



Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021

I, The Honourable William Alstergren, Chief Judge of the Federal Circuit and Family Court of Australia (Division 2), make the following Rules of Court.

Dated 26 August 2021

The Honourable William Alstergren
Chief Judge of the Federal Circuit and Family Court of Australia (Division 2)

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Chapter 1—All proceedings

Part 1—Introduction

1.01 Name

These Rules are the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*.

1.02 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. The whole of these Rules	1 September 2021.	1 September 2021

Note: This table relates only to the provisions of these Rules as originally made.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.

1.03 Authority

These Rules are made under Chapter 4 of the *Federal Circuit and Family Court of Australia Act 2021*.

1.04 Overarching purpose

- (1) The overarching purpose of these Rules, as provided in section 190 of the Act, is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

Note 1: The parties to a proceeding must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose (see section 191 of the Act).

Note 2: These Rules must be interpreted and applied, and any power conferred or duty imposed by them must be exercised or carried out, in the way that best promotes the overarching purpose (see subsection 190(3) of the Act).

Note 3: The Court may dispense with compliance with these Rules or make orders inconsistent with these Rules (see rule 1.07).

- (2) To assist the Court, the parties must:

Rule 1.05

- (a) avoid undue delay, expense and technicality; and
 - (b) consider options for primary dispute resolution as early as possible.
- (3) If appropriate, the Court will help to implement primary dispute resolution.

1.05 Definitions

In these Rules.

AAT Act means the *Administrative Appeals Tribunal Act 1975*.

Act means the *Federal Circuit and Family Court of Australia Act 2021*.

address for service, for a party means the address for service given by the party in accordance with rule 6.01.

AD(JR) Act means the *Administrative Decisions (Judicial Review) Act 1977*.

answers to specific questions includes interrogatories.

application in a proceeding means an application that is made in a proceeding that has already been started under these Rules and is an application for:

- (a) an interim order; or
- (b) a procedural order; or
- (c) an ancillary order; or
- (d) an interlocutory order; or
- (e) any other incidental order relating to an application or order.

appropriate registry, for a proceeding, means:

- (a) the registry in which the application starting the proceeding is filed; or
- (b) if the proceeding is transferred to another registry—that registry.

approved form, for a provision of these Rules, means a form approved by the Chief Judge under subrule 2.04(1) for the provision.

authenticate, in relation to an order of the Court, means to sign and seal the order.

authorised Registrar, in relation to a provision of these Rules, means a Registrar authorised in writing by the Chief Executive Officer to exercise the powers or perform the functions of an authorised Registrar under that provision.

Civil Dispute Resolution Act means the *Civil Dispute Resolution Act 2011*.

corporation includes any artificial person other than an organisation.

Court means the Federal Circuit and Family Court of Australia (Division 2).

criminal record, for a person, means a record of offences for which the person has been found guilty.

discontinuance, in relation to a proceeding, includes withdrawal from the proceeding.

discovery means an obligation to disclose.

electronic communication means a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy, including an email or an email attachment.

enter, in relation to an order, means to take out or authenticate the order.

Fair Work Commission has the meaning given by section 12 of the *Fair Work Act 2009*.

family law or child support proceeding has the meaning given by subsection 7(1) of the Act.

Federal Court Rules means the *Federal Court Rules 2011*.

filing registry, in relation to a proceeding, means the registry of a court in which the proceeding is started or to which the proceeding is transferred.

general federal law proceeding means a proceeding in the Court other than a family law or child support proceeding.

genuine steps statement has the meaning given by section 5 of the Civil Dispute Resolution Act.

Human Rights Act means the *Australian Human Rights Commission Act 1986*.

interested person, for a subpoena, means a person who might reasonably have an interest in the subject matter of the subpoena.

issuing party, for a subpoena, means the party at whose request a subpoena is issued.

lawyer means a legal practitioner who is entitled to practise in the Court.

legal assistance means any of the following:

- (a) advice in relation to a proceeding;
- (b) representation at a directions, interlocutory or final hearing or a mediation;
- (c) drafting or settling documents to be used in a proceeding;
- (d) representation generally in the conduct of a proceeding.

medical record, for a person, means the histories, reports, diagnoses, prognoses, interpretations and other data or records, written or electronic, relating to the person's medical condition, that are maintained by a physician, hospital or other provider of services or facilities for medical treatment.

minor means a person under the age of 18 years.

month has the meaning given by rule 3.03.

National Credit Code has the same meaning as in the *National Consumer Credit Protection Act 2009*.

party means an applicant, respondent or other person included as a party to a proceeding.

Rule 1.06

person subpoenaed means a person required by a subpoena to produce a document or give evidence.

police record, for a person, means records relating to the person kept by police, including statements, police notes and records of interview.

pro bono lawyer means a lawyer who has agreed to accept a referral under rule 12.01 to provide pro bono legal assistance.

Registrar means a Senior Registrar or Registrar of the Court.

Registrar of the Tribunal includes a person:

- (a) who has been appointed as an officer of the Tribunal under section 24PA of the AAT Act; and
- (b) to whom powers or functions have been delegated under subsection 10A(3) of the AAT Act.

service by hand means personal service.

the Court or a Judge includes a Judge sitting in chambers.

Tribunal means the Administrative Appeals Tribunal.

vexatious proceeding has the meaning given by subsection 7(1) of the Act.

vexatious proceedings order has the meaning given by subsection 7(1) of the Act.

1.06 Application

- (1) It is intended that the practice and procedure of the Court in general federal law proceedings be governed principally by these Rules.
- (2) However, if in a particular case the Rules are insufficient or inappropriate, the Court may apply the Federal Court Rules or the *Federal Court (Criminal Proceedings) Rules 2016* in whole or in part and modified or dispensed with, as necessary.
- (3) Without limiting subrule (2), the provisions of the Federal Court Rules set out in Schedule 1, apply, with necessary changes, to general federal law proceedings.

Note: These Rules have effect subject to any provision made by an Act, or by rules or regulations under an Act, with respect to the practice and procedure in particular matters (see subsection 217(2) of the Act).

- (4) These Rules apply as follows:
 - (a) Chapter 1 applies to all general federal law proceedings;
 - (b) Chapter 2 applies to proceedings under the *Australian Human Rights Commission Act 1986*;
 - (c) Chapter 3 applies to proceedings under other Acts including the *Administrative Decisions (Judicial Review) Act 1977*, the *Administrative Appeals Tribunal Act 1975* and the *Migration Act 1958*;
 - (d) Chapter 4 applies to proceedings in the Fair Work Division;

(e) Chapter 5 applies to proceedings under the *National Consumer Credit Protection Act 2009*.

Note: For rules relating to bankruptcy proceedings, see the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*.

(5) These Rules do not apply to family law or child support proceedings.

Note: For rules relating to family law or child support proceedings, see the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, as applied by the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*.

1.07 Court may dispense with rules

- (1) The Court may in the interests of justice dispense with compliance, or full compliance, with any of these Rules at any time.
- (2) If, in a proceeding, the Court gives a direction or makes an order that is inconsistent with any of these Rules, the direction or order of the Court prevails in that proceeding.

1.08 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.

Part 2—Documents

Division 2.1—General

2.01 Requirements for documents

- (1) A document (other than a form) to be filed must:
 - (a) be set out on one side only of size A4 durable white paper of good quality; and
 - (b) be legible and without erasures, blotting out or material disfigurement; and
 - (c) have a margin at the left side of at least 30 mm; and
 - (d) have clear margins of at least 10 mm on the top, bottom and right sides; and
 - (e) be written in English; and
 - (f) be:
 - (i) printed in a font of not less than 12 points; or
 - (ii) hand-printed clearly in ink in a way that is permanent and can be photocopied to produce a copy satisfactory to the registrar; and
 - (g) have a space of not less than 8 mm between the lines of printing.
- (2) However, unless the Court otherwise orders, strict compliance with subrule (1) is not required if the document:
 - (a) is readable, including when it is bound; and
 - (b) can be easily scanned and photocopied.
- (3) This rule does not apply to a document annexed to an affidavit.

Note: The Court may give directions limiting the length of documents to be filed (see section 182 of the Act).

2.02 Document must have distinctive number

A document filed in connection with a particular proceeding must bear the distinctive number of the proceeding.

2.03 Document to be signed

- (1) A document to be filed (other than an affidavit, annexure or exhibit) must be signed by a party or by the lawyer for the party unless the nature of the document is such that signature is inappropriate.
- (2) If a document (other than an affidavit) is required by these Rules to be signed, that requirement is met if the signature is attached to the document by electronic means, by, or at the direction of, the signatory.

2.04 Forms

- (1) The Chief Judge of the Court may approve a form for a provision of these Rules.

- (2) Unless the Court otherwise orders, strict compliance with forms is not required and substantial compliance is sufficient.
- (3) A document prepared in the form prescribed for a similar purpose for the Federal Court may be taken to substantially comply with the appropriate form for a proceeding.
- (4) However, unless otherwise provided in these Rules, a document to be filed in a proceeding must be headed:

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)

At (*Registry*).

Division 2.2—Filing documents

2.05 How documents may be filed

- (1) A document must be filed by electronic communication as permitted by the Court, unless it is not reasonably practicable to do so.
- (2) If it is not reasonably practicable to file a document by electronic communication in accordance with subrule 2.08(2), it may be filed, in order of preference, by:
 - (a) emailing it to the registry; or
 - (b) delivering it to the registry; or
 - (c) sending it to the registry by post; or
 - (d) faxing it to the registry.
- (3) A document is filed when:
 - (a) the filing fee has been paid (or an exemption or deferral applies); and
 - (b) the document is accepted for filing by the Registry Manager and sealed with the seal of the Court or marked with the stamp of the Court, as required by Division 2.4.

Note 1: The *Federal Court and Federal Circuit and Family Court Regulations 2012* provides that a document must not be filed in a registry of the Court unless the fee payable for the filing has been paid. The regulation also provides for an exemption or deferral of a fee, or payment of the fee on invoice, in certain circumstances.

Note 2: For the design, custody and affixation of the seal and validity of stamps (see sections 178 and 179 of the Act).

- (4) However, a document sent by fax or electronic communication, if accepted, is taken to have been filed:
 - (a) if the whole document is received by 4.30 pm on a day the Registry is open for business—on that day; or
 - (b) in any other case—on the next day the Registry is open for business.

Note: Because of the Court's computer security firewall, there may be a delay between the time a document is sent by electronic communication and the time the document is filed.

2.06 Registrar may refuse to accept document

A Registrar may refuse to accept a document for filing if:

- (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
- (b) the document is filed in connection with a pending proceeding and the registry is not the appropriate registry; or
- (c) the rules relating to the electronic filing of documents have not been complied with.

2.07 Filing by fax

- (1) An authorised Registrar may approve at least one fax number for each Registry for receiving documents.
- (2) A document sent to a Registry by fax must be:
 - (a) sent to an approved fax number for the Registry; and
 - (b) accompanied by a cover sheet stating:
 - (i) the sender's name, postal address, telephone number, fax number, email address and any document exchange number; and
 - (ii) the number of pages sent; and
 - (iii) the action sought in relation to the document.
- (3) A document must not be faxed to a Registry if it is more than 20 pages.
- (4) If the document is in an existing proceeding, it must be sent to an approved fax number for the Registry that is the appropriate registry for the proceeding.
- (5) If the document is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
 - (a) make one copy of the document; and
 - (b) if the sender asks that the document be held for collection—hold it for collection for 7 days; and
 - (c) if the sender does not ask for the document to be held for collection, or having asked does not collect the document within 7 days—return the document by sending it:
 - (i) by fax to the fax number stated on the cover sheet; or
 - (ii) if no fax number is stated, to the postal address stated on the cover sheet.
- (6) The sender of a document to a Registry by fax must:
 - (a) keep the original document and the transmission report evidencing successful transmission; and
 - (b) produce the original document or the transmission report as directed by the Court.
- (7) If the Court directs that the original document be produced, the first page of the document must be endorsed with:
 - (a) a statement that the document is the original of a document sent by fax; and
 - (b) the day that the document was sent by fax.

2.08 Filing by electronic communication

- (1) An authorised Registrar:
 - (a) may approve the formats for electronic versions of documents that will be accepted by a Registry; and
 - (b) may approve at least one email address for any Registry for the purpose of receiving documents by electronic communication.
- (2) A document sent to a Registry for filing by electronic communication must:

Rule 2.09

- (a) be lodged using eLodgment at <https://www.elodgment.fedcourt.gov.au>; and
- (b) be in an electronic format approved for the Registry; and
- (c) be in a form that complies with rule 2.04; and
- (d) be able to be printed with the content, and in the form, created.

Note: Approved electronic formats are listed on the Federal Court website at <http://www.fedcourt.gov.au>.

- (3) An affidavit may be filed by electronic communication only by sending an image of the affidavit as required by subrule (2).
- (4) If the document is in an existing proceeding, it must be sent to the Registry that is the appropriate registry for the proceeding by using:
 - (a) the Court's website at <http://www.fcfoa.gov.au> or
 - (b) eLodgment at <https://www.elodgment.fedcourt.gov.au>.

2.09 Other requirements for filing by electronic communication

- (1) If a document sent by a person by electronic communication is required to be signed or stamped, and it is accepted at a Registry, a Registrar must comply with the following (as applicable):
 - (a) for a document that, under these Rules, must be endorsed with a date for hearing—insert a notice of filing and hearing as the first page of the document;
 - (b) for any other document—insert a notice of filing as the first page of the document;
 - (c) make one copy of the document (including the notice mentioned in paragraph (a) or (b) (whichever applies));
 - (d) if the sender requests that the document be held for collection—hold it for collection for 7 days;
 - (e) if the sender does not request that the document be held for collection or, having made a request, does not collect the document within 7 days—return the document by sending it:
 - (i) by electronic communication to the email address stated on the cover sheet; or
 - (ii) if no email address is stated, to the postal address stated on the cover sheet.
- (2) A notice mentioned in paragraph (1)(a) or (b) is part of the document for the purposes of these Rules.
- (3) The person who sent the document must, as directed by the Court:
 - (a) if the document is an image of an affidavit—produce the original of the affidavit; or
 - (b) in any other case—produce a paper copy of the document.
- (4) If the Court directs that an original affidavit or a paper copy of a document be produced, the person who sent the document must:
 - (a) for an original affidavit—attach a statement to the affidavit stating:

- (i) that it is the original of the affidavit sent by electronic communication; and
 - (ii) the date that the affidavit was sent by electronic communication; or
 - (b) in any other case—endorse the first page with:
 - (i) a statement that the paper copy is a true copy of the document sent by electronic communication; and
 - (ii) the date the document was sent by electronic communication.
- (5) If a document has been filed electronically and a notice has been inserted as the first page of the document as required by paragraph (1)(a) or (b), the notice is treated as part of the document for the purposes of the Act and these Rules (including any rules about service of the document).

Rule 2.10

Division 2.3—Custody and inspection of documents

2.10 Custody of documents

- (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 proceeding; and
 - (b) the records of the Registry relating to a proceeding.
- (2) A person may remove a document 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.

2.11 Inspection of documents

- (1) A party may inspect any document in a 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 proceeding in the appropriate registry:
 - (a) an application starting the proceeding or a 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 proceeding;
 - (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 230 and 233 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 and Family Court Regulations 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.

Division 2.4—Seal and stamp of Court

2.12 Use of seal of Court

The seal of the Court must be attached to:

- (a) Rules of Court; and
- (b) any other documents the Court or a Judge directs or the law requires.

Note 1: The seal must be attached to all writs, commissions and process issued from the Court (see subsection 180(1) of the Act). It may also be used to enter an order (see rule 17.08).

Note 2: The design of the seal is determined by the Minister and the seal is kept in custody as directed by the Chief Judge (see section 178 of the Act).

2.13 Stamp of Court

- (1) The Registrar must keep, in the Registrar's custody, a stamp designed, as nearly as practicable, to be the same as the design of the seal of the Court.
- (2) The stamp of the Court must be attached to all process filed in the Court and orders entered and to other documents as directed by the Court.

Note: Documents marked with the stamp are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

2.14 Methods of attaching the seal or stamp

The seal or stamp of the Court may be attached to a document:

- (a) by hand; or
- (b) by electronic means; or
- (c) in another way.

Part 3—Sittings, registry hours and time

Division 3.1—Sittings, holidays and registry hours

3.01 Sittings

- (1) The Court sits at times and places as directed by the Chief Judge.
- (2) Unless the Judge constituting the Court otherwise directs, the Court does not sit:
 - (a) on a Saturday or Sunday; or
 - (b) on a day that is a public holiday where the registry is located.

3.02 Registry hours

- (1) A registry must be open for business when the registry facilities shared by the registry under arrangements made under section 248 of the Act are open for business.
- (2) A registry may be open at other times for urgent business at the direction of a Judge.

Rule 3.03

Division 3.2—Time

3.03 Meaning of *month*

In these Rules and in a judgment, decree, order or any document in a proceeding, unless the context otherwise indicates:

month means a calendar month.

3.04 Calculating time

- (1) This rule applies to a period of time fixed by these Rules or by a judgment, decree, order or any document in a proceeding.
- (2) If a period of more than 1 day is to be calculated by reference to a particular day or event, the particular day or the day of the event must not be counted.
- (3) If a period of 5 days or less would, but for this subrule, include a day when the registry is closed, that day must not be counted.
- (4) If the last day for taking an action that requires attendance at a registry is a day when the registry is closed, the action may be taken on the next day when the registry is open.
- (5) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply to these Rules.

3.05 Extension or shortening of time fixed

- (1) The Court may extend or shorten a time fixed by these Rules or by a judgment, decree or order.
- (2) A Registrar may extend or shorten a time fixed by these Rules.
- (3) The time fixed may be extended even if the time fixed has passed.
- (4) A time fixed by these Rules or by a judgment, decree or order for service, filing or amendment of a document may be extended by consent without an order.

