



Federal Court Amendment Rules 1999 (No. 6)

Statutory Rules 1999 No. 6

295

We, Judges of the Federal Court of Australia, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 26 November 1999.

M.E.J. BLACK C.J.
J.F. GALLOP J.
B.A. BEAUMONT J.
M.R. WILCOX J.
J.E.J. SPENDER J.
P.R.A. GRAY J.
J.A. MILES J.
D.M. RYAN J.
R.S. FRENCH J.
M.R. EINFELD J.
M.C. LEE J.
H.W. OLNEY J.
J.W. von DOUSSA J.
D.G. HILL J.

M.F. O'LOUGHLIN J.
D.F. O'CONNOR J.
T.J. HIGGINS J.
P.C. HEEREY J.
D.P. DRUMMOND J.
R.E. COOPER J.
A.P. WHITLAM J.
C.J.S.M. CARR J.
C.M. BRANSON J.
J.M. MATHEWS J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
S.M. KIEFEL J.
R.D. NICHOLSON J.
P.D. FINN J.
R.A. SUNDBERG J.
S.R. MARSHALL J.
J.R.F. LEHANE J.
A.M. NORTH J.
R. MERKEL J.
J.R. MANSFIELD J.
A.H. GOLDBERG J.
A.R. EMMETT J.
R.A. FINKELSTEIN J.
M.S. WEINBERG J.
J.A. DOWSETT J.
L.S. KATZ J.
P.G. HELY J.
S.C. KENNY J.
R.V. GYLES J.
Judges of the Federal
Court of Australia

W.G. SODEN
Registrar



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made under the

Federal Court of Australia Act 1976

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1999, 6

Federal Court Amendment Rules 1999 (No. 6)

1

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1 Name of Rules

These Rules are the *Federal Court Amendment Rules 1999 (No. 6)*.

2 Commencement

These Rules commence on gazettal.

3 Amendment of Federal Court Rules

Schedule 1 amends the Federal Court Rules.

Schedule 1 Amendments

(rule 3)

[1] Order 8, rule 11

substitute

11 Evidence of service

- (1) This rule applies if the Registrar has sent documents to the Secretary to the Attorney-General's Department under rule 10, and afterwards a certificate as to service, attempted service or non-service is filed purporting to be a certificate of:
 - (a) a judicial authority or other responsible person in the country concerned; or
 - (b) an Australian consular authority in that country; or
 - (c) an authorised employee in that country.
- (2) The certificate is evidence of the matters stated in the certificate.
- (3) For subrule (1), *authorised employee* means an employee of the Commonwealth or the Australian Trade Commission authorised for the purpose of paragraph 3 (c) or (d) of the *Consular Fees Act 1995*.

[2] Order 15, rule 2*substitute***2 Discovery on notice**

- (1) A party required to give discovery must do so within the time specified in the notice of discovery (not being less than 14 days after service of the notice of discovery on the party), or within such time as the Court or a Judge directs.
- (2) A party must give discovery by filing and serving:
 - (a) a list of documents required to be disclosed; and
 - (b) an affidavit verifying the list.
- (3) Without limiting rule 3 or 7, the documents required to be disclosed are any of the following documents of which the party giving discovery is, after a reasonable search, aware at the time discovery is given:
 - (a) documents on which the party relies; and
 - (b) documents that adversely affect the party's own case; and
 - (c) documents that adversely affect another party's case; and
 - (d) documents that support another party's case; and
 - (e) documents that the party is required by a relevant practice direction to disclose.
- (4) However, a document is not required to be disclosed if the party giving discovery reasonably believes that the document is already in the possession, custody or control of the party to whom discovery is given.
- (5) In making a reasonable search for subrule (3), a party may take into account:
 - (a) the nature and complexity of the proceedings; and
 - (b) the number of documents involved; and

-
- (c) the ease and cost of retrieving a document; and
 - (d) the significance of any document likely to be found; and
 - (e) any other relevant matter.
- (6) If the party does not search for a category or class of document, the party must include in the list of documents a statement of the category or class of document not searched for and the reason why.

[3] Order 15, subrule 6 (1)

omit

orders, conform

insert

orders, be in accordance with Form 22 and conform

[4] Order 21, rule 1

substitute

1 Vexatious litigant

- (1) If a person institutes a vexatious proceeding and the Court is satisfied that the person has habitually, persistently and without reasonable grounds instituted other vexatious proceedings in the Court or any other Australian court (whether against the same person or against different persons), the Court may order:
- (a) that any proceeding instituted by the person may not be continued without leave of the Court; and
 - (b) that the person may not institute a proceeding without leave of the Court.

