred offender.

(c) **Circle sentencing group determines intervention plan for offender and recommends sentence**

The circle sentencing group meets:

- (i) to determine an appropriate plan (if any) for the treatment or rehabilitation of the referred offender, and
- (ii) to recommend an appropriate sentence for the offender.

(d) **Offender to comply with intervention plan**

The offender complies with the requirements of an intervention plan (if any) determined by the circle sentencing group.

Note. Section 346 (1) of the Act defines *intervention plan* to mean a plan, agreement or arrangement arising out of the participation of an offender or an accused person in an intervention program.

Criminal Procedure Regulation 2005

Circle sentencing intervention program

Schedule 4

10 Convening of circle sentencing group

- (1) A participating court that makes a program participation order in respect of a referred offender must notify the Project Officer for the court of the order.
- (2) The Project Officer must convene a circle sentencing group for the referred offender as soon as practicable after being notified of the making of a program participation order in respect of the offender.
- (3) A circle sentencing group must be convened at a location approved by the presiding Magistrate.

11 Constitution of circle sentencing group

- (1) A circle sentencing group for a referred offender convened by the Project Officer under clause 10 (2) must include the following persons:
 - (a) the presiding Magistrate,
 - (b) the offender,
 - (c) the offender's legal representatives (unless the offender directs otherwise),
 - (d) the prosecutor,
 - (e) the Project Officer,
 - (f) at least 3 Aboriginal persons (but no more than the maximum number of persons specified in the guidelines) chosen by the Project Officer, being persons who the Project Officer is satisfied belong to the Aboriginal community of which the offender claims to be part or with which the offender claims to have a close association or kinship.
- (2) A circle sentencing group convened by a Project Officer may (but need not) include the following persons:
 - (a) any victim of the offender's offence who consents to participate in the group,
 - (b) a support person for any such victim chosen by the victim,
 - (c) a support person for the offender chosen by the offender,
 - (d) any other person or persons chosen by the Project Officer, but only with the consent of the offender and, if a victim is participating, the consent of the victim.
- (3) A member of a circle sentencing group may object to the participation in the group of a person chosen by the Project Officer for the purposes of subclause (1) (f) or (2) (d). The presiding Magistrate is to determine any such objection.

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Schedule 4 Circle sentencing intervention program

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- (4) The presiding Magistrate may invite any other person of a class specified by the guidelines to attend a circle sentencing group.
 - (5) The guidelines may specify whether that person may or may not participate in the circle sentencing group.

12 Functions of circle sentencing groups

- (1) The functions of a circle sentencing group are as follows:
 - (a) to determine an appropriate plan for the treatment or rehabilitation of a referred offender,
 - (b) to recommend an appropriate sentence for the offender,
 - (c) to provide support or other assistance to the offender in completing the program or an intervention plan arising out of the program,
 - (d) such other functions as may be imposed or conferred on the group by this Part or the guidelines.
- (2) Without limiting subclause (1) (a), a circle sentencing group may require a referred offender to comply with a plan that includes requirements relating to any one or more of the following:
 - (a) the conduct and good behaviour of the offender,
 - (b) attendance for counselling or other treatment,
 - (c) the supervision of the offender for the duration of the plan,
 - (d) residence, association with other persons or attendance at specified locations,
 - (e) involvement in activities, courses, training or employment for the purpose of promoting the re-integration of the offender into the community,
 - (f) such other matters as the group considers would promote the treatment or rehabilitation of the offender.

13 Exclusions of persons from meetings of circle sentencing groups

- (1) The presiding Magistrate may exclude a person (other than the offender or a victim) from participation in a circle sentencing group if the Magistrate is satisfied that:
 - (a) the person has a conflict of interest that would prevent the person from impartially discharging his or her obligations as a member of the group, or
 - (b) the behaviour of the person is disrupting the orderly conduct of a meeting of the group.

Criminal Procedure Regulation 2005

Circle sentencing intervention program

Schedule 4

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- (2) The Magistrate may, with the agreement of the other members of the group, invite another person to replace a person who has been excluded from participating in the group under subclause (1). However, if the other members do not agree, the Project Officer is to convene a new circle sentencing group for the offender excluding any such person.
 - (3) A person who is not a member of the circle sentencing group may not attend a meeting of the group unless all of the following persons consent:
 - (a) the presiding Magistrate,
 - (b) the offender,
 - (c) the victim, if a victim is participating in the group.

