



# Federal Court Amendment Rules 2008 (No. 2)<sup>1</sup>

**Select Legislative Instrument 2008 No. 244**

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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 2008

M.E.J. BLACK C.J.  
J.E.J. SPENDER J.  
P.R.A. GRAY J.  
D.M. RYAN J.  
T.J. HIGGINS J.  
P.C. HEEREY J.  
M.F. MOORE J.  
K.E. LINDGREN J.  
B.J.M. TAMBERLIN J.  
P.D. FINN J.  
R.A. SUNDBERG J.  
S.R. MARSHALL J.  
A.M. NORTH J.  
J.R. MANSFIELD J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
J.A. DOWSETT J.

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M.A. STONE J.  
A.C. BENNETT J.  
B.T. LANDER J.  
A.N. SIOPIJ J.  
R.F. EDMONDS J.  
P.R. GRAHAM J.  
A.P. GREENWOOD J.  
S.D. RARES J.  
B. COLLIER J.  
D.A. COWDROY J.  
A.J. BESANKO J.  
C.N. JESSUP J.  
R.R.S. TRACEY J.  
J.E. MIDDLETON J.  
R.J. BUCHANAN J.  
J. GILMOUR J.  
M.M. GORDON J.  
J.A. LOGAN J.  
G.A. FLICK J.  
J.E. REEVES J.  
N. PERRAM J.  
J.M. JAGOT J.  
L.G. FOSTER J.

Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

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**1 Name of Rules**

These Rules are the *Federal Court Amendment Rules 2008 (No. 2)*.

**2 Commencement**

These Rules commence as follows:

- (a) on the day after they are registered — rules 1 to 3 and Schedule 1;
- (b) on 1 January 2009 — Schedule 2.

**3 Amendment of Federal Court Rules**

Schedules 1 and 2 amend the Federal Court Rules.

## **Schedule 1      Amendments commencing on the day after registration**

(rule 3)

### **[1]      Order 21, rule 5**

*substitute*

### **5      Leave to start or continue proceeding**

- (1) If the Court has made an order under rule 1 or rule 2 against any person, the person may be given leave to institute or continue a proceeding only if the Court is satisfied that:
  - (a) the proceeding is not an abuse of process; and
  - (b) there is prima facie ground for the proceeding.
- (2) Unless the Court orders otherwise, an application by a person who is subject to an order under subrule 1 (2) or rule 2 may be determined by the Court without an oral hearing.

### **[2]      Order 27, after rule 3**

*insert*

### **3A      Change of date for attendance or production**

- (1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.
- (2) Where notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena.

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**[3] Order 27, subrule 6 (4)**

*substitute*

- (4) The addressee must comply with a subpoena to produce:
- (a) by attending at the date, time and place specified for production, or, if the addressee has received notice of a later date or time from the issuing party, at that later date or time, and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
  - (b) by delivering or sending the subpoena or a copy of it and the document or thing to the Registrar at the address specified for the purpose in the subpoena, or, if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production or, if the addressee has received notice of a later date or time from the issuing party, before that later date.

**[4] Order 35, after rule 7**

*insert*

**7A Interest up to judgment**

If determining a rate of interest for an order under paragraph 51A (1) (a) of the Act, the Court or a Judge may fix the rate as:

- (a) the cash rate of interest set by the Reserve Bank of Australia from time to time during the period mentioned in paragraph 51A (1) (a) of the Act, plus 4 per cent; or
- (b) such other rate as the Court or Judge thinks fit.

**[5] Order 35, rule 8, heading**

*substitute*

**8 Interest on judgment**

**[6] Order 41, subrule 2 (3)***substitute*

- (3) The writing on a document may be on 1 or both sides of the paper, but not partly on 1 side and partly on both sides.

*Note* The Court or a Judge may direct that one-sided documents be provided to the Court.

- (3A) A margin of at least 25 millimetres must be kept clear on the left side of each page of a document containing writing.