Part 4—Starting proceedings

Division 4.1—General

4.01 Application

- (1) Unless otherwise provided in these Rules, a proceeding must be started by filing an application in accordance with the approved form.
- (2) An application for final orders may include an application for interim or procedural orders.
- (3) A person must not file an application for an interim or procedural order unless:
 - (a) an application for a final order has been made in the proceeding; or
 - (b) the application includes an application for a final order.
- (4) If a person makes an application in a proceeding before final orders have been made in a proceeding, the application must be made in accordance with rule 4.06.

4.02 Content of application

An application must precisely and briefly state the orders sought and the basis on which the orders are sought.

4.03 Response to application

- (1) A respondent to an application who seeks to do any of the following must file a response in accordance with the approved form:
 - (a) indicate consent to an order sought by the applicant;
 - (b) ask the Court to make another order;
 - (c) ask the Court to dismiss the application;
 - (d) seek orders in a matter other than the matter set out in the application;
 - (e) make a cross-claim against the applicant or another party.
- (2) A response must precisely and briefly state any orders sought and the basis on which the orders are sought.
- (3) A response must be filed and served within 28 days after service of the application to which it relates.

Note: A response to an application under Part 29 must comply with the additional requirements of rule 29.06.

4.04 Affidavit to be filed with application or response

- (1) A person filing an application or response, whether seeking final, interim or procedural orders, must also file an affidavit stating the facts relied on.
- (2) However, an affidavit is not required:

Rule 4.05

- (a) in an application for interim or procedural orders—if the evidence relied on is in an affidavit or affidavits filed in the pending proceeding; or
 - (b) if the person filing an application files a statement of claim or points of claim; or
 - (c) in an application filed in the Fair Work Division in accordance with rule 30.04, 30.05, 30.06, 30.08 or 30.11; or
 - (d) in an application filed in accordance with rule 31.03.
- (3) If a statement of claim or points of claim are filed, a respondent:
- (a) must file a defence or points of defence instead of an affidavit; and
 - (b) may file a cross-claim.

Note: Paragraph 174(2)(b) of the Act provides for the Rules of Court made under the *Federal Court of Australia Act 1976* to apply, with necessary modifications, to the practice and procedure of the Court for particular jurisdictions of the Court if these Rules are insufficient. The Federal Court Rules may be used to direct how pleadings are to be dealt with in the Court if subrules 4.04(2) and (3) of these Rules apply.

4.05 Reply in certain circumstances

- (1) If a response to an application or cross-claim seeks orders in a matter (other than the orders set out in the application) the applicant may file and serve a reply to the response in accordance with the approved form.
- (2) A reply must be filed and served within 14 days of service of the response to which it relates.

4.06 Application in a proceeding

- (1) An application in a proceeding must be made in accordance with the approved form.
- (2) In addition to the requirements in rule 4.04, the application must state:
 - (a) the name and address of the person making the application in a proceeding; and
 - (b) the names and addresses for service of all persons affected by the order which is sought; and
 - (c) the names and addresses of the parties in the application filed for starting proceedings, as stated in that application.
- (3) The application and supporting affidavit must be served on all persons against whom the order is sought, in accordance with Part 6.

Division 4.2—Rules for proceedings if Civil Dispute Resolution Act applies

4.07 Applicant’s genuine steps statement

- (1) If Part 2 of the Civil Dispute Resolution Act applies to a proceeding, the applicant in the proceeding must, when filing the application mentioned in subrule 4.01(1), file the applicant’s genuine steps statement in accordance with the approved form.
- (2) The applicant’s genuine steps statement must comply with section 6 of the Civil Dispute Resolution Act.
- (3) The applicant’s genuine steps statement must be no more than 2 pages.

Note 1: For *Civil Dispute Resolution Act*, see rule 1.05.

Note 2: A party who wants to start a proceeding must have regard to the Civil Dispute Resolution Act before starting the proceeding to determine whether the Civil Dispute Resolution Act applies to the proceeding.

Note 3: A lawyer must comply with section 9 of the Civil Dispute Resolution Act if that Act applies to the proceeding.

4.08 Respondent’s genuine steps statement

- (1) If an applicant has filed a genuine steps statement, the respondent must file the respondent’s genuine steps statement in accordance with the approved form within 14 days after service of the applicant’s application.
- (2) The respondent’s genuine steps statement must comply with section 7 of the Civil Dispute Resolution Act.
- (3) The respondent’s genuine steps statement must be no more than 2 pages.

Note 1: For *Civil Dispute Resolution Act*, see rule 1.05.

Note 2: Rule 4.07 requires an applicant in a proceeding to which the Civil Dispute Resolution Act applies to file the applicant’s genuine dispute resolution statement at the same time as the application is filed.

Part 5—Urgent applications

5.01 Urgent application

In an urgent case, if service on the respondent is not practicable, the Court may, on application, make an order until a specified time or until further order.

5.02 Form of application

Unless the Court orders otherwise, an urgent application must be made in the form approved for the purpose of starting a proceeding under subrule 4.01(1) or an application in a proceeding under subrule 4.06(1).

5.03 Evidence

- (1) Unless the Court otherwise orders, the applicant must establish the following by affidavit or, with the leave of the Court, orally:
 - (a) whether there are previous proceedings between the parties and, if so, the nature of the proceedings;
 - (b) whether there are any current proceedings in any court in which the applicant or the respondent are parties;
 - (c) the particulars of any orders currently in force between the parties, including the courts in which they were made;
 - (d) the steps that have been taken to tell the respondent or the respondent's legal representative of the applicant's intention to make the application or the reasons why no steps were taken;
 - (e) the nature and immediacy of the damage or harm that may result if the order is not made;
 - (f) why the making of the order is a matter of urgency and why shortening the time for service of the application and the fixing of an early hearing date would not be more appropriate;
 - (g) if the application relates to a financial matter—the capacity of the applicant to give an undertaking as to damages;
 - (h) the other facts, matters and circumstances relied on by the applicant in support of the application.
- (2) Paragraph (1)(d) does not apply to an application for an interim injunction under section 46PP of the Human Rights Act.

Part 6—Service

Division 6.1—General

6.01 Address for service

- (1) A party to a proceeding must give an address for service.
- (2) A party may give an address for service:
 - (a) by filing a relevant document that includes an address for service; or
 - (b) by filing a notice of address for service in accordance with the approved form.
- (3) An address for service:
 - (a) must be an address in Australia; and
 - (b) must include a telephone number at which the party may be contacted during normal business hours; and
 - (c) must include a current email address for the party; and
 - (d) may include a fax number for the party.
- (4) If the party is represented by a lawyer who has general authority to act for the party, the address for service for the party must be the address of the lawyer.
- (5) If the party is represented by a lawyer and the notice for service provides the lawyer's email address, the party agrees for the party's lawyer to receive documents at the lawyer's email address.
- (6) If the party is not represented by a lawyer, the party agrees to receive documents at the party's email address.

Note: The parties may agree on how service is to be carried out. For example, the parties may agree that service is to be by email.

6.02 Change of address for service

If a party's address for service changes for any reason during a proceeding, the party must, within 7 days of the change:

- (a) file a notice of address for service; and
- (b) serve the notice on each other party.

6.03 Service of documents

- (1) A document to be served in a proceeding must be filed and sealed.
- (2) An application and each document filed with it must be served on each party to the proceeding within the time mentioned in rule 6.19.
- (3) If a document, other than an application and its related documents, is required to be served, the person who files the document must serve a copy of it as soon as practicable on each other party to the proceeding who has an address for service in the proceeding.

Rule 6.04

6.04 Court's discretion in relation to service

Nothing in this Part affects the power of the Court:

- (a) to authorise service of a document in a way that is not provided for in this Part; or
- (b) to find that a document has been served; or
- (c) to find that a document has been served on a particular day.

6.05 Affidavit of service

- (1) Unless the Court otherwise orders, evidence of service to be given must be given by affidavit.
- (2) For the purposes of subrule (1), the approved form may be used.

Division 6.2—Service by hand

6.06 When is service by hand required

- (1) Service by hand is required for an application starting a proceeding or a subpoena requiring attendance of a person.
- (2) However, service by hand is not required if:
 - (a) there are current proceedings for which there is a notice of address for service for the person to be served; or
 - (b) the Court directs that an application may be served in another way; or
 - (c) a lawyer accepts service for a party and subsequently files an address of service; or
 - (d) a lawyer accepts service for a person other than a party.

6.07 Service by hand on an individual

- (1) A person serving a document by hand on an individual must give a copy of the document to the person to be served.
- (2) However, if the person to be served does not take the copy of the document, the person serving it may put it down in the presence of the person to be served and tell the person what it is.

6.08 Service by hand on a corporation, unincorporated association or organisation

- (1) Unless the Court otherwise orders, a person serving a document by hand on a corporation, unincorporated association or organisation must leave a copy of the document with a person who is apparently an officer of or in the service of the corporation, unincorporated association or organisation:
 - (a) for a corporation:
 - (i) at the registered office of the corporation; or
 - (ii) if there is no registered office—at the principal place of business or the principal office of the corporation; or
 - (b) for an unincorporated association—at the principal place of business or the principal office of the association or on an officer holder; or
 - (c) for an organisation—at the office of the organisation shown in the copy records of the organisation lodged with the Registered Organisations Commissioner under section 233 of the *Fair Work (Registered Organisations) Act 2009*.
- (2) Despite subrule (1), service by hand may be effected:
 - (a) on a company, as defined in section 9 of the *Corporations Act 2001*, in any manner permitted by section 109X of that Act; or
 - (b) on the liquidator of a company, in the manner permitted by paragraph 109X(1)(c) of that Act; or

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- (c) on an administrator of a company, in the manner permitted by paragraph 109X(1)(d) of that Act.

6.09 Service of application on unregistered business

- (1) This rule applies if:
- (a) a proceeding is brought against a person in relation to a business carried on by the person under a name other than the person's name; and
 - (b) the name is not registered under an applicable State or Territory law; and
 - (c) the proceeding is started in the name under which the person carries on the business.
- (2) The application may be served by leaving a copy at the person's place of business with a person who appears to have control or management of the business there.

6.10 Service of application on partnership

- (1) An application against a partnership must be served:
- (a) on one or more of the partners; or
 - (b) on a person at the principal place of business of the partnership who appears to have control or management of the business there; or
 - (c) if there is a registered office of the partnership—at that office.
- (2) An application served in accordance with this rule is taken to be served on each of the partners who are partners when the application is filed.
- (3) However, the application must also be served on any person who the applicant seeks to make liable as a partner and who is not a partner when the application is filed.

Division 6.3—Ordinary service

6.11 Service other than by hand

- (1) If a document is not required to be served by hand, the document may be served on a person at the person's address for service:
 - (a) by delivering it to the address in a sealed envelope addressed to the person; or
 - (b) by sending it to the address by pre-paid post in a sealed envelope addressed to the person; or
 - (c) by fax transmission addressed to the person and sent to a fax receiver at the address; or
 - (d) if the address includes the number of a document exchange box of a lawyer—by sealing the document in an envelope that complies with any prepayment requirements of the document exchange and is addressed to the lawyer (at that box address) and placing the envelope:
 - (i) in that box; or
 - (ii) in a box provided at another branch of the document exchange for delivery of documents to the box address; or
 - (e) if the person has filed a notice authorising service by email—by sending the document to the email address; or
 - (f) if the party is represented by a lawyer, and the address for service provides the lawyer's email address—by sending it to the lawyer's email address.
- (2) If the person does not have an address for service, the document may be served on the person:
 - (a) by delivering it to the person's last known address or place of business in a sealed envelope addressed to the person; or
 - (b) by sending it by pre-paid post in a sealed envelope addressed to the person at the person's last known address or place of business; or
 - (c) by sending it to the person's last known email address; or
 - (d) if the person is a corporation or organisation and a law of the Commonwealth or the State or Territory in which service is to be effected provides for service of a document on a corporation or organisation—by serving the document in accordance with such provision.

6.12 When service is effected

A document served by post, fax or electronic communication is taken to have been served:

- (a) if it was posted to an address in Australia—on the day the document would be delivered in the ordinary course of the post; or
- (b) if it was posted by airmail to an address outside Australia—on the 28th day after posting; or
- (c) if the document was sent by fax—on the next business day after the document was sent; or

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- (d) if the document was sent by electronic communication—on the next business day after the document was sent.

6.13 Special requirements for service by fax

- (1) A document served by fax transmission must include a cover page stating the following:
 - (a) the sender's name and address;
 - (b) the name of the person to be served;
 - (c) the date and time of transmission;
 - (d) the total number of pages, including the cover page, transmitted;
 - (e) the telephone number from which the document is transmitted;
 - (f) the name and telephone number of a person to contact if there is a problem with transmission;
 - (g) that the transmission is for service.
- (2) An affidavit of service of a document by fax transmission must have the transmission report indicating successful transmission annexed.

Division 6.4—Substituted service and dispensing with service

6.14 Substituted service

- (1) If, for any reason, it is impracticable to serve a document in a way required under this Part, the Court may make an order dispensing with service or substituting another way of serving the document.
- (2) The Court may specify the steps to be taken for bringing the document to the attention of the person to be served.
- (3) The Court may specify that the document is to be taken to have been served on the happening of a specified event or at the end of a specified time.

6.15 Matters to be taken into account

In making an order for dispensing with service or for substituted service, the Court may have regard to:

- (a) whether reasonable steps have been taken to attempt to serve the document; and
- (b) whether it is likely that the steps that have been taken have brought the existence and nature of the document to the attention of the person to be served; and
- (c) whether the person to be served could become aware of the existence and nature of the document by means of advertising or another means of communication that is reasonably available; and
- (d) the likely cost to the party serving the document, the means of that party and the nature of the proceedings; and
- (e) any other relevant matter.

6.16 Failure to comply with condition

Failure to comply with a condition of an order for substituted service does not prevent the Court from finding that the document is taken to have been served on a date specified in the order.

Division 6.5—Time for service

6.17 General time limit

Unless the Court otherwise orders, a document must not be served more than 12 months after it is filed.

6.18 Time for service of subpoena

A subpoena must be served within 3 months after it is issued.

6.19 Time for service of applications

Unless the Court orders otherwise, an application and any document filed with it must not be served:

- (a) less than 3 days before the day fixed for the hearing of an application in a proceeding; or
- (b) less than 7 days before the day fixed for the hearing of any other application.

Part 7—Amendment

7.01 Power to amend

- (1) At any stage in a proceeding, the Court or a Registrar may allow or direct a party to amend a document (other than an affidavit) in the way and on the conditions the Court or the Registrar thinks fit.
- (2) Subject to rule 7.03, the Court or a Registrar may allow an amendment even if the effect would be to include a cause of action arising after the proceeding was started.

7.02 Who may be required to make an amendment

If the Court orders an amendment to be made to a document, the Court may order a party, a Registrar, a Judge's associate or another appropriate person to make the amendment.

7.03 Amendment after limitation period

- (1) This rule applies if an application for leave to make an amendment is made after the end of a relevant period of limitation current at the date the proceeding was started.
- (2) The Court may give leave to make an amendment correcting the name of a party, even if it is alleged that the effect would be to substitute a new party, if:
 - (a) the Court considers it appropriate; and
 - (b) the Court is satisfied that the mistake sought to be corrected was genuine and was not misleading or such as to cause reasonable doubt as to the identity of the party.
- (3) The Court may give leave to make an amendment changing the capacity in which a party seeks orders (whether as applicant or respondent by counterclaim) if:
 - (a) the Court considers it appropriate; and
 - (b) the capacity in which the party will seek orders is one in which, at the time the proceeding was started by the party, the party might have sought orders.
- (4) The Court may give leave to make an amendment even if the effect is to include a new cause of action, if:
 - (a) the Court considers it appropriate; and
 - (b) the new cause of action arises out of the same, or substantially the same, facts as a cause of action for which relief has already been claimed in the proceeding by the party seeking leave to amend.

Part 8—Transfer of proceedings

8.01 Change of venue

- (1) A party who files an application or a response in a proceeding may apply to have the proceeding heard in another registry of the Court.
- (2) In considering an application, the Court must have regard to:
 - (a) the convenience of the parties; and
 - (b) the limiting of expense and the cost of the proceeding; and
 - (c) whether the matter has been listed for final hearing; and
 - (d) any other relevant matter.

8.02 Transfer to Federal Court

- (1) The Court may, at the request of a party or on its own initiative, transfer a proceeding to the Federal Court.
- (2) Unless the Court otherwise orders, a request for transfer must be made on or before the first court date for the proceeding.
- (3) Unless the Court otherwise orders, the request must be included in a response or made by application supported by an affidavit.
- (4) In addition to the factors to which the Court must have regard under subsection 153(3) of the Act in deciding whether to transfer a proceeding to the Federal Court, the Court must take the following factors into account:
 - (a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Federal Court on one or more of the points in issue;
 - (b) whether, if the proceeding is transferred, it is likely to be heard and determined at less cost and more convenience to the parties than if the proceeding were not transferred;
 - (c) whether the proceeding will be heard earlier in the Court;
 - (d) the availability of particular procedures appropriate for the class of proceeding;
 - (e) the wishes of the parties.

8.03 Proceeding transferred to Federal Court

If a proceeding is transferred to the Federal Court, the Registrar must:

- (a) send to the proper officer of that court all documents filed and orders made in the proceeding; and
- (b) retain in the Court a copy of all orders made in the proceeding.

