



Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014

Select Legislative Instrument No. 151, 2014

We, Judges of the Federal Circuit Court of Australia, make the following Rules.

Dated 07 October 2014

Chief Judge Pascoe

Altobelli

Barnes

Baumann

Bender

Brown

Burchardt

Cameron

Coakes

Coates

Cole

Connolly

Demack

Donald

Driver

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Dunkley
Halligan
Harman
Hartnett
Henderson
Howard
Hughes
Jarrett
Jones
Kelly
Kemp
Laphorn
Lloyd-Jones
Lucev
McGuire
Manousaridis
Mead
Monahan
Myers
Neville
O'Sullivan
Phipps
Riethmuller
Riley
Roberts
Sexton
Simpson
Small
Terry
F Turner

OPC60600 - A

L Turner
Walker
Willis

Judges of the Federal Circuit
Court of Australia

Richard Foster
Chief Executive Officer

OPC60600 - A

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1 Name

These Rules are the *Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014*.

2 Commencement

Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provisions	Commencement
1. Rules 1 to 4 and anything in these Rules not elsewhere covered by this table	The day after these Rules are registered.
2. Schedule 1, Part 1	The day after these Rules are registered.
3. Schedule 1, Part 2	12 January 2015.

3 Authority

These Rules are made under the *Federal Circuit Court of Australia Act 1999*.

4 Schedules

Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments commencing day after registration

Federal Circuit Court Rules 2001

1 At the end of Part 1

Add:

1.07 Applications for orders about procedures

A person who wants to start a proceeding, or take a step in a proceeding, may apply to the Court for an order about the procedure to be followed if:

- (a) the procedure is not prescribed by the Act, these Rules or by or under any other Act; or
- (b) the person is in doubt about the procedure.

2 After subrule 4.09(2) (before the notes)

Insert:

- (3) The applicant's genuine steps statement must be no more than 2 pages.

3 After subrule 4.10(2) (before the notes)

Insert:

- (3) The respondent's genuine steps statement must be no more than 2 pages.

4 Subrule 10.05(1)

Repeal the subsection, substitute:

- (1) The Court may refer a proceeding, or a part of a proceeding or a matter arising out of a proceeding, for conciliation.

5 Rule 13.10 (note)

Omit "section 118", substitute "sections 102QB and 118".

6 Rule 15.01 (note)

Repeal the note.

7 Subrule 15A.06(2)

Omit “within a reasonable time before attendance or production under the subpoena is required”.

8 Subrule 23.01A(5)

Repeal the subrule, substitute:

- (5) If a family report is prepared in accordance with an order made under this rule, the Court may do any of the following:
- (a) by order or otherwise, give a copy of the report to any of the following:
 - (i) a party, a lawyer for a party, or an independent children’s lawyer, in the proceeding;
 - (ii) a children’s court (however described) of a State or Territory;
 - (iii) a prescribed child welfare authority (within the meaning of the Family Law Act);
 - (iv) an authority established by or under a law of a State or Territory for purposes including the provision of legal assistance;
 - (v) the convenor of any legal dispute resolution conference;
 - (b) receive the report in evidence;
 - (c) permit oral examination of the person making the report;
 - (d) order that the report not be released to a person or that access to the report be restricted.
- (6) If the Court, other than by order, gives a copy of a family report under subrule (5), the copy must be accompanied by a notice that states the following information:
- (a) the people to whom a copy of the report may be provided;
 - (b) the status of the report at the time of its preparation;
 - (c) information about the potential consequences for unauthorised publication of information contained in the report.

9 Subparagraphs 24.03(1)(d)(ii) and (iii)

Omit “de facto spouse”, substitute “de facto partner”.

10 Subrule 25B.20(2) (note)

Omit “rule 25B.10”, substitute “Division 25B.4”.

11 At the end of rule 44.15

Add:

- (3) A respondent who claims costs in accordance with subrule (2) must serve on the applicant who filed the notice of discontinuance a sealed copy of a bill of costs in accordance with the approved form that specifies the relevant amount set out in Division 2 of Part 3 of Schedule 1, or a lesser amount, that the respondent is claiming.
- (4) Unless, within 14 days after the respondent serves a bill of costs under subrule (3), a party applies to the Court for an order as to costs, a Judge or a Registrar may order the applicant to pay an amount of costs equal to:
 - (a) the relevant amount set out in Division 2 of Part 3 of Schedule 1; or
 - (b) if a lesser amount was claimed in the bill—the amount claimed.
- (5) This rule does not limit a party’s right to apply, under Part 21, for an order as to costs of the application.

