



# Federal Court Rules

**Statutory Rules 1979 No. 140 as amended**

made under the

*Federal Court of Australia Act 1976*

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This document has been split into four volumes

Volume 1 contains Orders 1 to 51,

**Volume 2** contains Orders 51A to 82,

Volume 3 contains Schedules 1 to 4, and

Volume 4 contains the Notes

Each volume has its own Table of Contents

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**Rule 1**

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# **Order 51A      Matters remitted by the High Court of Australia**

**1            Remittal of matters by High Court to the Court**

- (1) A sealed copy of the order of the High Court, remitting a matter, or any part of a matter, to the Court shall be filed in the District Registry named in the order of remittal.
- (2) In the absence of a specification of a District Registry of the Court in a matter or part of a matter in the order referred to in subrule (1), the Chief Justice may direct that the order shall be filed in a particular District Registry.

**2            Filing and service**

- (1) The Registrar shall affix a notice to the High Court's order which shall be allotted a serial number as though the order was an application filed in the Registry.
- (2) The notice shall bear the date for a directions hearing in the matter.
- (3) The notice shall bear a note that before taking any step in the proceeding a party, other than the applicant, must enter an appearance in the Registry unless he has already entered an appearance in the High Court.
- (4) The notice shall be in the form numbered 53A in Schedule 1.
- (4A) The Registrar must affix the stamp of the Court to a sufficient number of copies of the notice for service in accordance with subrule (5).

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**Rule 5**

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- (5) The Registrar shall cause sealed copies of the notice with copies of the High Court's order attached thereto to be served on all parties to the proceeding in the High Court and on any other person whom the Court or a Judge directs should be so served.
- (6) Service may be effected by delivery to a party's address for service in the proceeding before the High Court.

**2A      Conduct of proceedings remitted by High Court to the Court**

The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding that involves a matter, or part of a matter, remitted by the High Court to the Court.

**3            Directions hearing**

The Court shall give any directions necessary for the further conduct of the proceeding having regard to the provisions of Order 10.

**4            Directions of High Court**

Rules 1 to 3 of this Order apply subject to any direction of the High Court in the matter.

**5            Remittal of application for order *nisi***

- (1) Subject to subrule (2) and to any Act to the contrary, when the Court or a Judge hears an application remitted by the High Court for an order *nisi* for a constitutional writ, the Court or Judge:
  - (a) will at the same time hear the parties on whether, if the order *nisi* were made, it should be made absolute; and
  - (b) if satisfied that an order absolute should be made, will not make the order *nisi*, but will proceed directly to make the order absolute.
- (2) In a particular case, the Court or Judge may order that subrule (1), or any part of it, does not apply.

**Rule 1**

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# **Order 51B      Referral of petition under *Commonwealth Electoral Act 1918*, s 354**

**1            Interpretation**

In this Order:

*Electoral Act* means the *Commonwealth Electoral Act 1918*.

*member* means a member of the House of Representatives.

**2            Expressions used in the Electoral Act**

Unless the contrary intention appears, an expression used in this Order and in the Electoral Act has the same meaning in this Order as it has in the Electoral Act.

**3            Application**

- (1) This Order applies to:
  - (a) a petition referred for trial under subsection 354 (1) of the Electoral Act; and
  - (b) a part of a petition, in respect of an election or return, referred under subsection 354 (3) of that Act.
- (2) The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, in relation to a petition, or part of a petition, mentioned in subrule (1).

**4            Filing**

- (1) A sealed copy of the High Court's order referring a petition, or part of a petition, to the Court must be filed in the District Registry named in the order.

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**Rule 7**

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- (2) If the order does not name a District Registry, the order must be filed in:
  - (a) if the election or return that the petition seeks to invalidate relates to a Senator — a District Registry in the State or Territory for which the election was held; or
  - (b) if the election or return that the petition seeks to invalidate relates to a member — a District Registry in the State or Territory where the electoral division for which the member was elected or returned is located.

**5 Service and directions hearing**

- (1) The Registrar must serve on each party and on any person whom the Court or a Judge directs should be served:
  - (a) a copy of the High Court's order; and
  - (b) notice of the date for a directions hearing in the matter.
- (2) The notice must be in accordance with Form 53B.

**6 Directions and orders**

- (1) The Court may give directions, and make orders, necessary for the conduct, or further conduct, of the proceeding.
- (2) In giving directions, the Court must have regard to the provisions of Order 10.

**7 Particulars of votes claimed or objected to**

- (1) If a petition claims a seat for a person who has not been returned as a Senator or member and alleges that the person had a majority of valid votes, each party must file in the Registry, and deliver to each other party, a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to.
- (2) However, this rule does not apply if the petition merely claims a fresh count of the votes actually counted at the election.

**Rule 8**

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- (3) The list of ballot-papers or classes of ballot-papers intended to be claimed or objected to must be filed in the Registry, and be delivered to each other party at that party's address for service, at least 7 days before the day for the trial of the petition.
- (4) If the list includes ballot-papers that are objected to, it must state the grounds of objection on which the party intends to rely.
- (5) An objection can not be entertained against the validity of a ballot-paper on a ground not specified in the list except:
  - (a) with the leave of the Court or a Judge; and
  - (b) on any terms as to amendment of the list, adjournment of the trial and payment of costs, as the Court or Judge orders.

**8 Counter-charges**

- (1) This rule applies if:
  - (a) a petition claims a seat for a person who has not been returned as a Senator or member; and
  - (b) a respondent wishes to contend that the person for whom the seat is claimed was not duly elected based on a ground other than that the respondent had a majority of valid votes.
- (2) The respondent must file in the Registry and deliver to the petitioner a statement of the ground on which the respondent intends to rely.
- (3) The statement must:
  - (a) be filed and served within 7 days (or any further time as the Court or a Judge allows) after the respondent enters his or her appearance; and
  - (b) in relation to the ground relied on, and the relief sought, comply with paragraphs 355 (aa) and (b) of the Electoral Act, as if it were a petition.

*Note 1* Paragraphs 355 (aa) and (b) of the Electoral Act state:

- ‘(aa) subject to subsection 358 (2), set out those facts with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief;



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**Rule 11**

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- (b) contain a prayer asking for the relief the petitioner claims to be entitled to;<sup>7</sup>.

*Note 2* Subsection 358 (2) of the Electoral Act (which provides for the Court to relieve a petitioner from compliance with paragraph 355 (aa)) does not apply to a respondent.

**9 Particulars**

The Court or a Judge may order a party to give further and better particulars of a matter alleged by the party to another party.

**10 Trial**

- (1) Not later than 14 days (or any other period fixed by the Court or a Judge) before the date fixed for the trial, the petitioner must:
  - (a) give to each other party to the petition notice of the trial in accordance with Form 53C; and
  - (b) advertise notice of the time, date and place of the trial in a newspaper circulating in the State, Territory or Electoral Division for which the election was held.
- (2) An order fixing the time, date and place for trial may be varied.

**11 Withdrawal of petition and substitution of another petitioner**

- (1) A petition referred to the Court may be withdrawn:
  - (a) with the leave of the Court or a Judge; and
  - (b) on any terms the Court or Judge thinks fit.
- (2) The petitioner's intention to apply for leave under subrule (1) must be advertised, in a newspaper circulating in the State, Territory or Electoral Division for which the election was held, not later than 14 days before the application is filed.
- (3) At the hearing of the application, the Court or Judge may allow a person who is competent to file a petition on the same grounds as the applicant's to be substituted for the petitioner in the petition proceeding.

**Rule 12**

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- (4) If a person is so substituted, the proceeding must be continued as if the person was the original petitioner.

**12 Abatement by death of petitioner**

- (1) If a sole petitioner in a petition referred to the Court for trial dies before the conclusion of the trial of the petition, the Court or a Judge may allow a person who is competent to file a petition on the same grounds as the original petitioner's to be substituted as petitioner.
- (2) If a person is so substituted, the proceeding must be continued as if the person was the original petitioner.

# Order 52      Appeals

## Division 1AA      General

### 1      Interpretation

In this Order unless the contrary intention appears:

***application*** means application for leave to appeal, and ***applicant*** has a corresponding meaning.

***Court*** means the Court exercising its appellate or related jurisdiction under Part III Division 2 of the Act.

***judgment*** means the judgment, decree, order, or sentence of a court or judge under appeal, or in respect of which leave to appeal is sought.

### 2      Service

Where in this Order service is required of a document it may be effected:

- (a) in the case of a notice of appeal or an application for leave to appeal:
  - (i) by serving a signed and sealed copy of the document personally on the party to be served; or
  - (ii) by delivering a signed and sealed copy of the document to that party's address for service in the proceeding in the court appealed from; and
- (b) in the case of any other document:
  - (i) by serving it in the manner prescribed in paragraph (a) above; or
  - (ii) by serving it in the manner prescribed in Order 7, rule 4 for service of documents which need not be served personally.

**Rule 2AB**

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**2AB Certain applications and matters may be dealt with without an oral hearing**

- (1) The Court may order that:
  - (a) an application mentioned in paragraph 25 (2) (b) or (c) of the Act; or
  - (b) a matter mentioned in subsection 25 (2B) of the Act; or
  - (c) an application for leave to appeal under Division 1; or
  - (d) an application for leave to appeal under subrule 10 (2); or
  - (e) an application for leave to file and serve a notice of appeal under subrule 15 (2);be dealt with without an oral hearing.
- (2) If the Court makes an order under subrule (1) in relation to an application or matter, each party to the application or matter must file a summary of argument and serve a copy of the summary on each other party.
- (3) A summary of argument must comply with rule 2AC.

**2AC Summary of argument**

- (1) A summary of argument must:
  - (a) not exceed 10 pages; and
  - (b) include the title of the proceeding; and
  - (c) include the name of the party by whom it is to be filed; and
  - (d) consist of paragraphs numbered consecutively; and
  - (e) state as concisely as possible:
    - (i) if the summary of argument is to be filed by the applicant — the factual background to the application; and
    - (ii) if the summary of argument is to be filed by a respondent — the factual issues in dispute; and
    - (iii) the claims to be argued by the party concerned; and
    - (iv) the reasons relied upon for those claims.
- (2) So far as is practicable:

- (a) a reference in a summary of argument to a part of a transcript of proceedings of a court must be given by page and line number; and
- (b) each relevant part of the transcript must be attached to the summary.
- (3) A summary of argument must be clear and legible, and securely fastened.

## **Division 1                      Leave to Appeal from judgments other than interlocutory judgments of the Court**

### **2A                      Application of Division**

This Division applies to an application for leave to appeal from a judgment other than an interlocutory judgment of the Court.

### **4                      Form of application — Form 54**

- (1) An application shall be made in or substantially in the form numbered 54 in Schedule 1.
- (2) An application shall be accompanied by an affidavit showing:
  - (a) the nature of the case;
  - (b) the questions involved; and
  - (c) the reasons why leave should be given.
- (3) An application must include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing.

### **5                      Time for filing application**

- (1) This rule applies only to applications where an appeal from the judgment lies to the Court only with leave.
- (2) An application shall be filed within 21 days after:
  - (a) the judgment was pronounced; or

**Rule 6**

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(b) a later date fixed for that purpose by the court or judge who pronounced the decision.

- (3) Where an application is not filed within the time limited by subrule (2), an order shall be sought in the application that compliance with subrule (2) be dispensed with.

**6 Service**

An application and accompanying affidavit shall be served on each person who was a party to or given leave to intervene in the proceeding in the court appealed from within 5 days of the filing of the application.

**7 Appearance by respondent**

If there is a respondent to the application, the respondent must enter an appearance before taking any step in the proceedings.

**7A Objection to application being dealt with without oral hearing**

If a respondent objects to an application being dealt with without an oral hearing, the respondent must:

- (a) file a notice to this effect; and
- (b) serve a copy of the notice on each other party to the application.

**8 Time for filing and service of affidavits**

A respondent who desires to adduce evidence shall file and serve his affidavits within 14 days of the service of the application on him.

**9 Setting down for hearing**

The application shall be set down for hearing (or, if the application is to be determined on written cases, for decision) by the Registrar at the proper place, who shall notify the parties of the date appointed for such hearing (or decision).

## **Division 1A      Leave to appeal from interlocutory judgments of the Court**

### **10      Leave to appeal from interlocutory judgments of the Court**

- (1) An application for leave to appeal from an interlocutory judgment of the Court may be made orally to the Judge who has pronounced the judgment at the time of its pronouncement.

*Note* Subsection 24 (1AA) of the Act specifies judgments from which an appeal cannot be brought, and subsection 24 (1C) of the Act specifies interlocutory judgments for which leave to appeal is not required.

- (2) If an application has not been made in accordance with subrule (1), an application may be made by motion on notice.

- (2A) Order 19 applies to an application under subrule (2), and the notice of motion must be filed:

- (a) if the interlocutory judgment is in the nature of a decision on a question under Order 29 — within 21 days after the date on which the interlocutory judgment was pronounced; and

- (b) in any other case — within 7 days after the date on which the interlocutory judgment was pronounced;  
or within such further time as the Court or a Judge may allow.

- (3) An application under subrule (2) must include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing.

- (4) If a respondent objects to an application being dealt with without an oral hearing, the respondent must:

- (a) file a notice to this effect; and

- (b) serve a copy of the notice on each other party to the application.

### **10A      Revocation or variation of a grant of leave by a single judge**

- (1) This rule applies if leave to appeal has been granted.

**Rule 11**

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- (2) The Full Court or, for an appeal from a judgment of the Federal Magistrates Court that is to be heard by a Judge, the Judge may:
- (a) revoke the leave to appeal, wholly or in part; or
  - (b) impose a condition on the leave to appeal; or
  - (c) vary a condition of the leave to appeal.

## **Division 2            Appeals**

### **11            Interpretation**

If the Court directs that a party other than the appellant shall have the carriage of the appeal, or of a proceeding in or arising out of an appeal, these Rules apply as if that party were included in the description ‘appellant’.

### **12            Form and filing of notice of appeal — Form 55**

- (1) An appeal is instituted by filing a notice of appeal in accordance with Form 55.
- (2) A notice of appeal must be filed in an appropriate Registry.
- (3) In this rule:
- appropriate Registry*** means:
- (a) if the appeal is from a judgment of a Court of a State or Territory — the District Registry in that State or Territory; or
  - (b) if the appeal is from a single Judge of the Court — the Registry at the proper place; or
  - (c) if the appeal is from a judgment of the Federal Magistrates Court — the District Registry in the State or Territory where the judgment was delivered; or
  - (d) in any other case — the Principal Registry or an appropriate District Registry; or
  - (e) a Registry that, before or after the filing of any document in the appeal, the Court or a Judge orders is an appropriate Registry.



**12A Certification of merits of appeal commencing migration litigation**

- (1) For the purposes of section 486I of the *Migration Act 1958*, a lawyer must not file a notice of appeal commencing migration litigation unless the notice includes, or is accompanied by, a certificate in accordance with Form 56B signed by the lawyer.
- (2) In this rule:  
*lawyer* has the meaning given by section 486K of the *Migration Act 1958*.  
*migration litigation* has the meaning given by section 486K of the *Migration Act 1958*.

**13 Title of proceeding**

- (1) A notice of appeal and all subsequent proceedings in an appeal shall be entitled 'In the Federal Court of Australia' with the name of the Registry in which they are filed, 'On Appeal From' the court from which the appeal is brought, naming it, and shall also be entitled as between the party appellant and the party respondent.
- (2) The notice of appeal shall state:
  - (a) whether the whole or part only, and what part, of the judgment is appealed from;
  - (b) briefly, but specifically, the grounds relied upon in support of the appeal; and
  - (c) what judgment the appellant seeks in lieu of that appealed from.
- (3) If the appeal is brought by leave of the Court:
  - (a) the notice of appeal shall so state; and
  - (b) a copy of the order giving leave to appeal shall be annexed to the notice of appeal filed in the court appealed from pursuant to subrule 16 (1), and to every copy of the notice of appeal served pursuant to subrule 16 (2).

**Rule 14**

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**14        Parties**

- (1) Each party to the proceeding in the court appealed from who is affected by the relief sought by a notice of appeal or is interested in maintaining the judgment under appeal shall be joined as a party appellant or respondent to the appeal.
- (2) The Court or a Judge may order the addition or removal of any person as a party appellant or respondent to an appeal.
- (3) A person shall not be made an appellant without his consent.

**14AA    Interveners**

- (1) The Court may give leave to a person (the *intervener*) to intervene in the appeal, on the terms and conditions, and with the rights, privileges and liabilities (including liabilities for costs), determined by the Court.
- (2) In deciding whether to give leave, the Court must have regard to:
  - (a) whether the intervener's contribution will be useful and different from the contribution of the parties to the appeal; and
  - (b) whether the intervention might unreasonably interfere with the ability of the parties to conduct the appeal as they wish; and
  - (c) any other matter that the Court considers relevant.
- (3) The role of the intervener is solely to assist the Court in its task of resolving the issues raised by the parties.
- (5) When giving leave, the Court must specify the form of assistance to be given by the intervener and the manner of participation of the intervener, and, in particular, must specify:
  - (a) the matters that the intervener may raise; and
  - (b) whether the intervener's submissions are to be oral, in writing, or both.

**14A Appearance by respondent**

Where there is a respondent to the appeal, the notice of appeal shall bear a note that before taking any step in the proceedings, the respondent must enter an appearance in the Registry and the respondent shall enter an appearance accordingly unless he has already entered a notice of appearance pursuant to rule 7.