14 Termination of circle sentencing group meeting

- (1) The presiding Magistrate may terminate a meeting of a circle sentencing group if the Magistrate is satisfied that the behaviour of a member of the group is disrupting the orderly conduct of the meeting.
- (2) If a meeting is terminated, the Magistrate may direct the Project Officer to convene a new circle sentencing group or the Magistrate may return the matter to the participating court.

15 Victims to be heard

If a victim agrees to participate in a circle sentencing group, the victim must be given an opportunity to express his or her views about the offender and the nature of the offence committed against the victim.

16 Procedure generally

- (1) The procedure for the calling of meetings of a circle sentencing group and the conduct of business at those meetings is, subject to this Part and the guidelines, to be as determined by the group.
- (2) The presiding Magistrate is to preside at a meeting of a circle sentencing group.
- (3) The quorum for a meeting of a circle sentencing group is all of the members of the group (other than members excluded under clause 13).
- (4) A decision supported by a majority of the members in a meeting of the circle sentencing group is to be treated as a decision of the whole group.

17 Records of meetings

- (1) The presiding Magistrate must make a record (or cause a record to be made) of the following matters in connection with a circle sentencing group:

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

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- (a) the name, address and date of birth of the referred offender,
 - (b) the nature of the offence,
 - (c) the name of the Project Officer,
 - (d) the names of the other members of the group and the capacity in which they participated,
 - (e) the dates on, and the locations at, which the circle sentencing group met,
 - (f) particulars of any intervention plan determined, or sentence recommended, by the group,
 - (g) the major points of discussion of the group,
 - (h) any other matter that the Magistrate considers relevant.
- (2) A copy of a record made under subclause (1) must be kept in the participating court's file for the proceedings in respect of which a referred offender was referred.

18 Reconvening of the circle sentencing group

- (1) The Project Officer may, in consultation with the presiding Magistrate, reconvene a circle sentencing group after it has determined an intervention plan or recommended an appropriate sentence (or both) for a referred offender for the purpose of reconsidering any matter it had previously determined or recommended.
- (2) The members of the reconvened group should, so far as is reasonably possible, be the same members who participated in the original circle sentencing group.
- (3) A circle sentencing group cannot be reconvened if:
 - (a) the period of 12 months has elapsed since the matter to be reconsidered was originally determined or recommended by the group, or
 - (b) the court that referred the referred offender to the group has imposed a sentence on the offender for the offence (whether or not in the terms recommended by the group).

Part 5 Project Officers**19 Project Officer (Circle Sentencing)**

- (1) The Minister is to ensure that there is a Project Officer (Circle Sentencing) for each participating court.
- (2) The functions of a Project Officer include (but are not limited to) the following functions:

Criminal Procedure Regulation 2005

Circle sentencing intervention program

Schedule 4

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- (a) contacting victims of a referred offender for the purpose of ascertaining whether they wish to participate in a circle sentencing group for the offender,
 - (b) informing any such offender of:
 - (i) the processes involved in the program or in being assessed for participation in the program, and
 - (ii) the offender's obligations under the program or an intervention plan arising out of the program,
 - (c) convening meetings of Aboriginal Community Justice Groups and circle sentencing groups,
 - (d) monitoring the compliance of an offender with his or her obligations under the program or an intervention plan arising out of the program and reporting any non-compliance to the participating court that referred the offender and to the Circle Sentencing Group for the court,
 - (e) such other functions as may be imposed or conferred on the Project Officer by this Part or the guidelines.

Part 6 Aboriginal Community Justice Groups

20 Minister to establish Aboriginal Community Justice Groups for each court

The Minister is to establish an Aboriginal Community Justice Group for each participating court.

21 Appointment of members of Aboriginal Community Justice Groups

- (1) The Minister may appoint such Aboriginal persons as the Minister considers necessary to be members of an Aboriginal Community Justice Group established under this Part.
- (2) The Minister may make an appointment under subclause (1) only on the recommendation of the Project Officer for the participating court concerned.
- (3) A person appointed as a member under subclause (1) is appointed for a period of 3 years, unless before the expiry of that period:
 - (a) the person resigns his or her appointment, or
 - (b) the person's appointment is revoked by the Minister.
- (4) A person appointed as a member under subclause (1) may resign his or her appointment by written notice to the Minister.