**[7] Order 52, rule 26, table***substitute***Item Document****Part A**

- |    |   |
|----|---|
| 1  | Title page  |
| 2  | The index to Part A   |
| 3  | A copy of the originating application and pleadings, including each relevant notice of motion (if any)  |
| 4  | If the court below was hearing an appeal from a tribunal or board — a copy of: <ul style="list-style-type: none"> <li>(a) the reasons for the decision of the tribunal or board; and</li> <li>(b) the formal decision of the tribunal or board; and</li> <li>(c) any notice of appeal to the court below</li> </ul> |
| 5  | A copy of the reasons for judgment of the court below   |
| 6  | A copy of the sealed orders of the court below  |
| 7  | A copy of the notice of appeal  |
| 8  | A copy of any notice of contention  |
| 9  | A copy of any notice of cross-appeal  |
| 10 | A copy of any submitting appearance   |
| 11 | A copy of the sealed orders giving leave to appeal or an extension of time to file the appeal (if any)  |
| 12 | The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part A  |

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**Item Document**


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**Part B**

- 13 Title page
- 14 The index to Part B
- 15 A list of all exhibits, in the order in which the exhibits were lettered or numbered as exhibits in the court below, showing:
- (a) the exhibit number or letter used to identify each exhibit in the court below and, if the exhibit was an exhibit to an affidavit:
    - (i) the name of the deponent; and
    - (ii) the date of the affidavit; and
    - (iii) the exhibit number or letter used in the affidavit to identify the exhibit; and
  - (b) if reproduced in this Part — the page number in the Part at which the exhibit starts; and
  - (c) if not reproduced in this Part — the words ‘not reproduced’; and
  - (d) if an exhibit consists of a bundle of documents — a description of each document that forms part of the exhibit and the page number in the Part at which the document starts, otherwise the words ‘not reproduced’
- 16 A list of all documents that were received into evidence, arranged:
- (a) in date order; or
  - (b) if a document is manifestly or admittedly misdated — according to the document’s known date; or
  - (c) if a document is undated — in the sequence contended for by the appellant
- For paragraph (c), the appellant must inform the respondent of the proposed position in the list and the respondent may require that the words ‘date disputed’ be shown against the document
- 17 A list of all affidavits that were read in whole or in part, with an indication whether the whole or any part was rejected or not read
- 18 A copy of each affidavit (including any annexures) containing evidence relevant to the appeal, cross-appeal or contention
- 19 A copy of each exhibit mentioned in item 15 that is relevant to the appeal, in the order in which the exhibits were lettered or numbered as exhibits in the court below
- 20 The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part B

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**Item Document**

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**Part C**

- 21 Title page
  - 22 The index to Part C
  - 23 A list identifying:
    - (a) all of the witnesses who gave oral evidence; and
    - (b) the date or dates on which each witness gave evidence; and
    - (c) the transcript page numbers on which evidence-in-chief, cross-examination (if any) and evidence-in-reply (if any) commenced
  - 24 A list of the pages of transcript (including the dates of the hearing to which the pages relate) that are not reproduced
  - 25 A copy of the transcript of oral evidence relevant to the appeal
  - 26 A copy of each additional transcript (if any) relevant to the appeal
  - 27 The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part C
- 

**[8] Order 52, rule 27**

*substitute*

**27 Filing and service of draft indexes of appeal papers**

The appellant must file in the Registry, and serve on the respondent, a draft index of each Part of the appeal papers, at least 7 days before the date appointed for settling the appeal papers.

**[9] Order 52, subrules 28B (3) to (5)**

*substitute*

- (3) The numbering of the pages of Parts A, B and C of the appeal papers must:
  - (a) be legible and distinct from any other numbering; and
  - (b) for Part A — begin with the number 1 and commence at item 3; and



- 
- (c) for Part B — begin with the number immediately after the number of the last page in Part A and commence at item 15; and
  - (d) for Part C — begin with the number immediately after the number of the last page in Part B and commence at item 23.
- (4) The pages of items 25 and 26 of Part C of the appeal papers must be numbered in accordance with the official transcript numbers.
  - (5) If any Part of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.