12 Rule 45.01 (definition of *Building and Construction Industry Improvement Act*)

Repeal the definition.

13 Rule 45.02 (heading)

Repeal the heading, substitute:

45.02 Expressions used in the Workplace Relations Act and the Fair Work Act

14 Paragraph 45.02(b)

Omit “Act; and”, substitute “Act.”

15 Paragraph 45.02(c)

Repeal the paragraph.

16 Rule 45.03

Omit “, the Fair Work Act or the Building and Construction Industry Improvement Act” (wherever occurring), substitute “or the Fair Work Act”.

17 Subparagraph 45.06(b)(ii)

Omit “section 369 of”.

18 Subparagraph 45.07(b)(ii)

Omit “section 777 of”.

19 Division 45.5

Repeal the Division.

20 Schedule 1

Repeal the Schedule, substitute:

Schedule 1—Costs

Note: See rules 21.10, 21.16 and 44.15.

Part 1A—Application of this Schedule

1 Application of this Schedule

This Schedule, as amended by the *Federal Circuit Court Amendment (2014 Measures No. 1) Rules 2014*, applies to work done or services performed after the commencement of this Schedule.

Part 1—Family law proceedings and general federal law proceedings

Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
1	Initiating or opposing an	Both:	Both:

Schedule 1 Amendments

Part 1 Amendments commencing day after registration

Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
	application up to the completion of the first court date	(a) \$2,048; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	(a) \$2,735; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
2	Initiating or opposing an application which includes interim orders (other than procedural orders) up to the completion of the first court date	Both: (a) \$2,561; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$3,422; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
3	Interim or summary hearing—as a discrete event Note: This stage applies to an interim application or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the item 1 or 2 component.	Both: (a) \$1,706; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$1,706; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing
4	Up to and including the conciliation conference	\$1,706	Not applicable
5	Dispute resolution litigation intervention	\$1,706	\$2,868
6	Preparation for final hearing—one day matter	\$4,365	\$6,150
7	Preparation for final hearing—2 day matter	\$5,412	\$9,241
8	Preparation for final hearing—each additional hearing day after the second hearing day	\$1,158	\$1,944
9	Final hearing costs for attendance of solicitor at hearing to take judgment and explain orders	Both: (a) \$278; and (b) the daily hearing fee mentioned in	Both: (a) \$278; and (b) the daily hearing fee mentioned in

Amendments **Schedule 1**
Amendments commencing day after registration **Part 1**

Costs for family law proceedings and general federal law proceedings			
Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
		item 13 that applies to the hearing	item 13 that applies to the hearing
10	Application for family law location, recovery or enforcement of an order (other than an application for enforcement by a Registrar under item 11)	Both: (a) \$867; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Not applicable
11	Application for enforcement by a Registrar of: (a) a warrant under rule 25B.22; or (b) a third party debt notice under rule 25B.40	\$573	Not applicable
12	Advocacy loading	50% of the daily hearing fee mentioned in item 13 that applies to the hearing	50% of the daily hearing fee mentioned in item 13 that applies to the hearing
13	Daily hearing fee	Either: (a) for a short mention—\$278; or (b) for a half day hearing—\$1,024; or (c) for a full day hearing—\$2,048	Either: (a) for a short mention—\$278; or (b) for a half day hearing—\$1,024; or (c) for a full day hearing—\$2,048
14	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments	The amount of the fees and payments
15	Disbursements—photocopying for each page	\$0.71	\$0.71
16	Agents fees and travelling costs	\$576	\$576

Schedule 1 Amendments

Part 1 Amendments commencing day after registration

Costs for family law proceedings and general federal law proceedings

Item	Description	Amount for a family law proceeding (including GST)	Amount for a general federal law proceeding (including GST)
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Note: For 2 or more hours travel.