**15 Time for filing and serving notice of appeal**

- (1) The notice of appeal shall be filed and served:
  - (a) within 21 days after:
    - (i) the date when the judgment appealed from was pronounced;
    - (ii) the date when leave to appeal was granted; or
    - (iii) any later date fixed for that purpose by the court appealed from; or
  - (b) within such further time as is allowed by the Court or a Judge upon application made by motion upon notice filed within the period of 21 days referred to in the last preceding paragraph.
- (2) Notwithstanding anything in the preceding subrule, the Court or a Judge for special reasons may at any time give leave to file and serve a notice of appeal.
- (3) An application for leave under subrule (2) must:
  - (a) be in accordance with Form 54A; and
  - (b) include a statement indicating whether the applicant wishes to have the application dealt with without an oral hearing; and
  - (c) be accompanied by an affidavit setting out:
    - (i) the nature of the matter; and
    - (ii) the factual and legal issues in dispute; and
    - (iii) the reasons why leave should be given.
- (4) If a respondent objects to an application being dealt with without an oral hearing, the respondent must:
  - (a) file a notice to this effect; and

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- (b) serve a copy of the notice on each other party to the application.

**16 Filing in courts and service upon parties**

- (1) Where the court appealed from is the Court of a State or Territory, a copy of the notice of appeal shall be filed in the office of the Registrar, Master or other proper officer of that court.
- (2) The notice of appeal shall be served upon each person who was a party to or given leave to intervene in the proceeding in the court appealed from.
- (3) The Court may direct that the notice of appeal be served on any other person.

**17 Stay**

- (1) An appeal to the Court shall not:
  - (a) operate as a stay of execution or of proceedings under the judgment appealed from; or
  - (b) invalidate any intermediate act or proceedings; except so far as the Court or a Judge or the court below may direct.
- (2) The Court may vary or vacate any direction of the Court or the court below referred to in subrule (1).
- (3) An application for a direction of the Court or a Judge under subrule (1) shall be made to the Court or a Judge by motion upon notice, and may be made whether or not a similar application has been made to the court below. An application for a direction under subrule (2) shall be made to the Court by motion upon notice, and may be made whether or not a similar application has been made to the court below.

**18 Competency of appeal**

- (1) A respondent may move on notice at any time for an order dismissing an appeal as incompetent.

- (2) Upon the hearing of the motion, the burden of establishing the competency of the appeal is on the appellant.
- (3) If a respondent does not move under subrule (1) but the appeal nevertheless is dismissed by the Court as incompetent, the respondent shall not, unless the Court otherwise orders, receive any costs of the appeal, and the Court may order that he pay the appellant any costs of the appeal proving useless or unnecessary.

## **19 Discontinuance of appeal**

- (1) An appellant may discontinue the whole, or any part of, an appeal by filing and serving a notice of discontinuance in accordance with Form 29A:
  - (a) without the leave of the Court — at any time before the hearing of the appeal; or
  - (b) with the leave of the Court — at the hearing, or after the hearing but before judgment is pronounced or made on the appeal.
- (2) If a notice of discontinuance is filed and served under subrule (1), the appeal, or relevant part of the appeal:
  - (a) is abandoned for the applicant; and
  - (b) continues for any other appellant in the appeal or part of the appeal.
- (3) An appellant who files a notice of discontinuance under subrule (1) is liable to pay the costs of any other party to the appeal for the appeal, or part of the appeal, that has been discontinued.
- (4) A party whose costs are payable under subrule (3) may tax the costs and, if the taxed costs are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs against the appellant who discontinued the appeal or the part of the appeal.

**Rule 19A**

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**19A Discontinuance of application made under s 25 (2) of the Act**

- (1) An applicant may discontinue an application mentioned in subsection 25 (2) of the Act by filing and serving a notice of discontinuance in accordance with Form 29B:
  - (a) without the leave of the Court — at any time before the hearing of the appeal; or
  - (b) with the leave of the Court — at the hearing of the application, or after the hearing of the application but before judgment is pronounced or made on the application.
- (2) If a notice of discontinuance is filed and served under subrule (1), the application:
  - (a) is abandoned for the applicant; and
  - (b) continues for any other applicant in the application.
- (3) An applicant who files a notice of discontinuance under subrule (1) is liable to pay the costs of any other party to the application for the application that has been discontinued.
- (4) A party whose costs are payable under subrule (3) may tax the costs and, if the taxed costs are not paid within 14 days after service of the certificate of taxation, may enter judgment for the taxed costs against the applicant who discontinued the application.

**20 Security for costs**

Unless the Court or a Judge otherwise directs no security for costs of an appeal to the Court shall be required.

**21 Amendment by supplementary notice**

- (1) A notice of appeal may, before the date of the appointment made under rule 24, be amended without leave by filing a supplementary notice.
- (2) A party who files a supplementary notice under subrule (1) shall serve and file it in accordance with rule 16 as if it were a notice of appeal.

- (3) The Court may allow a notice of appeal to be amended on such terms and conditions as the Court thinks fit.

## **22 Cross-appeal**

- (1) A respondent who desires to appeal from a part of the judgment or to seek a variation of a part of the judgment, need not institute a substantive appeal, but he shall:
- (a) within 21 days after the service upon him of the notice of appeal, or within such further time as the Court or a Judge fixes, file in the Registry a notice of cross-appeal; and
  - (b) serve a copy of the notice upon the appellant and any other person affected by the relief which he seeks.
- (2) The notice of cross-appeal shall state what part of the judgment he cross-appeals from or contends should be varied, and shall state briefly, but specifically, the grounds of the cross-appeal and:
- (a) the relief which he seeks in lieu of the order cross-appealed; or
  - (b) the variation of that order which he seeks.
- (3) If the respondent proposes to contend that the judgment should be affirmed on grounds other than those relied on by the court below, but does not seek a discharge or variation of any part of the judgment, the respondent need not file a notice of cross-appeal, but must:
- (a) file a notice of the respondent's contention within 21 days after the service upon the respondent of the notice of appeal, or within such further time as the Court or a Judge fixes; and
  - (aa) serve a copy of the notice on the appellant; and
  - (b) give notice to the appellant of the record of evidence or documents before the court below relating to the contention, for inclusion in the appellant's draft index of appeal papers; and
  - (c) at the appointment to settle the appeal papers, request the Registrar to include the record of evidence or documents in the appeal papers.

**Rule 22A**

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**22A Discontinuance of cross-appeal**

- (1) A cross-appellant may discontinue the whole, or any part, of a cross-appeal by filing and serving a notice of discontinuance in accordance with Form 29A.
- (2) Order 52, rule 19 applies to a discontinuance under subrule (1) in the same way that it applies to a discontinuance of an appeal under subrule 19 (1).

**23 Retention of exhibits**

- (1) Where an appeal from a judgment lies, by leave or without leave, to the Court, the officer of the court below who has custody of the exhibits in the proceeding, shall, unless the court below otherwise orders, retain the exhibits:
  - (a) for 21 days after the date when the judgment is pronounced; or
  - (b) if within the period of 21 days leave to appeal to the Court from the judgment is granted, for a period of 21 days after leave is granted.
- (2) Upon an appeal to the Court being instituted:
  - (a) the proper officer of the court below or the associate to the judge below, shall make out and certify a list of exhibits; and
  - (b) the exhibits, the list, and any other document before the court below, shall be delivered or transmitted to the Registry at the proper place.
- (3) Where an exhibit cannot be so delivered or transmitted, the associate or officer shall, in his certificate, state the circumstances and give such information as he can to enable the Registrar to cause the exhibit to be available to the Court.
- (4) The Registrar shall retain the documents obtained under subrules (2) and (3) until the disposal of the appeal and shall thereupon return them to the officer or persons from whom he obtained them.



**24 Appointment to settle**

- (1) On filing the notice of appeal, the appellant must make an appointment to settle the appeal papers.
- (2) The appellant must serve notice of the appointment on each person on whom the notice of appeal is served.
- (3) The notice of appointment may be subscribed to the notice of appeal.
- (4) Unless the Court or a Judge otherwise orders, this rule does not apply to an appeal from a judgment of the Federal Magistrates Court.

*Note* Rule 24A deals with the procedure for an appeal from a judgment of the Federal Magistrates Court.

**24A Appeal from a judgment of the Federal Magistrates Court**

Unless the Court or a Judge otherwise orders, a notice of appeal from a judgment of the Federal Magistrates Court must state a date for a directions hearing or a date for the final hearing of the appeal.

**26 Content of appeal papers**

The appeal papers must:

- (a) consist of the documents mentioned in the following table, in the order that they appear in the table; and
- (b) be divided into Parts A, B and C as shown in the table.

Item	Document
<b>Part A</b>	
1	Title page
2	The index to Part A
3	A copy of the originating application and pleadings, including each relevant notice of motion (if any)

**Rule 26**

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**Item Document**

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- 4 If the court below was hearing an appeal from a tribunal or board — a copy of:
  - (a) the reasons for the decision of the tribunal or board; and
  - (b) the formal decision of the tribunal or board; and
  - (c) any notice of appeal to the court below
- 5 A copy of the reasons for judgment of the court below
- 6 A copy of the sealed orders of the court below
- 7 A copy of the notice of appeal
- 8 A copy of any notice of contention
- 9 A copy of any notice of cross-appeal
- 10 A copy of any submitting appearance
- 11 A copy of the sealed orders giving leave to appeal or an extension of time to file the appeal (if any)
- 12 The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part A

**Part B**

- 13 Title page
- 14 The index to Part B
- 15 A list of the exhibits not reproduced in this Part showing:
  - (a) a brief description of each exhibit; and
  - (b) the exhibit number or letter used to identify each exhibit in the court below
- 16 A copy of all exhibits relevant to the appeal, cross-appeal or contention, in the order in which the exhibits were numbered or lettered as exhibits in the court below
- 17 A copy of each affidavit or part of an affidavit (including any annexures) containing evidence relevant to the appeal, cross-appeal or contention that was read in the court below
- 18 The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part B

**Part C**

- 19 Title page

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**Item Document**


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- 20 The index to Part C
  - 21 A list of the pages of transcript of oral evidence (including the names of the relevant witnesses and the dates of the hearing to which the pages relate) that are not reproduced
  - 22 A copy of the transcript of oral evidence relevant to the appeal
  - 23 A copy of each additional transcript (if any) relevant to the appeal
  - 24 The certificate of correctness mentioned in paragraph 28C (1) (a) relating to Part C
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**27 Filing and service of draft indexes of appeal papers**

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

**28 Text of oral judgment or summing up**

- (1) If a party proposes to include the text of a Judge's oral judgment or summing up in the appeal papers, the party must:
  - (a) submit the text to the Judge for correction; and
  - (b) ask the Registrar for a certificate stating that the party has submitted the text for correction.
- (2) The text of a Judge's oral judgment or summing up may be included in the appeal papers only if the text is accompanied by a certificate mentioned in paragraph (1) (b).

**28A Settlement of appeal papers**

- (1) At the appointment to settle the appeal papers the Registrar must:
  - (a) settle the appeal papers in accordance with subrule (2); or
  - (b) refer the appeal papers to the Court or a Judge for settling.
- (2) If paragraph (1) (a) applies, the Registrar must:
  - (a) determine the documents and matters to be included in the appeal papers; and

**Rule 28B**

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- (b) determine:
  - (i) the order of inclusion of the appeal papers; and
  - (ii) any other matters about the preparation of copies of the appeal papers that he or she considers to be appropriate; and
- (c) settle the indexes in accordance with rules 26 and 28B; and
- (d) determine the number of copies of the appeal papers required; and
- (e) obtain an estimate of the duration of the hearing from each party; and
- (f) if practicable:
  - (i) fix a date for a hearing; or
  - (ii) list the appeal for hearing in appellate sittings of the Court.

**28B      Preparation of appeal papers**

- (1) The title page of each Part of the appeal papers must include:
  - (a) the title of the proceeding, including the title of the court from which the appeal is brought; and
  - (b) the name and address for service of the lawyer for each party.
- (2) The index of each Part of the appeal papers must show the date and page number of each document included in that Part.
- (3) The numbering of the pages of Parts A, B and C of the appeal papers must:
  - (a) be legible and distinct from any other numbering; and
  - (b) for Part A — begin with the number 1 and commence at item 3; and
  - (c) for Part B — begin with the number immediately after the number of the last page in Part A and commence at item 15; and
  - (d) for Part C — begin with the number immediately after the number of the last page in Part B and commence at item 23.

- (4) The pages of items 25 and 26 of Part C of the appeal papers must be numbered in accordance with the official transcript numbers.
- (5) If any Part of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.
- (6) The appeal papers need not be in bound and printed form but must be clear and legible and securely fastened.

## **28C Filing of appeal papers**

- (1) The appellant must file:
  - (a) a copy of the appeal papers that includes a certificate, in each Part of the papers:
    - (i) signed by each party or the party's lawyer; and
    - (ii) stating that the Part has been examined and is correct.
  - (b) the number of copies of the appeal papers determined by the Registrar under paragraph 28A (2) (d).
- (2) The Registrar may refuse to accept appeal papers that do not comply with these Rules.

## **29 Setting down appeal**

- (1) Unless an appeal is set down or listed for hearing at the appointment to settle the appeal papers pursuant to paragraph 27 (e), the appellant shall set the appeal down for hearing in accordance with this rule.
- (2) Unless otherwise ordered by the Court or a Judge an appeal shall be heard at the proper place.
- (3) Unless otherwise ordered by the Court or a Judge an appeal shall be set down for hearing at the first sittings of the Court in its appellate jurisdiction appointed to be held at the place of hearing after the expiration of 6 weeks from the institution of the appeal.

**Rule 30**

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- (4) An appeal shall be set down at least 21 days before the day appointed for the commencement of the sittings.
- (5) Within 7 days after being notified of the date of the hearing of an appeal, the appellant must:
  - (a) file in the Registry a notice in accordance with Form 44A; and
  - (b) serve a copy of the notice on all other parties to the appeal.

*Note* See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to setting-down fees.
- (5A) If an appellant does not comply with subrule (5), the Registrar must:
  - (a) so advise the respondent forthwith; and
  - (b) give notice to the appellant that the Court may, of its own motion, make an order under subrule 38 (1).
- (6) The Court or a Judge, if satisfied that it is expedient to do so, may at any time order that an appeal be heard at a place and or time other than that provided for by this rule.

**30 Written submissions**

- (1) Subject to subrule (2) a party to an appeal may serve on the other parties a notice that he proposes to prepare and file written submissions.
- (2) Where a date for the hearing of the appeal has been fixed, a party shall not, unless the Court or a Judge otherwise orders, give a notice under subrule (1) later than 14 days before that date.
- (3) Where a notice under subrule (1) is served on any party, he may, by notice filed within 2 days after service on him of the notice under subrule (1), object to the use of written submissions.
- (4) A party filing a notice of objection under subrule (3) shall, on the day of filing, serve the notice on each other party.

- (5) Upon the filing of a notice of objection under subrule (3), the Registrar shall forthwith obtain the direction of the Chief Justice or the senior Judge available, and communicate it to the parties.

### **32 Preparation**

- (1) Subject to any determination under subrule 30 (5), upon service of a notice under subrule 30 (1), each party shall prepare written submissions.
- (3) Written submissions:
- (a) shall be divided into paragraphs numbered consecutively;
  - (b) shall state concisely:
    - (i) the circumstances out of which the appeal arises;
    - (ii) the contentions to be urged by the party concerned; and
    - (iii) the reasons relied upon; and
  - (c) shall, so far as practicable, refer to matter in the copies of appeal papers by page number, and shall not extract that matter.

### **33 Filing and lodgment**

- (1) Each party required to prepare written submissions shall, not more than 10 days after service on him of a notice under rule 30:
- (a) file his written submissions; and
  - (b) lodge with the Registrar such number of copies of the written submissions as the Registrar may direct.
- (2) A party filing written submissions under subrule (1) shall, on the day of filing, serve notice of the filing on each other party.
- (3) A written submission shall not be available for inspection until all parties have filed their submissions.

**Rule 34**

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**34 Service**

When all parties have filed their written submissions, each party shall serve 3 copies of his written submissions on each other party.

**35 Criminal cases**

- (1) In criminal cases an appellant may present his case and his argument to the Court in writing if he so desires, and, if he does so, it is not necessary for him to appear or to be represented upon the hearing of the appeal.
- (2) An appellant who is in custody is not entitled to be present on the hearing of his appeal, or of his application for leave to appeal, without the leave of the Court.
- (3) The Court or a Judge may, upon such terms as it thinks fit, admit an appellant to bail pending the hearing of his appeal or his application for leave to appeal.

**36 Further evidence on appeal**

- (1) This rule applies to any application to the Court to receive evidence in a proceeding on an appeal additional to evidence in the court below.
- (2) This rule applies unless the Court otherwise directs.
- (3) The application shall be made by motion on the hearing of the appeal without filing or serving notice of the motion.
- (4) The grounds of the application shall be stated in an affidavit.
- (5) Any evidence necessary to establish the grounds of the application, and the evidence which the applicant wants the Court to receive shall be given by affidavit.
- (6) The applicant shall file any affidavit not later than 21 days before the hearing of the appeal.
- (7) The evidence of any other party to the appeal shall unless the Court or a Judge otherwise orders be given by affidavit filed not later than 14 days before the hearing of the appeal.



- (8) A party to the appeal shall, not later than the time limited for him to file an affidavit under this rule:
- (a) lodge as many copies of the affidavit as the Registrar may direct; and
  - (b) serve 3 copies of the affidavit on each other party to the appeal.

### **37 Expediting appeals**

- (1) The Court or a Judge may at any time make such orders as appear just for expediting of the appeal.
- (2) A party requiring leave to appeal may move on notice before the Court for an order that the application for leave to appeal be heard concurrently with or immediately before the hearing of the appeal, and for such consequential orders as may be necessary.