**[10] Order 52, paragraph 28C (1) (a)**

*substitute*

- (a) a copy of the appeal papers that includes a certificate, in each Part of the papers:
  - (i) signed by each party or the party's legal practitioner; and
  - (ii) stating that the Part has been examined and is correct.

**[11] Order 53, rule 15A, table**

*substitute*

Item	Document
<b>Part A</b>	
1	Title page
2	The index to Part A
3	A copy of the originating application lodged in the tribunal, including each request for directions (if any)
4	A copy of the documents lodged with the tribunal in accordance with section 37 of the <i>Administrative Appeals Tribunal Act 1975</i>
5	A copy of the formal decision of the tribunal and the reasons for the decision

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**Item Document**

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- 6 A copy of the notice of appeal
- 7 A copy of any notice of cross-appeal or any notice of contention
- 8 A copy of any submitting appearance
- 9 A copy of the sealed orders of the Court giving leave to appeal or an extension of time to file the appeal (if any)
- 10 The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part A

**Part B**

- 11 Title page
- 12 The index to Part B
- 13 A list of all exhibits, in the order in which the exhibits were lettered or numbered as exhibits in the tribunal, showing:
  - (a) the exhibit number or letter used to identify each exhibit in the court below and, where the exhibit was an exhibit to an affidavit:
    - (i) the name of the deponent; and
    - (ii) the date of the affidavit; and
  - (ii) the exhibit number or letter used in the affidavit to identify the exhibit; and
  - (b) if reproduced in this Part, the page number in the Part at which the exhibit starts, otherwise the words 'not reproduced'; and
  - (c) if an exhibit consists of a bundle of documents — a description of each document that forms part of the exhibit and the page number in the Part at which the document starts, otherwise the words 'not reproduced'
- 14 A list of all documents that were received into evidence, arranged:
  - (a) in date order; or
  - (b) if a document is manifestly or admittedly misdated — according to the document's known date; or
  - (c) if a document is undated — in the sequence contended for by the applicant

For paragraph (c), the applicant must inform the respondent of the proposed position in the list and the respondent may require that the words 'date disputed' be shown against the document

- 15 A list of all affidavits that were read in whole or in part, with an indication whether the whole or any part was rejected or not read

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**Item Document**


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- 16 A copy of each affidavit (including any annexures) containing evidence relevant to the appeal
- 17 A copy of each exhibit mentioned in item 13 that is relevant to the appeal, in the order in which the exhibits were lettered or numbered as exhibits in the tribunal
- 18 The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part B
- Part C**
- 19 Title page
- 20 The index to Part C
- 21 A list identifying:
- (a) all of the witnesses who gave oral evidence; and
  - (b) the date or dates on which each witness gave evidence; and
  - (c) the transcript page numbers on which evidence-in-chief, cross-examination (if any) and evidence-in-reply (if any) commenced
- 22 A list of the pages of transcript (including the dates of the hearing to which the pages relate) that are not reproduced
- 23 A copy of the transcript of oral evidence relevant to the appeal
- 24 A copy of each additional transcript (if any) relevant to the appeal
- 25 The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part C
- 

**[12] Order 53, subrules 15B (3) to (5)**

*substitute*

- (3) The numbering of the pages of Parts A, B and C of the appeal papers must:
- (a) be legible and distinct from any other numbering; and
  - (b) for Part A — begin with the number 1 and commence at item 3; and
  - (c) for Part B — begin with the number immediately after the number of the last page in Part A and commence at item 13; and

(d) for Part C — begin with the number immediately after the number of the last page in Part B and commence at item 21.