8.04 Proceeding transferred from Federal Court

If a proceeding or appeal is transferred to the Court from the Federal Court:

Rule 8.04

- (a) a sealed copy of the order of the Federal Court transferring the proceeding or appeal must, unless the Federal Court otherwise directs, be filed:
 - (i) if the order was obtained by a party—by the party; or
 - (ii) if the order was made by the Federal Court on its own initiative—by the applicant in the proceeding; and
- (b) the Registrar must:
 - (i) give the proceeding or appeal a distinctive number; and
 - (ii) unless it is impracticable to do so, allocate a first court date within 14 days after the transfer.

Part 9—Lawyers

9.01 Change between acting in person and by lawyer

- (1) If a party acts in person in a proceeding and later appoints a lawyer, the lawyer must, as soon as practicable, file and serve notice of the appointment on each other party.
- (2) If a party appoints a lawyer and later decides to act in person, the party must, as soon as practicable, file and serve notice of acting in person on the lawyer and each other party.
- (3) The party's former lawyer remains the lawyer on the record until the party serves the notice on the former lawyer.
- (4) Notice under this rule must contain details of an address for service in accordance with the approved form.

9.02 Change of lawyer

- (1) A party may, at any stage in a proceeding, appoint another lawyer in place of the lawyer then acting for the party.
- (2) The newly appointed lawyer must, as soon as practicable, file and serve on each other party and the party's former lawyer notice of the appointment.
- (3) The party's former lawyer remains the lawyer on the record until the newly appointed lawyer has complied with subrule (2).
- (4) Notice under this rule must contain details of an address for service in accordance with the approved form.

9.03 Withdrawal as lawyer

- (1) A lawyer for a party may withdraw from the record in a proceeding by filing a notice of withdrawal, in accordance with the approved form, and serving the notice on each other party.
- (2) However, a lawyer may not file or serve a notice of withdrawal without leave of the Court unless the lawyer has, not less than 7 days before filing the notice, served a notice of intention to withdraw on the party for whom the lawyer is acting.
- (3) A notice of intention to withdraw must be in accordance with the approved form.
- (4) A lawyer may serve a notice of intention to withdraw on a party by:
 - (a) posting it to the residential or business address of the party last known to the lawyer; or
 - (b) emailing it to the email address of the party last known to the lawyer.

- (5) If a party's lawyer withdraws from the record, the party's last known residential or business address is the address for service until:
- (a) the party appoints another lawyer; or
 - (b) the party files a notice of address for service.

Note: If a party's address for service changes for any reason during a proceeding, the party must file a notice of address for service (see rule 6.02).

9.04 Corporation must be represented

Except as provided by or under an Act or regulations made under an Act, or with the leave of the Court, a corporation may not start or carry on a proceeding otherwise than by a lawyer.

Part 10—How to conduct proceedings

Division 10.1—First court date

10.01 Directions and orders

- (1) At the first court date, the Court or a Registrar must give orders or directions for the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Registrar may hear and determine all or part of the proceeding.
- (3) Without limiting subrule (1), the Court or a Registrar may make orders or directions in relation to the following:
 - (a) manner and sufficiency of service;
 - (b) amendment of documents;
 - (c) defining the issues;
 - (d) filing affidavits;
 - (e) cross-claims;
 - (f) joinder of parties;
 - (g) dispute resolution;
 - (h) admissibility of affidavits;
 - (i) discovery and inspection of documents;
 - (j) interrogatories;
 - (k) inspections of real or personal property;
 - (l) admissions of fact or of documents;
 - (m) giving particulars;
 - (n) giving evidence at hearing (including the use of statements of evidence and taking evidence by video link or telephone or other means);
 - (o) expert evidence and court experts;
 - (p) transfer of proceedings;
 - (q) costs;
 - (r) hearing date;
 - (s) any other matter that the Court or Registrar considers appropriate.

10.02 Adjournment of first court date

- (1) If the parties agree that, because of short service or other special circumstances, it is not appropriate to proceed on the first court date fixed, the parties may ask a Registrar in writing to adjourn the first court date to another date.
- (2) The Registrar may adjourn the first court date to the date requested by the parties or to another date that is practicable.

10.03 Fixing date for final hearing

At the first court date, the Court or a Registrar may:

Rule 10.03

- (a) fix a date for final hearing; or
- (b) direct the parties to arrange with the Registrar a date for final hearing; or
- (c) fix a date after which either party may request a date for final hearing; or
- (d) remove the matter from the list.

Division 10.2—Dispute resolution

10.04 Agreement reached by dispute resolution

If the parties to a proceeding resolve the issues between them following a dispute resolution process, the parties may:

- (a) discontinue the proceeding; or
- (b) ask the Court to make consent orders.

Note 1: Parties may be advised to use dispute resolution processes. For the duty of the Court to advise people to use dispute resolution processes, see section 158 of the Act. For the duty of lawyers to advise parties to use dispute resolution processes, see section 159 of the Act. For the duty of designated officers of the Court to advise parties to use dispute resolution processes, see section 160 of the Act.

Note 2: See also sections 161, 169 and 170 of the Act, which contain provisions dealing with the Court's power to refer a matter for conciliation, mediation or arbitration.

Note 3: For mediation and arbitration, see Part 23 of these Rules.

10.05 Conciliation conference

- (1) The Court may refer a proceeding, or a part of a proceeding or a matter arising out of a proceeding, for conciliation.
- (2) A conciliation conference must be held with:
 - (a) a Judge; or
 - (b) a Registrar; or
 - (c) another person appointed by the Court for the purpose.
- (3) Unless the Court or a Registrar otherwise orders:
 - (a) the parties must attend the conference in person; and
 - (b) each lawyer representing a party must also attend.
- (4) The parties must make a genuine effort to reach agreement on relevant matters in issue.
- (5) If an issue between the parties remains unresolved at the end of a conciliation conference, the Judge or Registrar may:
 - (a) give further directions; and
 - (b) make any other order, including an order for costs.

Division 10.3—Notice of constitutional matter

10.06 Party to file notice of constitutional matter

- (1) Unless the Court otherwise orders, a party to a proceeding who becomes aware that the proceeding involves a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*, must file a notice of a constitutional matter and serve a copy on each other party to the proceeding.
- (2) The notice may be in the form prescribed for the purpose under the Federal Court Rules and must state:
 - (a) the nature of the matter; and
 - (b) the facts showing that the matter is a matter to which subrule (1) applies.

Part 11—Parties and litigation guardians

Division 11.1—Parties

11.01 Necessary parties

- (1) Subject to any order of the Court, a person whose participation is necessary for the Court to completely and finally determine all matters in dispute in a proceeding must be included as a party to the proceeding.
- (2) The Court may require a person to be included as a party.
- (3) A person required to be included as an applicant who does not consent to be included may be included as a respondent.
- (4) The Court may decide a proceeding even if a person is incorrectly included or not included as a party.

11.02 Party may include another person as a party

- (1) A party to a proceeding may include any person as a party by:
 - (a) naming the person as a party in the application, response or reply; and
 - (b) serving on the person a copy of the application, response or reply and all other relevant documents filed in the proceeding.
- (2) A party must not include a person as a party after the first court date without the leave of the Court.
- (3) The Court may at any time order a party who has included a person as a party to file and serve on each other party to the proceeding an affidavit setting out the basis on which the person has been included.

11.03 Person may apply to be included

- (1) A person may apply to the Court to be included as a party to a proceeding.
- (2) Unless the Court otherwise orders, the application must be supported by an affidavit stating:
 - (a) the person's interest in the proceeding or any matter in dispute between the person and a party to the proceeding; and
 - (b) the orders (if any) that the person will seek if included as a party.
- (3) The person must serve a copy of the application and affidavit on each party to the proceeding.
- (4) An order for inclusion of the party may be on limited terms.

11.04 Party may apply to be removed

- (1) A party to a proceeding may apply to the Court to be removed as a party.

- (2) The party must file an affidavit stating:
 - (a) the relationship (if any) of the applicant to each other party; and
 - (b) the evidence in support of the application.
- (3) The party must serve a copy of the application and affidavit on each other party to the proceeding.

11.05 Court may order notice to be given

The Court may at any time order a party, or a person applying to be included as a party, to notify any person of:

- (a) the proceeding; or
- (b) the application of the person to be included as a party.

11.06 Intervention by Attorney-General

If intervening in a proceeding, the Attorney-General must:

- (a) file a notice setting out the basis or grounds of the intervention and the orders (if any) sought; and
- (b) serve a copy of the notice and affidavit (if any) on each other party to the proceeding.

Division 11.2—Litigation guardian

11.07 Person who needs a litigation guardian

- (1) For the purposes of these Rules, a person needs a litigation guardian in relation to a proceeding if the person:
 - (a) does not understand the nature and possible consequences of the proceeding; or
 - (b) is not capable of adequately conducting, or giving adequate instruction for the conduct of, the proceeding.
- (2) Unless the Court otherwise orders, a minor in a proceeding is taken to need a litigation guardian in relation to the proceeding.

11.08 Starting, continuing, defending or inclusion in proceeding

- (1) A person who needs a litigation guardian may start, continue, respond to or seek to be included as a party to a proceeding only by the person's litigation guardian.
- (2) The litigation guardian of a party to a proceeding:
 - (a) must do anything required by these Rules to be done by the party; and
 - (b) may do anything permitted by these Rules to be done by the party.

11.09 Who may be a litigation guardian

A person may be a litigation guardian in a proceeding if the person is an adult and has no interest in the proceeding adverse to the interest of the person needing the litigation guardian.

11.10 Appointment of litigation guardian

- (1) The Court may, at the request of a party or on its own initiative, appoint or remove a litigation guardian or substitute another person as litigation guardian in a proceeding in the interests of a person who needs a litigation guardian.
- (2) A person becomes a litigation guardian if the person consents to the appointment by filing an affidavit of consent in the proceeding.
- (3) The Court may remove a litigation guardian at the request of the litigation guardian.

11.11 Manager of the affairs of a party

- (1) In this rule:

manager of the affairs of a party includes a person who is authorised by or under a Commonwealth, State or Territory law to conduct legal proceedings in the name of, or for, a person who needs a litigation guardian.
- (2) A person who is a manager of the affairs of a party is entitled to be the litigation guardian in any proceeding to which the authority extends.

- (3) The Attorney-General may appoint in writing a person to be a manager of the affairs of a party for the purposes of this rule, either generally or for a particular person.
- (4) A manager of the affairs of a party becomes the litigation guardian of a person who needs a litigation guardian in a proceeding if the manager of the affairs of the party files an affidavit of consent in relation to the person.

11.12 Notice of becoming litigation guardian

A person appointed as the litigation guardian of a party to a proceeding must, as soon as practicable after the appointment, give notice of the appointment to each other party to the proceeding.

11.13 Costs and expenses of litigation guardian

The Court may make orders for the payment of the costs and expenses of a litigation guardian (including the costs of an application for the appointment of the litigation guardian):

- (a) by a party; or
- (b) from the income or assets of the person for whom the litigation guardian is appointed.

11.14 Service

- (1) A document required to be served by hand on a person who needs a litigation guardian must be served:
 - (a) on the person's litigation guardian for the proceeding; or
 - (b) if there is no litigation guardian—on a person who is entitled under subrule 11.11(2) to be the person's litigation guardian for the proceeding; or
 - (c) if there is no-one under paragraph (a) or (b)—on an adult who has the care of the person.
- (2) For the purposes of paragraph (1)(c), a superintendent or other person in direct charge of a hospital or nursing home is taken to have the care of a person who is a patient in the hospital or nursing home.

Rule 12.01

Part 12—Court referral for legal assistance

12.01 Referral for legal assistance

- (1) The Court may refer a party to a lawyer for legal assistance by issuing a referral certificate in accordance with the approved form.
- (2) In making a referral under subrule (1), the Court may take the following matters into account:
 - (a) the means of the party;
 - (b) the capacity of the party to otherwise obtain legal assistance;
 - (c) the nature and complexity of the proceeding;
 - (d) any other matters the Court considers appropriate.
- (3) The referral certificate may state the kind of legal assistance for which the party has been referred.
- (4) The Registrar will attempt to arrange for the provision of legal assistance in accordance with the referral certificate to a pro bono lawyer.

12.02 A party has no right to apply for a referral

A party is not entitled to apply to the Court for a referral under rule 12.01.

12.03 Acceptance of referral and provision of legal assistance

If a lawyer agrees to accept a referral under rule 12.01, the lawyer must provide legal assistance in accordance with the referral certificate.

12.04 Ceasing to provide legal assistance

If a pro bono lawyer no longer wishes to provide legal assistance, the lawyer must withdraw in accordance with rule 9.03.

Part 13—Ending a proceeding early

Division 13.1—Discontinuance

13.01 Discontinuance

- (1) A party may discontinue an application or response by filing a notice of discontinuance in accordance with the approved form.
- (2) A notice of discontinuance may be filed:
 - (a) at least 14 days before the day fixed for the final hearing of the application;
or
 - (b) with the leave of the Court or a Registrar, at a later time.
- (3) However, a party must not file a notice of discontinuance without the leave of the Court or a Registrar if the proceeding is a creditor's petition.
- (4) A party filing a notice of discontinuance must, as soon as practicable, serve a copy of the notice on each other party to the proceeding.

13.02 Costs

- (1) If a party discontinues an application, or part of an application, another party to the proceeding may apply for costs.
- (2) Unless the Court or a Registrar directs otherwise, an application for costs must be made by a party within 28 days after service on the party of the notice of discontinuance.
- (3) If an order for costs is made against a party and the party brings against the party to whom the costs are payable a further proceeding on the same or substantially the same matter, the Court may stay the further proceeding until the costs are paid.

Division 13.2—Order or judgment on default

13.03 Definitions for Division 13.2

In this Division:

applicant includes a cross-claimant.

claim includes a cross-claim.

respondent includes a cross-respondent.

13.04 When a party is in default

- (1) For the purposes of rule 13.05, an applicant is in default if the applicant fails to:
 - (a) comply with an order of the Court in the proceeding; or
 - (b) file and serve a document required under these Rules; or
 - (c) produce a document as required by Part 14; or
 - (d) do any act required to be done by these Rules; or
 - (e) prosecute the proceeding with due diligence.
- (2) For the purposes of rule 13.05, a respondent is in default if the respondent:
 - (a) has not satisfied the applicant's claim; and
 - (b) fails to:
 - (i) give an address for service before the time for the respondent to give an address has expired; or
 - (ii) file a response before the time for the respondent to file a response has expired; or
 - (iii) comply with an order of the Court in the proceeding; or
 - (iv) file and serve a document required under these Rules; or
 - (v) produce a document as required by Part 14; or
 - (vi) do any act required to be done by these Rules; or
 - (vii) defend the proceeding with due diligence.

13.05 Orders on default

- (1) If an applicant is in default, the Court may order that:
 - (a) the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant; or
 - (b) a step in the proceeding be taken within the time limited in the order; or
 - (c) if the applicant does not take a step in the time mentioned in paragraph (b)—the proceeding be stayed or dismissed as to the whole or any part of the relief claimed by the applicant.
- (2) If a respondent is in default, the Court may:
 - (a) order that a step in the proceeding be taken within the time limited in the order; or

- (b) if the claim against the respondent is for a debt or liquidated damages—grant leave to the applicant to enter judgment against the respondent for:
 - (i) the debt or liquidated damages; and
 - (ii) if appropriate—costs; or
 - (c) if the proceeding was started by an application supported by a statement of claim or the Court has ordered that the proceeding continue on pleadings—give judgment against the respondent for the relief that:
 - (i) the applicant appears entitled to on the statement of claim; and
 - (ii) the Court is satisfied it has power to grant; or
 - (d) give judgment or make any other order against the respondent; or
 - (e) make an order mentioned in paragraph (b), (c) or (d) to take effect if the respondent does not take a step ordered by the Court in the proceeding in the time limited in the order.
- (3) The Registrar must enter judgment for the debt or liquidated damages, costs and interest against the respondent as specified in leave granted under paragraph (2)(b), without giving notice, or further notice, to the respondent, if the applicant has filed in the Registry:
- (a) an affidavit, or affidavits, proving:
 - (i) service of the application claiming judgment for the debt or liquidated damages; and
 - (ii) that the respondent is in default; and
 - (b) an affidavit for the debt or liquidated damages in accordance with the approved form.
- (4) Unless the Court otherwise orders, if a respondent to a cross-claim is in default:
- (a) a judgment or decision on any claim, question or issue in the proceeding on the originating process; or
 - (b) any other cross-claim in the proceeding;
- is binding as between the cross-claimant and the respondent to the cross-claim, to the extent that the judgment or decision is relevant to any claim, question or issue in the proceeding on the cross-claim.
- (5) In subrule (4):
- decision** includes a decision by consent.
- judgment** includes a judgment by default or by consent.
- (6) The Court may make an order of the kind mentioned in subrule (1), (2) or (4), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the Court thinks just.

13.06 Default of appearance of a party

- (1) If a party to a proceeding is absent from a hearing (including a first court date), the Court or a Registrar may do any of the following:
 - (a) adjourn the hearing to a specific date or generally;
 - (b) order that there is not to be any hearing, unless:
 - (i) the proceeding is again set down for hearing; or

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- (ii) any other steps that the Court or the Registrar directs are taken;
 - (c) if the absent party is an applicant—dismiss the application;
 - (d) if the absent party is a party who has made an interlocutory application or a cross-claim—dismiss the interlocutory application or cross-claim;
 - (e) proceed with the hearing generally or in relation to any claim for relief in the proceeding.
- (2) If a party to a proceeding is absent from a hearing, the Court or a Registrar may also make an order of the kind mentioned in subrule 13.05(1), (2) or (4), or any other order, or may give any directions, and specify any consequences for non-compliance with the order, that the Court or the Registrar thinks just.

13.07 Court’s powers in relation to contempt etc. not affected

Nothing in rule 13.04, 13.05 or 13.06 is intended to limit the Court’s powers in relation to contempt or sanctions for failure to comply with an order.