### **38 Time; want of prosecution**

- (1) Where an appellant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted his appeal with due diligence, the Court may:
  - (a) order that the appeal shall be dismissed for want of prosecution;
  - (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal shall stand dismissed for want of prosecution, or subsequently and in the event of non-compliance, order that it be so dismissed; or
  - (c) make any other order as may seem just.
- (2) The Court may not make an order under subrule (1) unless notice of the proposed order has been served on the appellant.
- (3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

**Rule 38A**

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**38A Absence of party**

- (1) If a party is absent when an appeal is called on for hearing, the Court may:
  - (a) order that the hearing not proceed unless the appeal is again set down for hearing or such other steps are taken as the Court directs; or
  - (b) adjourn the hearing; or
  - (d) proceed with the hearing, either generally or in relation to any claim for relief in the appeal.
- (2) If the Court proceeds with the hearing under paragraph (1) (d), the Court may:
  - (a) set aside or vary any order made after so proceeding; and
  - (b) give directions for the further conduct of the appeal.

*Note* See also subsection 25 (2B) of the Act in relation to the failure of an appellant to attend a hearing relating to an appeal.

**39 Appeals in criminal cases from Supreme Courts of a Territory**

- (1) The Judges constituting a Full Court or a majority of them may during the course of hearing an appeal against conviction or sentence request the Supreme Court Judge of the Territory from whose judgment, order or sentence an appeal is brought to the Court to forward to the Registrar for the information of the Judges hearing the appeal a report on any specified aspect.
- (2) The Judge may when so requested give a report on any aspect of the case specified in the request.
- (3) The Judge's report shall not be available for inspection by the parties or any other person except on the direction of the Court or a Judge.

**40 Order for production of prisoner (Form 46A)**

- (1) In the case of an appeal against conviction or sentence where a prisoner is in lawful custody, the Court or a Judge may make:
  - (a) an order requiring the production of the prisoner; and

- (b) an order, as the Court or Judge considers appropriate, in relation to the continuing custody of the prisoner.
- (2) An order under subrule (1) may, if the Court or Judge considers it appropriate, be in accordance with Form 46A.

#### **41 Reference to Court by single Judge**

In any rule in this order where power is conferred on the Court or a Judge, a single Judge may refer a question to the Court if he considers it appropriate.

## **Order 52A      Taxation appeals**

### **Division I      General**

#### **1      Interpretation**

In this Order, unless the contrary intention appears: ***Commissioner*** means the Commissioner, a Second Commissioner or a Deputy Commissioner of Taxation, and ***person*** includes a corporation.

#### **2      Application of Order**

- (1) This Order applies to an appeal to or proceeding in the Court under or pursuant to a law of the Commonwealth dealing with the assessment of taxation and to questions referred under such a law to the Court.
- (2) An appeal to the Court from a judgment of the Court constituted by a single Judge shall be dealt with in accordance with Order 52.
- (3) An appeal to the Court from a decision to the Administrative Appeals Tribunal made under or pursuant to a law of the Commonwealth dealing with the assessment of taxation shall be dealt with in accordance with Order 53.

#### **3      Application of other Orders**

Subject to this Order and to any law of the Commonwealth, the provisions of this Order and other Orders of these Rules apply, so far as is practicable, to proceedings to which the last preceding rule applies and, for the purposes of this Order and other Orders of these Rules, the applicant and the Commissioner shall be parties to the proceedings.

**4 Mode of service**

- (1) Personal service is not required of any document to be served under this Order. Subject to the provisions of this Order any document may be served:
  - (a) by personal service on the person to be served in accordance with the provisions of Order 7 rule 2 of the Rules; or
  - (b) by leaving it at the address for service of the person to be served nominated in the appropriate document filed pursuant to this Order between the hours of nine in the morning and five in the afternoon on any day on which the Registry in the State or Territory in which the address is situated is open; or
  - (c) by sending the document by pre-paid post addressed to the person to be served at the address nominated in the appropriate document filed pursuant to this Order; or
  - (d) if the person to be served has not nominated an address for service in the proceeding, by leaving it at the person's usual or last known place of business or of residence between the hours mentioned in paragraph (b) or by sending it by pre-paid post addressed to the person at the person's usual or last known place of business or of residence; or
  - (e) by sending the document by facsimile transmission directed to the facsimile number operated at, or in connection with, the address nominated in the appropriate document filed under this Order; or
  - (f) by sending the document by electronic communication directed to the email address nominated in the appropriate document filed under this Order.
- (2) The time of service of a document served under this Order is:
  - (a) if the document is sent by pre-paid post in accordance with paragraph (1) (c) or (d) — 7 days after it is sent; or
  - (b) if the document is sent by facsimile transmission in accordance with paragraph (1) (e) — one day after it is sent; or

**Rule 5**

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- (c) if the document is sent by electronic communication in accordance with paragraph (1) (f) — one day after it is sent.
- (3) For paragraphs (2) (b) and (c), mention of a day does not include a Saturday, Sunday or a public holiday.

**5      Evidence by affidavit**

Unless otherwise ordered by the Court or a Judge, evidence in proceedings under this Order shall be by affidavit.

**Division II      Appeals from disallowance of objections**

**6      Notice of referral**

When the Commissioner has been requested under an Act to refer a decision on an objection with respect to taxation to the Court, the Commissioner shall refer the decision on the objection to the Court within the time prescribed by law, or, if no time has been so prescribed, then within sixty days after the date of the receipt of the request, or within such further time as is agreed between the Commissioner and the person who made the request.

**7      Form and filing of notice of referral**

- (1) The Commissioner shall refer the decision on the objection to the Court by filing a notice of referral which shall be in or substantially in the form numbered 55C in Schedule 1. The notice of referral shall state the address for service of the Commissioner.
- (2) A notice of referral shall be filed in the District Registry of the Court in the State or Territory in which the request to refer the decision on the objection was lodged with the Commissioner.

- (3) A notice of referral shall be signed by the Commissioner or the Commissioner's solicitor and shall state that the referral is made pursuant to the request under the particular Act involved and shall state the decision on the objection under challenge.

## **8 Documents to be forwarded**

The Commissioner shall also forward, together with the notice of referral, to the Registry:

- (a) the notice of assessment in respect of which the objection was made (including any amendment of the assessment);
- (b) the notice of objection;
- (c) the notice of the disallowance of the objection;
- (d) the request for the reference of the decision on the objection to the Court;
- (e) any other documents in the Commissioner's possession or power which are necessary for the hearing of the matter; and
- (f) a list of the documents forwarded.

## **9 Service of notice of referral and list of documents**

- (1) The Commissioner shall serve a sealed copy of the notice of referral upon the person who requested the referral of the decision to the Court within the time prescribed by law, or, if no time has been so prescribed, within fourteen days after the date of filing of the notice of referral, but not later than five days before the date appointed for the directions hearing under rule 12 unless the Court or a Judge otherwise orders.
- (2) The Commissioner shall also serve a copy of the list of documents referred to in paragraph (f) of rule 8 upon the person who requested the referral at the same time as service is made of the notice of referral.

**Rule 10**

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- (3) Service of a sealed copy of the notice of referral and of a copy of the list of documents under this rule may be effected by sending them by pre-paid post addressed to the person to be served at the address, if any, specified in the request for the reference or at the person's usual or last known place of business or of residence.
- (4) The documents served by post under the last preceding subrule shall be deemed to have been served seven days after they are so sent.

**10 Parties**

The person who requested the decision on an objection to be referred to the Court shall be the applicant and the Commissioner shall be the respondent.

**11 Applicant's address for service**

- (1) The applicant shall file a notice showing an address for service before the date appointed for a directions hearing and before filing any document.
- (2) A notice of address for service shall show:
  - (a) the name and address of the applicant;
  - (b) where the applicant is represented by a solicitor, the name, address, telephone number and, if applicable, the facsimile number and the email address of the solicitor;
  - (c) where the applicant is represented by a solicitor and that solicitor has another solicitor as agent in the proceeding, the name, address, telephone number and, if applicable, the facsimile number and the email address of the agent; and
  - (d) an address for service which may be a document exchange box.
- (3) A notice of address for service shall be in or substantially in the form numbered 55CA in Schedule 1.



- (4) Except where an address for service is a document exchange box an address for service shall be the address of a place within ten kilometres of the Registry at the proper place at which documents in the proceeding may, during ordinary business hours, be left for the person whose address for service it is and to which documents in the proceeding may be posted for that person.
- (5) A notice of address for service shall, unless the Court or a Judge otherwise orders, be served upon the respondent before the date appointed for a directions hearing.
- (6) An applicant may change an address for service by filing a notice showing the new address for service.
- (7) A change of address for service shall not be effective as between the applicant and another party until the notice of change of address is filed and served on that other party.

## **12 Directions hearing**

- (1) A notice of referral shall state a date for a directions hearing.
- (2) The date for the directions hearing shall be obtained by the Commissioner from the Registry and shall be endorsed on the notice of referral before it is served.

## **13 General**

- (1) On a directions hearing under this Order the Court or a Judge shall give such directions with respect to the conduct of the proceeding as is thought proper.
- (2) Without prejudice to the generality of subrule (1) the Court or a Judge may:
  - (a) determine what additional documents shall be forwarded to the Registry;
  - (b) direct the joinder of parties;
  - (c) make orders with respect to:
    - (i) discovery and inspection of documents;
    - (ii) interrogatories;

**Rule 14**

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- (iii) admissions of fact or of documents;
- (iv) the defining of the issues;
- (v) the filing and serving of affidavits;
- (vi) the giving of particulars;
- (vii) the place, time and mode of hearing;
- (viii) the giving of evidence at the hearing, including whether evidence of witnesses in chief shall be given orally or by affidavit, or both; and
- (ix) costs.

**14 Dismissal of appeal for want of prosecution**

- (1) Where an applicant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted the appeal with due diligence, the Court or a Judge may:
  - (a) order that the proceeding shall be dismissed for want of prosecution;
  - (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the proceeding shall stand dismissed for want of prosecution, or subsequently and in the event of non-compliance, order that it be so dismissed; or
  - (c) make any other order as may seem just.
- (2) The Court may not make an order under subrule (1) unless notice of the proposed order has been served on the appellant.
- (3) An order under paragraph (1) (b) may be varied at any time before the proceeding stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

**Division III****Objections and references****15 Rules to apply on referral to Court**

Where a request to refer a decision on an objection is, by force of subsection 4 (2) of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987*, treated as a request to refer the decision on the objection to this Court, the Rules shall apply, so far as is practicable, to those proceedings, subject to any direction of the Court or a Judge.

**16 Rules to apply on transfer from Supreme Court**

Where proceedings are transferred from a Supreme Court to this Court by force of subsection 4 (3) of the *Jurisdiction of Courts (Miscellaneous Amendments) Act 1987* the Rules shall apply, so far as is practicable, to those proceedings, subject to any direction of the Court or a Judge.

**Division IV****Applications for extension of time****17 Sending applications to Court**

Where the Commissioner receives an application under a relevant tax law asking that a request to refer a decision to the Court be treated as having been duly lodged notwithstanding that the period prescribed by law for lodgment of the request has ended, the Commissioner shall send that application to the Court in the time prescribed by law, or, if no time has been so prescribed, then within twenty-eight days after the date of the receipt of the request.

**18 Form of application**

The application shall state fully and in detail the circumstances concerning, and the reasons for, the failure by the applicant to lodge the request as required by the relevant law.

**Rule 19**

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**19      Filing of application**

The Commissioner shall send the application to the Court by filing the same in the District Registry in the State or Territory in which the application was received by the Commissioner.

**20      Notice of hearing**

At the same time as the Commissioner files the application for extension of time there shall be filed a notice of hearing of the application which shall be in or substantially in the form numbered 55CB in Schedule 1.

**21      Signing of notice and return date**

The notice of hearing shall be signed by the Commissioner or the Commissioner's solicitor and shall state a return date for the hearing of the application by the Court. The date for the hearing shall be obtained by the Commissioner from the Registry and shall be endorsed on the notice of hearing before it is served.

**22      Service of notice of hearing**

A sealed copy of the notice of hearing shall, unless the Court or a Judge otherwise orders, be served upon the applicant not less than five days before the date appointed for the hearing.

**23      Abridgment of time**

Where the Court or a Judge has made an order abridging time, the notice of hearing shall bear a note of the order made.

**24      Notice of address for service**

The applicant shall file and serve a notice showing an address for service before the date appointed for the hearing of the proceeding and before filing any document. The provisions of rule 11 of this Order apply, so far as is practicable, to proceedings to which Division IV of this Order apply. A notice of address for service shall be in or substantially in the form numbered 55CA in Schedule 1.

# **Order 52B    Appeals against appealable objection decisions made under the *Taxation Administration Act 1953***

## **1        Interpretation**

- (1) In this Order:

*appeal* means an appeal to which this Order applies under rule 2.

*Taxation Administration Act* means the *Taxation Administration Act 1953*.

- (2) Expressions used in this Order that are defined for the purposes of Part IVC of the Taxation Administration Act or Division 359 in Schedule 1 to that Act have the same meaning in this Order as they have in that Part or Division.

## **2        Application of this Order**

This Order applies to an appeal against an appealable objection decision.

## **3        Application of Order 52A**

Subject to this Order and to any other law of the Commonwealth, the following provisions of Order 52A apply to an appeal against an appealable objection decision: rule 1, subrules 2 (2) and (3), rules 4, 5, 10, 13 and 14, and rules 17 to 24 (inclusive).

**Rule 4**

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**4 Commencement of appeals**

- (1) An appeal must be commenced by filing an application in accordance with subrule 1 (1) of Order 4.
- (2) The following provisions of Order 4, with any appropriate changes and subject to any direction of the Court or a Judge, apply to an appeal: rules 4, 5, 7, 8, 10, 11, 13 and 14.
- (3) An application must:
  - (a) be in Form 55D; and
  - (b) set out:
    - (i) brief details of the appealable objection decision; and
    - (ii) the address of the office of the Australian Taxation Office shown on the written notice of the appealable objection decision served on the applicant under the Taxation Administration Act; and
  - (c) be filed in the Registry of the Court in the State or Territory in which:
    - (i) the office of the Australian Taxation Office mentioned in subparagraph (b) (ii) is located; or
    - (ii) if the applicant is a natural person — the applicant ordinarily resides; or
    - (iii) if the applicant is a corporation — the applicant has its head office or carries on a significant part of its business.
- (4) The applicant must serve a sealed copy of the application on the Commissioner, as respondent, at the office of the Australian Government Solicitor in the State or Territory in which the application was filed.
- (4A) If the appeal relates to a private ruling, the sealed copy of the application must be served, within 6 days after filing, the application.

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**Rule 5**

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- (5) The date fixed for the directions hearing must be:
- (a) if the appeal relates to a private ruling — a date not later than 21 days after filing the application, unless the parties agree to a later date; or
  - (b) in any other case — a date at least 5 weeks after filing the application.

**5 Documents to be filed and served by the Commissioner — matters other than private rulings**

- (1) This rule applies to an appeal other than an appeal that relates to a private ruling.
- (2) Within 28 days after a sealed copy of an application is served on the Commissioner, the Commissioner must:
- (a) file:
    - (i) a copy of the notice of the appealable objection decision concerned; and
    - (ii) a copy of the taxation objection concerned; and
    - (iii) any return or other document in the Commissioner's possession or under the Commissioner's control to which the taxation objection relates that is relevant to the hearing of the matter; and
    - (iv) an appeal statement or an appeal affidavit; and
  - (b) serve on the applicant:
    - (i) a copy of the appeal statement or the appeal affidavit, as the case may be; and
    - (ii) a list of the other documents mentioned in paragraph (a) that the Commissioner has filed.
- (3) In this rule:
- appeal affidavit***, in relation to an appeal, means an affidavit:
- (a) setting out the grounds for seeking an order at the first directions hearing dispensing with filing an appeal statement; and
  - (b) setting out, or annexing a minute of, proposed directions with respect to the conduct of the appeal.

**Rule 5A**

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*appeal statement*, in relation to an appeal, means a statement outlining succinctly the Commissioner's contentions and the facts and issues in the appeal as the Commissioner perceives them.

**5A Documents to be filed and served by the Commissioner — private rulings**

If an appeal relates to a private ruling, within 14 days after a sealed copy of the application is served on the Commissioner, the Commissioner must:

- (a) file:
  - (i) a notice of appearance in accordance with Form 15; and
  - (ii) a copy of the private ruling concerned; and
  - (iii) a copy of the notice of appealable objection decision concerned; and
  - (iv) a copy of the taxation objection concerned; and
  - (v) a copy of any documents given to the Commissioner by the applicant in support of an application under section 359-10 of Schedule 1 to the Taxation Administration Act or containing information given by the applicant to the Commissioner under section 357-105 or 357-115 of Schedule 1 to that Act; and
  - (vi) a statement of any assumption made by the Commissioner when making the ruling and which is not stated in the notice of ruling; and
- (b) serve on the applicant:
  - (i) a stamped copy of the notice of appearance; and
  - (ii) a list of the documents filed under subparagraphs (a) (ii) to (v) inclusive; and
  - (iii) a copy of the statement referred to in subparagraph (a) (vi).



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**Rule 6**

**6 Notice of setting down for hearing**

- (1) The Registrar must advise the applicant in writing of the date, time and place of the hearing as soon as practicable after an appeal is set down for hearing.
- (2) Within 7 days after the date of receipt of the Registrar's advice, the applicant must file in the Registry a notice in accordance with Form 55E and serve a copy on the respondent.

