



Federal Circuit Court Amendment (Costs and Other Measures) Rules 2017

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

Dated 31 July 2017

Chief Judge Pascoe
Judge Altobelli
Judge Baker
Judge Barnes
Judge Baumann
Judge Boyle
Judge Brown
Judge Burchardt
Judge Cameron
Judge Coates
Judge Coker
Judge Cole
Judge Demack
Judge Driver
Judge Dunkley
Judge Harland
Judge Harman
Judge Harper
Judge Hartnett
Judge Heffernan
Judge Henderson
Judge Hughes
Judge Jarrett
Judge Jones
Judge A Kelly
Judge C Kelly
Judge Kemp
Judge Laphorn
Judge Manousaridis

Judge McGuire
Judge McNab
Judge Middleton
Judge Neville
Judge Obradovic
Judge O'Sullivan
Judge Riethmuller
Judge Riley
Judge Sexton
Judge Small
Judge Spelleken
Judge Stewart
Judge Street
Judge Tonkin
Judge Turner
Judge Vasta
Judge Williams
Judge Willis
Judge Wilson
Judge Young

Judges of the Federal Circuit
Court of Australia

Dr Stewart Fenwick Chief Executive Officer

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1 Name

These Rules are the *Federal Circuit Court Amendment (Costs and Other Measures) Rules 2017*.

2 Commencement

- (1) 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	Column 3
Provisions	Commencement	Date/Details
1. Rules 1 to 4 and anything in these Rules not elsewhere covered by this table	The day after these Rules are registered.	3 August 2017
2. Schedule 1	The day after these Rules are registered.	3 August 2017
3. Schedule 2	The day after the end of the period of 3 months beginning on the day these Rules are registered.	2 November 2017

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

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Each instrument that is specified in a Schedule to these Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to these Rules has effect according to its terms.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

Part 1—Costs

Federal Circuit Court Rules 2001

1 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 (Costs and Other Measures) Rules 2017*, applies to work done and 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 application up to the completion of the first court date	Both: (a) \$2,199; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$2,936; 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) \$2,750; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$3,674; 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) \$1,832; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$1,832; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing

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)
4	Up to and including the conciliation conference	\$1,832	Not applicable
5	Dispute resolution litigation intervention	\$1,832	\$3,079
6	Preparation for final hearing—one day matter	\$4,686	\$6,603
7	Preparation for final hearing—2 day matter	\$5,811	\$9,922
8	Preparation for final hearing—each additional hearing day after the second hearing day	\$1,244	\$2,087
9	Final hearing costs for attendance of solicitor at hearing to take judgment. and explain orders	Both: (a) \$299; and (b) the daily hearing fee mentioned in item 13 that applies to the hearing	Both: (a) \$299; and (b) the daily hearing fee mentioned in 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) \$930; 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	\$615	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—\$299; or (b) for a half day hearing—\$1,099; or (c) for a full day hearing—\$2,199	Either: (a) for a short mention—\$299; or (b) for a half day hearing—\$1,099; or (c) for a full day hearing—\$2,199
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	\$0.76	\$0.76
16	Agents fees and travelling costs Note: For 2 or more hours travel.	\$618	\$618

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) \$2,316; 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) \$1,765; 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	\$1,199
4	Final hearing costs for attendance of solicitor at hearing to take judgment and explain orders	Both: (a) \$289; 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
6	Daily hearing fee	Either: (a) for a short mention—\$289; or (b) for a half day hearing—\$1,060; or (c) for a full day hearing—\$2,121
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	\$0.76
9	Disbursements—photocopying documents after first 10 pages—for each page	\$0.23
10	Agents fees and travelling costs Note: For 2 or more hours travel.	\$597

Division 2—Costs for appeal of a Tribunal or Child Support Registrar decision

Costs for an appeal of a Tribunal or Child Support Registrar decision		
Item	Description	Amount (including GST)
1	A proceeding concluded at or before the first court date for the proceeding	\$1,417

Costs for an appeal of a Tribunal or Child Support Registrar decision		
Item	Description	Amount (including GST)
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	\$3,537
3	A proceeding concluded at a final hearing	\$7,066

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	\$1,467
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	\$3,667
3	A proceeding concluded at a final hearing	\$7,328

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	\$730
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	\$1,829
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	\$3,667
4	Any other case	\$5,130

Part 2—Other amendments

Federal Circuit Court Rules 2001

2 Subrule 1.05(2)

Omit “the Federal Court Rules or the Family Law Rules”, substitute “the Family Law Rules, the Federal Court Rules or the *Federal Court (Criminal Proceedings) Rules 2016*”.