Division 13.3—Consent orders

13.08 Application for order by consent

- (1) The parties to a proceeding may apply for an order in terms of an agreement reached about a matter in dispute in the proceeding by filing a draft consent order signed by each party.
- (2) The draft consent order must state that it is made by consent.
- (3) The Court may make such orders as the Court considers appropriate in the circumstances.
- (4) If a Registrar has power to make the order, the Registrar may, unless the Registrar considers that the matter should be brought before the Court, make an order in accordance with the terms of the draft consent order.

13.09 Additional information

At any time before making a consent order, the Court or a Registrar may require a party to provide additional information.

Division 13.4—Summary disposal and stay

13.10 Disposal by summary judgment

- (1) This rule applies if, in a proceeding:
 - (a) in relation to the whole or a part of a party's claim there is evidence of the facts on which the claim or part is based; and
 - (b) either:
 - (i) there is evidence given by a party or by some responsible person that the opposing party has no answer to the claim or the part of the claim; or
 - (ii) the Court is satisfied that the opposing party has no reasonable prospect of successfully defending the claim or the part of the claim.
- (2) The Court may give judgment on that claim or part of the claim and make any orders or directions that the Court considers appropriate.
- (3) If the Court gives judgment against a party who claims relief against the party obtaining the judgment, the Court may stay execution on, or other enforcement of, the judgment until determination of that claim.

13.11 Residue of proceeding

- (1) This rule applies if, in a proceeding:
 - (a) a party applies for judgment or an order for stay or dismissal under this Division; and
 - (b) the proceeding is not wholly disposed of by judgment or dismissal, or is not wholly stayed.
- (2) The proceeding may be continued in relation to any claim or part of a claim not disposed of by judgment or dismissal and not stayed.
- (3) The Court may give directions for the further conduct of the proceeding.

13.12 Application

An application for judgment or for an order that a proceeding be stayed or dismissed must be made by filing an application in accordance with the approved form.

13.13 Disposal by summary dismissal

The Court may order that a proceeding be stayed, or dismissed generally or in relation to any claim for relief in the proceeding, if the Court is satisfied that:

- (a) the party prosecuting the proceeding or claim for relief has no reasonable prospect of successfully prosecuting the proceeding or claim; or
- (b) the proceeding or claim for relief is frivolous or vexatious; or
- (c) the proceeding or claim for relief is an abuse of the process of the Court.

13.14 Certificate of vexatious proceedings order

- (1) A person who wants the Chief Executive Officer to issue a certificate under section 240 of the Act must make the request in writing and include in the request:
 - (a) the applicant's name and address; and
 - (b) the person's interest in making the request.
- (2) The request must be lodged in the Registry in which the vexatious proceedings order was made.
- (3) The certificate must state:
 - (a) the name of the person subject to the vexatious proceedings order; and
 - (b) the name of the person who applied for the vexatious proceedings order (unless publication or disclosure of the person's name is restricted); and
 - (c) the date on which the vexatious proceedings order was made; and
 - (d) the orders made by the Court.

13.15 Application for leave to institute proceedings

An application under subsection 242(2) of the Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made:

- (a) in accordance with the approved form; and
- (b) without notice to any other person.

Note: Subsection 242(3) of the Act sets out the contents of the affidavit that must be filed with the application.

13.16 Dormant proceedings

- (1) If a party has not taken a step in a proceeding for 6 months, the Court may, on its own initiative, order that the proceeding, or a part of the proceeding, be dismissed.
- (2) The Court must not make an order under subrule (1) if:
 - (a) there is a future listing for the proceeding or a part of the proceeding; or
 - (b) an application in a proceeding relating to the proceeding has not been determined; or
 - (c) a party to the proceeding satisfies the Court that the proceeding, or the part of the proceeding, should not be dismissed; or
 - (d) the Court has not given the parties to the proceeding notice under subrule (3).
- (3) The Court must, at least 14 days before making an order under subrule (1), give each party to the proceeding written notice of the date and time it will consider whether to make the order.
- (4) Notice under subrule (3) must be sent by post in an envelope marked with the Court's return address:
 - (a) to each party's address for service; and
 - (b) if a party has no address for service—to the party's last-known address.

Part 14—Disclosure

Division 14.1—Answers to specific questions

14.01 Declaration to allow specific questions

- (1) A declaration may be made under subsection 176(2) of the Act to allow interrogatories on the application of a party or on the Court's own initiative.
- (2) If a declaration is made, the Court or a Registrar may make appropriate orders in relation to answers to specific questions, having regard to any relevant Federal Court Rules.

Note: Interrogatories are not allowed in relation to a proceeding unless the Court or a Judge declares that it is appropriate in the interests of the administration of justice (see subsections 176(2) and (3) of the Act).

Division 14.2—Obligation to disclose

14.02 Declaration to allow discovery

- (1) A declaration may be made under subsection 176(2) of the Act to allow discovery on the application of a party or on the Court's own initiative.

Note: Discovery is not allowed in relation to a general federal law proceeding unless the Court or a Judge declares that it is appropriate in the interests of the administration of justice (see subsections 176(2) and (3) of the Act).

- (2) If a declaration is made, the Court or a Registrar may make an order for disclosure:
- (a) generally; or
 - (b) in relation to particular classes of documents; or
 - (c) in relation to particular issues; or
 - (d) by a specified date.

14.03 Affidavit of documents

A party who is ordered to disclose documents must file an affidavit of documents.

14.04 Production of documents to Court

The Court may order a party to a proceeding to produce to it a document in the possession, custody or control of the party.

14.05 Claim for privilege

- (1) This rule applies if, on application for the production by a party of a document for inspection by the party making the application or to the Court:
- (a) privilege from production or inspection is claimed; or
 - (b) objection is made to production or inspection on any other ground.
- (2) The Court may inspect the document for the purpose of determining whether the claim or objection is valid.

14.06 Order for particular disclosure

If, at any stage of a proceeding, it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed, that some document or class of document relating to a matter in question in the proceeding may be, or may have been, in the possession, custody or control of a party, the Court may order the party:

- (a) to file an affidavit stating:
 - (i) whether the document, or a document of that class, is or has been in the possession, custody or control of the party; and

Rule 14.07

- (ii) if it has been, but is not then, in the possession, custody or control of the party—when the party parted with it and what has become of it; and
- (b) to serve the affidavit on another party.

14.07 Inspection of documents

A document produced under an order may be inspected:

- (a) at the time and place specified in the order; or
- (b) at a time and place agreed by the parties.

14.08 Copies of documents inspected

Unless the Court otherwise orders, a party who inspects a document under this Division may make a copy of the document or an extract from the document.

14.09 Documents not disclosed or produced

Unless the Court gives leave, a party is not entitled to put a document or a copy of a document in evidence or give, or cause to be given, evidence of the contents of a document:

- (a) if:
 - (i) the party has filed an affidavit of documents; and
 - (ii) the document was, when the party made the affidavit, in the possession, custody or control of the party or had been, in the possession, custody or control of the party; and
 - (iii) the document was not referred to in the affidavit or in any other affidavit of documents filed by the party under an order of the Court; or
- (b) if the party has been served with a subpoena to produce the document and does not produce the document.

14.10 Documents referred to in document or affidavit

- (1) If a document or affidavit filed by a party refers to another document, another party may request the party in writing for a copy of the document or to produce it for inspection.
- (2) The party requested to provide a copy of, or produce, a document must, within 4 days of the request, in writing to the party making the request:
 - (a) provide a copy of the document or appoint a time within 7 days, and a place where, it may be inspected; or
 - (b) claim that the document is privileged from production and state the grounds; or
 - (c) state that the document is not in the possession, custody or control of the party to whom the request was made and state that party's knowledge, information or belief about its whereabouts.

14.11 Use of documents

- (1) An order or undertaking, whether express or implied, not to use a document for any purpose other than for the proceeding in which it is disclosed does not apply to the document after it has been read to or by the Court or referred to in open Court in such terms as to disclose its contents.
- (2) Subrule (1) is subject to any order of the Court on the application of a party or of a person to whom the document belongs.

Part 15—Evidence

Division 15.1—General

15.01 Court may give directions

The Court may give directions:

- (a) as to the order of evidence and addresses; and
- (b) generally as to the conduct of a hearing.

15.02 Decisions without oral hearing

The Court or a Judge may make a decision in a proceeding without an oral hearing if the parties to the proceeding consent to the making of the decision without an oral hearing.

15.03 Court may call evidence

- (1) The Court may on its own initiative call any person as a witness in proceedings and give directions as to examination and cross-examination.
- (2) The Court may order a party to pay the expenses of the attendance of the witness.

Note: The Court may put a question to any witness to resolve or expedite proceedings (see section 198 of the Act).

15.04 Transcript receivable in evidence

A transcript of proceedings prepared at the direction of the Court may be received in evidence as a true record of the proceedings except to the extent that it is shown not to be a true record.

Division 15.2—Expert evidence

15.05 Definitions for Division 15.2

In this Division:

expert, in relation to a question, means a person who has specialised knowledge about matters relevant to the question based on that person’s training, study or experience.

15.06 Duty to Court and form of expert evidence

For an expert’s duty to the Court and for the form of expert evidence, an expert witness should be guided by the Federal Court practice note for expert witnesses.

- Note: While not intended to address all aspects of an expert’s duties, the key points in the note are:
- (a) an expert witness has a duty to assist the Court on matters relevant to the expert’s area of expertise;
 - (b) an expert witness is not an advocate for a party;
 - (c) the overriding duty of an expert witness is to the Court and not to the person retaining the expert;
 - (d) if expert witnesses confer at the direction of the Court, it would be improper for an expert to be given or to accept instructions not to reach agreement.

15.07 Expert evidence for 2 or more parties

- (1) This rule applies if 2 or more parties to a proceeding call expert witnesses to give opinion evidence about the same, or a similar, question.
- (2) The Court may give any direction that it thinks fit in relation to:
 - (a) the preparation by the expert witnesses (in conference or otherwise) of a joint statement of how their opinions on the question agree and differ; or
 - (b) the giving by an expert witness of an oral or written statement of:
 - (i) the expert witness’s opinion on the question; or
 - (ii) the expert witness’s opinion on the opinion of another expert on the question; or
 - (iii) whether in the light of factual evidence led at trial, the expert witness adheres to, or wishes to modify, any opinion earlier given; or
 - (c) the order in which the expert witnesses are to be sworn, are to give evidence, are to be cross-examined or are to be re-examined; or
 - (d) the position of witnesses in the courtroom (not necessarily in the witness box).

Example: The Court may direct that the expert witnesses be sworn one immediately after another, and that they give evidence after all or certain factual evidence has been led, or after each party’s case is closed (subject only to hearing the evidence of expert witnesses) in relation to the question.

15.08 Court expert

- (1) The Court may, at the request of a party or on its own initiative:

Rule 15.09

- (a) appoint an expert as court expert to inquire into and report on a question arising in the proceeding; and
- (b) give directions about an experiment or test for the purposes of the inquiry or report; and
- (c) give further directions, including to extend or supplement the inquiry or report.

(2) If possible, the court expert should be a person agreed on between the parties.

15.09 Report of court expert

- (1) The court expert must give the report to the Registrar together with the number of copies the Registrar directs.
- (2) The Registrar must send a copy of the report to each party.
- (3) The Court may:
 - (a) receive the report in evidence; or
 - (b) allow the examination of the court expert; or
 - (c) give other directions as to the use of the report.
- (4) A party wishing to cross-examine the court expert:
 - (a) must arrange for the attendance of the court expert; and
 - (b) may issue a subpoena requiring the court expert's attendance; and
 - (c) unless the Court otherwise directs, must pay the reasonable expenses of the attendance.

15.10 Remuneration and expenses of court expert

Unless the Court otherwise directs, the parties are jointly liable to pay the reasonable remuneration and expenses of the court expert for preparing a report.

15.11 Further expert evidence

If a court expert has made a report on a question, a party may adduce evidence of another expert on the question with the leave of the Court.

Division 15.3—Affidavits

15.12 Form of affidavit

The body of an affidavit must be divided into paragraphs numbered consecutively, each paragraph being as far as possible confined to a distinct part of the subject.

15.13 Making an affidavit

- (1) The person making the affidavit must sign each page of the affidavit.

Note: For the persons before whom an affidavit may be made, see section 195 of the Act.

- (2) The affidavit must:

(a) contain a jurat including:

- (i) the full name of the person making the affidavit; and
- (ii) whether the affidavit is sworn or affirmed; and
- (iii) the day and place the affidavit is made; and
- (iv) the full name and capacity of the person before whom the affidavit is made; and

(b) be signed by the person making the affidavit in the presence of the person before whom it is made; and

(c) then be signed by the person before whom it is made.

Note: A jurat is a clause placed at the end of an affidavit stating the time, place and person before whom the affidavit is made.

- (3) Any interlineation, erasure or other alteration in the affidavit must be initialled by the person making the affidavit and the person before whom the affidavit is made.

15.14 Affidavit of illiterate or vision impaired person etc

- (1) If the person making an affidavit is unable to read, or is physically incapable of signing it, the person before whom the affidavit is made must certify in or below the jurat that:

- (a) the affidavit was read to the person making it; and
- (b) the person seemed to understand the affidavit; and
- (c) in the case of a person physically incapable of signing—the person indicated that the contents were true.

- (2) Subrule (1) does not apply if the person making the affidavit has read the affidavit using:

- (a) a computer with a screen reader, text-to-speech software or a braille display; or
- (b) other technology for the vision impaired.

- (3) If the person making an affidavit does not have an adequate command of English:

Rule 15.15

- (a) a translation of the affidavit and oath or affirmation must be read or given in writing to the person in a language that the person understands; and
 - (b) the translator must certify in or below the jurat that this has been done.
- (4) If an affidavit is made by a person who is incapable of reading it or incapable of signing it and a certificate under subrule (1) or (2) does not appear on the affidavit, it must not be used in a proceeding unless the Court or a Registrar is satisfied that:
- (a) the affidavit was read or, if appropriate, a translation was read or given in writing, to the person; and
 - (b) the person seemed to understand the affidavit; and
 - (c) in the case of a person physically incapable of signing—the person indicated that the contents were true.

15.15 Documents annexed or exhibited

- (1) A document to be used in conjunction with an affidavit must be annexed to the affidavit.
- (2) However, if because of the nature of the document or its length it is impractical to annex the document, it may be made an exhibit to the affidavit.
- (3) An annexure must:
 - (a) be paginated; and
 - (b) bear a statement signed by the person before whom the affidavit is made identifying it as the particular annexure mentioned in the affidavit.
- (4) If there is more than one annexure, the pagination must be consecutive until the last page of the annexures and must be identified by page number in the affidavit.

Example: For an affidavit with 10 annexures totalling 100 pages, the first page of the first annexure is page 1 and the last page of the last annexure is page 100. An annexure would be identified in the affidavit in the following way: “Annexed and marked with the letter G (pages 72-81) is a copy of the agreement for sale”.
- (5) An exhibit to an affidavit must:
 - (a) be marked with the title and number of the proceeding; and
 - (b) be paginated; and
 - (c) bear a statement signed by the person before whom the affidavit is made identifying it as the particular exhibit mentioned in the affidavit.
- (6) A document annexed or exhibited to an affidavit must be served with the affidavit.

15.16 Objectionable material may be struck out

- (1) The Court or a Registrar may order material to be struck out of an affidavit at any stage in a proceeding if the material:
 - (a) is inadmissible, unnecessary, irrelevant, prolix, scandalous or argumentative; or
 - (b) contains opinions of persons not qualified to give them.

- (2) Unless the Court or a Registrar otherwise directs, any costs caused by the material struck out must be paid by the party who filed the affidavit.

15.17 Use of affidavit without cross-examination of maker

The Court may:

- (a) dispense with the attendance for cross-examination of a person making an affidavit; or
- (b) direct that an affidavit be used without the person making the affidavit being cross-examined on the affidavit.

Division 15.4—Admissions

15.18 Admission

If an admission is made by a party, the Court may, on the application of another party, make an order to which the party applying is entitled on the admission.

15.19 Notice to admit facts or documents

- (1) A party to a proceeding (the *first party*) may, by notice in accordance with the approved form, ask another party to admit, for the proceeding, the facts or documents specified in the notice.
- (2) If the other party does not, within 14 days, serve a notice on the first party disputing the fact or the authenticity of the document, the other party is taken to admit, for the proceeding only, the fact or the authenticity of the document.
- (3) The other party may, with the Court's leave, withdraw an admission taken to have been made under subrule (2).
- (4) Unless the Court otherwise orders, if the other party serves a notice disputing a fact or the authenticity of a document and the fact or the authenticity of the document is later proved in the proceeding, the other party must pay the costs of the proof.

Part 16—Subpoenas and notices to produce

Division 16.1—General

16.01 Issue of subpoena

- (1) The Court or a Registrar may, on the Court's or the Registrar's own initiative or at the request of a party, issue:
 - (a) a subpoena for production; or
 - (b) a subpoena to give evidence; or
 - (c) a subpoena for production and to give evidence.
- (2) A subpoena must be in accordance with the approved form.
- (3) A subpoena must specify the name or designation by office or position of the person subpoenaed.
- (4) A subpoena requiring a person to produce a document or thing must include:
 - (a) an adequate description of the document or thing; and
 - (b) the time and place for production.
- (5) A party must not request the issue of a subpoena for production and to give evidence if production would be sufficient in the circumstances.

16.02 Documents and things in possession of another court

- (1) The Court must not issue a subpoena requiring the production of a document or thing in the possession of the Court or another court.
- (2) A party who seeks production of a document or thing in the possession of another court must give to a Registrar a written notice setting out:
 - (a) the name and address of the court in possession of the document; and
 - (b) a description of the document to be produced; and
 - (c) the date the document is to be produced; and
 - (d) the reason for seeking production.
- (3) On receiving a notice under subrule (2), a Registrar may ask the other court, in writing, to send the document to the filing registry by a specified date.
- (4) A party may apply for permission to inspect and copy a document produced to the court.