Rule 1

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# Order 52C    Appeals against departure prohibition orders under *Taxation Administration Act 1953*

## 1        Interpretation

- (1) In this Order, unless the contrary intention appears:  
*appeal* means an appeal against a departure prohibition order.  
*Taxation Administration Act* means the *Taxation Administration Act 1953*.
- (2) Unless the contrary intention appears, expressions used in this Order that are defined for the purposes of Part IVA of the Taxation Administration Act have the same meaning in this Order as they have in that Part.

## 2        Application of Order 52A

Subject to this Order and to any other law of the Commonwealth, Order 52A rules 1, 4, 5, 13 and 14 apply to an appeal.

## 3        Commencement of appeals

- (1) An appeal must be commenced by filing an application in accordance with subrule 1 (1) of Order 4.
- (2) The person filing the application is to be the applicant and the Commissioner is to be the respondent.
- (3) Rules 4, 5, 7, 8, 10, 11, 13 and 14 of Order 4 apply to an appeal, with any appropriate changes and subject to any direction of the Court or a Judge.

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**Rule 5**

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- (4) An application must be in accordance with Form 55DA.
- (5) The applicant must serve a sealed copy of the application on the Commissioner at the office of the Australian Government Solicitor situated in the district of the Registry in which the departure prohibition order was made.
- (6) The date fixed for the directions hearing must be a date not later than 21 days after filing of the application, unless the parties agree to a later date.

**4 Documents to be filed and served by the Commissioner**

Within 14 days after a sealed copy of the application is served on the Commissioner, the Commissioner must:

- (a) file:
  - (i) any document on which the Commissioner relied in making the departure prohibition order; and
  - (ii) any other document in the Commissioner's possession or under the Commissioner's control that is relevant to the appeal; and
- (b) serve on the applicant a list of documents filed under subparagraphs (a) (i) and (ii).

**5 Notice of setting down for hearing**

- (1) The Registrar must advise the applicant in writing of the date, time and place of the hearing as soon as practicable after an appeal is set down for hearing.
- (2) Within 7 days after the date of receipt of the Registrar's advice, the applicant must file in the Registry a notice in accordance with Form 55E and serve a copy on the respondent.

Rule 1

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## **Order 53      *Administrative Appeals Tribunal Act 1975***

### **1      Interpretation**

In this Order unless the contrary intention appears:

***appropriate Registry*** means a District Registry in the State or Territory in which the Tribunal heard the matter.

***Tribunal*** means the Administrative Appeals Tribunal.

***Registrar of the Tribunal*** means the Registrar of the Tribunal, and includes the Deputy Registrar in the Registry in which the matter before the Tribunal is pending, or other officer for the time being discharging the duties of such Registrar or Deputy Registrar.

### **2      Form and filing notice of appeal — Form 55A**

- (1) An appeal to the Court from a decision of the Tribunal shall be instituted by filing a notice of appeal which shall be in or substantially in the form numbered 55A in Schedule 1.
- (2) A notice of appeal must be filed in an appropriate Registry.
- (3) Before or after the filing of a notice of appeal, the Court or a Judge may order that a nominated Registry is the appropriate Registry for that appeal.

### **2A      Certification of merits of appeal from a migration decision**

- (1) For the purposes of section 486I of the *Migration Act 1958*, a lawyer must not file a notice of appeal commencing migration litigation unless the notice includes, or is accompanied by, a certificate in accordance with Form 56B signed by the lawyer.

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**Rule 4**

- (2) In this rule:

*lawyer* has the meaning given by section 486K of the *Migration Act 1958*.

*migration litigation* has the meaning given by section 486K of the *Migration Act 1958*.

### **3 Title of proceedings**

- (1) A notice of appeal and all subsequent proceedings in an appeal shall be entitled 'In the Federal Court of Australia' with the name of the Registry in which they are filed, 'On Appeal From' the Division of the Tribunal from which the appeal is brought and shall also be entitled as between the party applicant and the party respondent.
- (2) The notice of appeal shall be signed by the applicant or his solicitor and shall state:
  - (a) the decision of the Tribunal from which the appeal is brought, the members constituting the Tribunal and the date when the decision was made;
  - (b) the question or questions of law to be raised on the appeal;
  - (c) the order sought; and
  - (d) briefly, but specifically, the grounds relied upon in support of the order sought.
- (3) The Court may on such terms and conditions as the Court thinks fit, allow a notice of appeal to be amended.
- (4) On the hearing of an appeal, the applicant shall not, without the leave of the Court, raise any question of law or rely on any ground in support of the order sought other than those stated in the notice of appeal.

### **4 Appearance**

Where there is a respondent to the appeal, the notice of appeal shall bear a note that before taking any step in the proceedings the respondent must enter an appearance in the Registry.

**Rule 5**

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**5 Parties**

- (1) A party who commences a proceeding in the original jurisdiction of the Court under this order shall be an applicant and a party against whom the proceeding is commenced shall be a respondent.
- (2) Each party to the proceeding in the Tribunal who is affected by the order sought by a notice of appeal or is interested in maintaining the decision under appeal shall be joined as a respondent to an appeal.
- (3) The Court may order the addition or removal of any person as an applicant or respondent to an appeal.
- (4) A person shall not be made an applicant without his consent.

**6 Filing and service of notice of appeal**

- (1) Within the time specified in paragraph 44 (2A) (a) of the *Administrative Appeals Tribunal Act 1975*, the party desiring to appeal from the decision shall file a notice of appeal in the appropriate Registry.
- (2) Within 7 days after the filing of the notice of appeal the applicant shall serve a copy of the notice of appeal upon all the other parties to the proceeding before the Tribunal and upon the Registrar of the Tribunal.

**7 Extension of time**

- (1) Application may be made to the Court or a Judge for an extension of the time specified in subsection 44 (2A) of the *Administrative Appeals Tribunal Act 1975* for the filing or serving of a notice of appeal either before or after the expiration of the specified time.
- (2) Such application shall be made in or substantially in the form numbered 55B in Schedule 1.
- (3) An application shall be accompanied by an affidavit showing:
  - (a) the nature of the case;
  - (b) the questions involved; and

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**Rule 10**

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- (c) the reason why an extension of time should be given.

**8 Security for costs**

- (1) The Court may, in special circumstances, order that such security for costs of appeal to the Court be given as it thinks fit.
- (2) Subject to subrule (1), no security for costs of an appeal to the Court shall be required.

**9 Stay**

- (1) An application pursuant to section 44A of the *Administrative Appeals Tribunal Act 1975* for an order staying or otherwise affecting the operation or implementation of a decision subject to appeal shall be made to the Court or a Judge by motion upon notice and such motion may be made returnable upon the date fixed for the directions hearing.
- (2) Such an application may in an urgent case be made *ex parte*.

**10 Documents to be forwarded**

- (1) Within 21 days from the service of the notice of appeal upon the Registrar of the Tribunal there shall be forwarded to the Registry at the proper place:
  - (a) all documents referred to in paragraph 46 (1) (a) of the *Administrative Appeals Tribunal Act 1975*;
  - (b) a copy of the decision of the Tribunal;
  - (c) where the Tribunal gave reasons in writing for its decision, a copy of the reasons;
  - (d) where a transcript or notes of proceedings before the Tribunal were taken, that transcript or those notes; and
  - (e) a list of the documents forwarded specifying the documents which were before the Tribunal and specifying the documents (if any) in respect of which:
    - (i) the Tribunal has made an order under subsection 35 (2) of the *Administrative Appeals Tribunal Act 1975*;

**Rule 11**

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- (ii) a certificate of the Attorney-General is in force under subsection 28 (2) of the *Administrative Appeals Tribunal Act 1975*; and
  - (iii) a certificate of the Attorney-General is in force under subsection 36 (1) of the *Administrative Appeals Tribunal Act 1975* and indicating whether an order was made by the Tribunal with respect to such documents under subsection 36 (3) of the *Administrative Appeals Tribunal Act 1975*.
- (2) Where the Tribunal does not give reasons in writing for its decision the party appealing shall obtain from the Tribunal in accordance with subsection 43 (2A) of the *Administrative Appeals Tribunal Act 1975* a statement in writing of the reasons for its decision and shall forward a copy of the statement to the Registrar of the Tribunal and to the Registry at the proper place within 10 days after receiving it.
- (3) When the documents referred to in subrules (1) and (2) of this rule have been received in the Registry, the Registrar shall, subject to the provisions of sections 35 and 36 of the *Administrative Appeals Tribunal Act 1975* forward a copy of the list of documents to all parties to the appeal.

**11 Discontinuance of appeal**

- (1) An applicant may at any time file and serve a notice of discontinuance of the appeal and upon its being filed the appeal shall be abandoned.
- (2) The notice of discontinuance filed by an applicant under subrule (1) does not affect any other applicant in the appeal.
- (3) A party filing a notice of discontinuance under subrule (1) shall be liable to pay the costs of the other party or parties occasioned by his appeal.
- (4) A party whose costs are payable under subrule (3) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter judgment for the taxed costs.



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**Rule 13****12 Amendment by supplementary notice**

- (1) A notice of appeal may, before the date of the directions hearing, be amended without leave by filing a supplementary notice.
- (2) A party who files a supplementary notice under subrule (1) shall file and serve it in accordance with rule 6 as if it were a notice of appeal.
- (3) The Court may allow a notice of appeal to be amended at such time and on such conditions as the Court thinks fit.

**13 Notices of contention**

- (1) A respondent who wishes to appeal from a decision, or a part of a decision, from which the applicant has appealed, must:
  - (a) file in the Registry a notice of cross-appeal within the time mentioned in subsection 44 (2A) of the *Administrative Appeals Tribunal Act 1975*; and
  - (b) serve a copy of the notice of cross-appeal upon the applicant and every other party to the proceeding.
- (2) The notice of cross-appeal shall state what part of the decision he cross-appeals from or contends should be varied and shall state:
  - (a) the question or questions of law to be raised on the cross-appeal;
  - (b) the relief sought in lieu of the decision appealed from or the variation of that decision which is sought; and
  - (c) briefly but specifically the grounds relied upon in support of the relief or variation sought.
- (3) It is not necessary to give notice of cross-appeal if a respondent proposes to contend that some matter of law has been erroneously decided against him but does not seek a discharge or variation of a part of the decision actually pronounced or made but he shall:
  - (a) give notice of his contention to the applicant;

**Rule 14**

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- (b) give notice to the applicant of the record of evidence or documents before the Tribunal relevant to his contention for inclusion in the applicant's draft index; and
- (c) at the time when the appeal papers are settled, request that such record of evidence or documents be included in the appeal papers.

**14 Directions hearing**

- (1) A notice of appeal shall state a date for a directions hearing.
- (2) The date for the directions hearing shall be obtained from the Registry and shall be endorsed on the notice of appeal before it is served.
- (3) A notice of appeal shall, unless the Court or a Judge otherwise orders, be served upon the respondent not less than five days before the date appointed for the directions hearing.
- (4) Where the Court or a Judge has made an order abridging time, the notice of appeal shall bear a note of the order made.

**15 Directions**

- (1) The Court or a Judge may give directions about the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court or a Judge may do any of the following:
  - (a) determine what documents and matters must be included in the appeal papers and the order of inclusion;
  - (b) determine what documents and matters were before the Tribunal;
  - (c) settle the index in accordance with rule 15A;
  - (d) determine the number of copies of the appeal papers required;
  - (e) give directions, for paragraph 44 (8) (b) of the *Administrative Appeals Tribunal Act 1975*, for the giving of further evidence;
  - (f) direct the joinder of parties;

**Rule 15A**

- (g) refer the notice of appeal and any other necessary papers to the Chief Justice for a direction on whether the appeal should be heard by a Full Court;
- (h) direct the place, time and mode of hearing;
- (i) determine any other matter for the purpose of preparing the appeal for hearing.

**15A Content of appeal papers**

The appeal papers must:

- (a) consist of the documents mentioned in the following table, in the order that they appear in the table; and
- (b) be divided into Parts A, B and C as shown in the table.

Item	Document
<b>Part A</b>	
1	Title page
2	The index to Part A
3	A copy of the originating application lodged in the tribunal, including each request for directions (if any)
4	A copy of the documents lodged with the tribunal in accordance with section 37 of the <i>Administrative Appeals Tribunal Act 1975</i>
5	A copy of the formal decision of the tribunal and the reasons for the decision
6	A copy of the notice of appeal
7	A copy of any notice of cross-appeal or any notice of contention
8	A copy of any submitting appearance
9	A copy of the sealed orders of the Court giving leave to appeal or an extension of time to file the appeal (if any)
10	The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part A
<b>Part B</b>	
11	Title page
12	The index to Part B

**Rule 15B**

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**Item Document**

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- 13 A list of the exhibits not reproduced in this Part showing:
  - (a) a brief description of each exhibit; and
  - (b) the exhibit number or letter used to identify each exhibit in the tribunal below
- 14 Copies of all exhibits relevant to the appeal, cross-appeal or contention, in the order in which the exhibits were numbered or lettered as exhibits in the tribunal below
- 15 A copy of each affidavit or part of an affidavit (including any annexures) containing evidence relevant to the appeal, cross-appeal or contention that was read in the tribunal below
- 16 The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part B

**Part C**

- 17 Title page
  - 18 The index to Part C
  - 19 A list of the pages of transcript of oral evidence (including the names of the relevant witnesses and the dates of the hearing to which the pages relate) that are not reproduced
  - 20 A copy of the transcript of oral evidence relevant to the appeal
  - 21 A copy of each additional transcript (if any) relevant to the appeal
  - 22 The certificate of correctness mentioned in paragraph 16 (1) (a) relating to Part C
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**15B Preparation of appeal papers**

- (1) The title page of each Part of the appeal papers must include:
  - (a) the title of the proceeding, including the title of the Tribunal from which the appeal is brought; and
  - (b) the names of the members constituting the Tribunal; and
  - (c) the name and address for service of the lawyer for each party.
- (2) The index of each Part of the appeal papers must show the date and page number of each document included in that Part.

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**Rule 16A**

- (3) The numbering of the pages of Parts A, B and C of the appeal papers must:
  - (a) be legible and distinct from any other numbering; and
  - (b) for Part A — begin with the number 1 and commence at item 3; and
  - (c) for Part B — begin with the number immediately after the number of the last page in Part A and commence at item 13; and
  - (d) for Part C — begin with the number immediately after the number of the last page in Part B and commence at item 21.
- (4) The pages of items 23 and 24 of Part C of the appeal papers must be numbered in accordance with the official transcript numbers.
- (5) If any Part of the appeal papers consists of more than one volume, the page numbers must continue consecutively from one volume to the next volume.
- (6) The appeal papers need not be in bound and printed form but must be clear and legible and securely fastened.

**16 Filing of appeal papers**

- (1) The appellant must file:
  - (a) a copy of the appeal papers that includes a certificate, in each Part of the papers:
    - (i) signed by each party or the party's lawyer; and
    - (ii) stating that the Part has been examined and is correct.
  - (b) the number of copies of the appeal papers determined by the Registrar under paragraph 15 (2) (d).
- (2) The Registrar may refuse to accept appeal papers that do not comply with these Rules.

**16A Written submissions**

The provisions of Order 52 rules 30, 32, 33 and 34 shall apply *mutatis mutandis* to an appeal under this Order.

**Rule 18**

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**18 Setting down appeal**

- (1) Within 14 days after settlement of appeal papers, an applicant must file a notice in accordance with Form 44 requesting the Registrar to fix a date for trial.
- (2) Within 7 days after being notified by the Registrar of the date for trial, the applicant must:
  - (a) file in the Registry a notice in accordance with Form 44A; and
  - (b) serve a copy of the notice on all other parties to the proceeding.

*Note* See Part 2 of the *Federal Court of Australia Regulations 2004* in relation to setting-down fees.

**19 Time for entry of appeal**

- (1) If the applicant does not enter the appeal for hearing within the time prescribed by rule 18, any other party to the appeal may enter the appeal for hearing or apply to the Court or a Judge by motion upon notice for an order dismissing the appeal for want of prosecution.
- (2) When an application is made to the Court or a Judge under subrule (1), the Court or a Judge may order the appeal to be dismissed or may make such other order as is thought to be just.

**20 Time: want of prosecution**

- (1) Where an applicant has not done any act required to be done by or under these Rules, or otherwise has not prosecuted his appeal with due diligence, the Court may:
  - (a) order that the appeal shall be dismissed for want of prosecution; or
  - (b) fix a time peremptorily for the doing of the act and at the same time order that upon non-compliance the appeal shall stand dismissed for want of prosecution, or subsequently and in the event of non-compliance, order that it be so dismissed; or
  - (c) make any other order as may seem just.

**Rule 20**

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- (2) The Court may not make an order under subrule (1) unless notice of the proposed order has been served on the appellant.
- (3) An order under paragraph (1) (b) may be varied at any time before the appeal stands dismissed for want of prosecution, and in special circumstances may be varied or revoked after that time.

**Rule 1**

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# **Order 53B     Appeals from the Superannuation Complaints Tribunal**

**1        Application of Order 53B**

This Order applies to an appeal to the Court, under section 46 of the *Superannuation (Resolution of Complaints) Act 1993*, from a determination of the Superannuation Complaints Tribunal.

**2        Application of Order 53**

(1) Order 53 applies, with any necessary changes and subject to subrule (2), to an appeal to which this Order applies.

(2) For an appeal to which this Order applies:

*appropriate registry* means the Registry in the State or Territory in which the applicant ordinarily resides.



## **Order 54      *Administrative Decisions (Judicial Review) Act 1977***

### **1      Application**

Subject to this Order, the Rules of Court prescribe the manner of making an application under the *Administrative Decisions (Judicial Review) Act 1977*.