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

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- (5) The Minister may revoke the appointment of a person as a member of an Aboriginal Community Justice Group at any time by written notice to the person.
 - (6) Nothing in this clause prevents the Minister from re-appointing a person as a member of an Aboriginal Community Justice Group under subclause (1) following the expiry of a previous period of appointment or the revocation of a previous appointment.

22 Functions of Aboriginal Community Justice Groups

The functions of an Aboriginal Community Justice Group include (but are not limited to) the following functions:

- (a) assessing the suitability of a referred offender to participate in the program and reporting to the participating court that referred the offender about the offender's suitability,
- (b) such other functions as may be imposed or conferred on the Group by this Part or the guidelines.

23 Procedure

- (1) The procedure for the calling of meetings of an Aboriginal Community Justice Group and the conduct of business at those meetings is, subject to this Part and the guidelines, to be as determined by the Group.
- (2) The quorum for a meeting of an Aboriginal Community Justice Group is 3 members of the Group.
- (3) A decision supported by a majority of the members in attendance at a meeting of an Aboriginal Community Justice Group is to be treated as a decision of the whole Group.

Part 7 Guidelines**24 Minister may issue guidelines in respect of the conduct of the program**

- (1) The Minister may from time to time issue guidelines, not inconsistent with this Schedule, for or with respect to any or all of the following matters:
 - (a) the constitution and procedure for meetings of Aboriginal Community Justice Groups and circle sentencing groups,
 - (b) the functions of such Aboriginal Community Justice Groups and circle sentencing groups and of members of such groups in connection with the program or assessment for participation in the program,
 - (c) any other matter in respect of which guidelines are permitted or required by this Schedule.

Criminal Procedure Regulation 2005

Circle sentencing intervention program

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- (2) Without limiting subclause (1), the guidelines may include provisions that:
- (a) apply generally, or
 - (b) apply only in relation to specified persons, courts, groups or other bodies, or
 - (c) apply only in specified circumstances, or
 - (d) do a combination of the things referred to in paragraphs (a), (b) and (c).

Part 8 Disclosure of information in connection with program

25 Evidence of statements generally inadmissible

- (1) Evidence of anything said, or any admission made or document produced, in:
- (a) a meeting of a circle sentencing group concerning a referred offender, or
 - (b) a meeting of an Aboriginal Community Justice Group held to assess a referred offender's suitability to participate in the program,
- is not admissible in any criminal or civil proceedings.
- (2) Subclause (1) does not apply to the criminal proceedings in respect of which a referred offender was referred or any appeal made in respect of those proceedings.

26 Disclosure of information in connection with the program by certain persons prohibited

- (1) A relevant program participant must not disclose any information obtained in connection with:
- (a) the assessment of a referred offender's suitability to participate in the program, or
 - (b) the conduct of the program or an intervention plan arising out of the program.
- Maximum penalty: 20 penalty units.
- (2) Nothing in subclause (1) prevents a relevant program participant from disclosing information:
- (a) in connection with the conduct of an assessment of a referred offender's suitability to participate in the program, or

Criminal Procedure Regulation 2005

Schedule 4 Circle sentencing intervention program

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- (b) to a victim of a referred offender about the outcome of a circle sentencing group for the offender, or
 - (c) for the purposes of any legal proceedings, or
 - (d) in accordance with a requirement of the *Ombudsman Act 1974* or with any request made by the Ombudsman, or
 - (e) with other lawful excuse.
- (3) In this clause:
- relevant program participant*** means:
- (a) a member of an Aboriginal Community Justice Group, or
 - (b) a person selected to participate in a circle sentencing group for a referred offender under clause 11 (1) (f) or (2) (b), (c) or (d).



New South Wales

Legal Profession Amendment (Civil Procedure) Regulation 2005

under the

Legal Profession Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 1987*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to substitute Schedule 3 to the *Legal Profession Regulation 2002* (which prescribed the costs chargeable for the uncontested recovery of lump sum debts and the enforcement of judgments by judgment creditors) as a consequence of the enactment of the *Civil Procedure Act 2005*. The costs so prescribed remain unchanged.