16.03 Time limits

- (1) A subpoena requiring production only may be made returnable at a time fixed by the Court.
- (2) A subpoena requiring attendance of a person must be made returnable on a day when the proceeding is listed for a hearing.

Rule 16.04

- (3) Unless the Court directs otherwise:
- (a) a subpoena requiring attendance must be served at least 7 days before attendance under the subpoena is required; and
 - (b) a subpoena requiring production must be served at least 10 days before production under the subpoena is required.

Note: A subpoena must be served within 3 months of issue (see rule 6.18).

16.04 Limit on number of subpoenas

- (1) Unless the Court directs otherwise, a party must not request the issue of more than 5 subpoenas in a proceeding.
- (2) For the purposes of this rule:
- proceeding* does not include a part of a proceeding.

16.05 Service

- (1) A subpoena must be served in accordance with Part 6.
- Note: Under subrule 6.06(1), service by hand is required for an application starting a proceeding or a subpoena requiring the attendance of a person.
- (2) The issuing party must serve by ordinary service a copy of the subpoena on each other party and any interested person in the proceeding.

16.06 Conduct money

- (1) The person serving a subpoena must give the person subpoenaed conduct money sufficient for return travel between the place of residence or employment (as applicable) of the person subpoenaed and the court.
- (2) The amount of conduct money must be at least \$25.

16.07 Undertaking not to require compliance with subpoena

The issuing party for a subpoena may, by notice in writing served on the person subpoenaed and on each other party, undertake not to require the person subpoenaed to comply with the subpoena.

16.08 Setting aside subpoena

On application, the Court may make an order setting aside all or part of a subpoena.

16.09 Order for cost of complying with subpoena

Subject to rule 16.10, the Court may, on application, make an order for the payment of any loss or expense incurred in complying with a subpoena.

16.10 Cost of complying with subpoena if not a party

- (1) This rule applies if:
 - (a) a subpoena is addressed to a person who is not a party to the proceeding;
and
 - (b) before complying with the subpoena, the person subpoenaed has given the issuing party notice that substantial loss or expense would be incurred in properly complying with the subpoena, including an estimate of the loss or expense; and
 - (c) the Court is satisfied that substantial loss or expense is incurred in properly complying with the subpoena.
- (2) Unless the Court or a Registrar otherwise directs, the amount of the loss or expense estimated under paragraph (1)(b) is payable by the issuing party.
- (3) The Court may fix the amount payable having regard to the scale of fees and allowances payable to witnesses in the Supreme Court of the State or Territory where the person is required to attend.
- (4) The amount payable is in addition to any conduct money paid.
- (5) If a party who is to pay an amount under this rule obtains an order for the costs of the proceeding, the Court may:
 - (a) allow the amount to be included in the costs recoverable; or
 - (b) make any other order it thinks fit.

Division 16.2—Production of documents and access by parties

16.11 Application of Division 16.2

- (1) This Division:
 - (a) applies to a subpoena for production; and
 - (b) does not apply to a subpoena for production and to give evidence.
- (2) A person who inspects or copies a document under these Rules or an order must:
 - (a) use the documents only for the purpose of the proceedings; and
 - (b) not disclose the contents of the document or give a copy of it to any other person without the Court's permission.
- (3) However:
 - (a) a solicitor may disclose the contents or give a copy of the document to the solicitor's client or counsel; and
 - (b) a client may disclose the contents or give a copy of the document to the client's solicitor.

16.12 Right to inspection of document

- (1) This rule applies if:
 - (a) the Court or a Registrar issues a subpoena for production of a document under rule 16.01; and
 - (b) the issuing party serves a copy of the subpoena on each other party and any interested person in accordance with rule 16.05, at least 10 days before the day stated in the subpoena for production; and
 - (c) the issuing party files a notice of request to inspect in an approved form.
- (2) If a person subpoenaed, another party or an interested person has not made an objection under rule 16.13 by the date required for production, each party may, after that day:
 - (a) inspect a subpoenaed document; and
 - (b) take copies of a subpoenaed document, other than a criminal record, medical record or police record.

Note: For *criminal record*, *medical record* and *police record*, see rule 1.05

- (3) Unless otherwise ordered, the inspection is by appointment and without an order.

16.13 Objection to production or inspection or copying of document

- (1) A person who objects to producing a document subpoenaed, or another party or an interested person who objects to the inspection or copying of a document subpoenaed by a party to the proceedings, must notify the Registrar and the issuing party, in writing, of the objection and the grounds of the objection before the day stated in the subpoena for production.
- (2) If an issuing party seeks the production of a person's medical records, the person may, before the day stated in the subpoena for production, notify the Registrar in

writing that the person wants to inspect the records for the purpose of determining whether to object to the inspection or copying of the records by any other party.

- (3) If notice is given under subrule (2):
 - (a) the person may inspect the medical records and notify the Registrar in writing of an objection (including the grounds of the objection) within 7 days after the day stated in the subpoena for production; and
 - (b) unless otherwise ordered, no other person may inspect the medical records until the later of the following:
 - (i) 7 days after the day stated in the subpoena for production;
 - (ii) the hearing and determination of the objection, if any.
- (4) A subpoena that is the subject of a notice of objection under this rule must be referred to the Court or Registrar for the hearing and determination of the objection.

16.14 Subpoena for production of documents or things

- (1) If a person is served with a subpoena for production:
 - (a) the person, or the person's agent, must produce the documents or things described in the subpoena at the registry stated in the subpoena; and
 - (b) the Registrar must issue a receipt to the person producing the document or thing.
- (2) Unless the subpoena specifically requires the production of the original documents or things, the person, or the person's agent, may produce a copy of the document or things.
- (3) The copy of the document or things may be:
 - (a) a photocopy; or
 - (b) in PDF on a CD-ROM; or
 - (c) in any other electronic form that the issuing party has indicated is acceptable.

16.15 Failure to comply with subpoena

- (1) If a person fails, without lawful excuse, to comply with a subpoena, the Court or a Registrar may:
 - (a) issue a warrant for the arrest of the person; and
 - (b) order the person to pay any costs of failure to comply.
- (2) Subrule (1) does not affect any power of the Court to punish a person for failure to comply with a subpoena.

Division 16.3—Notices to produce

16.16 Notice to produce

- (1) A party may, by notice in writing, require another party to produce, at the hearing of the proceeding, a specified document that is in the possession, custody or control of the other party.
- (2) Unless the Court otherwise orders, the party given notice to produce must produce the document at the hearing.

Part 17—Judgments and orders

17.01 Court may make any judgment or order

The Court may, at any stage in a proceeding on the application of a party, give any judgment or make any order even if the claim was not made in an originating process.

17.02 Date of effect

Unless the Court otherwise orders, a judgment or order takes effect on the day it is given or made.

17.03 Time for compliance

- (1) Unless the Court otherwise orders, if an order requires a person to do an act, the person must do so within 14 days after service of the order on the person.
- (2) Subrule (1) does not apply to that part of an order that requires a person to pay money unless the requirement is to pay money into Court.
- (3) If an order requires a person to do an act within a specified time, the Court may make an order requiring the person to do the act within another specified time.

17.04 Fines

- (1) If the Court imposes a fine on a person, the Court must make an order requiring the person to pay the fine to a Registrar within a specified time.
- (2) The Registrar must pay into the Consolidated Revenue Fund all money paid to the Registrar as a fine imposed by the Court.

17.05 Setting aside or varying judgments or orders

- (1) The Court or a Registrar may vary or set aside a judgment or order before it has been entered.
- (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.

Rule 17.06

- (3) This rule does not affect the power of the Court or a Registrar to vary or terminate the operation of an order by a further order.

17.06 Undertakings

Unless the Court otherwise orders, an undertaking to the Court has the same force and effect as an order of the Court.

17.07 When must an order be entered

- (1) An order must be entered if:
- (a) the order takes effect on the signing of the order; or
 - (b) the order is to be served; or
 - (c) the order is to be enforced; or
 - (d) an appeal from the order has been instituted or an application for leave to appeal has been made; or
 - (e) a step is to be taken under the order; or
 - (f) the Court directs that the order be entered.
- (2) However, an order need not be entered if it merely (in addition to any provision as to costs):
- (a) extends or shortens the time for an act to be done; or
 - (b) gives leave or makes a direction:
 - (i) to amend a document (other than an order); or
 - (ii) to file a document; or
 - (iii) for an act to be done by an officer of the Court other than a lawyer; or
 - (c) gives directions about the conduct of proceedings.

17.08 Entry of orders

- (1) An order may be entered:
- (a) under an arrangement under section 246 of the Act; or
 - (b) under the seal of the Court signed by:
 - (i) a Judge; or
 - (ii) a Registrar; or
 - (iii) an officer of the Court acting with the authority of the Chief Executive Officer.
- (2) For the purposes of paragraph (1)(b), an order may be signed by electronic means.
- (3) An order may be entered, in accordance with subrule (1):
- (a) in the registry; or
 - (b) in court; or
 - (c) in chambers.

Part 18—Separate decision on question

18.01 Definitions for Part 18

In this Part:

question includes a question or issue in a proceeding, whether of fact or law, or partly of fact and partly of law, and whether raised in a document, by agreement of the parties or otherwise.

18.02 Order for decision

The Court may make an order for the decision by the Court on a question separately from another question at any time in a proceeding.

18.03 Separate question

A separate question must:

- (a) set out the question or questions to be decided; and
- (b) be divided into paragraphs numbered consecutively.

18.04 Orders, directions on decision

If a question is decided under this Part, the Court may make the orders and directions that the nature of the case requires.

18.05 Disposal of proceeding

The Court may, in relation to a decision on a question under this Part:

- (a) dismiss the proceeding or any part of the proceeding; or
- (b) give judgment, including a declaratory judgment; or
- (c) make another order.

Part 19—Referral of matter to officer of Court

19.01 Court may refer matter

- (1) The Court may refer to a Registrar, including in relation to assessment of damages or taking accounts, any claim or application for, or relating to, any matter before the Court for:
 - (a) investigation; and
 - (b) report; and
 - (c) recommendation.
- (2) A Registrar to whom a claim or application is referred for investigation may:
 - (a) take evidence on oath or affirmation; and
 - (b) summon witnesses for the purpose of giving evidence or producing documents.

Part 20—Contempt

20.01 Contempt in the face or hearing of Court

- (1) If it appears to the Court that a person is guilty of contempt in the face of or in the hearing of the Court, the Court may:
 - (a) direct the person to attend before the Court; or
 - (b) issue a warrant for the person's arrest.
- (2) When the person attends before the Court, the Court must:
 - (a) tell the person of the contempt with which the person is charged; and
 - (b) allow the person to state the person's defence to the charge; and
 - (c) after hearing the defence, determine the charge; and
 - (d) make an order for the punishment or discharge of the person.
- (3) The Court may direct the person to be kept in custody or released until the charge is determined.
- (4) The Court may direct the person to give security for the person's attendance before the Court to answer the charge.

20.02 Contempt other than in the face or hearing of Court

- (1) If it is alleged that a person has committed a contempt of the Court (other than contempt in the face or hearing of the Court), an application may be made to the Court for the person to be dealt with for the contempt.
- (2) An application must:
 - (a) be in accordance with the approved form; and
 - (b) state the contempt alleged; and
 - (c) be supported by an affidavit setting out the facts relied on.
- (3) An application may be made:
 - (a) if the contempt is in connection with a proceeding—by a party to the proceeding; or
 - (b) by the Marshal of the Court; or
 - (c) by an officer or staff member of the Australian Federal Police; or
 - (d) by a member of the police force of a State or Territory.
- (4) The Court may direct the Marshal to make an application.
- (5) If the Court considers that the person is likely to leave the jurisdiction of the Court, the Court may issue a warrant for the arrest and detention of the person in custody until the person:
 - (a) attends before the Court to answer the charge; or
 - (b) gives security, as directed by the Court, for the person's attendance before the Court to answer the charge.

Rule 20.02

- (6) When the person attends before the Court, the Court must:
 - (a) tell the person of the allegation; and
 - (b) ask the person to state whether the person admits or denies the allegation;
and
 - (c) hear any evidence in support of the allegation.
- (7) After hearing evidence in support of the allegation, the Court may:
 - (a) if the Court decides there is no prima facie case—dismiss the application;
or
 - (b) if the Court decides there is a prima facie case:
 - (i) invite the person to state the person’s defence to the allegation; and
 - (ii) after hearing any defence, determine the charge.
- (8) If the Court finds the charge proved, the Court may make an order for the punishment of the person.

Part 21—Registrars' powers

Division 21.1—Delegation of powers to Registrars

21.01 Delegation of powers to Registrars

- (1) For the purposes of subsection 254(1) of the Act, a power of the Court mentioned in an item of the following table is delegated to a Registrar (an **approved Registrar**) who is approved, or is in a class of Registrars who are approved, by the Chief Judge for the exercise of the power.

Note 1: Subsection 254(1) of the Act enables the Chief Judge to make Rules of Court delegating powers to a delegate or prescribed class of delegate. A Registrar is a delegate (see paragraph (b) of the definition of **delegate** in subsection 7(1) of the Act).

Note 2: In these Rules, **Registrar** means a Senior Registrar or Registrar of the Court (see the definition of **Registrar** in rule 1.05).

Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
<i>Federal Circuit and Family Court of Australia Act 2021</i>		
1	Paragraph 174(2)(b) but only for a proceeding that is within the power of a Registrar to hear and determine	To give directions about the practice and procedure to be followed in relation to a proceeding or a part of a proceeding
2	Section 182 but only for a proceeding that is within the power of a Registrar to hear and determine	To give directions about the length of documents required or permitted to be filed in the Court
3	Section 184	To order, at any stage, a change of venue
4	Section 187 but only for a proceeding that is within the power of a Registrar to hear and determine	To give directions about limiting the time for oral argument in a proceeding
5	Section 188 but only for a proceeding that is within the power of a Registrar to hear and determine	To give directions about the use, or length, of written submissions in a proceeding
6	Subsection 189(2)	To make an order declaring that a proceeding is not invalid by reason of a formal defect or an irregularity
7	Section 197 but only for a proceeding that is within the power of a	To give directions about limiting the time for giving testimony in a proceeding

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Division 21.1 Delegation of powers to Registrars

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Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
	Registrar to hear and determine	
8	Subsection 199(2) but only for a proceeding that is within the power of a Registrar to hear and determine	To give directions that particular testimony is to be given orally or by affidavit
9	Subsection 201(1)	To direct or allow testimony to be given by video link or audio link
10	Subsection 202(1)	To direct or allow a person to appear by way of video link or audio link
11	Subsection 203(1)	To direct or allow a person to make a submission by way of video link or audio link
12	Section 207 but only for a proceeding that is within the power of a Registrar to hear and determine	To make orders for the payment of expenses incurred in connection with giving testimony, appearing, or making submissions, by video link or audio link
13	Subsection 254(2)	All of the following: (a) to require a party's lawyer to estimate the likely duration of the proceeding and likely amount of costs; (b) to make orders about the conduct of a proceeding; (c) to make orders following a party's failure to comply with orders made as mentioned in paragraph (b); (d) to dispense with the service of any process of the Court; (e) to make orders in relation to substituted service; (f) to make orders in relation to discovery, inspection and production of documents; (g) to make orders in relation to interrogatories; (h) to make an order adjourning the hearing of proceedings; (i) to make an order as to costs; (j) to make an order about security for costs; (k) to make an order exempting a party to proceedings from compliance with a provision of these Rules; (l) to exercise a power of the Court prescribed by these Rules (m) to make an order the terms of which have been agreed upon by all the parties to the proceedings

Fair Work Act 2009

14	Paragraph 545(2)(b)	To order a person to pay compensation
15	Subsection 548(4)	To amend the papers starting the proceeding
16	Subsections 548(5) and (6)	To give leave for a party to a small claims proceeding to be

Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
		represented by a lawyer
17	Section 570	To order a party to pay costs incurred by another party
<i>Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021</i>		
18	Subrule 1.07(1)	To dispense with compliance with these Rules
19	Rule 1.08	To make an order about procedure
20	Subrule 2.01(3)	To make orders in relation to compliance with requirements for documents
21	Subrule 2.04(2)	To make orders in relation to compliance with forms
22	Paragraph 2.07(6)(b)	To direct that the original of a document or transmission report be produced
23	Subrule 2.09(3)	To direct that the original of an affidavit or a paper copy of a document be produced
24	Paragraph 2.12(b)	To direct that the seal of the Court be attached to a document
25	Subrule 2.13(2)	To direct that the stamp of the Court be attached to a document
26	Rule 6.04	To exercise discretion in relation to service of a document
27	Subrule 6.05(1)	To order evidence of service of a document to be given otherwise than by affidavit
28	Paragraph 6.06(2)(b)	To direct that an application be served other than by hand
29	Subrule 6.08(1)	To make an order in relation to the requirements for service by hand on a corporation, unincorporated association or organisation
30	Subrule 6.14(1)	To make an order dispensing with service of a document or substituting another way of serving a document
31	Subrule 6.14(2)	To specify the steps to be taken for bringing a document to the attention of the person to be served
32	Subrule 6.14(3)	To specify that a document is to be taken to have been served on the happening of a specified event or at the end of a specified time
33	Rule 6.15	To make an order dispensing with service of a document or for substituted service of a document and the matters that may be considered when making the order
34	Rule 6.16	To find that a document is taken to have been served on a date specified in an order for substituted service despite failure to comply with a condition of the order
35	Rule 6.17	To order that a document may be served more than 12 months after it is filed
36	Rule 6.19	To make an order permitting an application and any document filed with it to be served otherwise than as provided by rule 6.19
37	Rule 7.02 but only to the extent that it	To order a party or another appropriate person to make an amendment to a document