(4) The pages of items 23 and 24 of Part C of the appeal papers must be numbered in accordance with the official transcript numbers.

(5) If any Part of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.

**[13] Order 53, paragraph 16 (1) (a)**

*substitute*

(a) a copy of the appeal papers that includes a certificate, in each Part of the papers:

- (i) signed by each party or the party's legal practitioner; and
- (ii) stating that the Part has been examined and is correct.

**[14] Order 62, subrule 43 (4)**

*omit*

41 (7)

*insert*

41 (9)

**[15] Order 63, subrule 5 (2), at the foot**

*insert*

*Note* Information on the investments that may be made by the Registrar under an order under Order 63 rule 5 is set out in Practice Note No. 28.

**[16] Order 78, paragraph 25 (2) (a)***omit*

by completing

*insert*

in accordance with

**[17] Schedule 1, Form 41, Part A***omit*

evidence:

*insert*

evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

**[18] Schedule 1, Form 41, Part B***omit*

things:

*insert*

things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

**[19] Schedule 1, Form 41, Part C***omit*

follows:

*omit*

follows, unless you receive notice of a later date or time from the issuing party, in which case the later date or time is substituted:

**[20] Schedule 1, Form 41, Part C***omit*

things:

*insert*

things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

**[21] Schedule 1, Form 41, note 5***substitute***Production of subpoena or copy of it and documents or things by delivery or post**

5. If this subpoena requires production of the subpoena (or a copy of it) and a document or thing, instead of attending to produce the subpoena (or a copy of it) and the document or thing, you may comply with the subpoena by delivering or sending the subpoena (or a copy of it) and the document or thing to the Registrar:
- (a) at the address specified in the subpoena for the purpose; or
  - (b) if more than one address is so specified — at any one of those addresses;
- so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date from the issuing party, before the later date or time.

**[22] Schedule 1, Form 55A***omit*

constituted by (*the names of the members constituting the Tribunal which made the decision*)

**[23] Schedule 1, For 55A, clause 1***omit*

constituted by (*specify members constituting the Tribunal*)

**[24] Schedule 1, Form 55B, clause 1***omit*constituted by (*specify members constituting the Tribunal*)**[25] Schedule 1, Form 141***substitute***Form 141 Notice of appeal from National Native Title Tribunal****(and application for extension of period in which to appeal, if relevant)**

(Order 78, subrules 24 (1) and 25 (2))

IN THE FEDERAL COURT OF AUSTRALIA DISTRICT REGISTRY	} No.        of        .
--	--------------------------

On appeal from the National Native Title Tribunal

Re:        A.B.

Applicant

C.D.

Respondent

*(vary to suit purpose — see section of the 169 Native Title Act 1993 and Order 78, rule 24 of the Federal Court Rules)***NOTICE OF APPEAL**

The applicant appeals from the decision/determination of the National Native Title Tribunal given on (*specify date*) at (*specify place*) by which the Tribunal decided or determined (*insert details of the decision/determination appealed from*).

THE QUESTION OR QUESTIONS OF LAW on which the applicant appeals to the Court are: (*specify each question of law*)

- 1.
- 2.
- 3.

ORDERS SOUGHT: (*state the orders or relief sought by the applicant from the Court — see subsections 169 (6) and (7) of the Native Title Act 1993*)

- 1.
- 2.
- 3.

THE GROUNDS OF THE APPEAL: (*specify the grounds relied upon in support of the orders sought*)

- 1.
- 2.
- 3.

**Application for extension of period in which to appeal**

The applicant applies under Order 78, rule 25 of the Federal Court Rules for an extension of the time in which to institute the above appeal. As required by Order 78, paragraph 25 (2) (b) of the Federal Court Rules, there must be an accompanying affidavit:

- (a) explaining why the applicant did not institute the appeal within the 28 day period or will not be able to institute the appeal within that period; and
- (b) setting out the grounds for seeking the extension of time.