3 Paragraph 2.06(a)

Repeal the paragraph, substitute:

- (a) the Registrar is satisfied that the document, on its face or by reference to any other documents filed or submitted for filing with the document, is an abuse of process or is frivolous, scandalous or vexatious; or

4 Paragraph 2.07A(4)(a)

Omit “<http://www.fmc.gov.au>”, substitute “<http://www.federalcircuitcourt.gov.au>”.

5 Division 2.3 (heading)

Repeal the heading, substitute:

Division 2.3—Custody and inspection of documents

6 Rule 2.08 (heading)

Repeal the heading, substitute:

2.08 Searching records in family law proceedings or child support proceedings

7 Paragraphs 2.08(1)(c) and (d) and (2)(b)

After “Court”, insert “or a Registrar”.

8 Subrule 2.08(3)

After “Court”, insert “or a Registrar”.

9 Subrule 2.08(4)

Repeal the subrule.

10 At the end of Division 2.3

Add:

2.08A Custody of documents in general federal law proceedings

- (1) The District Registrar of a District Registry of the Federal Court of Australia is to have custody of, and control over:
- (a) each document filed in the Registry in a general federal law proceeding;
and
- (b) the records of the Registry relating to a general federal law proceeding.

- (2) A person may remove a document in a general federal law proceeding from a Registry if:
 - (a) a Registrar has given written permission for the removal because it is necessary to transfer the document to another Registry; or
 - (b) the Court or a Registrar has given the person leave for the removal.
- (3) If the Court or Registrar permits a person to remove a document from the Registry, the person must comply with any conditions on the removal imposed by the Court or Registrar.

2.08B Inspection of documents in general federal law proceedings

- (1) A party may inspect any document in a general federal law proceeding except:
 - (a) a document for which a claim of privilege has been made:
 - (i) but not decided by the Court; or
 - (ii) that the Court has decided is privileged; or
 - (b) a document that the Court or a Registrar has ordered be confidential.
- (2) A person who is not a party may inspect the following documents in a general federal law proceeding in the appropriate registry:
 - (a) an application starting the proceeding or cross-claim;
 - (b) a response or reply;
 - (c) a notice of address for service;
 - (d) a pleading or particulars of a pleading or similar document;
 - (e) a statement of agreed facts or an agreed statement of facts;
 - (f) an application in a case;
 - (g) a judgment or an order of the Court;
 - (h) a notice of discontinuance;
 - (i) a notice of change of lawyer;
 - (j) a notice of withdrawal;
 - (k) reasons for judgment;
 - (l) a transcript of a hearing heard in open court.
- (3) However, a person who is not a party is not entitled to inspect a document if:
 - (a) the Court or a Registrar has ordered the document be confidential; or
 - (b) the person is not entitled to inspect the document because of a suppression order or non-publication order by the Court.

Note: For the power of the Court to make a suppression order or non-publication order, see sections 88F and 88J of the Act.

- (4) A person may apply to the Court or a Registrar for leave to inspect a document that the person is not otherwise entitled to inspect.
- (5) A person may be given a copy of a document, except a copy of the transcript in the proceeding, if the person:
 - (a) is entitled to inspect the document; and
 - (b) has paid the prescribed fee.

Note 1: For the prescribed fee, see the *Federal Court and Federal Circuit Court Regulation 2012*.

Note 2: If there is no order that a transcript is confidential, a person may, on payment of the applicable charge, obtain a copy of the transcript of a proceeding from the Court's transcript provider.

11 Paragraph 4.05(2)(c)

After "45.08", insert ", 45.09A".

12 Subrule 13.03C(1)

After "the Court" (first occurring), insert "or a Registrar".

13 Subparagraph 13.03C(1)(b)(ii)

After "the Court", insert "or the Registrar".

14 Subrule 13.03C(2)

After "the Court" (first occurring), insert "or a Registrar".

15 Subrule 13.03C(2)

After "the Court" (second occurring), insert "or the Registrar".

16 Rule 13.10

After "Court" (first occurring), insert "or a Registrar".

17 Rule 13.10

After "Court" (second occurring), insert "or the Registrar".

18 Rule 16.05 (heading)

Repeal the heading, substitute:

16.05 Setting aside or varying judgments or orders

19 Subrule 16.05(1)

Omit "Court may vary or set aside its", substitute "Court or a Registrar may vary or set aside a".