This Regulation is made under the *Legal Profession Act 1987*, including section 216 (the general power to make regulations) and section 196.

Clause 1 Legal Profession Amendment (Civil Procedure) Regulation 2005

Legal Profession Amendment (Civil Procedure) Regulation 2005

under the

Legal Profession Act 1987

1 Name of Regulation

This Regulation is the *Legal Profession Amendment (Civil Procedure) Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Amendment of Legal Profession Regulation 2002

The *Legal Profession Regulation 2002* is amended as set out in Schedule 1.

Legal Profession Amendment (Civil Procedure) Regulation 2005

Schedule 1 Amendment

Schedule 1 Amendment

(Clause 3)

Schedule 3

Omit the Schedule. Insert instead:

Schedule 3 Costs for recovery of lump sum debts and for enforcement of judgments by judgment creditors

(Clause 47)

Part 1 Supreme Court

No	Item	Amount
1	Preparation of process	
	Costs of taking instructions, preparing documents and filing statement of claim for recovery of lump sum debt including drawing/typing/checking of originating process and cheque to pay account of process server	\$858
2	Service of additional defendants	
	Costs of service—for each additional defendant	\$50
3	Substituted service	
	Costs of substituted service including drawing/typing/checking of affidavit, notice of motion and cheque to pay account of process server	\$488
4	Service interstate or overseas	
	Costs of service in another jurisdiction:	
(a)	within Australia—including obtaining leave to proceed and drawing/typing/checking notice of motion	\$187
(b)	outside Australia in a country where English is the official language—including drawing/typing/checking of request for service and notice to defendant to be served	\$128
(c)	outside Australia in a country where English is not the official language—including drawing/typing/checking of request for special service and notice to defendant to be served	\$578

Legal Profession Amendment (Civil Procedure) Regulation 2005

Schedule 1 Amendment

No	Item	Amount
5	Default judgment	
	Costs on applying for default judgment for recovery of lump sum debt including all matters listed in Item 1 plus drawing/typing/checking of affidavit of service, notice of motion and affidavit in support	\$1,246
6	Foreign judgments	
	Costs on obtaining certificate of judgment under section 15 of the <i>Foreign Judgments Act 1991</i> of the Commonwealth, including drawing/typing/checking of summons, minute of judgment, certificate under that section and affidavit of facts	
	(a) if a solicitor is required to attend the court to settle judgment	\$687
	(b) if a solicitor is not so required	\$481
7	Writ of execution	
	Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff	\$530

Part 2 District Court

No	Item	Amount
1	Preparation of process	
	Costs of taking instructions, preparing documents and filing statement of claim for recovery of lump sum debt including drawing/typing/checking of originating process and cheque to pay account of process server	\$642
2	Service of additional defendants	
	Costs of service—for each additional defendant	\$50
3	Substituted service	
	Costs of substituted service including drawing/typing/checking of notice of motion, affidavit and cheque to pay account of process server	\$462

Legal Profession Amendment (Civil Procedure) Regulation 2005

Schedule 1 Amendment

No	Item	Amount
4	Default judgment—liquidated claim	
	Costs on applying for default judgment for recovery of lump sum debt including all matters listed in Item 1 plus drawing/typing/checking of affidavit of service, notice of motion and affidavit in support	\$956
5	Default judgment—unliquidated claim	
	Costs on obtaining judgment in undefended proceedings including all matters listed in Items 1 and 4	\$1,335
6	Order for examination	
	Costs of obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$506
7	Arrest of judgment debtor	
	Costs on issue of warrant for arrest of judgment debtor including drawing/typing/checking of notice of motion for issue of warrant	\$217
8	Writ of execution	
	Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff	\$388

Part 3 Local Court

No	Item	Amount
1	Preparation of process	
	Costs of taking instructions, preparing documents and filing statement of claim for recovery of lump sum debt including drawing/typing/checking of originating process and cheque to pay account of process server	\$491
2	Default judgment—liquidated claim	
	Costs on applying for default judgment for recovery of lump sum debt including all matters listed in Item 1 plus drawing/typing/checking of affidavit of service, notice of motion and affidavit in support	\$712