Note: This section need be completed only if the appeal is not, or will not be able to be, instituted within 28 days starting on the day when the decision or determination of the Tribunal is given to the applicant — see subsection 169 (4) of the *Native Title Act 1993* and Order 78, subrule 24 (2) of the Federal Court Rules. The application for the extension of time must be accompanied by an affidavit in accordance with Order 78, paragraph 25 (2) (b) of the Federal Court Rules.



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Date: (eg 7 May 2008)

(Signed, applicant or applicant's solicitor)

The applicant's address for service is: (specify address for service)

Fax number: (insert)

Telephone number: (insert)

Note: The applicant must serve a copy of the notice of appeal on other parties (if any) to the proceeding before the National Native Title Tribunal.

The Federal Court will send a copy to the Registrar of the Tribunal.

FILED IN THE FEDERAL COURT OF AUSTRALIA ON THE DATE  
SHOWN ON THE FILING STAMP.

A directions hearing in this appeal will be heard by the Court at the time and place specified below.

**Appointment for Directions Hearing (to be entered by Registry)**

Time: (time)

Place: (address of Court)

Date: (eg 7 May 2008)

(Signed, Registrar)

**Version 2**

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**Schedule 2      Amendments commencing  
1 January 2009**  
(rule 3)

[1]      **Schedule 2**  
*substitute*

**Schedule 2      Scale of costs for 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	246
2	To make or oppose an interlocutory application or motion to the Court or a Judge or an officer of the Court	110
3	For a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	107
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)	148
5	For brief for counsel on application in chambers or brief notes for solicitor (if necessary)	135
	<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 the taxing officer considers appropriate

Item	Matter for which charge may be made	Charge (\$)
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	136
9	Any application or notice of motion, including fixing return day, copies to file and serve, and attendance to file	110
	if more than 3 folios — add for each folio	8
10	Any simple notice or memorandum such as a notice for discovery, including copies, filing (if necessary) and service	88
11	Notice to produce, notice to admit or any similar notice, including copies, filing (if necessary) and service	110
	if more than 3 folios — add for each folio	8
12	A brief to counsel (including a brief to hear judgment) and attending counsel with the brief	94
	if more than 3 folios — add for each folio	9
	For copy documents to accompany brief	the other charges in this scale that are appropriate
13	Any necessary subpoena, including issuing 1 copy to serve and arranging for service	75
<i>Drawing</i>		
14	Any necessary document — for each folio	11
<i>Engrossing or Typing</i>		
15	Any necessary document — for each folio	5

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Item	Matter for which charge may be made	Charge (\$)
<i>Copies</i>		
16	Of any document, including carbon, photographic or machine-made copy — for each page  except if allowance for 10 or more pages is claimed in respect of any document or documents	2  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  <i>or per folio</i>  except if allowance for 30 or more folios is claimed in respect of any document or documents	20  5  at the discretion of the taxing officer
18	If it is not necessary to peruse but it is necessary to scan a document — for each page  except if allowance for 10 or more pages is claimed in respect of any document or documents	8  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	88
	• clerk	20
<i>Letters</i>		
20	Short letter — simple form of letter, eg formal acknowledgment	14
21	Ordinary letter, including letter between principal and agent	29
22	Circular letter (after the first) — for each letter	9

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Item	Matter for which charge may be made	Charge (\$)
23	Special letter or letter including opinion	60 <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
24	Telegram, facsimile copy, or telex including attendance to dispatch	75 <i>or</i> an amount that is reasonable in the circumstances
25	Receiving and filing any incoming letter	9
	<i>Note</i> Postage and transmission expenses may be claimed as a disbursement properly incurred.	
	<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	74 <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	20