### **2      Form of application — Form 56**

- (1) An application for an order of review made under the *Administrative Decisions (Judicial Review) Act 1977* shall be in, or substantially in, the form numbered 56 in Schedule 1.
- (2) If the grounds of the application include an allegation of fraud or bad faith, the applicant shall set out in the application particulars of the fraud or bad faith on which he relies.

### **2A      Extension of time**

- (1) An application under paragraph 11 (1) (c) of the *Administrative Decisions (Judicial Review) Act 1977* for an extension of the time in which to lodge an application for an order of review must:
  - (a) be accompanied by a proposed application for the order of review in accordance with Form 56; or
  - (b) be made by lodging an application for an order of review, in accordance with Form 56, that includes a claim for the order of review and for the extension of time.
- (2) An application for an extension of time must be supported by an affidavit stating:
  - (a) the nature of the applicant's case; and

**Rule 3**

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- (b) the questions involved in the case; and
- (c) the reasons why the extension of time should be granted.

**3 Documents to be filed**

- (1) On the filing of an application for an order of review or as soon afterwards as is practicable, the applicant shall file copies of such of the following documents as are in his possession:
  - (a) a statement of the terms of the decision the subject of the application; and
  - (b) a statement with respect to that decision furnished to the applicant pursuant to section 13 of the *Administrative Decisions (Judicial Review) Act 1977* or section 28 of the *Administrative Appeals Tribunal Act 1975*, or any other statement furnished 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;unless a copy of that document has been filed previously in the proceeding.
- (2) An applicant who files a copy of a statement pursuant to subrule (1) of this rule shall serve a copy of the statement on the other parties to the application within 5 days of filing.

**4 Notice of objection to competency — Form 57**

If a respondent to an application objects to the competency of the application he shall, within 14 days after service upon him of the application, file and serve upon the other parties to the proceeding a notice of objection to competency, in accordance with Form 57, stating briefly the grounds of his objection.

**5 Directions**

In addition to the powers of the Court under Order 10 of these Rules the Court may give directions:

- (a) that a party serve a copy of the application upon the Attorney-General of the Commonwealth;

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**Rule 8**

- (b) that a party give notice of the application to such persons or classes of persons in such manner as the Court directs; and
- (c) where a notice of objection to competency has been filed by a party, that the objection be heard and determined before the hearing of the application to which the objection to competency relates.

**6 Staying or dismissal of applications**

In applying Order 20, rule 4 to an application under the *Administrative Decisions (Judicial Review) Act 1977*, the rule must be interpreted as if paragraph (1) (a) of the rule read ‘no reasonable basis for the application is disclosed’.

**7 Application for summary judgment, stay or dismissal**

- (1) A party may apply to the Court:
  - (a) for a judgment in an application for an order of review under Order 20, rule 2 or section 31A of the Act; or
  - (b) to have an application for an order of review stayed or dismissed:
    - (i) under Order 20, rule 4 or 5; or
    - (ii) on a ground set out in section 10 of the *Administrative Decisions (Judicial Review) Act 1977*; or
    - (iii) in the exercise of the Court’s discretion.
- (2) An application under this rule must be made within 14 days after the party is served with the application for an order of review.

**8 Use of affidavit without cross-examination of maker**

Notwithstanding Order 14 rule 9, the Court may dispense with the attendance for cross-examination of a person making an affidavit and may direct that an affidavit be used without the person making the affidavit being cross-examined thereon.

Rule 1

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## **Order 54A     *Judiciary Act 1903;* section 39B Mandamus, prohibition, injunction against an officer of the Commonwealth**

### **1        Application**

Subject to this Order, the Rules of Court prescribe the manner of making an application under section 39B of the *Judiciary Act 1903*.

### **2        Form of application**

- (1) An application shall be in or substantially in the form numbered 5 in Schedule 1.
- (2) The application shall be entitled:

(name of applicant(s))

Applicant(s)

(name and title of the officer or officers of the Commonwealth against whom the order is sought and the name or names of any other person against whom orders are sought)

Respondent(s)

### **3        Joinder of claims for relief**

- (1) Subject to subrule (2) any other claim for relief coming within the jurisdiction of the Court and which arises out of or relates to or is connected with the same subject matter, may be joined in an application under this Order.

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**Rule 3**

- (2) Where, on an application for an order of review under the *Administrative Decisions (Judicial Review) Act 1977*, relief is sought also pursuant to section 39B of the *Judiciary Act 1903* and this arises out of or relates to or is connected with the same subject matter, then the application for that order of review and for relief under section 39B of the *Judiciary Act 1903* shall be made in the one application which shall, with all necessary adaptations, be in or substantially in the form numbered 56 in Schedule 1 and the provisions of Order 54 shall, with all necessary adaptations, apply to that application.

Rule 1

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## **Order 54B    Applications in relation to migration decisions under *Migration Act 1958***

### **1        Application**

This Order applies to the making of an application in relation to a migration decision (within the meaning of the *Migration Act 1958*) in relation to which the Court has original jurisdiction under paragraph 476A (1) (a), (b) or (c) of that Act.

### **2        Form of application — Form 56A**

- (1) An application to which this Order applies must be in accordance with Form 56A.
- (1A) A lawyer (within the meaning of section 486K of the *Migration Act 1958*) must not file an application unless the application includes, or is accompanied by, a certificate under section 486I of that Act in accordance with Form 56B signed by the lawyer.
- (1B) An application in relation to a tribunal decision (within the meaning of section 486D of the *Migration Act 1958*) must include a disclosure under section 486D of that Act.
- (2) If the grounds of the application include an allegation of fraud or bad faith, the application must give particulars of the alleged fraud or bad faith.

### **3        Notice of objection to competency — Form 57**

If a respondent to an application under this Order objects to the competency of the application, the respondent must, within 14 days after service upon him of the application, file and serve

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**Rule 6**

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on the other parties to the proceeding a notice of objection stating briefly the grounds of the objection.

**4 Directions**

In addition to the powers of the Court under Order 10 of these Rules, the Court may give directions:

- (a) that a party serve a copy of the application on the Attorney-General of the Commonwealth;
- (b) that a party give notice of the application to such persons, or classes of persons, in such manner as the Court directs; and
- (c) if a notice of objection to competency has been filed by a party — that the objection be heard and determined before the hearing of the application to which the objection to competency relates.

**5 Staying or dismissal of applications**

In applying Order 20, rule 4 to an application to which this Order applies, the rule must be interpreted as if paragraph (1) (a) of the rule read ‘no reasonable basis for the application is disclosed’.

**6 Application for summary judgment, stay or dismissal**

- (1) A party may apply to the Court:
  - (a) for a judgment in an application for an order of review under Order 20, rule 2 or section 31A of the Act; or
  - (b) to have an application to which this Order applies dismissed:
    - (i) under Order 20, rule 4 or 5; or
    - (ii) in the exercise of the Court’s discretion.
- (2) An application under this rule must be made within 14 days after the party is served with the application to which this Order applies.

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**Rule 7****7 Use of affidavit without cross-examination of maker**

Notwithstanding Order 14, rule 9, the Court may dispense with the attendance for cross-examination of a person making an affidavit and may direct that an affidavit be used without the person making the affidavit being cross-examined thereon.

**8 Application for extension of time**

- (1) An application for extension of time must be made by lodging an application, in accordance with Form 56A, that includes a claim for:
  - (a) each remedy sought; and
  - (b) the extension of time.
- (2) An application for extension of time must be accompanied by an affidavit showing all of the following:
  - (a) the nature of the case;
  - (b) the questions involved;
  - (c) the reasons why it is necessary, in the interests of the administration of justice, that the extension of time be given.
- (3) A lawyer (within the meaning of section 5 of the *Migration Act 1958*) must not file an application for extension of time unless the application includes, or is accompanied by, a certificate:
  - (a) under section 486I of the *Migration Act 1958*; and
  - (b) in accordance with Form 56B; and
  - (c) signed by the lawyer.
- (4) In this rule:

***application for extension of time*** means an application for an order under subsection 477A (2) of the *Migration Act 1958* for an extension of the time within which to lodge an application for a remedy to be granted in exercise of the court's original jurisdiction under paragraph 476A (1) (b) or (c) of that Act.



## Order 56      ***Health Insurance Act 1973***

### 1      **Interpretation**

In this Order:

***Tribunal*** means the Medical Services Review Tribunal or the Optometrical Services Review Tribunal whose decision is under appeal.

***Minister*** has the same meaning as in the *Health Insurance Act 1973*.

***Committee*** means the Medical Services Committee of Inquiry upon whose recommendation the Minister made the determination that gave rise to the proceedings.

### 2      **Rules applicable**

An appeal to the Court from a decision of the Tribunal shall be instituted and conducted in a like manner as an appeal to the Court from a decision of the Administrative Appeals Tribunal is instituted and conducted and Order 53 shall apply thereto *mutatis mutandis* and subject to any directions of the Court or a Judge.

### 3      **Documents to be forwarded**

The documents to be forwarded by the Tribunal to the Registry at the proper place, pursuant to the application *mutatis mutandis* of Order 53, rule 10 shall be copies of:

- (a) the reference to the Committee that gave rise to the Minister's determination;
- (b) the transcript of proceedings at the hearing conducted by the Committee for the purposes of that reference;
- (c) the Committee's report on that reference and any documents sent to the Minister with that report;

**Rule 3**

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- (d) the Minister's determination;
- (e) the notice requesting the Minister to refer his determination to the Tribunal;
- (f) the reasons for the decision of the Tribunal;
- (g) the formal decision of the Tribunal;
- (h) the transcript of proceedings before the Tribunal;
- (i) any other documents before the Tribunal; and
- (j) a list of the documents forwarded.

## **Order 57      *Australian Crime Commission Act 2002***

### **1      Applications for review under *Administrative Decisions (Judicial Review) Act 1977* (as varied by section 57 of *Australian Crime Commission Act 2002*)**

- (1) Subject to subrules (2) and (3), Order 54 applies to an application for review of a matter arising under the *Australian Crime Commission Act 2002*.
- (2) An applicant who files a copy of a statement under Order 54, subrule 3 (1) must serve a copy of the statement on each other party to the proceeding not later than the next day after the statement is filed.
- (3) The time limited by Order 54, rule 4 for filing and serving a notice of objection to competency of an application is reduced to 5 days after service of the application.

Rule 1

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## Order 58                      Intellectual property

### Part I                         Intellectual property cases generally

#### 1                      Interpretation

- (1) In this Order, unless the contrary intention appears:

*Advance Australia Logo Protection Act* means the *Advance Australia Logo Protection Act 1984*.

*Circuit Layouts Act* means the *Circuit Layouts Act 1989*.

*Commissioner* means:

- (a) in relation to proceedings under the Patents Act — the person holding the office of Commissioner under that Act; and
- (b) in relation to proceedings under the Designs Act — the person holding the office of Registrar under that Act; and
- (c) in relation to proceedings under the Trade Marks Act — the person holding the office of Registrar under that Act; and
- (d) in relation to proceedings under the Olympic Insignia Protection Act — the person holding the office of Registrar under the Designs Act;

whether or not any two or more of those offices must be, or are for the time being, occupied by the same person.

*Copyright Act* means the *Copyright Act 1968*.

*decision* includes a direction or determination made by the Commissioner.

*Designs Act* means the *Designs Act 2003*.

*intellectual property case* means:

- (a) a proceeding arising in respect of infringement of:
  - (i) the monopoly in the design of a logo provided for by the Advance Australia Logo Protection Act; or

**Rule 1**

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- (ii) a copyright subsisting under the Copyright Act; or
  - (iii) the monopoly in a design registered under the Designs Act; or
  - (iv) a patent granted under the Patents Act; or
  - (v) a trade mark registered under the Trade Marks Act; or
  - (vi) the monopoly in a protected design provided for by the Olympic Insignia Protection Act; or
  - (vii) EL rights subsisting under the Circuit Layouts Act; or
  - (viii) plant variety rights granted under the Plant Variety Rights Act; or
- (b) an application, appeal or other proceeding under a subject Act, whether or not joined with any other claim or cause of action, unless the proceeding is one to which Order 54 or 54A applies.

***Olympic Insignia Protection Act*** means the *Olympic Insignia Protection Act 1987*.

***Patents Act*** means the *Patents Act 1990*.

***Plant Breeder's Rights Act*** means the *Plant Breeder's Rights Act 1994*.

***PBR*** has the same meaning as in the *Plant Breeder's Rights Act 1994*.

***subject Act*** means the Advance Australia Logo Protection Act, the Circuit Layouts Act, the Copyright Act, the Designs Act, the Olympic Insignia Protection Act, the Patents Act, the Plant Variety Rights Act or the Trade Marks Act, as the case requires.

***Trade Marks Act*** means the *Trade Marks Act 1995*.

- (2) In this Order, the words ***plaintiff*** and ***defendant*** in the Patents Act are taken to have the same meaning, respectively, as ***applicant*** and ***respondent***.

## **Rule 2**

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- (3) An expression used in this Order that is also used in a provision of a subject Act under which, or in relation to which, proceedings are taken has the same meaning in this Order as it has in that provision.

## **2 Application of Order**

- (1) This Order applies to intellectual property cases.
- (2) Subject to this Order and to any other law of the Commonwealth, the other Orders of these Rules apply to intellectual property cases.

## **3 Appearance by the Commissioner**

The Commissioner may appear and be heard in any proceedings, but is not a party to proceedings other than an appeal:

- (a) from a decision of the Commissioner; and
- (b) in which there is no party in opposition to the party bringing the appeal.

# **Part II Appeals from decision etc of Commissioner**

## **4 Form and filing of notice of appeal — Form 58A**

- (1) An appeal from a decision of the Commissioner is instituted by filing in an appropriate Registry a notice of appeal in accordance with Form 58A.
- (2) An appeal must be instituted within 21 days after the date of the decision appealed from or within such further time as the Court fixes, unless a law of the Commonwealth provides otherwise.
- (2A) The notice of appeal must be served on the Commissioner and all other parties to the appeal within 5 days of day on which the notice of appeal is filed.

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**Rule 5**

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- (3) Application may be made to the Court to extend the time for filing, by notice of motion:
  - (a) made at any time — unless a law of the Commonwealth provides otherwise; and
  - (b) supported by affidavit showing special circumstances.
- (4) If application is made under subrule (3), a copy of the notice of motion and supporting affidavit must be served on the Commissioner and on the persons directly affected by the appeal, not later than 14 days before the day appointed for the directions hearing.
- (5) In this rule, *appropriate registry* means:
  - (a) the Registry at the place where the applicant prefers the appeal to be heard; or
  - (b) the Registry determined at any time by order of the Court or a Judge to be an appropriate Registry.

**5 Notice of appeal etc**

- (1) Documents filed in an appeal must include in the title to the proceedings the title or description of the decision-maker from whose decision the appeal is brought.
- (2) A notice of appeal must also state:
  - (a) the decision from which the appeal is brought and the date of the decision;
  - (b) whether the appeal is from the whole or a part of the decision (including, if from a part only, details of the part);
  - (c) the order or orders sought;
  - (d) the grounds relied on in support of each order sought;
  - (e) the particulars of each ground relied on; and
  - (f) the date given by the Registry for the directions hearing.
- (3) Except by the leave of the Court, evidence is not admissible in proof of:
  - (a) a ground of appeal not stated in the notice of appeal; or

## **Rule 5AA**

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- (b) a ground of appeal of which particulars have not been given in the notice of appeal.

### **5AA Particulars of non-patentable invention**

- (1) This rule applies to an appeal from a decision of the Commissioner under a provision of the Patents Act.
- (2) For paragraph 5 (2) (e), if a ground relied on in an appeal is that the invention is not a patentable invention because information about the invention has become publicly available in a document or through the doing of an act, the particulars of that ground must include:
  - (a) in the case of a document — the time when, and the place where, the document is alleged to have become publicly available; and
  - (b) in the case of an act:
    - (i) the name of the person alleged to have done the act; and
    - (ii) the period in which, and the place where, the act is alleged to have been done publicly; and
    - (iii) a description that is sufficient to identify the act; and
    - (iv) if the act relates to apparatus or machinery — whether the apparatus or machinery exists and, if so, where it can be inspected.
- (3) For paragraph 5 (2) (e), if:
  - (a) a ground relied on in an appeal, in relation to a claim of the complete specification of a patent, is that the invention concerned is not useful; and
  - (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention that is the subject of the claim cannot be made to work, either at all or as described in the specification;the particulars of that ground must include particulars of each such example of the invention, specifying the respect in which it is alleged that it does not work as described.



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**Rule 5A**

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**5A Cross-appeals and notices of contention**

- (1) A respondent to an appeal from a decision of the Commissioner who desires to appeal from the whole or a part of the decision need not institute a substantive appeal, but must:
  - (a) within 21 days after the service on the respondent of the notice of appeal (or within such further time as the Court or a Judge fixes), file in the Registry a notice of cross-appeal; and
  - (b) serve a copy of the notice of cross-appeal on the Commissioner, the applicant and any other person who may be affected by the relief sought in the notice of cross-appeal.
- (2) A notice of cross-appeal must:
  - (a) state whether the appeal is from the whole or a part of the decision (including, if the appeal is from a part only, details of the part); and
  - (b) state the order or orders sought; and
  - (c) state briefly the specific grounds relied on in support of the order or orders sought.
- (3) If a respondent to an appeal from a decision of the Commissioner wishes to contend that the Commissioner's decision should be supported and, if appropriate, affirmed on a ground other than that relied on by the Commissioner, but does not seek a reversal or variation of the Commissioner's decision, the respondent need not give a notice of cross-appeal but must:
  - (a) file in the Registry a notice of contention; and
  - (b) serve on the applicant and on the Commissioner a copy of the notice of contention; and
  - (c) give notice to the applicant and to the Commissioner of the record of evidence and documents before the Commissioner that are relevant to the contention.