- (2) An order under this rule may be made:
- (a) on the Court's own motion; or
 - (b) on the application of the Attorney-General or Solicitor-General of the Commonwealth or of a State or Territory; or
 - (c) on the application of the Registrar.

[5] Order 25, rule 1

omit

In an urgent case,

insert

- (1) In an urgent case,

[6] Order 25, rule 1

insert

- (2) An applicant under subrule (1) must give an undertaking to the Court to commence proceedings in relation to the subject matter of the application within 14 days of the determination of the application.

[7] Order 27, after subrule 8 (4)

insert

- (4A) If a subpoena requires attendance or production on a specified date, the subpoena must be served not later than 5 days before the date unless the Court otherwise orders.

[8] After Order 34A

insert

Order 34B Expert assistant

1 Application

This order does not apply to a question or matter to be tried before a jury.

2 Appointment of expert assistant

- (1) The Court or a Judge may, at any stage of a proceeding and with the consent of the parties, appoint an expert as an expert assistant to assist the Court on any issue of fact or opinion identified by the Court or Judge (other than an issue involving a question of law) in the proceeding.
- (2) A person who has given evidence, or whom a party intends to call to give evidence, in the proceeding must not be appointed as an expert assistant in the proceeding.
- (3) For this rule, *expert* means a person who has specialised knowledge based on the person's training, study or experience.

3 Assistance to be given

- (1) An expert assistant in a proceeding must give the Court a written report on the issues identified by the Court or Judge only.
- (2) However, at the direction of the Court or a Judge and with the consent of the parties, the expert assistant may assist the Court by making other comments in the report.

- (3) The expert assistant must:
 - (a) state in the report each issue identified by the Court or Judge; and
 - (b) give a copy of the report to each party.
- (4) The Court must give each party a reasonable opportunity to comment on the report and may allow a party to adduce evidence, or further evidence, in relation to an issue identified, but not to examine or cross-examine the expert assistant.
- (5) A party must not communicate, directly or indirectly, with the expert assistant about any issue to be reported on, without the leave of the Court or a Judge.
- (6) The expert assistant must not give evidence in the proceeding.

4 Remuneration of expert assistant

The Court may make an order for the payment of an amount for the reasonable remuneration and expenses of an expert assistant, including an order that the amount be paid by 2 or more parties jointly.

[9] Schedule 1, Form 22

omit

relating to any matter in question between the applicant and the respondent

insert

required to be disclosed for the purposes of Order 15 subrule 2 (3)

[10] Schedule 1, Form 131*omit*

The Applicant

The Respondent

[11] Second Schedule*substitute*

**Schedule 2 Costs allowable in
respect of work done
and services performed**

(Order 62, rule 12)

Item	Matter for which charge may be made	Charge (\$)
<i>Instructions</i>		
1	To sue or defend, to appeal or oppose an appeal or for any other originating proceeding	158.00
2	To make or oppose an interlocutory application or motion to the Court or a Judge or an officer of the Court	70.00
3	For a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	68.00
4	For an interrogatory, answer to an interrogatory or an affidavit (except a formal affidavit), an admission or a list of documents (and affidavit verifying)	94.00

Item	Matter for which charge may be made	Charge (\$)
5	For brief for counsel on application in chambers or brief notes for solicitor (if necessary)	86.00
	<i>or</i>	
	in respect of items 1 to 5 of this scale, having regard to all the circumstances of the case	any other amounts that may be allowed by the taxing officer
6	For brief for counsel or brief notes for solicitor (if necessary), having regard to all the circumstances of the case	a sum that the taxing officer thinks fit
7	For a necessary document not otherwise provided for, having regard to all the circumstances of the case	a sum that the taxing officer thinks fit
<i>Documents</i>		
8	Any notice of appearance, including copies, filing and service by respondent	87.00
9	Any application or notice of motion, including fixing return day, copies to file and serve, and attendance to file	70.00
	if more than 3 folios — add for each folio	3.00
10	Any simple notice or memorandum such as a notice for discovery, including copies, filing (if necessary) and service	56.00
11	Notice to produce, notice to admit or any similar notice, including copies, filing (if necessary) and service	70.00
	if more than 3 folios — add for each folio	3.00