Part 2—Child support proceedings

Division 1—Application for enforcement order in relation to child support proceedings

Costs for child support proceedings

Item	Description	Amount (including GST)
1	Initiating or opposing an application up to the completion of the first court date Note: This item includes final hearing of up to one day if it is held on the first court date.	Both: (a) \$2,157; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
2	Interim or summary hearing—as a discrete event Note: This item applies to an interim application, or a summary proceeding of a type not otherwise addressed in this fee structure such as an application for an order that a proceeding be stayed. It does not include the item 1 component.	Both: (a) \$1,644; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
3	Preparation of final hearing for a matter of 2 or more days—for every day after the first court date	\$1,117
4	Final hearing costs for attendance of solicitor at hearing to take judgment and explain orders	Both: (a) \$269; and (b) the daily hearing fee mentioned in item 6 that applies to the hearing
5	Advocacy loading	50% of the daily hearing fee mentioned in item 6 that applies to the hearing

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Costs for child support proceedings		
Item	Description	Amount (including GST)
6	Daily hearing fee	Either: (a) for a short mention—\$269; or (b) for a half day hearing—\$987; or (c) for a full day hearing—\$1,976
7	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments
8	Disbursements—photocopying documents first 10 pages—for each page	\$0.71
9	Disbursements—photocopying documents after first 10 pages—for each page	\$0.22
10	Agents fees and travelling costs Note: For 2 or more hours travel.	\$556

Division 2—Costs for appeal of an SSAT or Child Support Registrar decision

Costs for an appeal of an SSAT or Child Support Registrar decision		
Item	Description	Amount (including GST)
1	A proceeding concluded at or before the first court date for the proceeding	\$1,319
2	A proceeding concluded: (a) after the first court date for the proceeding; and (b) at least 4 weeks before the final hearing for the proceeding	\$3,294
3	A proceeding concluded at a final hearing	\$6,581

Part 3—Migration proceedings

Division 1—Costs for migration proceedings that have concluded

Costs for migration proceedings that have concluded		
Item	Description	Amount (including GST)
1	A proceeding concluded at or before the first court date for the proceeding	\$1,367
2	A proceeding concluded: (a) after the first court date for the proceeding; and (b) at or before the hearing under rule 44.12 or other interlocutory hearing	\$3,416
3	A proceeding concluded at a final hearing	\$6,825

Division 2—Costs for migration proceedings that have been discontinued

Costs for migration proceedings that have been discontinued		
Item	Description	Amount (including GST)
1	A proceeding in which the notice of discontinuance is filed and served at least 14 days before the first court date for the proceeding	\$680
2	A proceeding in which the notice of discontinuance is filed and served: (a) less than 14 days before the first court date for the proceeding; and (b) at least 15 days before the hearing under rule 44.12 or other interlocutory hearing	\$1,706
3	A proceeding in which the notice of discontinuance is filed and served: (a) less than 15 days before the hearing under rule 44.12 or other interlocutory hearing; and (b) at least 15 days before the final hearing	\$3,416
4	Any other case	\$4,778

21 Part 2 of Schedule 3 (after table item 5)

Insert:

5A rule 12.01

22 Dictionary

Insert:

de facto partner has the meaning given by the *Acts Interpretation Act 1901*.

Part 2—Amendments commencing 12 January 2015

Division 1—Main amendments

Federal Circuit Court Rules 2001

23 After subrule 2.04(1A)

Insert:

- (1B) A reference in these Rules to a notice of risk is a reference to Form 1 in Schedule 2.

24 At the end of rule 4.01

Add:

- Note: An application for a parenting order must be accompanied by a notice of risk: see rule 22A.02.

25 At the end of rule 4.03

Add:

- Note: A response to an application for a parenting order, or a response seeking a parenting order, must be accompanied by a notice of risk: see rule 22A.02.

26 After Part 22

Insert:

Part 22A—Notice of risk etc.

Division 1—Notice of risk

22A.01 Definitions

In this Division:

interested person:

- (a) in a proceeding to which section 67Z of the Family Law Act applies—has the meaning given by subsection (4) of that section; and

- (b) in a proceeding to which section 67ZBA of the Family Law Act applies—has the meaning given by subsection (4) of that section.

22A.02 Notice of risk must be filed with application for parenting order

- (1) A person who:
 - (a) makes an application to the Court for a parenting order; or
 - (b) files a response to such an application;must file a notice of risk with the application or response.