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**Rule 6****6 Provision of documents by Commissioner**

Not later than 14 days after being served with a notice of appeal, the Commissioner must:

- (a) file in the appropriate Registry the documents (or certified copies of those documents) necessary for the hearing that are in the Commissioner's possession, and a list of the documents; and
- (b) give the parties to the appeal notice in writing of the documents filed.

**7 Directions hearing**

A directions hearing must be fixed for a date not earlier than 28 days after the day notice of appeal is filed.

**8 Evidence**

- (1) Material before the Commissioner for the purpose of the decision appealed from is, with the leave of the Court and saving all just exceptions, admissible in evidence on the hearing of the appeal.
- (2) At the directions hearing in respect of an appeal from a decision under the Patents Act, the Court may give directions, for the purposes of paragraph 160 (a) of that Act, as to the giving of further evidence.

**Part III Other proceedings under a subject Act****Division 1 Patents Act****9 Application of Division**

This Division applies to proceedings under the Patents Act other than an appeal from a decision of the Commissioner.

**10 Applications under subsection 105 (1) of Patents Act (amendments)**

- (1) An application for an order under subsection 105 (1) of the Patents Act may be made only after the applicant gives to the Commissioner a notice of intention to apply accompanied by an advertisement that states:
  - (a) the identity of the proceedings, or pending proceedings, in which the application will be made;
  - (b) the particulars of the amendment sought;
  - (c) the applicant's address for service; and
  - (d) that a person intending to oppose the application who is not a party to the proceedings or pending proceedings must, not later than 28 days after publication of the advertisement, give written notice of that intention to the Commissioner and to the persons who are parties to the proceedings.
- (2) The Commissioner must publish the advertisement in the *Official Journal* once unless the Court otherwise orders.
- (3) A person who gives notice under paragraph (1) (d) is entitled to be heard in opposition to the application, subject to any direction of the Court as to costs.
- (4) The application may be instituted by filing a notice of motion in the relevant proceedings before the end of 50 days after the date of publication of the advertisement.
- (5) A copy of the notice of motion, together with a copy of the patent, patent request or complete specification, as appropriate, showing in ink of contrasting colour the amendment sought, must be served on the Commissioner, each party to the proceedings and each person who has given notice under paragraph (1) (d).
- (6) On the hearing of the motion, the Court may give any direction it thinks fit for the conduct of that proceeding, including a direction:
  - (a) requiring the applicant to give to each party or other person who opposes the application a statement of the grounds relied on for the amendment;

## **Rule 11**

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- (b) requiring a party or other person opposing the application to give to the applicant a statement of the grounds relied on in opposition to the amendment;
- (c) determining that the motion will be heard with the relevant proceedings or separately and, if separately, fixing the date for hearing the motion;
- (d) determining the manner in which evidence will be adduced and, in the case of evidence by affidavit, fixing the times within which the affidavits must be filed and served.

### **11 Applications under subsection 120 (1) of Patents Act (infringements)**

- (1) Notwithstanding Order 4 rule 11, an application under subsection 120 (1) of the Patents Act and an affidavit or statement of claim must be served, not later than 14 days before the date appointed for the directions hearing:
  - (a) on the respondent in the proceeding and, if the applicant is an exclusive licensee, the patentee; and
  - (b) on the Commissioner.
- (1A) If the application relates to an innovation patent, the supporting affidavit or statement of claim must state the date when the innovation patent was certified.
- (2) Particulars of infringements complained of must give at least one instance of each type of infringement alleged and must specify, in proceedings for infringement of a standard patent, which of the claims of the complete specification of that patent are alleged to be infringed.
- (3) A respondent relying on a defence under subsection 144 (4) of the Patents Act must give particulars of:
  - (a) the date of, and the parties to, a contract on which the respondent intends to rely for the defence; and
  - (b) the provision of the contract that the defendant asserts is void.

**12 Applications under subsection 125 (1) of Patents Act (non-infringement declarations)**

Notwithstanding Order 4 rule 11, an application under subsection 125 (1) of the Patents Act and an affidavit or statement of claim must be served, not later than 14 days before the date appointed for the directions hearing:

- (a) on the nominated person, or the patentee, as the case requires; and
- (b) on the Commissioner.

**13 Applications under subsection 128 (1) of Patents Act (relief from unjustified threat)**

Notwithstanding Order 4 rule 11, an application under subsection 128 (1) of the Patents Act and an affidavit or statement of claim must be served, not later than 14 days before the date appointed for the directions hearing:

- (a) on the person making the threat; and
- (b) on the Commissioner.

**14 Applications under Chapter 12 of Patents Act (compulsory licences, revocation etc)**

- (1) Notwithstanding Order 4 rule 11, an application under subsection 133 (1), 134 (1) or 138 (1) of the Patents Act and an affidavit or statement of claim must be served, not later than 14 days before the date appointed for the directions hearing:
  - (a) on the patentee; and
  - (b) as a further respondent — on any person who claims an interest in the patent as exclusive licensee or otherwise; and
  - (c) on the Commissioner.
- (2) An application and affidavit or statement of claim referred to in this rule must comply with Chapter 12 of the Patents Regulations.

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**Rule 15**

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- (2A) If an application under subsection 133 (1) or 138 (1) of the Patents Act relates to an innovation patent, the supporting affidavit or statement of claim must state the date when the innovation patent was certified.
- (3) An application for leave under subsection 137 (4) of the Patents Act may be made by notice of motion in the pending proceedings.

**15 Particulars of invalidity**

- (1) A party who disputes the validity of a patent must deliver with the pleading or other document in which the party disputes the validity of registration, particulars of the grounds of invalidity on which the party relies.
- (2) If one of the grounds referred to in subrule (1) is that the invention is not a patentable invention because of information about the invention in a document or through the doing of an act, the particulars must specify:
  - (a) in the case of a document — the time when, and the place where, the document is alleged to have become publicly available; and
  - (b) in the case of an act:
    - (i) the name of the person alleged to have done the act; and
    - (ii) the period in which, and the place where, the act is alleged to have been done publicly; and
    - (iii) a description that is sufficient to identify the act; and
    - (iv) if the act relates to apparatus or machinery — whether the apparatus or machinery exists and, if so, where it can be inspected.
- (3) If one of the grounds referred to in subrule (1) is:
  - (a) that the invention, so far as claimed in any claim of the complete specification of the patent, is not useful; and
  - (b) it is intended, in connection with that ground, to rely on the fact that an example of the invention which is the subject of any such claim cannot be made to work, either at all or as described in the specification;

the particulars must identify each such claim and state that fact and must include particulars of each such example, specifying the respect in which it is alleged that it does not work as described.

- (4) Except by leave of the Court, evidence is not admissible in proof of a ground of invalidity of which particulars have not been given.

## **Division 2                      Copyright Act**

### **16                      Applications under Copyright Act (infringements)**

In proceedings for infringement of copyright, particulars of the infringement must specify the manner in which the copyright is alleged to be infringed and must give at least one instance of each type of infringement alleged.

## **Division 3                      Trade Marks Act**

### **17                      Application of Division**

This Division applies to proceedings under the Trade Marks Act other than an appeal from a decision of a Commissioner.

### **18                      Applications under Trade Marks Act (infringements)**

In proceedings for the infringement of a registered trade mark, particulars of the infringement must specify the manner in which the trade mark is alleged to be infringed and must give at least one instance of each type of infringement alleged.

### **19                      Particulars of invalidity**

- (1) A party who disputes the validity of the registration of a registered trade mark must deliver, with the pleading or other document in which the party disputes the validity of registration, particulars of the grounds of invalidity on which the party relies.

**Rule 20**

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- (2) Except by leave of the Court, evidence is not admissible in proof of a ground of invalidity of which particulars have not been given.

## **Division 4                      Designs Act**

### **20                      Application of Division**

This Division applies to proceedings under the Designs Act other than an appeal from a decision of the Commissioner.

### **21                      Applications under Designs Act (infringements)**

In proceedings for the infringement of the monopoly in a registered design, particulars of the infringement must specify the manner in which the design is alleged to be infringed and must give at least one instance of each type of infringement alleged.

### **22                      Revocation of registration or rectification of Register**

- (1) An application for an order:
- (a) revoking the registration of a design under section 93 of the Designs Act; or
  - (b) for the rectification of the Register under section 120 of the Designs Act;
- must include details of the grounds for revocation or rectification on which the party making the application relies.
- (2) Except by leave of the Court, evidence is not admissible in proof of a ground for revocation or rectification for which details have not been given under subrule (1).



**23 Application for compulsory licence**

An application for the grant of a compulsory licence under section 90 of the Designs Act must state the facts intended to be relied on to show that:

- (a) products embodying the design have not been made in Australia, to the extent that is reasonable in the circumstances of the case; and
- (b) the registered owner of the design has given no satisfactory reason for failing to exercise the exclusive rights in the design; and
- (c) the applicant has tried for a reasonable period, but without success, to obtain from the registered owner of the design an authorisation to do, on reasonable terms and conditions, any of the things mentioned in paragraphs 10 (1) (a) to (e) of the Designs Act in relation to the design.

**Division 5 Circuit Layouts Act**

**24 Applications under subsection 20 (2) of the Circuit Layouts Act (equitable remuneration)**

Proceedings to determine equitable remuneration under subsection 20 (2) of the Circuit Layouts Act must be commenced by an application in accordance with Form 64.

**25 Applications under subsection 25 (4) of the Circuit Layouts Act (terms of the doing of the act)**

Proceedings to determine the terms of the doing of the act under subsection 25 (4) of the Circuit Layouts Act must be commenced by an application in accordance with Form 65.

**26 Applications under Circuit Layouts Act (infringements)**

In proceedings for infringement of EL rights, particulars of the infringement must specify the manner in which it is alleged the EL rights have been infringed and must give at least one instance of each type of infringement alleged.

## **Division 6                      Plant Breeder's Rights Act**

### **27                      Applications under Plant Breeder's Rights Act (infringements)**

- (1) In proceedings for infringement of a PBR, particulars of the infringement must specify the manner in which it is alleged the PBR has been infringed and must give at least one instance of each type of infringement alleged.
- (2) A respondent in the proceedings who relies on subsection 54(2) of the Plant Breeder's Rights Act by way of counter-claim must give:
  - (a) particulars of the facts intended to be relied on to show that the plant variety was not a new plant variety; or
  - (b) particulars of the facts intended to be relied on as facts which, if known, would have resulted in the refusal of the grant of the PBR.

## **Division 7                      Olympic Insignia Protection Act**

### **28                      Application of Division**

This Division applies to proceedings under the Olympic Insignia Protection Act other than an appeal from a decision of the Commissioner.

### **29                      Application under Olympic Insignia Protection Act (infringements)**

In proceedings for infringement of the monopoly in a protected design, particulars of the infringement must specify the manner in which the design is alleged to be infringed and must give at least one instance of each type of infringement alleged.

### **30                      Particulars of grounds for rectification or of invalidity**

- (1) A party who:

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**Rule 31**

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- (a) applies under subsection 12 (6) or 12 (9) of the Olympic Insignia Protection Act for the rectification of the register;  
or
  - (b) disputes the validity of a protected design;  
must deliver with the pleading or other document in which the party makes that application or disputes the validity of the protected design, particulars of the grounds for rectification or of invalidity on which the party relies.
- (2) If one of the grounds referred to in subrule (2) is previous publication or user, the particulars must state the time and place of the previous publication or user alleged, and, in the case of previous user, the particulars must:
- (a) specify the name of the person who is alleged to have been the previous user;
  - (b) specify the period during which the previous user is alleged to have continued; and
  - (c) contain a description sufficient to identify the previous user.
- (3) Except by leave of the Court evidence is not admissible in proof of a ground for rectification or of invalidity of which particulars have not been given.

## **Part IV                      Evidence**

### **31                      Experimental proof as evidence**

- (1) In a proceeding in which a party (the *proponent*) proposes to tender as evidence experimental proof of a fact, the proponent must apply for directions in relation to the experimental proof.
- (2) The Court may make such directions in relation to the experimental proof proposed to be tendered as evidence as the Court thinks appropriate, including directions about any of the following:
  - (a) the service on other parties of particulars of the experiment and of each fact that the proponent asserts is, will or may be proved by the experiment;

**Rule 31**

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- (b) any persons who must be permitted to attend the conduct of the experiment;
  - (c) the time when, and the place where, the experiment must be conducted;
  - (d) the means by which the conduct and results of the experiment must be recorded;
  - (e) the time by which any other party (the *opponent*) must notify the proponent of any grounds on which the opponent will contend that the experiment does not prove a fact that the proponent asserts is, will or may be proved by the experiment.
- (3) Evidence of the conduct and results of the experiment is not admissible in the proceeding except:
- (a) if the proponent has made an application under subrule (1) and has complied with any directions given under subrule (2); or
  - (b) with the leave of the Court.
- (4) If a direction mentioned in paragraph (2) (e) has been made, and the opponent has not complied with the direction in relation to a ground, the opponent may not rely on the ground except with the leave of the Court.

## **Order 59      *Moomba-Sydney Pipeline System Sale Act 1994***

### **1      Appeals from determinations of Australian Competition Tribunal under section 126**

An appeal to the Court under section 126 of the *Moomba-Sydney Pipeline System Sale Act 1994* from a determination of the Australian Competition Tribunal is to be instituted by filing a notice of appeal in accordance with Form 55A.

### **2      Enforcement under Part 6, Division 6**

An application made to the Court under Part 6, Division 6 of the *Moomba-Sydney Pipeline System Sale Act 1994* must be made by filing an application in accordance with Form 5.

### **3      Inquiry by Court under subsection 124 (3) where non-compliance with requirements of Australian Competition and Consumer Commission**

- (1) For the purposes of an inquiry under subsection 124 (3) of the *Moomba-Sydney Pipeline System Sale Act 1994*, the Australian Competition and Consumer Commission must file:
  - (a) an application made in accordance with Form 5; and
  - (b) an affidavit certifying the details of non-compliance with the requirements of the Australian Competition and Consumer Commission and annexing a copy of the notice given under section 95 of that Act.

**Rule 3**

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- (2) In addition to the powers of the Court under Order 10 of these Rules, the Court may give directions as it thinks fit for the conduct of the inquiry, including directions as to the filing of a statement of facts and contentions by the respondent.

## **Order 60      *Customs Act 1901***

### **1      Proceedings under section 243B of Customs Act**

- (1) A proceeding under section 243B of the *Customs Act 1901* shall be instituted by filing an application in accordance with Order 4, Rule 1.
- (3) The person against whom an order under section 243B is sought shall be called a defendant.

### **2      Applications under section 243F of Customs Act**

- (1) When an application has been instituted under section 243B of the *Customs Act 1901*, the applicant may in the same application ask the Court for an order directing the Official Trustee to take control of property pursuant to section 243F of the Act.
- (2) The provisions of Order 26 relating to the appointment of receivers do not apply where the Official Trustee is, by order of the Court, directed to take control of any property pursuant to an application made under section 243F of the *Customs Act 1901*.

**Rule 1**

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# **Order 61      *Complaints (Australian Federal Police) Act 1981***

**1      Interpretation**

In this Order:

*Disciplinary Tribunal* has the same meaning as in the *Complaints (Australian Federal Police) Act 1981*.

**2      Rules applicable**

Subject to Division 5 of Part VI of the *Complaints (Australian Federal Police) Act 1981*, the provisions of Order 53 shall apply mutatis mutandis to an appeal to the Court on a question of law from the Disciplinary Tribunal made pursuant to section 79 of that Act.



## **Order 61A    *Australian Federal Police Act 1979***

### **1        Appeal from decision of Disciplinary Tribunal**

Subject to rule 2 of this Order, the provisions of Order 53 shall apply *mutatis mutandis*, to an appeal to the Court from the Disciplinary Tribunal made pursuant to section 48 of the *Australian Federal Police Act 1979*.

### **2        Notice of appeal**

The notice of appeal shall state the question or questions of law and/or the question or questions of fact to be raised on the appeal.

**Rule 1**

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## **Order 62      Costs**

### **1      Interpretation**

In this Order unless the contrary intention appears:

*bill* means bill of costs; and

*taxed costs* means costs taxed in accordance with this Order.

### **1A      Party represented by officer of the Crown**

If a party is represented by a lawyer (as counsel) who is a law officer or an employee of the Crown, a fee commensurate with that which would be allowable if the lawyer had been a private lawyer may be allowed despite the fact that the party is unable to vouch payment of the fee either by the signature of the lawyer or otherwise.

### **2      Application**

The provisions of this Order apply to costs payable or to be taxed under any order of the Court, or under the Rules, and costs to be taxed in the Court under any Act.

### **3      Time for dealing with costs**

- (1) The Court may in any proceeding exercise its powers and discretions as to costs at any stage of the proceeding or after the conclusion of the proceeding.
- (2) Where the Court makes an order in any proceeding for the payment of costs the Court may require that the costs be paid forthwith notwithstanding that the proceeding is not concluded.
- (3) An order for costs of an interlocutory proceeding shall not, unless the Court otherwise orders, entitle a party to have a bill of costs taxed until the principal proceeding in which the interlocutory order was made is concluded or further order.

