



New South Wales

Legal Profession Further Amendment (Fixed Costs) Regulation 2008

under the

Legal Profession Act 2004

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Legal Profession Act 2004*.

JOHN HATZISTERGOS, M.L.C.,
Attorney General

Explanatory note

The object of this Regulation is to amend the *Legal Profession Regulation 2005* to increase:

- (a) the fixed costs for recovery of certain debts and enforcement of certain judgments in the Supreme Court, the District Court and a Local Court, and
- (b) the fixed costs for legal services for probate and administration matters in the Supreme Court.

The fixed costs are being increased generally in line with movements in the Consumer Price Index.

This Regulation is made under the *Legal Profession Act 2004*, including sections 329, 330 and 738 (the general regulation-making power).

2008 No 601

Clause 1 Legal Profession Further Amendment (Fixed Costs) Regulation 2008

Legal Profession Further Amendment (Fixed Costs) Regulation 2008

under the

Legal Profession Act 2004

1 Name of Regulation

This Regulation is the *Legal Profession Further Amendment (Fixed Costs) Regulation 2008*.

2 Commencement

This Regulation commences on 1 January 2009.

3 Amendment of Legal Profession Regulation 2005

The *Legal Profession Regulation 2005* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Schedule 2

Omit the Schedule. Insert instead:

Schedule 2 Costs for recovery of certain debts and enforcement of certain judgments

(Clause 112)

Part 1 Supreme Court

No	Item	Amount
1	Preparation of process	
	Costs of taking instructions, preparing documents and filing statement of claim including drawing/typing/checking of originating process and cheque to pay account of process server:	
	(a) for recovery of lump sum debt	\$1,020
	(b) for recovery of possession of land	\$1,283
2	Service of additional defendants etc	
	Costs of service:	
	(a) for each additional defendant	\$59
	(b) in proceedings for the recovery of land where one or more occupiers must be served with notice of proceedings, for each different address at which a notice is served	\$100
3	Substituted service	
	Costs of substituted service including drawing/typing/checking of affidavit, notice of motion and cheque to pay account of process server	\$580
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	\$222

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Schedule 1 Amendments

No	Item	Amount
	(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	\$152
	(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	\$687
5	Default judgment	
	Costs on applying for default judgment including all matters listed in item 1 plus drawing/typing/checking of affidavit of service, notice of motion and affidavit in support:	
	(a) for recovery of lump sum debt	\$1,482
	(b) for recovery of possession of land	\$1,953
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	\$817
	(b) if a solicitor is not so required	\$572
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	\$630

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	\$763
2	Service of additional defendants	
	Costs of service—for each additional defendant	\$59

No	Item	Amount
3	Substituted service	
	Costs of substituted service including drawing/typing/checking of notice of motion, affidavit and cheque to pay account of process server	\$549
4	Default judgment—liquidated claim, claim for possession of land or claim for detention of goods	
	Costs on applying for default judgment for recovery of lump sum debt, claim for possession of land or claim for detention of goods, including all matters listed in item 1 plus drawing/typing/checking affidavit of service, notice of motion and affidavit in support	\$1,137
5	Default judgment—unliquidated claim	
	Costs on obtaining judgment in undefended proceedings including all matters listed in items 1 and 4	\$1,588
6	Order for examination	
	Costs of issuing an examination notice and obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$601
7	Failed examination of judgment debtor	
	Costs on attending examination of judgment debtor where the judgment debtor fails, without reasonable excuse:	\$258
	(a) to attend the examination, or	
	(b) to produce documents at the examination as required under the order for examination.	
8	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	\$258
9	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	\$462

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Schedule 1 Amendments

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	\$584
2	Default judgment—liquidated claim or claim for detention of goods	
	Costs on applying for default judgment for recovery of lump sum debt or claim for detention of goods, including all matters listed in item 1 plus drawing/typing/checking affidavit of service, notice of motion and affidavit in support	\$847
3	Default judgment—unliquidated claim	
	Costs on obtaining judgment in undefended proceedings including all matters listed in items 1 and 2	\$1,461
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 issuing an examination notice and obtaining an order for examination, including drawing/typing/checking of notice of motion and cheque to pay account of process server	\$348
6	Examination of judgment debtor	
	Costs on examination of judgment debtor by solicitor	\$253

No	Item	Amount
7	Failed examination of judgment debtor	
	Costs on attending examination of judgment debtor where the judgment debtor fails, without reasonable excuse:	\$184
	(a) to attend the examination, or	
	(b) to produce documents at the examination as required under the order for examination.	
8	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	\$184
9	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	\$235

[2] Schedule 4

Omit the Schedule. Insert instead:

Schedule 4 Costs for legal services for probate and administration matters

(Clause 114)

Part 1 Obtaining first time grant or the resealing of probate

Disclosed value of assets	Costs payable
Not exceeding \$30,000	\$560 Plus \$13.33 for each \$1,000 up to \$30,000
Exceeding \$30,000 but not exceeding \$150,000	\$960 Plus \$5.90 for each \$1,000 in excess of \$30,000
Exceeding \$150,000 but not exceeding \$1,000,000	\$1,670 Plus \$4.47 for each \$1,000 in excess of \$150,000
Exceeding \$1,000,000 but not exceeding \$3,000,000	\$5,470 Plus \$1.66 for each \$1,000 in excess of \$1,000,000

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Schedule 1 Amendments

Disclosed value of assets	Costs payable
Exceeding \$3,000,000 but not exceeding \$5,000,000	\$8,800 Plus \$1.10 for each \$1,000 in excess of \$3,000,000
Exceeding \$5,000,000 but not exceeding \$10,000,000	\$11,000 Plus \$0.90 for each \$1,000 in excess of \$5,000,000
Exceeding \$10,000,000	\$15,500

Part 2 Obtaining of any grant or resealing of probate after the first, up to and including the uplifting of the probate so granted or resealed

Value of assets remaining at the time of application	Costs payable
Not exceeding \$30,000	\$460 Plus \$10.83 for each \$1,000 up to \$30,000
Exceeding \$30,000 but not exceeding \$150,000	\$785 Plus \$4.88 for each \$1,000 in excess of \$30,000
Exceeding \$150,000 but not exceeding \$1,000,000	\$1,370 Plus \$3.65 for each \$1,000 in excess of \$150,000
Exceeding \$1,000,000 but not exceeding \$3,000,000	\$4,480 Plus \$1.37 for each \$1,000 in excess of \$1,000,000
Exceeding \$3,000,000 but not exceeding \$5,000,000	\$7,230 Plus \$0.91 for each \$1,000 in excess of \$3,000,000
Exceeding \$5,000,000 but not exceeding \$10,000,000	\$9,060 Plus \$0.72 for each \$1,000 in excess of \$5,000,000
Exceeding \$10,000,000	\$12,685

Part 3 Obtaining first time grant of administration or of the resealing letters of administration

Such amount as is allowed under Part 1 for the first time grant of probate and, if a law practice is required to perform any work in addition to that for which Part 1 makes provision, such additional amount as is allowed under Table 1 in Schedule G to the *Supreme Court Rules 1970*.

BY AUTHORITY