

Guide to Registering a Certificate of Costs as a Judgment in the Supreme Court

The following Uniform Civil Procedure Rules apply to registering costs assessors' certificates:

36.10 Filing of cost assessors' certificates

(cf SCR Part 40, rule 12)

- (1) A cost assessor's certificate:
 - (a) may be filed in the proceedings to which it relates, or
 - (b) may be filed in fresh proceedings, whether in the same court or another court.
- (2) A number of certificates may be filed together under subrule (1) if each of the certificates:
 - (a) relates to the same costs assessment, and
 - (b) requires the same person or persons to pay costs.
- (3) If some of the costs specified in the certificate or certificates have been paid, the certificate or certificates must be accompanied by an affidavit, sworn not earlier than 14 days before the certificate or certificates are filed, stating the amount of the costs that have been paid.

Note. The certificate or certificates will, from the date of filing, be taken to be a judgment of the court under Division 11 of Part 3.2 of the [Legal Profession Act 2004](#) for:

- (a) if the certificate or certificates are not accompanied by an affidavit under subrule (3)—the total amount of costs specified in the certificate or certificates, or
- (b) if the certificate or certificates are accompanied by an affidavit under subrule (3)—the amount of costs that have not been paid.

and,

42.31 Recovery of assessed costs in Supreme Court

(cf SCR Part 52A, rule 46)

- (1) A person is not entitled to his or her costs of proceedings in the Supreme Court (including costs of execution) to recover payment of costs included in a cost assessor's certificate unless:
 - (a) at the time of filing the certificate the amount of unpaid costs included in the certificate exceeds \$150,000, or
 - (b) it appearing to the Court that the person had sufficient reason for filing the certificate in the Court, the Court orders otherwise.
- (2) A party may apply for an order under subrule (1) without serving notice of motion.

- (3) If the applicant for an order under subrule (1) adds to the motion a request that the application be granted in accordance with this subrule, the Supreme Court may make the order in the absence of the public and without any attendance by or on behalf of the applicant.
- (4) A person is not entitled to his or her costs of filing a cost assessor's certificate in the Supreme Court.
- (5) In this rule, a reference to a **certificate** includes a number of certificates filed together under rule 36.10 (1) and (2).

Note. See also rule 36.10 in relation to the filing of cost assessors' certificates.

Frequently Asked Questions?

The following is not legal advice. It is a step-by-step procedural guide.

1. What form should I use to register a certificate of determination of costs?

A Form 45 must be used.

[See Uniform Civil Forms](#)

2. What are the fees to lodge a form 45?

The filing fee prescribed by the *Civil Regulation 2005* and set out in the Supreme Court Fee Schedule must be paid.

[Supreme Court Fee Schedule - See "Documents - Filing or registering a copy or certificate of judgment, order, determination"](#)

3. What do I attach to the form 45?

Original certificates must be attached. More than one certificate between the same parties or in the same costs assessment may be attached.

If you do not have the original certificates you may apply for a certified copy. Contact the Costs Assessment Section at the Supreme Court to make arrangements to obtain a copy.

Certified copies are provided upon payment of the required fee (see the amount of the fee schedule in question 2 under "Copies - Copy or certified copy any judgment, order, written opinion or reasons")

4. Do I have to lodge an affidavit with the form 45?

Only if you have been paid part of the costs set out in the costs assessors' certificate or certificates. See question 6 below.

If none of the costs are paid, you do not need to lodge an affidavit.

5. Can I register the costs assessors' certificates in the Supreme Court proceedings to which they relate?

The Supreme Court Registry will not accept for filing costs assessors' certificates in the Supreme Court proceedings to which they relate unless sufficient reasons are demonstrated.

Otherwise, all costs assessors' certificates will be registered as fresh proceedings in the Common Law Division.

You cannot register the costs assessors' certificates in the costs assessment file in the Supreme Court.

6. How do I calculate the amount to be enforced at the date of registration? Where do I put the amount to be enforced in the form 45?

The costs assessors' certificates set out the amount of costs determined to be fair and reasonable and which party to the assessment is to pay the costs.

The certificates also set out the amount of the costs of the costs assessment or the costs of a review and which party is liable to pay them.

A costs assessors' certificate setting out the costs of a costs assessment may only be registered by a party who is not liable for all or some of the costs of the costs assessment but paid the Manager, Costs Assessment the amount of the costs of the costs assessment for the release of the certificates.

After calculating the amount to be enforced as set out in the certificates, if none of the costs are paid at the date of registration insert the total amount sought to be enforced under the heading "Details of Judgment" next to "Total amount to be enforced as at date of registration."

If you were paid part of the costs determined in the certificates an affidavit sworn not less than 14 days prior to lodging the form 45 must be provided that sets out the amount paid.

This allows the calculation of the correct amount to be enforced as a judgment.

Example: A certificate determines Party A is to pay party B \$1,000. Prior to registration of the cost certificates Party A paid party B \$500.

The amount to be enforced is the amount determined minus the amount paid.

EG: \$100 minus \$500 = \$500

When lodging the form 45 Party B lodges an affidavit setting out that the \$500 was paid.

Party B then inserted into the form 45:

- the amount paid, \$500 under the heading "Details of Judgment" next to "Payments made or credits accrued since order made."
- the amount of \$500 in the form 45 under the heading "Details of Judgment" and next to "Total amount to be enforced as at date of registration".

7. Can I claim interest in the Form 45?

No.

Interest is not payable. See section 101 of the *Civil Procedure Act 2005* (NSW).

Do not complete or delete both of sets of words as follows: "Interest accrued since judgment/order made" and "#Interest rate".

The exception is that if the parties have an order for interest on costs. If so, the party lodging the form should provide an affidavit setting out their order and calculations for interest on costs. These applications will be referred to a Registrar to determine and confirm the amounts to be entered. The Registrar may require further information before determining the amount to be enforced.

8. Can I claim the filing fee for the form 45 in the Supreme Court?

No. See UCPR r42.31(4). Do not complete or delete the wording "#Registration #Filing fee" under Details of Judgment.

In the Supreme Court the filing fee cannot be claimed. Even if the parties complete this section of the form 45 it will not be allowed.

9. Can I obtain a copy of the judgment entered after I lodge the form 45?

Yes.

On payment of the requisite fee under the *Civil Procedure Regulation 2005* (see the amount of the fee schedule in question 2 under “Copies - Copy or certified copy any judgment, order, written opinion or reasons”) when lodging the form 45 the counter clerk will be able to produce a copy of the judgment immediately unless in the opinion of the counter clerk the form 45 is incomplete or needs to be considered by the Chief Clerk or a Registrar.

Further copies can be obtained at any time by payment of the requisite fee at the counter.