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**Rule 6**

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**4 Taxed costs and other provisions**

- (1) Subject to this Order, where by or under these Rules or any order of the Court costs are to be paid to any person, that person shall be entitled to his taxed costs.
- (2) Where the Court orders that costs be paid to any person, the Court may further order that as to the whole or any part of the costs specified in the order, instead of taxed costs, that person shall be entitled to:
  - (a) a proportion specified in the order of the taxed costs; or
  - (b) the taxed costs from or up to a stage of the proceedings specified in the order; or
  - (c) a gross sum specified in the order; or
  - (d) a sum in respect of costs to be ascertained in such manner as the Court may direct.
- (3) The Court may make an order under subrule (2) at any time, whether or not an order that costs be paid to a person has previously been made or entered.

**5 Costs in other courts**

Where in a proceeding transferred to or removed into the Court or in a proceeding on an appeal to the Court, the Court makes an order as to the costs of a proceeding before any other court, the Court may:

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed in accordance with this Order; or
- (c) make orders for the ascertainment of the costs by taxation or otherwise in that other court.

**6 Order for payment**

Subject to this Order or to the effect of any agreement between the parties a party to a proceeding in the Court shall not be entitled to recover any costs of and incidental to the proceeding from any other party to the proceeding except under an order of the Court.

**Rule 7**

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**7 Order for taxation — when not required**

## (1) Where:

- (a) an order of the Court directs the payment of costs;
- (b) the proceeding is dismissed with costs;
- (c) a motion is refused with costs;
- (d) a party may tax costs under rule 26 on the discontinuance of a proceeding or under Order 52, rule 19 upon the discontinuance of an appeal;
- (e) a party may tax costs under subrule 27 (1) or (2) on the acceptance of money paid into Court; or
- (f) a party is otherwise liable under these Rules to pay the costs of another party;

the costs may be taxed without any order directing taxation.

## (2) Where:

- (a) a proceeding is dismissed with costs; or
  - (b) a motion is refused with costs;
- and the costs are not paid within 14 days after service of a sealed copy of a certificate of taxation of the costs, a party to whom the costs are payable may enter an order for the payment of taxed costs.

**8 Registrar to tax costs**

## (1) Unless the Court or a Judge in a particular case otherwise orders, bills of costs and fees which:

- (a) are payable to lawyers in respect of business transacted by them in the Court or its registries; and
- (b) have been directed by a judgment or order to be taxed or under these Rules are liable to be taxed without express direction;

shall be taxed allowed and certified by a taxing officer.

## (2) Unless the taxing officer appoints a time for taxation under subrule 41 (1), a bill will be assessed in accordance with rule 46.

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**Rule 9**

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- (3) In subrule (2):  
*bill* does not include a short form bill under:
- (a) rule 40A; or
  - (b) rule 40B; or
  - (c) rule 13.03 of the Bankruptcy Rules.

**9 Liability of lawyer**

- (1) Without limiting the Court's discretion to award costs in a proceeding, if costs are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default, and it appears to the Court that a lawyer is responsible (whether personally or through a servant or agent), the Court may, after giving the lawyer a reasonable opportunity to be heard, do any of the following:
- (a) disallow the costs as between the lawyer and the lawyer's client;
  - (b) if the lawyer is a barrister — disallow the costs as between the barrister and the barrister's instructing solicitor;
  - (c) direct the lawyer to repay to the client, costs which the client has been ordered to pay to another party;
  - (d) direct the lawyer to indemnify any party other than the client against costs payable by the party indemnified.

*Note* A lawyer acting for a party in a civil proceeding must take account of the party's duty to conduct the proceeding consistently with the overarching purpose described in section 37M of the Act, and assist the party to comply with that duty. When deciding whether to award costs, a Court or Judge must take into account any failure by the lawyer to comply with this obligation — see subsection 37N (4) of the Act.

- (2) Without limiting subrule (1), a lawyer is taken to be responsible for a default under that subrule if a proceeding cannot conveniently proceed, or can proceed only with the incurring of extra costs or with inconvenience to the Court or another party to the proceeding, because of the failure of the lawyer:
- (a) to attend before the Court in person or by proper representative; or

**Rule 10**

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- (b) to file any document that ought to have been filed; or
  - (c) to deliver for the use of the Court any document that ought to have been so delivered; or
  - (d) to be prepared with any proper evidence or account; or
  - (e) to comply with any provision of these Rules or any judgment or order or direction of the Court; or
  - (f) otherwise to proceed.
- (3) Before making an order under subrule (1), the Court may refer the matter to a Registrar for inquiry and report.
- (4) The Court may order that notice of any proceeding or order against a lawyer be given, as specified in the order, to:
- (a) the lawyer's client; or
  - (b) if the lawyer is a barrister — the barrister's instructing solicitor.
- (5) For the purpose of giving effect to a costs order, the Court may give ancillary directions, including a direction to a lawyer to provide to the Court or a party to the proceeding a bill of costs in assessable form.

**10 Notice of taxing costs and copy bill**

- (1) Seven days' notice of the time appointed for the taxation of costs together with a copy of the bill of costs shall be given by the party or the solicitor of the party whose costs are to be taxed to the other party or his solicitor except in cases where that party has not entered an appearance.
- (2) The taxing officer may in cases of urgency direct that one day's notice only shall be given.

**11 Review of Taxation**

Every taxation of costs and every decision of a taxing officer shall be subject to review by a Judge.

**12 Scale of costs**

- (1) Except as otherwise ordered in all proceedings commenced on and after the date these Rules came into operation, solicitors are, subject to these Rules, entitled to charge and be allowed the fees set forth in the Second Schedule in respect of the matters referred to in that Schedule and higher fees shall not be allowed in any case except such as are by this Order otherwise provided for.
- (2) Any person who is not a party to proceedings and who is called as a witness or attends at Court in compliance with a subpoena is entitled to recover from the party calling that person or requesting the issue of the subpoena the expenses incurred in giving evidence or attending Court in accordance with the scale provided in the Second Schedule.
- (3) The Court or a Judge may order that the party who called the person referred to in subrule (2) as a witness or requested the issue of the subpoena under which the person attended a Court pay the expenses of that person in an amount to be fixed or taxed in accordance with the Second Schedule.

**13 Taxing officers to assist each other**

The taxing officers shall be respectively assistant to each other and in the discharge of their duties and for the proper despatch of the business of the respective officers the taxing officer may tax or assist in the taxation of a bill of costs which has been referred to another taxing officer for taxation and for ascertaining what is due in respect of the costs and in that case shall certify accordingly.

**15 Costs reserved**

Where the costs of a motion, application or other proceeding are reserved by the Court or a Judge, the costs so reserved shall follow the event unless the Court or a Judge otherwise orders.

**Rule 16**

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**16 Notice of adjournment of taxation**

If the taxation of a bill is adjourned for any reason notice of the adjournment shall be sent by post by the party with the carriage of the taxation to any solicitor or person not present at the time of the adjournment on whom the original bill of costs was served.

**17 Refusal or neglect to procure taxation**

Where a party entitled to costs refuses or neglects to bring in his costs for taxation or to procure them to be taxed, the taxing officer may, so as to prevent another party being prejudiced by the refusal or neglect:

- (a) certify the costs of the other party and the refusal or neglect; or
- (b) allow a nominal or other sum to the party refusing or neglecting to bring in his costs.

**18 Delay before taxing officer**

Where in a proceeding before the taxing officer a party is guilty of neglect or delay or puts another party to any unnecessary or improper expense the taxing officer may exercise the powers vested in him by the preceding rule.

**19 Cost to be allowed on taxation**

On every taxation the taxing officer shall allow all such costs charges and expenses as appear to him to have been necessary or proper for the attainment of justice or for maintaining or defending the rights of a party, but, except as against the party who incurred them, costs shall not be allowed which appear to the taxing officer to have been incurred or increased:

- (a) through over-caution, negligence or misconduct;
- (b) by payment of special fees to counsel or special charges or expenses to witnesses or other persons; or
- (c) by other unusual expenses.



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**Rule 22**

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**20 Disbursements in solicitors' bills**

- (1) Subject to subrule (2), a disbursement must not be allowed if the disbursement has not been paid before the bill of costs is delivered.
- (2) If a bill expressly states that a disbursement was not paid before the bill was delivered, and the bill sets out the unpaid items of disbursement under a separate heading in the bill, the disbursement may be allowed by the taxing officer if:
  - (a) the disbursement:
    - (i) is paid before the certificate of taxation is given; and
    - (ii) is paid in discharge of an antecedent liability of the solicitor, including counsels' fees, properly incurred on behalf of the client; or
  - (b) the solicitor provides an unconditional undertaking to the Court to pay the unpaid disbursement from any costs recovered.

**21 Fees not here provided for**

The taxing officer may in his discretion allow such sum as he thinks just and reasonable having regard to all the circumstances of the case for work and labour properly performed and not specifically provided for in the Second Schedule in respect of work and labour for which, in his opinion, an allowance should be made.

**22 Taxing officer's discretion**

- (1) In the case of a fee or allowance which is discretionary it shall, unless otherwise provided, be allowed at the discretion of the taxing officer.
- (2) The taxing officer in the exercise of his discretion shall take into consideration:
  - (a) the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which such a fee or allowance applies;

**Rule 23**

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- (b) the nature and importance of the proceeding;
- (c) the amount involved;
- (d) the principle involved;
- (e) the interest of the parties;
- (f) the fund, estate or person to bear the costs;
- (g) the general conduct and cost of the proceeding; and
- (h) all other relevant circumstances.

**23 Extension of time**

Where a party applies for an extension of time he shall, unless the Court otherwise orders, pay the costs of and occasioned by the application or any order made on or in consequence of the application.

**24 Non-admission of fact**

Where a party to any proceeding serves a notice disputing a fact under Order 18, rule 2 (which relates to notices to admit facts) and afterwards that fact is proved in the proceeding he shall, unless the Court otherwise orders, pay the costs of proof.

**25 Non-admission of document**

Where a party to any proceeding serves a notice disputing the authenticity of a document under Order 18, rule 2 (which relates to notices to admit documents) and afterwards the authenticity of the document is proved in the proceeding he shall, unless the Court otherwise orders, pay the costs of proof.

**26 Discontinuance**

- (1) Where pursuant to Order 22, rule 2 a party to any proceeding discontinues the proceeding without leave as to the whole or any part of the relief claimed by him against any other party, the discontinuing party shall, unless the Court otherwise orders, pay the costs of the party against whom the discontinued claim is made occasioned by the discontinued claim and incurred before service of notice of the discontinuance.

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**Rule 31**

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- (2) A party whose costs are payable under subrule (1) may tax the costs and if the taxed costs are not paid within 14 days after service of the certificate of taxation may enter an order for the payment of the taxed costs.

**28 Continuance of interlocutory injunction**

Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification an order as to costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

**29 Cost of application or step within proceedings**

Subject to this Order, the costs of any application or other step in any proceedings shall, unless the Court otherwise orders, be deemed to be part of the costs of the cause of the party in whose favour the application or other step is determined and shall be paid and otherwise dealt with in accordance with the provisions of this Order.

**30 Costs of application or step within proceedings where stood over to trial**

When a motion, application or other proceeding is ordered to stand over to the trial and no order is made at the trial as to the costs of the motion, application or proceeding, the costs of both parties of the motion, application or proceeding shall be deemed to be part of their costs of the cause.

**31 Party and party basis**

On a taxation on a party and party basis:

- (a) the costs of briefing more than one counsel may be allowed notwithstanding that none is one of Her Majesty's counsel;
- (b) a retaining fee to more than one counsel shall not be allowed; and

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- (c) costs in respect of counsel attending before a Registrar or taxing officer shall not be allowed unless the Registrar or taxing officer certifies the attendance to be proper, or the Court otherwise orders.

**32 Refreshers**

- (1) Where counsel is briefed to appear on a trial or hearing and the trial or hearing occupies more than 4½ hours and costs are taxed on a party and party basis, the taxing officer may allow refresher fees in such amount as he thinks fit for every 4½ hours occupied by the trial or hearing after the first 4½ hours and for the remaining duration of the trial or hearing.
- (2) The taxing officer may allow refreshers under subrule (1) whether or not witnesses are examined at the trial or hearing.

**33 Absence of counsel**

- (1) Where counsel is briefed to appear on a trial or hearing and costs are taxed on a party and party basis, counsel's fee on the brief shall not be allowed unless:
  - (a) he is present at the trial or hearing for a substantial amount of the relevant period;
  - (b) he gives substantial assistance during the relevant period in the conduct of the proceedings; or
  - (c) the Court otherwise orders.
- (2) In subrule (1) *relevant period* means the period of the trial or hearing or if the trial or hearing lasts more than 4½ hours, the first 4½ hours.

**34 4½ hour periods**

- (1) In reckoning the 4½ hour period mentioned in rules 32 and 33 the mid-day adjournment shall not be included unless the Court otherwise orders.
- (2) Where the commencement or resumption of a trial or hearing is delayed beyond the listed time the taxing officer may include waiting time in reckoning the 4½ hour period mentioned in rule 32 and 33.

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**Rule 36A**

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**35 Fees to barristers and solicitors**

When a lawyer acts in the capacities of both barrister and solicitor, or in the capacity of counsel, instructed by his partner acting as solicitor, the taxing officer may allow such sum as a counsel's fee as the taxing officer in his discretion thinks just and reasonable having regard to the practice of allowing such fees as are permitted by the Supreme Court Rules of the State or Territory concerned.

**36 Disallowance of costs of improper, vexatious or unnecessary matter in documents or proceedings**

- (1) The Court or Judge may, at a trial or hearing or upon any application and whether or not objection is taken:
  - (a) direct that any costs which have been improperly, unreasonably or negligently incurred be disallowed;
  - (b) direct the taxing officer to examine the costs incurred, and to disallow such costs as he shall find to have been improperly, unreasonably or negligently incurred; or
  - (c) direct that a party whose costs are so disallowed shall pay to the other parties the costs incurred by those parties in relation to the proceeding in respect of which his costs have been disallowed.
- (2) Where the question of costs having been improperly, unreasonably or negligently incurred has not been raised before and dealt with by the Court or Judge, it is the duty of the taxing officer to look into that question, and thereupon the same consequences shall ensue as if he had been specially directed under paragraph (1) (b) of this rule to examine the costs incurred, and to disallow such costs as he finds to have been improperly, unreasonably or negligently incurred.

**36A Reduction in costs otherwise allowable**

- (1) Where a party is awarded judgment for less than \$100,000 on a claim (not including a cross-claim) for a money sum or damages any costs ordered to be paid, including disbursements, will be reduced by one-third of the amount otherwise allowable under this Order unless the Court or a Judge otherwise orders.

**Rule 37**

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- (2) If the Court or a Judge is of the opinion that a proceeding (including a cross-claim for a money sum or damages) brought in this Court could more suitably have been brought in another court or in a tribunal and so declares, then any costs to be paid, including disbursements, will be reduced by one-third of the amount otherwise allowable under this Order.
- (3) This rule does not apply to a proceeding under the *Admiralty Act 1988*.

**37 Unnecessary appearance in Court**

Where a party appears upon a proceeding before the Court or a Judge or before a Registrar, in which he is not interested or upon which, according to the practices of the Court, he ought not to appear, he shall not be allowed any costs of appearance unless the Court, Judge or Registrar expressly directs the costs to be allowed.

**38 Powers of taxing officer**

The taxing officer may, for the purpose of taxation of costs:

- (a) summon and examine witnesses either orally or upon affidavit;
- (b) administer oaths;
- (c) direct or require the production of books, papers and documents;
- (d) issue subpoenas;
- (e) make separate or interim certificates;
- (f) require a party to be represented by a separate solicitor; and
- (g) do such other acts and direct or take all such other steps as are directed by these Rules or by the Court or a Judge.

**39 Registrars appointed taxing officers**

- (1) The Registrar, Deputy Registrar, District Registrars and Deputy District Registrars are appointed taxing officers.

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**Rule 40A**

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- (1A) The Registrar or a District Registrar may authorise an officer to be the taxing officer for the purposes of taxing a short form bill filed under the following provisions:
  - (a) rule 40A;
  - (b) Division 13.2 of the Bankruptcy Rules.
- (2) The taxing officers shall be assistant to each other.
- (3) A taxing officer may, of his own motion, refer any question arising in a taxation for the direction of the Court.

**40 Bill of costs**

- (1) A bill of costs shall contain particulars of:
  - (a) work done by the solicitor, his servants and agents;
  - (b) costs claimed for the work done in paragraph (a) above; and
  - (c) disbursements made.
- (2) There shall be endorsed on the bill a certificate signed by a solicitor verifying the additions in it, and there shall be attached to it or otherwise filed with it in a convenient manner originals or legible copies of receipts for disbursements, or if a disbursement has not been paid, copies of all relevant accounts.

**40A Short form bill for winding up application  
(Corporations Act s 466 (2))**

- (1) If an order is made for the winding up of a company in a proceeding instituted in the Court under the *Corporations Act 2001*, an applicant may claim as costs of the application:
  - (a) the amounts that, on the date when the application was filed, were the prescribed amounts in item 43A in Schedule 2; and
  - (b) disbursements properly incurred in relation to the application.

**Rule 40B**

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- (2) An applicant who claims costs under this rule must serve on the liquidator appointed to the company:
  - (a) a bill of costs and disbursements, which need not include an itemised account of the work or services performed; and
  - (b) copies of receipts, vouchers or journals that evidence the disbursements claimed.
- (3) Within 14 days of service of a bill of costs and disbursements, the liquidator must advise the applicant in writing which, if any, of the costs and disbursements claimed are disputed.
- (4) Within 14 days of receiving an advice under subrule (3), the applicant must file:
  - (a) a copy of the advice; and
  - (b) the documents mentioned in subrule (2); and
  - (c) an affidavit of service of the bill of costs and disbursements on the liquidator.
- (5) The applicant, the liquidator and their respective solicitors must not attend on taxation of the bill of costs and disbursements, unless directed by a taxing officer to attend.
- (6) This rule does not limit an applicant's right to claim the taxed costs of the winding up application under this Order.
- (7) However, an applicant who claims the costs of a winding up application:
  - (a) under this rule — has no further claim to recover any of the taxed costs of the application under this Order; and
  - (b) otherwise under this Order — has no further claim to recover any of the taxed costs of the application under this rule.