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Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
	gives the Court the power to order a party or another appropriate person to make an amendment	
38	Rule 8.01	To consider an application to have a proceeding heard in another registry of the Court and to have regard to certain matters when considering the application
39	Subrule 9.03(2)	To give leave to a lawyer to file or serve a notice of withdrawal without satisfying the requirement to serve, within the time specified in subrule 9.03(2), a notice of intention to withdraw on the party for whom the lawyer is acting
40	Paragraph 10.04(b)	To make consent orders if parties resolve the issues between them following a dispute resolution process
41	Subrule 10.05(1)	To refer a proceeding, a part of a proceeding or a matter arising out of a proceeding, for conciliation
42	Paragraph 10.05(2)(c)	To appoint a person to hold a conciliation conference
43	Subrules 11.01(1) and (2)	To make orders in relation to persons who must be included as parties to a proceeding
44	Subrule 11.02(2)	To give leave to a party to include a person as a party to a proceeding after the first court date
45	Subrule 11.02(3)	To order a party who has included a person as a party to file and serve on each other party an affidavit setting out the basis on which the person has been included as a party
46	Subrule 11.03(2)	To make an order that an application to be included as a party to a proceeding be supported otherwise than by an affidavit stating the matters referred to in subrule 11.03(2)
47	Subrule 11.04(1)	To consider an application by a party to be removed as a party
48	Rule 11.05	To, at any time, order a party, or a person applying to be included as a party, to give notice to any person of certain matters
49	Subrule 11.07(2)	To order that a minor in a proceeding is not taken to need a litigation guardian in relation to the proceeding
50	Subrule 11.10(1)	To appoint or remove a litigation guardian, or substitute another person as litigation guardian, in a proceeding
51	Subrule 11.10(3)	To remove a litigation guardian at the request of the litigation guardian
52	Rule 11.13	To make orders for the payment of the costs and expenses of a litigation guardian
53	Subrules 12.01(1) and (2)	To refer a party to a lawyer for legal assistance and to take certain matters into account when making such a referral
54	Subrule 13.02(3)	To stay further proceedings until costs are paid by the party bringing the further proceedings

Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
55	Subrule 13.08(3) but only if the order is made with the consent of all the parties to the case	To make such orders as the Court considers appropriate in the circumstances
56	Subrule 13.10(3)	To stay execution on, or other enforcement of, a judgment until determination of a claim
57	Subrule 13.11(3)	To give directions for the further conduct of a proceeding in relation to a claim or part of a claim not disposed of by judgment or dismissal and not stayed
58	Rule 13.13	To order that a proceeding be stayed, or dismissed generally or in relation to any claim for relief in the proceeding
59	Subrules 13.16(1), (2) and (3)	To order that a proceeding, or a part of a proceeding, be dismissed if a party has not taken a step in the proceeding for 6 months, and to give notice to each party of the date and time the Court will consider whether to make such an order
60	Rule 14.04	To order a party to produce to the Court a document in the possession, custody or control of the party
61	Rule 14.05	To inspect a document for the purpose of determining whether a claim for privilege, or an objection, is valid
62	Rule 14.06	To order a party to file and serve an affidavit regarding the possession, custody or control of a document or class of document by the party
63	Rule 14.08	To order otherwise than permitting a party who inspects a document under Division 14.2 to make a copy of, or take an extract from, the document
64	Subrule 15.07(2)	To give a direction in relation to opinion evidence by expert witnesses
65	Rule 15.08	To appoint an expert as court expert to inquire into and report on a question arising in a proceeding, and give directions for the purposes of the inquiry or report
66	Subrule 15.09(3)	To do a thing referred to in subrule 15.09(3) in relation to a report prepared by a court expert
67	Rule 15.10	To direct otherwise than that the parties are jointly liable to pay the reasonable remuneration and expenses of a court expert for preparing a report
68	Rule 15.11	To give leave to a party to adduce evidence of another expert on a question on which a court expert has made a report
69	Subrule 16.03(3)	To fix time limits for service of a subpoena otherwise than as required by paragraph 16.03(3)(a) or (b)
70	Rule 16.04	To direct that a party may request the issue of more than 5 subpoenas in a proceeding

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Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
71	Rule 16.08	To make an order setting aside all or part of a subpoena
72	Rule 16.09	To make an order for the payment of any loss or expense incurred in complying with a subpoena
73	Rule 16.10	To make orders with respect to the payment of costs incurred by a person in complying with a subpoena where the person is not a party to the proceedings
74	Paragraph 16.11(2)(b)	To permit a person who inspects or copies a document under these Rules to disclose the contents of the document or give a copy of it to another person
75	Subrule 22.01(1)	To order the applicant to give the security the Court considers appropriate for the respondent's costs of the proceeding
76	Paragraph 22.02(1)(c)	To allow further time for an application for an order for costs to be made
77	Subrule 22.02(2)	To do a thing referred to in any of paragraphs 22.02(2)(a) to (d) in making an order for costs in a proceeding
78	Subrule 22.03(1)	To specify the maximum costs that may be recovered on a party and party basis
79	Subrule 22.03(3)	To vary the maximum costs specified if there are special reasons and it is in the interests of justice to do so
80	Rule 22.04	If costs of a motion, application or other proceeding are reserved—to order otherwise than that the costs follow the event
81	Rule 22.07	To order otherwise than that interest is payable on outstanding costs at the rate specified in rule 22.07
82	Rule 22.09	To order otherwise than that a party is entitled to costs in accordance with Part 1 of Schedule 2 and disbursements properly incurred
83	Paragraph 22.11(b)	To authorise or approve an amount for attendance by a witness
84	Paragraph 22.12(b)	To authorise or approve an amount for preparation of a report by an expert
85	Rule 25.04	To give a direction for the enforcement or execution of an order
86	Rule 25.11	To make an order, issue a writ or take another step to enforce a judgment or order
87	Rule 30.12	To give leave for a party to a fair work small claims proceeding to be represented by a lawyer
88	Rule 31.04	To grant leave for a party to a consumer credit small claims proceeding to be represented by a lawyer
Migration Act 1958		
89	Subsection 476(1)	To order that a matter be remitted by consent for determination according to law

Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
90	Subsection 477(2)	To order by consent that the time for making an application under section 476 of the <i>Migration Act 1958</i> be extended
<i>National Consumer Credit Protection Act 2009</i>		
91	Section 178	To order a person to pay compensation
92	Subsection 199(6)	To amend the papers starting the proceedings
93	Subsections 199(7) and (8)	To give leave for a party to a small claims proceeding to be represented by a lawyer
94	Section 200	To order a party to pay costs incurred by another party
National Credit Code		
95	Section 37	To order a credit provider to provide a statement
96	Subsection 38(7)	To determine a disputed liability and make consequential orders
97	Subsection 74(2)	To make orders changing, or refusing to change, the terms of a credit contract
98	Subsection 74(3)	To stay enforcement proceedings or make other orders relating to a debtor's application to change the terms of a credit contract
99	Subsection 75(1)	To vary or revoke an order under subsection 74(2)
100	Subsection 75(2)	To vary or revoke a stay or order under subsection 74(3)
101	Section 76	To reopen an unjust transaction that gave rise to an unjust contract, mortgage or guarantee
102	Section 78	To annul or reduce an unconscionable change to a rate, fee or charge
103	Subsection 96(2)	To order or refuse to order a postponement
104	Subsection 96(3)	To stay enforcement proceedings until an application for postponement has been heard
105	Subsection 101(1)	To order a person to deliver mortgaged goods to a credit provider
106	Subsection 101(2)	To make orders varying the place at which, or time or period within which, mortgaged goods must be delivered to a credit provider
107	Subsection 106(1)	To order a credit provider to credit a mortgagor
108	Subsection 106(2)	To order a credit provider to compensate a mortgagor or mortgagee
109	Subsection 107(3)	To determine the amount of enforcement expenses that may be recovered by a credit provider
110	Section 108	To order a credit provider to return possession of goods to a mortgagor
111	Section 118	To order a credit provider to pay compensation to a debtor or guarantor
112	Section 175F	To determine a disputed liability and make consequential

Rule 21.01

Table 21.1—Powers delegated to Registrars

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
		orders
113	Subsection 175G(6)	To order a lessor under a consumer lease to provide a statement
114	Section 177D	To make orders changing, or refusing to change, the terms of a consumer lease or staying enforcement proceedings or make other orders relating to a lessee's application to change the terms of a consumer lease
115	Section 177E	To vary or revoke an order or stay under section 177D
116	Section 177F	To reopen an unjust transaction that gave rise to an unjust consumer lease
117	Section 179K	To order or refuse to order a postponement or to stay enforcement proceedings until an application for postponement has been heard
118	Section 179Q	To order a person to deliver mortgaged goods to a lessor or to make orders varying the place at which, or time or period within which, mortgaged goods must be delivered to a lessor
119	Subsection 179R(3)	To determine the amount of enforcement expenses that may be recovered by a lessor

- (2) The powers of the Court mentioned in items 14 and 17 of Table 21.1 may only be exercised by an approved Registrar only when dealing with a claim mentioned in section 548 of the *Fair Work Act 2009*.
- (3) The powers of the Court mentioned in items 91 and 94 to 119 of Table 21.1 may only be exercised by an approved Registrar only when dealing with an application for an order mentioned in subsection 199(2) of the *National Consumer Credit Protection Act 2009*.

Note: If a power of the Court is delegated to a Registrar under this rule:

- (a) the Registrar has, in exercising the power, the same protection and immunity as a Judge has in performing the functions of a Judge (see section 257 of the Act); and
- (b) a party, legal practitioner or witness appearing before a Registrar on the hearing of any application or matter, or on the conducting of any conference or enquiry, has the same protection and immunity as if appearing in a proceeding in the Court (see subsection 254(4) of the Act).

Division 21.2—Review of exercise of Registrars' powers

21.02 Time for application for review

- (1) For the purposes of subsection 256(1) of the Act, an application for review of the exercise of a power by a Registrar must be made within 7 days.
- (2) The time prescribed by subrule (1) may be extended in a proceeding:
 - (a) by the Court or a Registrar on any terms that the Court or Registrar thinks fit; or
 - (b) with the consent of the parties to the proceeding.

21.03 Application for review

- (1) An application for review of an exercise of power by a Registrar must be in accordance with the approved form.
- (2) An application must be listed for a hearing as soon as possible and, unless it is impractical to do so, within 14 days after the date of filing.
- (3) The applicant must serve a sealed copy of the application on each other party to the proceeding within 7 days after it is filed.
- (4) Unless the Court or a Registrar otherwise orders, the application does not operate as a stay of the exercise of the power under review.

21.04 Procedure for review

- (1) The review of an exercise of power by a Registrar must proceed by way of a hearing de novo.
- (2) In the review, the Court:
 - (a) may receive as evidence any affidavit or exhibit tendered before the Registrar; and
 - (b) may with leave receive further evidence; and
 - (c) may receive as evidence:
 - (i) any transcript of the proceeding before the Registrar; or
 - (ii) if there is no transcript—an affidavit sworn by a person who was present at the proceeding before the Registrar as a record of the proceeding.

Part 22—Costs

Division 22.1—Security for costs

22.01 Security for costs

(1) On application by a respondent, the Court may order the applicant to give the security that the Court considers appropriate for the respondent's costs of the proceeding.

(2) In this rule:

respondent includes an applicant if a cross-claim is made or the response to the application seeks orders in relation to matters not covered by the applicant.

(3) An application must be made in accordance with the approved form and supported by an affidavit setting out the facts relied on.

Note: For the power of the Court to order an applicant in a proceeding to give security for the payment of costs and for other matters relating to security for costs, see section 215 of the Act.

Division 22.2—Orders for costs

22.02 Order for costs

- (1) An application for an order for costs may be made:
 - (a) at any stage in a proceeding; or
 - (b) within 28 days after a final decree or order is made; or
 - (c) within any further time allowed by the Court.
- (2) In making an order for costs in a proceeding, the Court may:
 - (a) set the amount of the costs; or
 - (b) set the method by which the costs are to be calculated; or
 - (c) refer the costs for taxation under Part 40 of the Federal Court Rules; or
 - (d) set a time for payment of the costs, which may be before the proceeding is concluded.

22.03 Determination of maximum costs

- (1) The Court may specify the maximum costs that may be recovered on a party and party basis:
 - (a) by order at the first court date; and
 - (b) on its own initiative or on the application of a party.
- (2) However, an amount specified must not include an amount that a party is ordered to pay because the party:
 - (a) has failed to comply with, or has sought an extension of time for complying with, an order or any of these Rules; or
 - (b) has sought leave to amend a document; or
 - (c) has otherwise caused another party to incur costs that were not necessary for the economic and efficient progress of the proceeding or hearing of the proceeding.
- (3) The Court may vary the maximum costs specified if, in the Court's opinion, there are special reasons and it is in the interests of justice to do so.

22.04 Costs reserved

If the costs of a motion, application or other proceeding are reserved, the costs reserved follow the event unless the Court otherwise orders.

22.05 Costs if proceedings transferred

- (1) This rule applies if a proceeding is transferred to the Court from the Federal Court.
- (2) If the Federal Court has not made an order for costs, the Court may make an order for costs including costs before the transfer.

Rule 22.06

- (3) Unless the Federal Court otherwise orders, costs before the transfer must be in accordance with this Part.

22.06 Order for costs against lawyer

- (1) The Court or a Registrar may make an order for costs against a lawyer if the lawyer, or an employee or agent of the lawyer, has caused costs:
- (a) to be incurred by a party or another person; or
 - (b) to be thrown away;
- because of undue delay, negligence, improper conduct or other misconduct or default.
- (2) A lawyer may be in default if a hearing may not proceed conveniently because the lawyer has unreasonably failed:
- (a) to attend, or send another person to attend, the hearing; or
 - (b) to file, lodge or deliver a document as required; or
 - (c) to prepare any proper evidence or information; or
 - (d) to do any other act necessary for the hearing to proceed.
- (3) An order for costs against a lawyer may be made:
- (a) on the initiative of the Court or Registrar; or
 - (b) on application by a party to the proceeding; or
 - (c) by another person who has incurred the costs or costs thrown away.
- (4) The order may provide:
- (a) that the costs, or part of the costs, as between the lawyer and party be disallowed; or
 - (b) that the lawyer pay the costs, or part of the costs, incurred by the other person; or
 - (c) that the lawyer pay to the party or other person the costs, or part of the costs, that the party has been ordered to pay to the other person.
- (5) Before making an order for costs, the Court or Registrar:
- (a) must give the lawyer, and any other person who may be affected by the decision, a reasonable opportunity to be heard; and
 - (b) may order that notice of the order, or of any proceeding against the lawyer, be given to a party for whom the lawyer may be acting or any other person.

22.07 Interest on outstanding costs

- (1) Unless the Court otherwise orders, interest is payable on outstanding costs at the rate applying under subrule (2).
- (2) For the purposes of paragraph 212(3)(a) of the Act, the rate of interest is the rate prescribed by rule 39.06 of the Federal Court Rules.

Note: This rate applies to all proceedings. The Court may in a particular case determine a lower rate in the interests of justice (see paragraph 212(3)(b) of the Act).

Division 22.3—Costs and disbursements

22.08 Application of Division 22.3

- (1) This Division applies to costs payable, or to be taxed, under an Act, these Rules or an order of the Court, in a proceeding.
- (2) Unless otherwise provided, these Rules do not regulate the fees to be charged by lawyers as between lawyer and client in relation to proceedings in the Court.

Note: In relation to a dispute between a lawyer and a client about the fees charged by the lawyer, see the State or Territory legislation governing the legal profession in the State or Territory where the lawyer practises.

22.09 Costs and disbursements

Unless the Court otherwise orders, a party entitled to costs in a general federal law proceeding (other than a proceeding to which the *Bankruptcy Act 1966* applies) is entitled to:

- (a) costs in accordance with Schedule 2; and
- (b) disbursements properly incurred.

Note 1: For costs in a proceeding to which the *Bankruptcy Act 1966* applies, see Part 13 of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*.

Note 2: For costs in a migration proceeding, see rule 29.13 and Part 2 of Schedule 2 to these Rules.

22.10 Taxation of costs

- (1) In taxing a statement of costs, a taxing officer must apply the scale of costs set out in Schedule 3 to the Federal Court Rules.
- (2) In this rule:

taxing officer means a Registrar.

22.11 Expenses for attendance by witness

An amount paid, or to be paid, for attendance by a witness at a hearing is a disbursement properly incurred for a proceeding if:

- (a) the attendance is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

22.12 Expenses for preparation of report by expert

An amount paid, or to be paid, to an expert for preparation of a report for a party is a disbursement properly incurred for a proceeding if:

- (a) the report is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

Rule 22.13

22.13 Solicitor as advocate

- (1) If a solicitor appeared for a party at a hearing alone or as instructed by another solicitor who is a member of the same firm, the amount to which the party is entitled for the hearing is limited to:
 - (a) 150% of the daily hearing fee for one solicitor; and
 - (b) a fee for preparation.
- (2) The party is not entitled to an amount for the preparation of a brief on hearing.

22.14 Advocacy certificate

The Court or a Registrar may certify that it was reasonable to employ an advocate, or more than one advocate, to appear for a party to a proceeding.

22.15 Counsel as advocate

If the employment of an advocate is certified as reasonable, the amount payable for counsel to appear is the daily hearing fee and advocacy loading in accordance with Part 1 of Schedule 2.