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Item	Matter for which charge may be made	Charge (\$)
<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	160
	• clerk	40
29	If appeal books are prepared in a solicitor's office, a sum that the taxing officer considers 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 scale	
<i>Attendances</i>		
30	An attendance that is capable of being made by a clerk, such as at the court registry	40
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	72
	• managing clerk	15
32	An attendance for which no other provision is made in this scale	66
33	An attendance by telephone that does not involve the exercise of skill or legal knowledge	13
34	An attendance on counsel:	
	• with brief or papers (if not otherwise provided for)	41
	• to appoint a conference or consultation	41
	• if appointment made by telephone	13

<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge (\$)</b>
35	A necessary conference or consultation with counsel: <ul style="list-style-type: none"> <li>• if half an hour or less</li> <li>• if over half an hour — for each hour or part of an hour</li> </ul>	110 160
36	In court or chambers or before the Registrar for hearing without counsel: <ul style="list-style-type: none"> <li>• for each hour or part of an hour of the hearing</li> <li>• for each hour or part of an hour when likely to be heard, but not heard</li> <li>• not to exceed per day</li> </ul>	320 320 1 435
37	In court or chambers or before the Registrar for hearing with counsel: <ul style="list-style-type: none"> <li>• for each hour or part of an hour of the attendance during the hearing</li> <li>• for each hour or part of an hour of the attendance when likely to be heard, but not heard</li> <li>• not to exceed per day</li> </ul> <p>If a person other than a solicitor attends in place of a solicitor:</p> <p>(a) attendance by a managing clerk: <ul style="list-style-type: none"> <li>• for each hour</li> <li>• not to exceed per day</li> </ul> </p> <p>(b) attendance by any other clerk: <ul style="list-style-type: none"> <li>• for each hour</li> <li>• not to exceed per day</li> </ul> </p>	260 260 1 179  110 481  59 256
38	To hear judgment	74
39	On taxation of costs: <ul style="list-style-type: none"> <li>• if a solicitor attends — for each hour or part of an hour</li> <li>• if a clerk attends — for each hour or part of an hour</li> </ul>	160 40

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Item	Matter for which charge may be made	Charge (\$)
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 considers reasonable — not exceeding	364
<i>General Care and Conduct</i>		
41	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: <ul style="list-style-type: none"> <li>(a) the complexity of the matter and the difficulty and novelty of questions raised;</li> <li>(b) the importance of the matter to the party and the amount involved;</li> <li>(c) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor;</li> <li>(d) the number and importance of the documents prepared or perused, without regard to length;</li> <li>(e) the time taken by the solicitor;</li> <li>(f) research and consideration of questions of law and fact</li> </ul>	a percentage of the total amount of the allowed costs excluding disbursements
<i>Counsel's Fees</i>		
42	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	

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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 considers 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 Act 2001 — 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 <i>Corporations Act 2001</i> 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 37, as the case may be	3 363
<i>Bankruptcy Act 1966 — Short Form Bills</i>		
43B	Short form amount that may be claimed by an applicant on the making of a sequestration order	2 156
43C	Short form amount that may be claimed by an applicant on the dismissal of a petition	1 858
<i>Migration Act 1958 — Short Form Bills</i>		
43D	Short form amount, including costs and disbursements, that may be claimed by a party in a standard migration case	5 494

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<b>Item</b>	<b>Matter for which charge may be made</b>	<b>Charge (\$)</b>
43E	Short form amount, including costs and disbursements, that may be claimed by the respondent in a migration case on dismissal or discontinuance of the case	1 939
43F	Application for leave to appeal or extension of time	1 564
43G	Migration appeal case finalised before a final hearing	3 650
43H	Migration appeal case finalised after a final hearing	5 736
<i>Witnesses' Expenses</i>		
44	Witnesses called because of their professional, scientific or other special skill or knowledge — for each day	190 to 940
45	Witnesses called, other than those covered in item 44 — for each day	110 to 176
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 considers 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

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Item	Matter for which charge may be made	Charge (\$)
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
<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).	

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### Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.