Note 1: A notice of risk must be in accordance with Form 1 in Schedule 2: see subrule 2.04(1B).

Note 2: For additional obligations when an application is made to the Court for a parenting order by consent, see rule 13.04A.

- (2) The affidavit filed with the application or response, in accordance with rule 4.05, must state the evidence relied on to support each allegation (if any) set out in the notice of risk.

Note 1: If a notice of risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused, or there has been family violence or there is a risk of family violence by one of the parties to the proceeding, a true copy of the notice must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Family Law Act.

Note 2: If a notice of risk filed in a proceeding alleges that a child to whom the proceeding relates has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Family Law Act.

22A.03 Notice of risk filed by interested person

If:

- (a) an interested person files a notice of risk in a proceeding for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act; and
 - (b) the notice of risk was not filed under rule 22A.02;
- the interested person must file an affidavit stating the evidence relied on to support each allegation set out in the notice of risk.

22A.04 Amendment of notice of risk

If:

- (a) a person who is a party to a proceeding, or an interested person in a proceeding, has filed a notice of risk in the proceeding; and
- (b) after filing the notice, the person becomes aware of new facts or circumstances that would require the person to file a notice of risk for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act in relation to those facts or circumstances;

the person must file:

- (c) a new notice of risk setting out those facts or circumstances; and
- (d) an affidavit stating the evidence relied on to support each allegation set out in the notice.

Note 1: A true copy of a notice of risk that is filed for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act must be served on the person to whom the allegations relate: see subsections 67Z(2) and 67ZBA(2) of the Family Law Act.

Note 2: If a notice of risk alleges that a child has been abused or is at risk of being abused, the Registry Manager must notify a prescribed child welfare authority: see subsection 67Z(3) and paragraph 67ZBA(3)(b) of the Family Law Act.

22A.05 Proceedings transferred from another court

- (1) This rule applies if a proceeding in which a parenting order is sought is transferred to the Court from another court.
- (2) Each party to the proceeding must file and serve on each other party to the proceeding:
 - (a) a notice of risk; and
 - (b) an affidavit stating the evidence relied on to support each allegation (if any) set out in the notice.
- (3) The notice of risk must be filed and served before the first court date for the proceeding in the Court.

22A.06 Content of notice of risk

A notice of risk filed in a proceeding must set out particulars of the facts and circumstances on which each allegation (if any) set out in the notice is based.

22A.07 Notice of risk for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act

- (1) A notice of risk is the prescribed form for a notice mentioned in subsections 67Z(2) and 67ZBA(2) of the Family Law Act.

Note: A notice of risk is the method by which the Court may fulfil its obligations under paragraph 69ZQ(1)(aa) of the Family Law Act.

- (2) If:
- (a) a person who is a party to a proceeding, or an interested person in the proceeding, has filed a notice of risk in the proceeding; and
 - (b) the notice of risk alleges:
 - (i) that a child to whom the proceeding relates has been abused or is at risk of being abused; or
 - (ii) that there has been family violence, or there is a risk of family violence, by one of the parties to the proceeding;
- the person is taken to have filed a notice in the prescribed form for the purposes of subsection 67Z(2) or 67ZBA(2) of the Family Law Act in relation to the allegation.

Division 2—Family violence orders

22A.08 Family violence orders

- (1) A party to a proceeding who is seeking a parenting order in relation to a child must file a copy of any family violence order affecting the child or a member of the child's family.
- (2) However, if a copy of a family violence order is not available, the party must file a written notice setting out:
- (a) an undertaking to file the order within a specified time;
 - (b) the date of the order;
 - (c) the court that made the order; and
 - (d) the details of the order.

Schedule 1 Amendments

Part 2 Amendments commencing 12 January 2015

- (3) The family violence order, or the notice under subrule (2), must be filed:
- (a) when the proceeding commences; or
 - (b) as soon as practicable after the family violence order is made.

27 Part 1 of Schedule 3 (table item 3)

Repeal the item.

28 Dictionary

Insert:

family violence order has the same meaning as in the Family Law Act.

Division 2—Form of notice of risk

Federal Circuit Court Rules 2001

29 After Schedule 1

Insert:

Schedule 2—Forms

Note: See subrule 2.04(1B).