Part 23—Dispute resolution

Division 23.1—General

23.01 Proceeding referred to mediator or arbitrator

- (1) If the Court orders a proceeding or any matter arising out of a proceeding to be referred to a mediator or, with the consent of the parties, to an arbitrator, the mediation or arbitration must proceed in accordance with this Part.
- (2) However, this Part does not apply if the Court refers a proceeding to a mediator for mediation as mentioned in rule 30.14.
- (3) Nothing in this Part affects an order or direction made under rule 10.01.

23.02 Adjournment of proceeding

- (1) Unless the Court otherwise orders, if an order for mediation or arbitration is made in relation to a proceeding, the proceeding is adjourned until the mediator or arbitrator reports to the Court.
- (2) A proceeding may be adjourned to a fixed date when the mediator or arbitrator must report to the Court on progress in the mediation or arbitration.

23.03 Court may end mediation or arbitration

- (1) The Court may:
 - (a) end a mediation or arbitration at any time; or
 - (b) terminate the appointment of a mediator or an arbitrator; or
 - (c) appoint a new mediator or arbitrator to replace a mediator or an arbitrator.
- (2) If the Court appoints a new arbitrator, the Court may order:
 - (a) that the new arbitrator must treat any evidence given, or any record, document or anything else produced, or anything done, in the course of the arbitration as if it had been given, produced or done before or by the new arbitrator; or
 - (b) that any interim award made in the course of the arbitration is to be taken to have been made by the new arbitrator; or
 - (c) that the new arbitrator must adopt and act on any determination made by the previous arbitrator.
- (3) If the Court appoints a new mediator, the Court may order that the mediation continue in any way the Court directs.

Division 23.2—Mediation

23.04 Nomination of mediator

- (1) If the parties cannot reach agreement on a mediator within 14 days of an order for mediation, a Registrar must:
 - (a) nominate a person as the mediator; and
 - (b) give the parties written notice:
 - (i) of the name and address of the mediator; and
 - (ii) of the time, date and place for the mediation; and
 - (iii) of any further documents to be given to the mediator by a party.
- (2) In fixing a time and date for the mediation, the Registrar must:
 - (a) consult the parties; and
 - (b) have regard to any time fixed by the Court for the mediation to be started or completed.

23.05 Mediation conference

- (1) A mediation conference must be conducted:
 - (a) in accordance with the directions (if any) of the Court; and
 - (b) as a structured process in which the mediator assists the parties by encouraging and facilitating discussion between the parties so that:
 - (i) they may communicate effectively with each other about the dispute; and
 - (ii) if agreement is reached—with the consent of the parties the agreement can be included in a consent order.
- (2) If part only of a proceeding is the subject of an order for mediation, the mediator may, at the end of the mediation, report to the Court in terms agreed between the parties.

23.06 Mediator may end mediation

If the mediator considers that a mediation should not continue, the mediator must, subject to any order of the Court:

- (a) end the mediation; and
- (b) advise the Court of the outcome.

Division 23.3—Arbitration

23.07 Appointment of arbitrator

- (1) If an order for arbitration is made, the Court may, with the consent of the parties, nominate a person to be the arbitrator.
- (2) If the person consents in writing to the appointment, the Court may appoint the person as the arbitrator.
- (3) The parties may ask the Court to make orders by consent setting out:
 - (a) the way in which the arbitration is to be conducted; and
 - (b) the time by which the arbitration is to be completed; and
 - (c) the way in which the arbitrator and the expenses of the arbitration are to be paid.
- (4) The parties may ask the Court to indicate to the arbitrator the way in which the arbitrator's report on the proceeding or any matter arising out of the proceeding is to be reported to the Court.

Rule 24.01

Part 24—Cross-claims

24.01 Cross-claim against applicant

In a proceeding, a respondent may make a cross-claim against an applicant instead of bringing a separate proceeding.

24.02 Cross-claim after application

A cross-claim may be made in relation to a matter arising after the start of the proceeding.

24.03 Cross-claim against additional party

- (1) A respondent may make a cross-claim against a person other than the applicant (whether or not already a party to the proceeding) if:
 - (a) the applicant is also made a party to the cross-claim; and
 - (b) either:
 - (i) the respondent alleges that the other person is liable with the applicant for the subject matter of the cross-claim; or
 - (ii) the respondent claims against the other person relief relating to or connected with the subject matter of the original proceeding.
- (2) If a respondent makes a cross-claim against a person who is not a party to the original proceeding, the respondent must serve the response and cross-claim and the applicant's application on the person.
- (3) A person who is not a party to the original proceeding and is included as a respondent to a cross-claim becomes a party to the proceeding on being served with the response and cross-claim.
- (4) If a respondent makes a cross-claim against a person who is not a party to the original proceeding, these Rules apply as if:
 - (a) the cross-claim were an application; and
 - (b) the party making the cross-claim were an applicant; and
 - (c) the party against whom the cross-claim is made were a respondent.

24.04 Cross-claim to be included in response

A cross-claim must be included in the respondent's response.

24.05 Response to cross-claim

- (1) A cross-respondent may file a response to the cross-claim in accordance with the approved form.
- (2) A response must be filed and served within 14 days of service of the cross-claim to which it relates.

24.06 Conduct of cross-claim

- (1) These Rules apply (with necessary changes) to a cross-claim as if:
 - (a) the applicant on the cross-claim were the applicant in an original application; and
 - (b) the respondent to the cross-claim were the respondent to an original application.
- (2) However, if a respondent to a cross-claim has an address for service in the original proceeding, service by hand on the respondent is not required.
- (3) Subject to rule 24.07, a cross-claim must be heard at the same time as the original application.

24.07 Exclusion of cross-claim

The Court may at any time exclude a cross-claim from the proceeding in which it is made and give the directions that the Court considers appropriate about the conduct of the cross-claim.

24.08 Cross-claim after judgment etc

A cross-claim may proceed after judgment is given in the original proceeding or after the original proceeding is stayed, dismissed or discontinued.

24.09 Judgment for balance

If a respondent establishes a cross-claim against the applicant and there is a balance in favour of one of the parties, the Court may give judgment for the balance.

24.10 Stay of claim

The Court may stay the enforcement of a judgment given against a respondent until a cross-claim by the respondent is decided.

24.11 Cross-claim for contribution or indemnity

Unless the Court otherwise orders, if an applicant on a cross-claim makes a claim for contribution or indemnity in relation to a claim made against the applicant:

- (a) an order for the applicant must not be entered; and
- (b) an order for the applicant in relation to the cross-claim must not be enforced by execution until any order against the applicant has been satisfied.

24.12 Offer of contribution

- (1) This rule applies in a proceeding if:
 - (a) a party (the *first party*) may be held liable to contribute towards an amount of debt or damages that may be recovered from another party (the *second party*) in the proceeding; and

Rule 24.12

- (b) at any time after entering an appearance in the proceeding, the first party makes an offer to the second party, without prejudice to the first party's defence, to contribute, to a specified extent, to the amount of the debt or damages.
- (2) The first party's offer must not be brought to the attention of the Court until all issues in relation to the first party's liability, or the amount of the debt or damages, have been decided between the parties.

Part 25—Enforcement

25.01 Definitions for Part 25

In this Part:

without notice means without serving or advising another party or other person of an application to be made to the Court.

25.02 Application without notice for directions

A party or an interested person may, without notice, apply to the Court for directions about the enforcement or execution of an order.

25.03 Condition precedent not fulfilled

- (1) If an order is made in favour of a party subject to the fulfilment of a condition, the party cannot enforce the order until the condition is fulfilled.
- (2) However, the party may apply to the Court for an order for the revocation of the condition or the variation of the order.

25.04 Application for stay of judgment or order

A party bound by a judgment or order may apply to the Court for an order that the judgment or order be stayed.

Note: The party may rely on events occurring after the judgment or order takes effect.

25.05 Failure to comply with Court order

- (1) A person who is ordered by the Court to do, or not to do, an act or thing, must comply with the order.
- (2) A person who undertakes to the Court to do, or not to do, an act or thing, must comply with that undertaking.

Note: If a person does not comply with an order of the Court, the Registrar may bring the person's failure, neglect or disobedience to the attention of the Court.

25.06 Failure to attend Court in response to subpoena or order

- (1) If the Court has issued a subpoena or made an order that a person attend Court:
 - (a) to give evidence; or
 - (b) to produce a document or thing; or
 - (c) to answer a charge of contempt; or
 - (d) for any other reason;

and the person fails to attend, a party may apply to the Court for an order that a warrant, in accordance with the approved form, issue to the Sheriff, or another person named in the warrant:

Rule 25.07

- (e) for the person's arrest and detention in custody until the person is brought before the Court; and
 - (f) for the production of the person before the Court.
- (2) Subrule (1) does not limit the power of the Court to punish for contempt.
- (3) This rule does not apply to an order or direction of the Court requiring a party to comply with these Rules.

25.07 Endorsement on order

If an order requires a person to do, or not to do, an act or thing, whether within a certain time or not, and the consequences of failing to comply with the order may be committal, sequestration or punishment for contempt, the order must carry an endorsement that the person to be served with the order will be liable to imprisonment, sequestration of property or punishment for contempt if:

- (a) for an order that requires the person to do an act or thing—the person neglects or refuses to do the act or thing within the time specified in the order; or
- (b) for an order that requires the person not to do an act or thing—the person disobeys the order.

25.08 Service of order

- (1) An order mentioned in rule 25.07 must be served personally on the person who is bound to do, or not to do, the act or thing:
- (a) within the time mentioned in the order; or
 - (b) if no time is mentioned—within a time that would allow the person to comply with the order.
- (2) However, if the person:
- (a) was present when the judgment was pronounced or the order was made; or
 - (b) was notified of the terms of the order orally, by telephone or electronically;
- the person is taken to have been served with the order at the time the person heard or was notified of the order.

25.09 Application where person fails to comply with order

- (1) If a person fails to comply with an order that the person is bound to comply with, a party may apply to the Court for either or both of the following orders:
- (a) the committal of the person;
 - (b) the sequestration of the person's property.
- (2) If the person in default is a corporation or an organisation, a party may apply to the Court for either or both of the following orders:
- (a) the committal of an officer of the corporation or organisation;
 - (b) the sequestration of the property of the corporation or organisation.
- (3) However, an application must not be made for an order under paragraph (2)(a) unless the officer:

Rule 25.10

- (a) has been served with the order in accordance with subrule 25.08(1), and the order carries the endorsement in rule 25.07; or
 - (b) was present when the order was made or was notified of the order in accordance with subrule 25.08(2).
- (4) This rule applies if the Court has made:
- (a) an injunction; or
 - (b) an order in the nature of an injunction; or
 - (c) an order in the nature of mandamus or prohibition.

25.10 Substituted performance

- (1) If a person (the *first person*) is bound, but neglects or refuses, to do an act or thing, a party may apply to the Court for an order:
- (a) that the act or thing be done by another person, appointed by the Court; and
 - (b) that the first person pay the costs and expenses incurred by the making of the order.
- (2) Subrule (1) does not limit:
- (a) the power of the Court to punish for contempt; or
 - (b) any other mode of enforcement of the judgment or order available to the party.

Note: See Part 20 in relation to contempt.

25.11 Execution generally

- (1) A party may apply to the Court to issue a writ, order or any other means of enforcement of a judgment or order that can be issued or taken in the Supreme Court of the State or Territory in which the judgment or order was made, as if it were a judgment or order of that Supreme Court.
- (2) An order made under subrule (1) authorises the Sheriff, when executing the orders of the Court, to act in the same manner as a similar officer of the Supreme Court of the State or Territory in which the order is being executed is entitled to act.
- (3) A party who wants to enforce an order in more than one State or Territory may adopt the procedures and forms of process of the Supreme Court of the State or Territory in which the judgment or order was made.

Note: It is not necessary to adopt different modes of procedure and forms of process in each State or Territory.

25.12 Stay of execution

A party may apply to the Court for a stay of execution of a judgment or order.

Chapter 2—Human rights proceedings

Part 26—Proceedings alleging unlawful discrimination

26.01 Application of Chapter 2

- (1) This Chapter applies to a proceeding alleging unlawful discrimination.

Note: An affected person may apply to the Court for an order in relation to a complaint alleging unlawful discrimination if the complaint has been terminated by the President of the Commission (see section 46PO of the Human Rights Act).
- (2) Chapter 1 applies, so far as it is relevant and not inconsistent with this Chapter, to a proceeding alleging unlawful discrimination.

26.02 Interpretation

- (1) In this Chapter:

Commission means the Australian Human Rights Commission.

special-purpose Commissioner has the meaning given by section 46PV of the Human Rights Act.
- (2) An expression used in this Chapter and in the Human Rights Act has the same meaning in this Chapter as it has in the Human Rights Act.

Note: The following expressions are defined in the Human Rights Act:

 - (a) affected person;
 - (b) alleged unlawful discrimination;
 - (c) complaint;
 - (d) unlawful discrimination.

26.03 Form of application

- (1) An application must be in accordance with the approved form.
- (2) Rule 4.04 does not apply to an application in the approved form.

26.04 Copy of application to be given to Commission

At least 5 days before the date fixed for the first court date, the applicant must give to the Commission:

- (a) a sealed copy of the application showing the date, time and place of the first court date; and
- (b) a copy of any other documents filed.

26.05 Form of response to application

- (1) A response to an application must be in accordance with the approved form.
- (2) Rule 4.04 does not apply to a response to an application in the approved form.

26.06 Appearance by special-purpose Commissioner

If the Court gives leave to a special-purpose Commissioner to assist the Court in a proceeding, the special-purpose Commissioner must:

- (a) file a notice of address for service; and
- (b) serve a sealed copy of the notice on each party to the proceeding.

Rule 27.01

Chapter 3—Judicial review proceedings and administrative appeals

Part 27—Judicial review

Note: See Part 29 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

27.01 Application of Part 27

- (1) This Part applies to a proceeding under the AD(JR) Act.

Note: For *AD(JR) Act*, see rule 1.05.

- (2) Chapter 1 applies, so far as it is relevant and not inconsistent with this Chapter, to a proceeding under the AD(JR) Act.

27.02 Application for order of review

- (1) A person who wants to apply for an order of review under subsection 11(1) of the AD(JR) Act must file an originating application, in accordance with the approved form.
- (2) If the grounds of the application include an allegation of fraud or bad faith, the originating application must include details of the alleged fraud or bad faith.

27.03 Application for extension of time

- (1) A person who wants to apply for an extension of time within which to lodge an application for an order of review under paragraph 11(1)(c) of the AD(JR) Act must file an application for an extension of time, in accordance with the approved form.
- (2) An application for an extension of time must be accompanied by:
 - (a) an affidavit stating:
 - (i) briefly, but specifically, the facts on which the application relies; and
 - (ii) why the application was not filed within time; and
 - (b) a draft application that complies with rule 27.02.

27.04 Documents to be filed and served

- (1) An applicant must, at the time of filing an application or as soon as practicable thereafter, file the following documents if they are in the applicant's possession:
 - (a) a statement of the terms of the decision that is the subject of the application;
 - (b) a statement with respect to the decision:
 - (i) given to the applicant under section 13 of the AD(JR) Act or section 28 of the AAT Act; or
 - (ii) given by or on behalf of the person who made the decision, purporting to set out findings of facts, or a reference to the evidence or other

material on which those findings were based or the reasons for making the decision.

- (2) A copy of each document must be served, within 5 days after filing, on each other party.

Note: For *AAT Act*, see rule 1.05.

27.05 Service

A party to an application may apply to the Court for an order that:

- (a) the application be served on the Attorney-General; or
- (b) the application be served on a specified person or class of persons in a specified manner.

27.06 Notice of objection to competency

- (1) A respondent who objects to the competency of an application must, within 14 days after being served with the application, file a notice of objection to competency, in accordance with the approved form, that briefly, but specifically, states the grounds of the objection.
- (2) The applicant carries the burden of establishing the competency of an application.
- (3) A respondent may apply to the Court for the question of competency to be heard and determined before the application is heard.
- (4) If a respondent has not filed a notice under subrule (1), and the application is dismissed by the Court as incompetent, the respondent is not entitled to any costs of the application.
- (5) If the Court decides that an application is not competent, the application is dismissed.

Rule 28.01

Part 28—Administrative Appeals Tribunal

Note 1: See Part 29 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

Note 2: In relation to appeals under section 44AAA of the AAT Act, see rule 1.13 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, as applied by the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*.

28.01 Definitions for Part 28

In this Part:

without notice means without serving or advising another party or other person of an application to be made to the Court.

28.02 Application of Part 28

- (1) This Part applies to an appeal from the Tribunal transferred to the Court from the Federal Court.
- (2) Chapter 1 applies, so far as it is relevant and not inconsistent with this Chapter, to an appeal from the Tribunal.

28.03 Form of application for stay of Tribunal decision

A person who wants to make an application for an order under section 44A of the AAT Act for an order staying or otherwise affecting the operation or implementation of a Tribunal decision:

- (a) must file an application in a proceeding; and
- (b) may, in an urgent case, make the application without notice.

28.04 Notice of cross-appeal

- (1) The rules of this Part apply to a cross-appeal as if it were an appeal.
- (2) A respondent who wants to appeal from a decision, or a part of a decision, from which the applicant has appealed, must file a notice of cross-appeal, in accordance with the approved form.

Note: The notice of cross-appeal must be filed within the time mentioned in subsection 44(2A) of the AAT Act.

- (3) The notice of cross-appeal must state the following:
 - (a) the part of the decision the respondent cross-appeals from or contends should be varied;
 - (b) the precise question or questions of law to be raised on the cross-appeal;
 - (c) any findings of fact that the Court is asked to make;
 - (d) the relief sought instead of the decision appealed from, or the variation of the decision that is sought;
 - (e) briefly, but specifically, the grounds relied on in support of the relief or variation sought.