Item	Matter for which charge may be made	Charge (\$)
12	A brief to counsel (including a brief to hear judgment) and attending counsel with the brief	60.00
	if more than 3 folios — add for each folio	6.00
	For copy documents to accompany brief	the other charges in this scale that are appropriate
13	Any necessary subpoena, including issuing one copy to serve and arranging for service	48.00
	<i>Drawing</i>	
14	Any necessary document — for each folio	7.00
	<i>Engrossing or Typing</i>	
15	Any necessary document — for each folio	2.00
	<i>Copies</i>	
16	Of any document, including carbon, photographic or machine-made copy — for each page	1.00
	except if allowance for 10 or more pages is claimed in respect of any document or documents	at the discretion of the taxing officer
	<i>Perusal</i>	
17	Of any document (if necessary) including special letter, telegram or telex, up to 3 folios	12.00
	<i>or per folio</i>	2.00
	except that, if allowance for 30 or more folios is claimed in respect of any document or documents	at the discretion of the taxing officer

Item	Matter for which charge may be made	Charge (\$)
18	If it is not necessary to peruse but it is necessary to scan a document — for each page	3.00
	except that, if allowance for 10 or more pages is claimed in respect of any document or documents	at the discretion of the taxing officer
<i>Examination</i>		
19	If it is necessary to neither peruse nor scan a document, eg an examination of an appeal book: for examination — for each half hour	
	• solicitor	56.00
	• clerk	12.00
<i>Letters</i>		
20	Short letter — simple form of letter, eg formal acknowledgment	10.00
21	Ordinary letter, including letter between principal and agent	17.00
22	Circular letter (after the first) — for each letter	6.00
23	Special letter or letter including opinion	41.00 <i>or</i> an amount that is reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this scale

Item	Matter for which charge may be made	Charge (\$)
24	Telegram, facsimile copy, or telex including attendance to dispatch	48.00 <i>or</i> an amount that is reasonable in the circumstances
25	Receiving and filing any incoming letter <i>Note</i> Postage and transmission fees may be claimed as a disbursement properly incurred	6.00
<i>Service</i>		
26	Personal service (except if service is able to be claimed under another item of this scale) of any document of which personal service is required	47.00 <i>or</i> an amount that is reasonable, having regard to time occupied, distance travelled and other relevant circumstances
27	Service of any document at the office of the address for service, either by delivery or by post	12.00
<i>Preparation of Appeal Books</i>		
28	Preparation of appeal books, including collating all necessary material, attendances on the printer, general oversight of their preparation in cases where the taxing officer is satisfied it has been done efficiently — for each hour:	
	• solicitor	102.00
	• clerk	26.00

Item	Matter for which charge may be made	Charge (\$)
29	If appeal books are prepared in a solicitor's office, the taxing officer may in his or her discretion allow a sum that he or she thinks is just and reasonable, having regard to work and labour properly performed and charges for material used. In exercising his or her discretion the taxing officer must have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine-made copy costs otherwise allowable in this Schedule	
<i>Attendances</i>		
30	An attendance that is capable of being made by a clerk, such as at the court registry	26.00
31	An attendance that requires the attendance of a solicitor or managing clerk and involves the exercise of skill or legal knowledge (including an attendance to inspect or negotiate) — for each quarter hour:	
	• solicitor	45.00
	• managing clerk	11.00
32	An attendance for which no other provision is made in this scale	41.00
33	An attendance by telephone that does not involve the exercise of skill or legal knowledge	9.00
34	An attendance on counsel:	
	• with brief or papers (if not otherwise provided for)	26.00
	• to appoint a conference or consultation	26.00

Item	Matter for which charge may be made	Charge (\$)
35	<ul style="list-style-type: none"> if appointment made by telephone 	9.00
	A necessary conference or consultation with counsel:	
	<ul style="list-style-type: none"> if half an hour or less if over half an hour — for each hour or part of an hour 	70.00 102.00
36	In court or chambers or before the Registrar for hearing without counsel:	
	<ul style="list-style-type: none"> for each hour or part of an hour of the hearing for each hour or part of an hour when likely to be heard, but not heard 	205.00 205.00
	<ul style="list-style-type: none"> not to exceed per day 	918.00
37	In court or chambers or before the Registrar for hearing with counsel:	
	<ul style="list-style-type: none"> for each hour or part of an hour of the attendance during the hearing for each hour or part of an hour of the attendance when likely to be heard, but not heard 	167.00 167.00
	<ul style="list-style-type: none"> not to exceed per day 	754.00
	If a person other than a solicitor attends in place of a solicitor:	
	(a) attendance by a managing clerk:	
	<ul style="list-style-type: none"> for each hour not to exceed per day 	70.00 308.00
	(b) attendance by any other clerk:	
	<ul style="list-style-type: none"> for each hour not to exceed per day 	37.00 164.00