Form 1—Notice of risk

Note: See subrule 2.04(1B) and Division 1 of Part 22A.

**FEDERAL CIRCUIT COURT
OF AUSTRALIA
REGISTRY:**

File number:
COURT USE ONLY
Court Location:
Court date:
Court time:

.....
Applicant

.....
Respondent

.....
Other party (if applicable)

** Repeat as necessary for additional parties*

Filed on behalf of

Prepared by Lawyer's code

Name of law firm

Address for service in Australia

..... State Postcode

Email DX

Tel Fax Attention

NOTICE OF RISK [Subrule 2.04(1B)]

1. This Notice is filed by:

Applicant Respondent
Other Specify:

ALLEGATIONS RELATING TO CHILD ABUSE

2. Has a child to whom the proceedings relate been abused or is a child to whom the proceedings relate at risk of being abused? (See sections 67Z and 67ZBA and 4 and 4AB of the *Family Law Act 1975*)

Yes No

If you tick 'no', go straight to question 3.

NOTE (1): If you tick 'yes' to this question, further particulars must be provided at (a) – (d) below. This information will be reported to the relevant child welfare authority, as required by sections 67Z and 67ZBA of the Family Law Act 1975.

NOTE (2): This form also fulfils the Court's obligation under paragraph 69ZQ(1)(aa) of the Family Law Act 1975.

(a) Do you allege that a child to whom the proceedings relate has been abused by a party to proceedings or any other person who is relevant to these proceedings?

Yes No

Particulars of alleged abuse to a child:

(b) Do you allege that a child to whom the proceedings relate is at risk of being abused by a party to proceedings or any other person who is relevant to these proceedings?

Yes

No

Particulars of alleged risk of abuse to a child:

(c) If 'yes' is ticked to question (a) or (b) please select all of the categories that cover the alleged abuse or risk of abuse.

Physical assault

Sexual assault or abuse

Serious psychological harm

Serious neglect

(d) Have these allegation/s been reported to an external authority?

Yes

No

If you tick 'yes' to question (d), specify to whom the allegation/s have been reported.

Police

.....
Child Welfare Authority

.....
Medical Practitioner

.....
Other

..... (please specify)

ALLEGATIONS RELATING TO FAMILY VIOLENCE

3. Has there been family violence or is there a risk of family violence by a party to the proceedings or any other person who is relevant to these proceedings?

(See sections 67Z and 67ZBA and 4 and 4AB and of the *Family Law Act 1975*)

Yes

No

NOTE (1): If you tick 'yes' to this question, and a child or children have suffered or are at risk of suffering abuse in the form of serious psychological harm caused by being subjected to or exposed to family violence, you should also answer 'yes' to question 2 above.

NOTE (2): This form also fulfils the Court's obligation under paragraph 69ZQ(1)(aa) of the Family Law Act 1975.

Particulars of alleged family violence or risk of family violence:

(a) Have these allegation/s been reported to an external authority?

Yes No

If you tick 'yes' to question (a), specify to whom the allegation/s have been reported.

Police
.....

Child Welfare Authority
.....

Medical Practitioner
.....

Other
..... (please specify)

ALLEGATIONS RELATING TO OTHER RISKS

4. Are there any other facts or circumstances that you allege pose a risk to a child who is the subject of the proceedings?

(a) Do you allege that a child is at risk because a party to the proceedings, or another person relevant to the proceedings, suffers mental ill-health?

Yes No

(b) Do you allege that a child is at risk because a party to the proceedings, or another person relevant to the proceedings, abuses drugs or alcohol?

Yes No

(c) Do you allege that a child is at risk because a party, or another person relevant to the proceedings, suffers a serious parental incapacity?

Yes No

(d) Do you allege that a child is otherwise at risk?

Yes No

Particulars of facts or circumstances alleged in questions 4(a) to (d):

5. Details of the identity of all relevant adults and children:

NOTE: If you fear for your safety or the safety of your children, you do not need to disclose your or your children's residential address

Name	Last Known Address	Date of Birth	Description/Role

The evidence of the allegations must be set out in an affidavit accompanying this form.

Signature:

Signed by: person giving this notice lawyer

Date:/...../.....

Notice prepared by: person giving this notice lawyer

(Print name if lawyer)