Note: The Court can only make findings of fact in limited circumstances (see subsection 44(7) of the AAT Act).

- (4) The notice of cross-appeal must be filed within 21 days after the respondent was served with the notice of appeal.
- (5) The respondent must serve a copy of the notice of cross-appeal on:
 - (a) each other party to the proceeding; and
 - (b) the Registrar of the Tribunal.

28.05 Notice of contention

If a respondent does not want to cross-appeal from a decision of the Tribunal, but contends that the decision should be affirmed on grounds other than those relied on by the Tribunal, the respondent must, within 21 days after the notice of appeal is served, file a notice of contention, in accordance with the approved form.

28.06 Directions

- (1) At the first court date, the Court or a Registrar must give directions for the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Registrar may:
 - (a) determine the documents and matters to be included in the appeal papers and the order of inclusion; and
 - (b) determine what documents and matters were before the Tribunal; and
 - (c) settle the index; and
 - (d) determine the number of copies of the appeal papers required; and
 - (e) direct the joinder of parties; and
 - (f) direct the place and time of hearing.

28.07 Preparation of appeal papers

- (1) The appeal papers must be prepared to the satisfaction of the Registrar.
- (2) The title page of the appeal papers must state:
 - (a) the title of the proceedings; and
 - (b) the division of the Tribunal from which the appeal is brought; and
 - (c) the names of members constituting the Tribunal; and
 - (d) the lawyer and address for service for each party; and
 - (e) if a party is not represented by a lawyer—the address for service of the party.
- (3) Following the title page, there must be an index of the documents comprising the appeal papers that states the date and page number of each document.
- (4) The appeal papers must be paginated.
- (5) The appeal papers must include all documents necessary to enable the questions of law raised by the appeal to be determined.

Rule 28.07

- (6) A copy of the appeal papers must be filed with a certificate by each party or each party's lawyer stating that the papers have been examined and are correct.
- (7) The appeal papers must be clear and legible and securely fastened.
- (8) The applicant must file the number of copies required by the Registrar.

Part 29—Proceedings under the Migration Act 1958

Division 29.1—Preliminary

29.01 Definitions for Part 29

In this Part:

Migration Act means the *Migration Act 1958*.

migration decision has the meaning given by subsection 5(1) of the Migration Act.

29.02 Application of Part 29

- (1) This Part applies to a proceeding for a remedy to be granted in the exercise of the Court's jurisdiction under section 476 of the Migration Act in relation to a migration decision.
- (2) This Part applies to a matter, or part of a matter, remitted to the Court by the High Court under section 44 of the *Judiciary Act 1903* and in accordance with section 476B of the Migration Act.
- (3) Subrule (2) is subject to any order of the High Court in the matter.

29.03 Application of Chapter 1

Chapter 1 applies, so far as it is relevant and not inconsistent with this Part, to a proceeding to which this Part applies.

Division 29.2—Matters started in the Court

29.04 Application of Division 29.2

This Division applies to a matter started in the Court.

29.05 Application for judicial review of migration decision

- (1) An application for a remedy to be granted in exercise of the Court's jurisdiction under section 476 of the Migration Act in relation to a migration decision must be made in accordance with the approved form.
- (2) An application must be supported by an affidavit including:
 - (a) a copy of the decision in relation to which the remedy is sought and any statement of reasons for the decision; and
 - (b) each document or other evidence the applicant seeks to rely on; and
 - (c) if an extension of time is sought—the evidence explaining the delay and showing why it is necessary in the interests of the administration of justice for the Court to grant an extension.

Note: See rules 4.03 and 4.04 in relation to a response to an application.

29.06 Response to application for judicial review of migration decision

- (1) In addition to the requirements in rule 4.03, a respondent to an application under this Division must state in the response:
 - (a) whether the respondent asks the Court to make an order under rule 13.10; and
 - (b) whether any applicant is in immigration detention and, if so, the place of detention; and
 - (c) whether the respondent believes the matter requires expedition and, if so, why; and
 - (d) if the respondent is aware that any applicant requires an interpreter—the language of the interpreter that is required; and
 - (e) if the respondent is aware of any related judicial review proceedings—details of those proceedings; and
 - (f) if the respondent is aware that any applicant has already brought judicial review proceedings in respect of the same decision—details of those proceedings.
- (2) Despite subrule 4.03(3), a response to an application under this Part must be filed and served within 8 weeks after service of the application to which it relates.

Division 29.3—Matters remitted by the High Court

29.07 Application of Division 29.3

This Division applies to a matter, or part of a matter, remitted to the Court by the High Court, subject to any direction of the High Court in the matter.

29.08 Filing of order of remittal

- (1) A sealed copy of the order of the High Court, remitting a matter, or part of a matter, to the Court must be filed in the registry named in the order of remittal.
- (2) In the absence of a specification of a registry of the Court in a matter or part of a matter in the order, the Chief Executive Officer may direct the order to be filed in a particular registry.

29.09 Service of notice and order

- (1) A Registrar must affix a notice to the High Court's order and allocate a serial number to the order as if the order were an application filed in the registry.
- (2) The notice must:
 - (a) include the date for a first court date in the matter; and
 - (b) include a note to the effect that before taking any step in the proceeding, a party, other than the applicant, must enter an appearance in the registry unless the party has already entered an appearance in the High Court; and
 - (c) be in the form approved by the Chief Executive Officer.
- (3) A Registrar must affix the stamp of the Court to a sufficient number of copies of the notice for service in accordance with subrule (4).
- (4) A Registrar must cause sealed copies of the notice, together with copies of the High Court's order, to be served on each party to the proceeding in the High Court and on any other person who the Court or a Registrar directs should be so served.
- (5) Service may be effected by delivery to a party's address for service in the proceeding before the High Court.

Division 29.4—General

29.10 Stay of proceedings

The Court may, at any time, grant, discharge or vary a stay of the proceedings to which an application for judicial review of a migration decision relates.

29.11 Directions and orders

- (1) At any time after an application under this Part is filed, the Court or a Registrar may give orders or directions for the conduct of the proceeding in relation to the following:
 - (a) the matters in subrule 10.01(3);
 - (b) a stay or interim order;
 - (c) an extension of time for the application;
 - (d) an amendment of the application;
 - (e) the provision of particulars, or further and better particulars, of a ground in an application or response;
 - (f) the filing of further affidavits by the applicant;
 - (g) the filing by a respondent or other person of a relevant document or other evidence;
 - (h) the filing of affidavits by a respondent.
- (2) The Court or a Registrar may:
 - (a) give orders or directions under subrule (1) in Chambers without a hearing;
or
 - (b) at the discretion of the Court or a Registrar, require the parties to an application to attend a hearing.

29.12 Writs

A writ of a particular kind issued by the Court under this Part:

- (a) must be substantially in the form of a writ of that kind issued under the *High Court Rules 2004*; and
- (b) must be served and complied with in accordance with those Rules.

29.13 Costs

- (1) The Court may, in relation to a proceeding that is concluded, order an unsuccessful party to the proceeding to pay the costs of a successful party in accordance with Division 1 of Part 2 of Schedule 2.
- (2) If:
 - (a) the applicant files a notice of discontinuance in a proceeding in which a respondent has sought costs in the response; and
 - (b) the applicant does not file with the notice an application in respect of costs;

a Judge or a Registrar may, without hearing the parties, make an order in chambers in accordance with Division 2 of Part 2 of Schedule 2 for the costs of the respondent.

- (3) This rule does not limit a party's right to apply, under Part 22, for an order as to costs of the application.

Note 1: See Division 13.1 of these Rules in relation to discontinuance.

Note 2: See section 136 of the Act in relation to the exercise of jurisdiction in chambers.

Chapter 4—Fair Work Division

Part 30—Proceedings in the Fair Work Division

Division 30.1—General

30.01 Definitions for Part 30

In this Part:

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

Fair Work Act means the *Fair Work Act 2009*.

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

30.02 Expressions used in Part 30

Unless the contrary intention appears:

- (a) an expression used in Division 30.2 or 30.4 of these Rules and in the Fair Work Act has the same meaning in that Division as it has in the Fair Work Act; and
- (b) an expression used in Division 30.3 of these Rules and in the Registered Organisations Act has the same meaning in that Division as it has in the Registered Organisations Act; and
- (c) an expression used in Division 30.6 of these Rules and in the Building and Construction Industry Act has the same meaning in that Division as it has in the Building and Construction Industry Act.

30.03 Application of Part 30

- (1) This Part applies to a proceeding in the Court to which the Fair Work Act, the Registered Organisations Act or the Building and Construction Industry Act applies.
- (2) Chapter 1 applies, to the extent that it is relevant and not inconsistent with this Chapter, to a proceeding in the Court to which the Fair Work Act, the Registered Organisations Act or the Building and Construction Industry Act applies.

Division 30.2—Contraventions of the Fair Work Act

30.04 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)

An application for an order in relation to an allegation that an employee was dismissed in contravention of a general protection mentioned in Part 3-1 of the Fair Work Act must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by:
 - (i) a claim in accordance with the approved form; and
 - (ii) unless the application includes an application for an interim injunction, a certificate issued by the Fair Work Commission under the Fair Work Act that provides that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 of these Rules sets out general rules about starting proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 4.04).

30.05 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)

An application for an order in relation to an alleged unlawful termination of an employee's employment must:

- (a) be in accordance with the approved form; and
- (b) be accompanied by:
 - (i) a claim in accordance with the approved form; and
 - (ii) unless the application includes an application for an interim injunction, a certificate issued by the Fair Work Commission under the Fair Work Act that provides that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 of these Rules sets out general rules about starting proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 4.04).

30.06 Application in relation to other alleged contraventions of the Fair Work Act general protections

An application for an order in relation to an alleged contravention, or an alleged proposed contravention, of a general protection mentioned in Part 3-1 of the Fair Work Act (other than a contravention mentioned in rule 30.04) must:

- (a) be in accordance with the approved form; and

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Division 30.2 Contraventions of the Fair Work Act

Rule 30.07

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

Note 1: Sections 545 and 546 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 of these Rules sets out general rules about starting proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 4.04).

30.07 Application in relation to other alleged contraventions of the Fair Work Act

An application for an order in relation to an alleged contravention of the Fair Work Act (other than a contravention mentioned in rule 30.04, 30.05 or 30.06) must be in accordance with the approved form.

Note: Part 4 of Chapter 1 of these Rules sets out general rules about starting proceedings.

Division 30.3—Contraventions of the Registered Organisations Act

30.08 Application in relation to taking a reprisal (Registered Organisations Act, section 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 of these Rules sets out general rules about starting proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 4.04).

Division 30.4—Small claims

30.09 Definitions for Division 30.4

In this Division:

small claim means a claim mentioned in section 548 of the Fair Work Act.

small claims application means an application dealt with under this Division.

30.10 Small claims procedure

- (1) An applicant may request that an application for compensation be dealt with under this Division if:
 - (a) the compensation is not more than \$20,000; and
 - (b) the compensation is for an entitlement mentioned in subsection 548(1A) of the Fair Work Act.

- (2) An applicant may request that an application made under subsection 548(1B) of the Fair Work Act be dealt with under this Division.

Note: Subsection 548(1B) applies to proceedings in connection with a dispute relating to conversion of casual employment to full-time or part-time employment.

- (3) The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:
 - (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.

30.11 Starting proceedings

A small claims application must:

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

Note 1: Sections 545, 545A and 548 of the Fair Work Act state the orders the Court may make.

Note 2: Part 4 of Chapter 1 of these Rules sets out general rules about starting proceedings.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 4.04).

30.12 Lawyers—Fair Work Act small claims proceeding

- (1) A party to a small claims application may not be represented by a lawyer without the leave of the Court.
- (2) If the Court gives a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate.
- (3) For the purposes of subrule (1), a party is not taken to be represented by a lawyer if the lawyer is an employee or officer of the party.

30.13 Representation for corporations—Fair Work Act small claims proceeding

Despite rule 9.04, an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Division if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.

Division 30.5—Dispute resolution

30.14 Mediation—Fair Work Act and Registered Organisations Act proceedings

- (1) This rule applies if the Court refers for mediation under section 169 of the Act a proceeding, or a part of a proceeding, or a matter arising out of a proceeding, to which this Part applies.

Note: The Court may refer a proceeding for mediation under section 169 of the Act with or without the consent of the parties.

- (2) The mediator for the mediation must be:
- (a) a Judge; or
 - (b) a Registrar; or
 - (c) another person appointed by the Court for the purpose; or
 - (d) an FWC member nominated by the President of the Fair Work Commission.
- (3) Unless the Court or a Registrar otherwise orders:
- (a) the parties to the proceeding must attend the mediation in person; and
 - (b) the lawyer or lawyers representing the parties to the proceeding must attend the mediation.
- (4) Unless the Court otherwise orders, if an order for mediation is made, the proceeding is adjourned until the earlier of the following:
- (a) the day the mediator reports to the Court;
 - (b) the day fixed by the Court when the mediator must report to the Court about progress in the mediation.
- (5) The parties must make a genuine effort to reach agreement on relevant matters in issue.
- (6) If the mediator considers that the mediation should not continue, the mediator must, subject to any order of the Court:
- (a) end the mediation; and
 - (b) advise the Court of the outcome.
- (7) If an issue between the parties remains unresolved at the end of the mediation, the Judge or Registrar may:
- (a) give further directions; and
 - (b) make any other order, including an order for costs.
- (8) In this rule:

FWC member has the meaning given by section 12 of the Fair Work Act.

President has the meaning given by section 12 of the Fair Work Act.

Division 30.6—Proceedings under the Building and Construction Industry Act

30.15 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 of these Rules sets out general rules about starting proceedings.

Rule 31.01

Chapter 5—Proceedings under the National Consumer Credit Protection Act

Part 31—Small claims application under the National Consumer Credit Protection Act

31.01 Definitions for Part 31

In this Part:

National Consumer Credit Protection Act means the *National Consumer Credit Protection Act 2009*.

small claims application means an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act that is dealt with under this Part.

small claims proceeding means a proceeding relating to a small claims application.

31.02 Small claims proceeding—National Consumer Credit Protection Act

- (1) An applicant may request that an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act be dealt with under this Part.
- (2) The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:
 - (a) in an informal manner; and
 - (b) without regard to legal forms and technicalities.

31.03 Starting a National Consumer Credit Protection Act small claims proceeding

A small claims application must be made in accordance with the approved form.

Note: Part 4 of Chapter 1 sets out general rules about starting proceedings.

31.04 Lawyers—National Consumer Credit Protection Act small claims proceeding

- (1) A party to a small claims application may not be represented by a lawyer without the leave of the Court.
- (2) If the Court gives a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate.
- (3) For the purposes of subrule (1), a party is not taken to be represented by a lawyer if the lawyer is an employee or officer of the party.

31.05 Representation for corporations—National Consumer Credit Protection Act small claims proceeding

Despite rule 9.04, an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Part if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.

Schedule 1—Federal Court Rules applied

Note: See rule 1.06.

Federal Court Rules

Item	Provision
1	rules 1.41 and 1.42
2	rules 2.41 to 2.43
3	rules 5.22 to 5.24
4	rule 6.11
5	Division 7.3
6	rules 10.41 to 10.52
7	Division 10.6
8	rule 12.01
9	rule 15.10
10	rules 16.01A and 16.01
11	paragraphs 16.02(1)(a), (b) and (d)
12	subrules 16.02(3) and (5)
13	rules 16.03 to 16.13
14	rule 16.21
15	rules 16.31 to 16.33
16	rules 16.41A to 16.45
17	rule 25.01 to 25.06
18	rules 25.10 to 25.12
19	rule 25.14
20	rule 30.29 to 30.33
21	Division 34.3
22	rules 39.01 to 39.03
23	rule 39.06
24	rule 39.11
25	rule 39.21
26	Division 42.3

Schedule 2—Costs

Note: See rules 22.09, 22.15 and 29.13.

Part 1—General federal law proceedings other than migration proceedings

Costs for general federal law proceedings other than migration proceedings		
Item	Description	Amount (including GST)
1	Initiating or opposing an application up to the completion of the first court date	Both: (a) \$3,147; and (b) the daily hearing fee mentioned in item 10 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) \$3,938; and (b) the daily hearing fee mentioned in item 9 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) \$1,964; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
4	Dispute resolution litigation intervention	\$3,300
5	Preparation for final hearing—one day matter	\$7,076
6	Preparation for final hearing—2 day matter	\$10,634
7	Preparation for final hearing—each additional hearing day after the second hearing day	\$2,237
8	Final hearing costs for attendance of solicitor at hearing to take judgment. and explain orders	Both: (a) \$321; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
9	Daily hearing fee	(a) for a short mention—\$321; or (b) for a half day hearing—\$1,178; or (c) for a full day hearing—\$2,357
10	Advocacy loading	50% of the daily hearing fee mentioned in item 9 that applies to the hearing
11	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments
12	Disbursements—photocopying for each page	\$0.81

Schedule 2 Costs

Part 1 General federal law proceedings other than migration proceedings

Costs for general federal law proceedings other than migration proceedings

Item	Description	Amount (including GST)
13	Agents' fees and travelling costs	\$663
	Note: For 2 or more hours travel.	

Part 2—Migration proceedings

Division 1—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	\$1,572
2	A proceeding concluded: (a) after the first court date for the proceeding; and (b) at or before an interlocutory hearing	\$3,930
3	A proceeding concluded at a final hearing	\$7,853

Schedule 2 Costs

Part 2 Migration proceedings

Division 2 Migration proceedings that have been discontinued

Division 2—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	\$782
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 an interlocutory hearing	\$1,960
3	A proceeding in which the notice of discontinuance is filed and served: (a) less than 15 days before an interlocutory hearing; and (b) at least 15 days before the final hearing	\$3,930
4	Any other case	\$5,497