Legal Profession Amendment (Civil Procedure) Regulation 2005

Schedule 1 Amendment

No	Item	Amount
3	Default judgment—unliquidated claim	
	Costs on obtaining judgment in undefended proceedings including all matters listed in Items 1 and 2	\$1,228
4	Conditions applicable to Items 1–3	
	Items 1, 2 and 3 are alternatives, and only one of them is applicable in respect of any matter. If, in respect of any of those Items, if the amount at issue in the proceedings:	
	(a) does not exceed \$1,000—the costs are 40% of the amount specified for that Item, or	
	(b) exceeds \$1,000 but does not exceed \$5,000—the costs are 60% of the amount specified for that Item, or	
	(c) exceeds \$5,000 but does not exceed \$20,000—the costs are 80% of the amount specified for that Item, or	
	(d) exceeds \$20,000—the costs are the full amount specified for that Item.	
5	Order for examination	
	Costs of obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$293
6	Examination of judgment debtor	
	Costs on examination of judgment debtor by solicitor	\$213
7	Arrest of judgment debtor	
	Costs on issue of warrant for arrest of judgment debtor including drawing/typing/checking of notice of motion for issue of warrant	\$155
8	Writ of execution	
	Costs of taking instructions, preparing documents and filing notice of motion for writ of execution (whether or not the matter was contested) including drawing/typing/checking of notice of motion, affidavit and cheque for payment of proceeds to plaintiff	\$198



New South Wales

Local Courts (Transitional Fees) Repeal Regulation 2005

under the

Local Courts Act 1982

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Local Courts Act 1982*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal the *Local Courts (Transitional Fees) Regulation 2004*. The fees fixed by that regulation are in future to be fixed by regulations under the *Criminal Procedure Act 1986*.

This Regulation is made under the *Local Courts Act 1982*, including section 28 (the general power to make regulations) and clause 16 of Schedule 1.

Clause 1 Local Courts (Transitional Fees) Repeal Regulation 2005

Local Courts (Transitional Fees) Repeal Regulation 2005

under the

Local Courts Act 1982

1 Name of Regulation

This Regulation is the *Local Courts (Transitional Fees) Repeal Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Repeal of Local Courts (Transitional Fees) Regulation 2004

The *Local Courts (Transitional Fees) Regulation 2004* is repealed.



New South Wales

Property (Relationships) Regulation 2005

under the

Property (Relationships) Act 1984

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Property (Relationships) Act 1984*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to remake such provisions of the *Property (Relationships) Regulation 2000* as have not been overtaken by the *Civil Procedure Act 2005*. That regulation would otherwise be repealed on 1 September 2005 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The new Regulation deals with the following matters under the *Property (Relationships) Act 1984* (*the Act*):

- (a) proceedings under the Act that are taken before a Local Court (Part 2), including the following:
 - (i) provisions to maintain privacy for the parties to proceedings on applications for orders under Part 3 of the Act,
 - (ii) the payment of maintenance,
- (b) the enforcement of orders for periodic maintenance (Part 3),
- (c) other matters of a minor, consequential or ancillary nature (Parts 1 and 4).

This Regulation is made under the *Property (Relationships) Act 1984*, including sections 47, 54, 57 and 61 (the general regulation-making power).

This Regulation comprises or relates to matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

Property (Relationships) Regulation 2005

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Property (Relationships) Regulation 2005

Clause 1

Preliminary

Part 1

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Property (Relationships) Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

Note. This Regulation replaces the *Property (Relationships) Regulation 2000* which is repealed by clause 18 and would otherwise be repealed on 1 September 2005 under section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

judgment of a Local Court means a judgment of a Local Court in its civil jurisdiction.

maintenance order means an order under Part 3 of the Act for maintenance.

periodic maintenance order means an order under Part 3 of the Act for periodic maintenance.

the Act means the *Property (Relationships) Act 1984*.

(2) In this Regulation, a reference to a Form is a reference to a Form set out in Schedule 1.

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

Clause 4 Property (Relationships) Regulation 2005

Part 2 Proceedings before a Local Court

Part 2 Proceedings before a Local Court

4 Application of Part

This Part applies to proceedings that are dealt with by a Local Court.