Item	Matter for which charge may be made	Charge (\$)
38	To hear judgment	47.00
39	On taxation of costs:	
	• if a solicitor attends — for each hour or part of an hour	102.00
	• if a clerk attends — for each hour or part of an hour	26.00
40	If a solicitor attends at court or chambers for the hearing of an application or appeal, or on conference with counsel, at a distance of more than 50 kilometres from his or her place of business, and it is neither appropriate nor proper for an agent to attend, the taxing officer may allow for each day of absence from the place of business (except a Saturday, Sunday or public holiday) an amount that the taxing officer thinks reasonable — not exceeding	232.00

Item	Matter for which charge may be made	Charge (\$)
<i>General Care and Conduct</i>		
41	<p>If the case or circumstances warrant it, an allowance may be claimed under this item, in addition to any other item that appears in this scale, for general care and conduct (if appropriate) including the following:</p> <ul style="list-style-type: none"> (a) the complexity of the matter and the difficulty and novelty of questions raised; (b) the importance of the matter to the party and the amount involved; (c) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor; (d) the number and importance of the documents prepared or perused, without regard to length; (e) the time taken by the solicitor; (f) research and consideration of questions of law and fact 	
<i>Counsel's Fees</i>		
42	<p>It is proper for a solicitor to incur an amount for counsel's fees that appears to be fair and reasonable according to the circumstances of the case and the seniority of counsel. The fees incurred may be claimed as a disbursement</p>	

Item	Matter for which charge may be made	Charge (\$)
43	If a solicitor briefs another solicitor as counsel, when it would be appropriate to brief counsel	a sum as a counsel's fee that the taxing officer thinks just and reasonable having regard to the practice of allowing these fees that is permitted by the Supreme Court Rules of the State or Territory concerned (Order 62, rule 35)
<i>Corporations Law — Short Form Bill</i>		
43A	The amount as to the costs of obtaining a winding-up order, up to and including entry and service of the order under section 470 of the Corporations Law and the obtaining of a certificate of taxation Additional costs are allowable for any adjournment in which costs have been reserved by the Court in accordance with item 36 or item 37, as the case may be	2151.00
<i>Bankruptcy Act — Short Form Bills</i>		
43B	Short form amount that may be claimed by an applicant on the making of a sequestration order	1379.00
43C	Short form amount that may be claimed by an applicant on the dismissal of a petition	1188.00

Item	Matter for which charge may be made	Charge (\$)
<i>Witnesses' Expenses</i>		
44	Witnesses called because of their professional, scientific or other special skill or knowledge — for each day	121.00 to 601.00
45	Witnesses called, other than those covered in item 44 — for each day	70.00 to 113.00
46	Witnesses remunerated in their occupation by wages, salary or fees	the amount lost by attendance at Court
47	If a witness lives more than 50 kilometres from the Court	a sum that the taxing officer thinks reasonable for the actual cost of travel, together with a reasonable amount for meals and accommodation
<i>Disbursements</i>		
48	All court fees and other fees and payments	to the extent to which they have been properly and reasonably incurred and paid
49	If a solicitor attends at court or chambers, or on conference with counsel, in the circumstances outlined in item 40	reasonable travelling expenses to the extent to which they have been reasonably incurred and paid

Item	Matter for which charge may be made	Charge (\$)
<i>Miscellaneous</i>		
50	Matters not included in this scale may be allowed to the extent they are covered by Order 62, rule 21	
	<i>Note 1</i> Bills of costs prepared in accordance with Order 62, rule 40 must identify costs and disbursements claimed with an item number.	
	<i>Note 2</i> A folio comprises 72 words (there are generally 3 folios to each page).	

Notes

- These Rules amend Statutory Rules 1979 No. 140, as amended by 1980 No. 87; 1982 Nos. 217 and 408; 1983 No. 264; 1984 Nos. 9 and 258; 1985 Nos. 16, 97, 168 and 227; 1986 Nos. 61, 157 and 324; 1987 Nos. 73, 174 and 197; 1988 Nos. 14, 54, 144, 217 and 306; 1989 Nos. 50, 253 and 318; 1990 Nos. 72, 102, 276, 319, 414 and 453; 1991 Nos. 70, 249, 395 and 461; 1992 Nos. 43, 44, 86, 87, 186, 330, 421 and 453; 1993 No. 40, 45, 137, 225 and 290; 1994 Nos. 63, 130, 224, 279, 332 and 463; 1995 Nos. 31, 46, 239 and 449; 1996 Nos. 29 and 308; 1997 Nos. 82, 87, 143, 174, 204, 277 and 425; 1998 Nos. 224, 297 and 323; 1999 Nos. 15, 70, 94, 194 and 232.
- Notified in the *Commonwealth of Australia Gazette* on
/ 1999.

3 December