20 Subrule 16.05(2)

Repeal the subrule, substitute:

- (2) The Court or a Registrar may vary or set aside a judgment or order after it has been entered if:
- (a) it was made in the absence of a party; or
 - (b) it was obtained by fraud; or
 - (c) it is interlocutory; or
 - (d) it is an injunction or for the appointment of a receiver; or
 - (e) it does not reflect the intention of the Court; or
 - (f) the party in whose favour it was made consents; or
 - (g) there is a clerical mistake in the judgment or order; or
 - (h) there is an error arising in the judgment or order from an accidental slip or omission.

21 Subrule 16.05(3)

After “Court”, insert “or a Registrar”.

22 Subrules 25.05(1) and 25.06(1)

After “Court”, insert “or a Registrar”.

23 Subrule 25.11(5)

After “Court” (first occurring), insert “or a Registrar”.

24 Paragraph 25.11(5)(a)

After “Court”, insert “or the Registrar”.

25 Subrule 25.11(6)

Omit “Court grants the application, the Court”, substitute “Court or a Registrar grants the application, the Court or the Registrar”.

26 Paragraph 25.12(a)

After “Court”, insert “or a Registrar”.

27 Rule 25.18

Omit “Registry Manager”, substitute “Court or a Registrar”.

28 Rule 25B.01 (note 2)

Omit “(Form 18)”.

29 At the end of rule 44.05

Add:

Note: See rules 4.03 and 4.05 in relation to a response to an application.

30 Rule 44.06

Repeal the rule.

31 Rule 45.01

Insert:

Building and Construction Industry Act means the *Building and Construction Industry (Improving Productivity) Act 2016*.

Registered Organisations Act means the *Fair Work (Registered Organisations) Act 2009*.

32 Rule 45.02 (heading)

Repeal the heading, substitute:

45.02 Expressions used in Part 45

33 At the end of rule 45.02

Add:

; and (c) an expression used in Division 45.3A and in the Registered Organisations Act has the same meaning in Division 45.3A as it has in the Registered Organisations Act; and

(d) an expression used in Division 45.5 and in the Building and Construction Industry Act has the same meaning in Division 45.5 as it has in the Building and Construction Industry Act.

34 Subrules 45.03(1) and (2)

Omit “or the Fair Work Act”, substitute “, the Fair Work Act, the Registered Organisations Act or the Building and Construction Industry Act”.

35 After Division 45.3

Insert:

Division 45.3A—Contraventions of the Registered Organisations Act

45.09A Application in relation to taking a reprisal (Registered Organisations Act, s 337BB)

An application for an order in relation to an allegation that a person took or threatened to take, or is taking or threatening to take, a reprisal against another person must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by a claim in accordance with the approved form.

Note 1: Section 337BB of the Registered Organisations Act states the orders the Court may make.

Note 2: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim in accordance with rule 4.05.

36 Division 45.4A (heading)

Repeal the heading, substitute:

Division 45.4A—Dispute resolution

37 Rule 45.13B (heading)

Repeal the heading, substitute:

45.13B Mediation—Fair Work Act and Registered Organisations Act proceedings

38 At the end of Part 45

Add:

Division 45.5—Proceedings under the Building and Construction Industry Act

45.14 Applications for orders etc. under the Building and Construction Industry Act

An application for one of the following must be in accordance with the approved form:

- (a) an injunction under section 48 of the Building and Construction Industry Act in relation to unlawful industrial action, or an unlawful picket;
- (b) an order under section 81 of that Act in relation to an alleged contravention of that Act;
- (c) an order under subsection 98(6) of that Act in relation to an alleged contravention of an undertaking given by a person to the ABC Commissioner;
- (d) a review under section 100 of that Act of a notice given under section 99 of that Act.

Note: Part 4 of Chapter 1 sets out the general rules concerning how to start proceedings.

39 Part 2 of Schedule 3 (table item 18, column headed “Provision”)

Omit “Divisions 34.2 and”, substitute “Division”.

40 Dictionary

Insert:

prescribed property has the same meaning as in the Family Law Rules.

Schedule 2—Amendments commencing 3 months after registration

Federal Circuit Court Rules 2001

1 Subrule 4.03(3)

Omit “14”, substitute “28”.

2 After Chapter 8

Insert:

Chapter 9—Transitional provisions

Part 47—Transitional provisions relating to the Federal Circuit Court Amendment (Costs and Other Measures) Rules 2017

47.01 Application of amendment of rule 4.03

The amendment of rule 4.03 made by Schedule 2 to the *Federal Circuit Court Amendment (Costs and Other Measures) Rules 2017* applies in relation to applications made after the commencement of that Schedule.

47.02 Repeal of this Part

This Part is repealed at the end of the period of 1 month beginning on the day this Part commences.