5 Record of proceedings

- (1) Wherever practicable, all proceedings in a Local Court exercising jurisdiction under the Act must be fully recorded.
- (2) Proceedings are to be transcribed only if the Magistrate or registrar of the Local Court so orders.

6 Directions as to practice and procedure

- (1) A Local Court may give such directions as it considers necessary with respect to the practice or procedure to be followed in a particular case if it is satisfied:
 - (a) that the Act or this Regulation does not make adequate provision for the practice or procedure to be followed in that case, or
 - (b) that a difficulty arises or doubt exists as to the practice or procedure to be followed in that case.
- (2) Any directions must seek to facilitate a speedy and inexpensive hearing of the matters in issue between the parties and must be consistent with the Act and this Regulation.

7 Information concerning proceedings

- (1) Information concerning proceedings under the Act must not be published otherwise than in the form of a list of proceedings that has been provided by the registrar of the Local Court for that purpose.
- (2) A list of proceedings may contain such of the following particulars as the registrar of the Local Court thinks fit:
 - (a) the surnames of the parties, but not their given names,
 - (b) the name of the Magistrate,
 - (c) the time at which, and the place or courtroom in which, the Magistrate will sit,
 - (d) the general nature of the applications to be heard by the Magistrate.
- (3) A list of proceedings may be published:
 - (a) to members of the legal profession and their employees, and
 - (b) to litigants in person.

Property (Relationships) Regulation 2005

Clause 8

Proceedings before a Local Court

Part 2

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- (4) A list of proceedings may also be published on a notice board exhibiting lists of cases for the information of the legal profession.

8 Searches

- (1) A person must not search the records of a Local Court relating to proceedings or matters under the Act or this Regulation or inspect any document forming part of any such records.
- (2) Subclause (1) does not prevent the following persons from searching records or inspecting documents referred to in that subclause:
- (a) the Attorney General or a person authorised by the Attorney General,
 - (b) if the records relate to particular proceedings—a party to those proceedings,
 - (c) a person who has been granted leave by the Local Court or the registrar of the Local Court to search the records or inspect the document.
- (3) Leave to search records or inspect a document may be granted only to a person who demonstrates a proper interest in searching the records or inspecting the document.
- (4) Leave may be granted subject to such conditions as the Local Court or the registrar of the Local Court determines.

9 Payment of maintenance

- (1) A sum of money required to be paid under a maintenance order must be paid to the Local Court by which the order was made or to such person as the Local Court directs.
- (2) The Local Court or person must, as soon as practicable, remit the money to the person in whose favour the order was made.

Clause 10	Property (Relationships) Regulation 2005
Part 3	Enforcement of periodic maintenance orders

Part 3 Enforcement of periodic maintenance orders

10 Mode of enforcing Supreme Court order

A periodic maintenance order made by the Supreme Court under section 27 of the Act may be enforced in a Local Court as if it were a judgment of the Local Court.

11 Certificate of court as to periodic maintenance order

- (1) A person in whose favour a periodic maintenance order has been made under section 27 of the Act (whether by the Supreme Court or by a Local Court) may obtain from the Prothonotary of the Supreme Court or the registrar of the Local Court a certificate in Form 1.
- (2) The certificate:
 - (a) must be signed by the Prothonotary and sealed with the seal of the Supreme Court, in the case of an order made by the Supreme Court, or
 - (b) must be signed by the registrar of the Local Court, in the case of an order made by a Local Court.

12 Certificate as to amount of maintenance paid

- (1) A registrar of a Local Court who is specified in a periodic maintenance order as the person to whom the maintenance is to be paid must, on request, give to the person who obtained the order a certificate in Form 2 stating:
 - (a) the amount that, according to the relevant records, has been paid under the order on or before the date specified in the certificate in that regard, and
 - (b) the amount that, according to the relevant records, was due under the order but is unpaid on that date.
- (2) Such a certificate is evidence of the matters so stated.

13 Matters to be satisfied before recording order as judgment

- (1) The registrar of a Local Court may record as a judgment of the Local Court a periodic maintenance order in respect of which a certificate under clause 11 has been issued.
- (2) An application to record a periodic maintenance order as such a judgment must be accompanied by:
 - (a) the certificate under clause 11, and

Property (Relationships) Regulation 2005

Clause 14

Enforcement of periodic maintenance orders

Part 3

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- (b) a recent certificate under clause 12, in the case of a periodic maintenance order that specifies a registrar of a Local Court as the person to whom the maintenance is to be paid, and
 - (c) affidavits as to the matters referred to in subclause (4).
- (3) A certificate under clause 12 is a recent certificate if the specified date as at which the amounts under the order are stated to have been paid, or to remain unpaid, is no more than 10 days before the date of the application referred to in subclause (2).
- (4) The registrar of a Local Court must not record a periodic maintenance order as a judgment of the Local Court unless the registrar is satisfied:
- (a) that a copy of the order has been duly served on the person liable to make payments under the order, or that service of a copy of the order on that person has been dispensed with by the Local Court, and
 - (b) that the maintenance order has not been complied with for a period of at least 14 days, and that a specified amount of money remains due and unpaid, and
 - (c) that no judgment has been entered in any other Local Court in respect of the arrears, and that no enforcement action is pending in respect of any other arrears of maintenance which remain due and unpaid.
- (5) An affidavit is not necessary with respect to the matters referred to in subclause (4) (b) if the registrar of the Local Court is specified in the order as the person to whom the maintenance is to be paid.

14 Notice of transmission of money

If:

- (a) the registrar of a Local Court is specified in a periodic maintenance order as the person to whom the maintenance is to be paid, and
- (b) the order is recorded as a judgment of some other Local Court, and
- (c) money is paid into the Local Court for which the registrar so specified is the registrar,

the registrar so specified must give notice to the registrar of the other Local Court of any money remitted to the person in whose favour the order was made.

Clause 15	Property (Relationships) Regulation 2005
Part 3	Enforcement of periodic maintenance orders

15 Notice of discharge, variation or suspension of periodic maintenance order

- (1) The parties to a periodic maintenance order made by the Supreme Court under section 27 of the Act (being an order that is recorded as a judgment of a Local Court) must give notice in writing to the registrar of the Local Court in which the order is recorded of any discharge, variation or suspension of the order.
- (2) On receipt of the notice, the registrar of the Local Court must cancel the judgment.
- (3) On cancellation of the judgment:
 - (a) the maintenance order ceases to be enforceable by the Local Court in which it is recorded, and
 - (b) the maintenance order remains unenforceable by that Court until it is again recorded in that Court, and
 - (c) any enforcement process arising out of the recording of the maintenance order ceases to have effect.

Property (Relationships) Regulation 2005

Clause 16

Miscellaneous

Part 4

Part 4 Miscellaneous

16 Advice of effect of domestic relationship agreements or termination agreements

For the purposes of section 47 (1) (d) of the Act, the prescribed form of certificate is Form 3.

17 Service of injunctions

For the purposes of section 54 (1) (a) of the Act, a copy of an order for an injunction granted under section 53 of the Act may be served:

- (a) by delivering it personally to the person against whom it is made, or
- (b) by leaving it at, or by posting it to, the last address of that person known to the person by whom it is served.

18 Repeal and savings

- (1) The *Property (Relationships) Regulation 2000* is repealed.
- (2) Any act, matter or thing that, immediately before the repeal of the *Property (Relationships) Regulation 2000*, had effect under that Regulation is taken to have effect under this Regulation.



New South Wales

Sheriff (Transitional Fees) Repeal Regulation 2005

under the

Sheriff Act 2005

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

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The object of this Regulation is to repeal the *Sheriff (Transitional Fees) Regulation 2005*. The fees fixed by that regulation are in future to be fixed by regulations under the *Civil Procedure Act 2005*.

This Regulation is made under the *Sheriff Act 2005*, including section 16 (the general power to make regulations) and clause 6 of Schedule 2.

Clause 1 Sheriff (Transitional Fees) Repeal Regulation 2005

Sheriff (Transitional Fees) Repeal Regulation 2005

under the

Sheriff Act 2005

1 Name of Regulation

This Regulation is the *Sheriff (Transitional Fees) Repeal Regulation 2005*.

2 Commencement

This Regulation commences on 15 August 2005.

3 Repeal of Sheriff (Transitional Fees) Regulation 2005

The *Sheriff (Transitional Fees) Regulation 2005* is repealed.

ISSN 0155-6320

Authorised to be printed
ROBERT J. GALLAGHER, Government Printer.