**40B Short form bill for migration cases (original jurisdiction)**

- (1) In this rule:  
*migration case* means a proceeding in the Court to which Order 54B applies.



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**Rule 40C**

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***migration court book*** means the set of documents that is bound or stapled in book form, and filed by the respondent and served on the applicant in a migration case.

***standard migration case*** means a migration case in which there are no more than 2 directions hearings and that is determined after a trial that takes no more than 4½ hours.

- (2) A party to a standard migration case may claim as costs of the proceeding, including disbursements, the amount that, on the date when the proceeding was commenced, was the prescribed amount in item 43D in Schedule 2.
- (3) The respondent to a migration case that is discontinued or dismissed after the applicant has been served with the migration court book and before the trial, may claim as costs of the proceeding, including disbursements, the amount that, on the date when the proceeding was commenced, was the prescribed amount in item 43E in Schedule 2.

**40C      Short form bill for migration cases (appeal jurisdiction)**

- (1) This rule applies to an application or migration appeal case commenced on or after the commencement of this rule.
- (2) A respondent to an application that is discontinued or dismissed may claim as costs of the proceeding, including disbursements, an amount not more than the amount that, on the date when the proceeding was commenced, was set out in item 43F in Schedule 2.
- (3) A party to a migration appeal case that is finalised before a final hearing may claim as costs of the proceeding, including disbursements, an amount not more than the amount that, on the date when the proceeding was commenced, was set out in item 43G in Schedule 2.
- (4) A party to a migration appeal case that is finalised after a final hearing may claim as costs of the proceeding, including disbursements, an amount not more than the amount that, on the date when the proceeding was commenced, was set out in item 43H in Schedule 2.

**Rule 40D**

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(5) In this rule:

***application*** means:

- (a) an application for leave to appeal to the Court from an FMC judgment; or
- (b) an application for an extension of time to make an application mentioned in paragraph (a); or
- (c) an application for an extension of time to file a notice of appeal.

***FMC judgment*** means a judgment of the Federal Magistrates Court in relation to a migration decision.

***migration appeal case*** means an appeal to the Court from an FMC judgment.

***migration decision*** has the meaning given by subsection 5 (1) of the *Migration Act 1958*.

**40D Procedure — short form bills for migration cases**

- (1) A party who claims costs under rule 40B or 40C (the ***claimant***) must serve on the other party a bill of costs, including disbursements, (the ***bill***), which need not include an itemised account of:
  - (a) the work or services performed; or
  - (b) the disbursements incurred in relation to the proceeding.
- (2) If the other party objects to the claim being made under rule 40B or 40C, the other party must, within 14 days after being served with the bill, give the claimant written notice of the objection.
- (3) If the claimant receives a notice of objection, the claimant must, within 14 days after receiving the notice, file a copy of the following documents:
  - (a) the notice;
  - (b) the bill;
  - (c) the affidavit of service of the bill on the other party;

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**Rule 41**

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- (d) an itemised account or evidence that the costs incurred by the claimant were equal to, or more than, the amount of the bill.

*Note* For the taxation of the bill, see rule 41.

- (4) The claimant and the other party and their respective lawyers may attend on taxation of the bill only if directed by the taxing officer.
- (5) Rules 40B and 40C do not limit a party's right:
  - (a) to claim the taxed costs of the proceeding under this Order; or
  - (b) to make an application for an order under paragraph 4 (2) (c).
- (6) However, a party who claims costs:
  - (a) under rule 40B or 40C — has no further claim to recover any of the taxed costs of the proceeding under this Order; and
  - (b) otherwise under this Order — has no further claim to recover any of the taxed costs of the proceeding under rule 40B or 40C.

#### **41 Appointment to tax bill**

- (1) Subject to any direction of a Registrar under rule 46, if a bill of costs is filed, the taxing officer must appoint a time to tax the bill and endorse the bill with the date and time of the appointment.
- (2) The party who filed the bill must serve a copy of the bill on each other party to the taxation at least 7 days before the date appointed for taxation.
- (3) A party on whom a bill is served may by notice object to any item in the bill.
- (4) The notice shall list each item or part thereof in the bill which is objected to and shall also state shortly but specifically the nature and grounds of objection to each item or part objected to and the amount which it is contended should be taxed off.

**Rule 41**

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- (5) The notice shall be filed and served on the party in whose favour the bill is to be taxed and on any other interested party not less than 7 days before the day appointed for taxing the bill.
- (6) A party on whom a notice is served under subrule (5) must prepare a written statement of response to each item or part of an item of the bill objected to, stating briefly, but specifically, the basis on which it is claimed the item or part is allowable and the reason the objection cannot be sustained, including references to any authorities relied on.
- (7) Oral submissions may be made at the taxation conference:
  - (a) subject to the discretion of the taxing officer; and
  - (b) only for the purpose of explaining or clarifying an objection set out in a notice under subrule (3) or a response to an objection set out in a statement under subrule (6).
- (8) Subject to the discretion of the taxing officer to be exercised in exceptional circumstances, on taxation of the bill:
  - (a) no amount is to be taxed off, nor any ground of objection to an item or part of an item of a bill allowed, unless each amount, ground, item or part, is specifically set out in a notice under subrule (3); and
  - (b) no amount is to be allowed in respect of an item or part of an item of a bill which is objected to in a notice under subrule (3) if no response to the objection has been made under subrule (6).
- (9) Subject to subrule 46 (4A), the taxing officer has a discretion:
  - (a) to tax the costs of a notice under subrule (3), and of any other objections, and:
    - (i) add them, or a part of them, to; or
    - (ii) deduct them, or a part of them, from;any sum payable by or to a party to the taxation; or
  - (b) to fix a lump sum in respect of the costs of the notice or other objection and add it to, or deduct it from, any sum payable by or to a party to the taxation.

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**Rule 43****42 Objection to decision of taxing officer**

- (1) Where a taxing officer decides to allow or disallow, wholly or in part, any item in a bill, or to allow some amount in respect of any item, he shall not, except with the consent of the parties to the taxation, give his certificate until the expiry of 14 days after the date of his decision.
- (1A) A party to the taxation who objects to the decision may apply to the taxing officer to reconsider his decision.
- (2) An application under subrule (1A) shall be made by motion to the taxing officer.
- (3) Notice of the motion shall be filed within 14 days after the date of the decision.
- (4) The applicant shall file with or subscribe to the notice statement of his objections.
- (5) A statement of objections shall specify by a list the items as to which the applicant objects to the decision of the taxing officer and must state briefly, but specifically, the nature and grounds of each objection, including references to any authorities relied on.
- (6) An applicant under subrule (1A) shall, on the date of filing the notice of motion and statement of objections, serve the notice and statement on each party interested.

**43 Reconsideration**

- (1) Upon motion made under rule 42, the taxing officer:
  - (a) shall reconsider the decision to which objection is made and shall give his certificate in accordance with his decision on reconsideration; and
  - (b) shall, upon request by any party, state, in his certificate or some other document, and by reference to the objections to his previous decision, his reasons for his decision on reconsideration.

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- (2) On the reconsideration, a party shall not, unless, in exceptional circumstances, the taxing officer otherwise directs, raise any ground of objection not stated in a statement of objection.
- (3) A request under paragraph (1) (b) shall be made within 14 days after the date of the decision on reconsideration to which the request relates.
- (4) The taxing officer may deal with the costs of the objections to the decision in any manner allowed under subrule 41 (9).

**44 Review**

- (1) The Court may review the decision of a taxing officer on reconsideration if the taxing officer has given:
  - (a) a certificate in accordance with that decision; and
  - (b) reasons for the decision in response to a request under paragraph 43 (1) (b).
- (2) Where, during the time within which a request may be made under rule 43, it becomes impracticable to make the request by reason of the death or incapacity of, or other matter personal to, the taxing officer, subrule (1) shall apply notwithstanding that a request under rule 43 has not been made.
- (3) A notice of motion applying for a review under subrule (1) must be filed within:
  - (a) 28 days after the certificate is given; or
  - (b) any extension of that time granted by the Court or the taxing officer at the time the certificate is given.
- (4) On the review, unless the Court by order otherwise directs:
  - (a) further evidence shall not be received; and
  - (b) a party shall not raise any ground of objection not either stated in a statement of objection or raised before the taxing officer.
- (5) Subject to subrule (4), on the review, the Court may:
  - (a) exercise all the powers and discretions of the taxing officer in relation to the subject matter of the review;

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**Rule 46**

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- (b) make orders for the alteration of the certificate;
- (c) make orders for the remission of any item to the same or any other taxing officer for taxation; and
- (d) make such other orders as the nature of the case requires.

**45 Certificate of taxation**

- (1) On completion of taxation, the taxing officer shall issue a sealed certificate of taxation, with sufficient number of office copies as are needed for the parties responsible for the payment of costs.
- (2) The certificate of taxation must be served on the party responsible for its payment.
- (3) If, after 14 days from the date of service of the certificate of taxation, the costs remain unpaid then the Registrar shall, at the request of the party in whose favour the costs are awarded draw up sign and seal an order in favour of that party for the sum shown in the certificate of taxation and enter the same.
- (4) Subject to subrule (5) interest calculated in accordance with Order 35, rule 8 is payable from the date the order is pronounced.
- (5) Subrule (4) shall not apply to taxations taking place on or after 4 June 1990.
- (6) Every award of costs under a judgment of the Court shall carry interest calculated in accordance with Order 35 rule 8 from the date of the certificate of taxation quantifying the same.
- (7) Subrule (6) shall apply to taxations taking place on or after 4 June 1990.

**46 Assessment procedures**

- (1) Notwithstanding anything in this Order, the Registrar shall have a discretion to apply the provisions or a provision of this rule, and may for that purpose decline to give an appointment to tax a bill on its being filed, and may require the party who filed the bill to lodge any documents in the possession or power of that party.

**Rule 46**

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- (2) If the Registrar decides to apply this rule, unless the Registrar directs that action be taken under subrule (4) or (6), the bill must be assessed in accordance with subrule (3).
- (2A) If a bill is to be assessed in accordance with subrule (3):
  - (a) the Registrar must endorse the bill and each copy of it with the date when the taxing officer is to make an estimate and return the bill and copies to the party filing the bill; and
  - (b) the party filing the bill must serve a copy of the bill and the documents mentioned in subrule 40 (2) on each other party to the assessment at least 7 days before the date endorsed on the bill.
- (3)
  - (a) A taxing officer may, in the absence of the parties and without making any determination on the individual items in the bill, make an estimate of the approximate total for which, if the bill were to be taxed, the certificate of taxation would be likely to issue.
  - (b) The Registrar will notify each party interested in the bill in writing of an estimate made under paragraph (a).
  - (c) A party interested may, within 21 days after the date of issue of a notice under paragraph (b), file and serve on each other party a notice of objection to the estimate.
  - (ca) If there is no notice of objection, the amount of the estimate is deemed to be the amount for which a certificate of taxation may be issued.
  - (cb) If a certificate of taxation has been issued for an amount determined under paragraph (ca), a party that has not received a notice under paragraph (b) may apply by motion to the Court for an order to set aside the certificate of taxation.
  - (d) The Registrar must not accept a notice of objection for filing unless the party filing the notice pays into the Litigants' Fund an amount of \$1 250 as security for the costs of any taxation of the bill.
  - (e) Where a notice of objection is filed, the Registrar may direct that subrule (4) apply, or that taxation of the bill proceed.



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**Rule 46**

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- (4) (a) Upon the direction of the Registrar under subrule (2) or paragraph (e) of subrule (3), a taxing officer may, in the absence of the parties, provisionally tax the bill, noting legibly upon it in ink all amounts provisionally taxed off.
- (b) The Registrar will serve a photocopy of the bill so provisionally taxed on each party interested.
- (c) A party interested may, within 21 days after the date of issue of a photocopy of the provisionally taxed bill, file and serve on each other party a notice requiring a full taxation.
- (ca) If there is no notice requiring a full taxation, the amount at which the bill was provisionally taxed is deemed to be the amount for which a certificate of taxation may be issued.
- (cb) If a certificate of taxation has been issued for an amount determined under paragraph (ca), a party that has not received a photocopy of the provisionally taxed bill may apply by motion to the Court for an order to set aside the certificate of taxation.
- (d) A notice requiring a full taxation shall:
  - (i) set out a complete list of each item or part of an item in the bill to the treatment of which upon the provisional taxation the party filing the notice objects; and
  - (ii) specify the nature and grounds of objection and the extent to which it is contended each item or part of an item should have been allowed or disallowed as the case may be.
- (e) Within 21 days of service of a notice under paragraph (c), a party served may file and serve on each other party a notice containing corresponding details of any item or part of an item to the treatment of which upon the provisional taxation that party objects and of the nature and grounds of such objections.
- (f) On taxation of the bill and subject to a discretion of the taxing officer exercisable in exceptional circumstances only, all items shall be taxed as they were provisionally taxed to the extent that they are not referred to in a notice filed pursuant to paragraph (c) or (e) and no ground shall

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be relied on which is not specifically set out in such a notice.

- (4A) Subject to any order made under subrule (4B), if a notice of objection is filed under paragraph (3) (c), or a notice requiring a full taxation is filed under paragraph (4) (c), the party filing the notice must bear the costs of taxation of all parties from the date of filing the notice unless, on taxation, there is obtained in that party's favour a variation of at least 15% of the estimate of taxed costs or of the amount provisionally taxed.
- (4B) The taxing officer may order that the costs of all or part of the taxation from the date of filing the notice be paid by a party, including a party who has obtained in that party's favour a variation of at least 15% of the estimate of taxed costs or of the amount provisionally taxed.
- (4C) In considering whether to make an order under subrule (4B), the taxing officer may have regard to any relevant matter including the following:
  - (a) any offer of compromise as to costs;
  - (b) any conduct by a party that added to the duration or cost of the taxation.
- (5) Each District Registrar may produce figures for the guidance of parties and solicitors in relation to costs estimated or taxed in the district registry.
- (6) At any time after the making of an order for costs, and before the issue of a certificate of taxation in accordance with an estimate or provisional taxation or full taxation:
  - (a) the Registrar may order (either on the application of a party or of the Registrar's own motion) that the parties attend before a designated Registrar or other designated officer in confidential conference with a view to:
    - (i) reaching a mediated resolution of the amount for which a certificate of taxation should issue; or
    - (ii) clarifying the real issues in dispute; and
  - (b) if the Registrar makes an order under paragraph (a) — each party must file and serve on the other parties, at least 7 days before the date of the conference, a brief summary

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of the issues in dispute and the contentions to be raised in respect of the issues.

- (6A) If a party that filed a notice of objection withdraws the notice of objection before the taxation or provisional taxation is completed:
- (a) the amount of the estimate of costs is the amount for which a certificate of taxation may be issued; and
  - (b) the party that filed the notice of objection must bear the costs of taxation of all parties from the date of service of the notice of objection to the date of notification of the withdrawal; and
  - (c) the Registrar, having regard to the liability of any party to pay the costs of the taxation under this rule, must:
    - (i) determine how the amount paid under paragraph (3) (d) as security for the costs of taxation is to be distributed or refunded to the parties; and
    - (ii) direct that payment be made out of Court accordingly.
- (6B) If at least 21 days have passed after the date on which the Registrar notified the parties of a completed taxation or provisional taxation under this rule, and no party has objected to that taxation, the Registrar, having regard to the liability of any party to pay the costs of the taxation under this rule, must:
- (a) determine how the amount paid under paragraph (3) (d) as security for the costs of taxation is to be distributed or refunded to the parties; and
  - (b) direct that payment be made out of Court accordingly.
- (7) In this rule a reference to a Registrar extends only to persons occupying the office or for the time being performing the duties of Registrar or District Registrar of the Court.

**Rule 1**

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## **Order 62A      Determination of maximum costs at directions hearing**

### **1            Power to order maximum costs**

The Court may, by order made at a directions hearing, specify the maximum costs that may be recovered on a party and party basis.

### **2            Excluded costs**

A maximum amount specified in an order under rule 1 shall not include an amount that a party is ordered to pay because the party:

- (a) has failed to comply with an order or with any of these Rules; or
- (b) has sought leave to amend its pleadings or particulars; or
- (c) has sought an extension of time for complying with an order or with any of these Rules; or
- (d) has otherwise caused another party to incur costs that were not necessary for the economic and efficient:
  - (i) progress of the proceedings to trial; or
  - (ii) hearing of the action.

### **3            Further directions**

An order under rule 1 may include such directions as the Court considers necessary to effect the economic and efficient:

- (a) progress of the proceedings to trial; or
- (b) hearing of the action.

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**Rule 4****4 Variation of order**

If, in the Court's opinion, there are special reasons, and it is in the interests of justice to do so, the Court may vary the specification of maximum recoverable costs ordered under rule 1.

Rule 1

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## Order 63      Administration of money paid into court

### 1      Application

This Order deals with the administration of money paid into Court.

### 2      Definitions

In this Order, unless the contrary intention appears:

**bank** means a bank to which the *Banking Act 1959* applies and includes the Reserve Bank of Australia.

**Litigants' Fund** means the Federal Court of Australia Litigants' Fund established under rule 3.

### 3      Litigants' Fund

- (1) The Registrar of the Court must establish with a bank an account titled 'Federal Court of Australia Litigants' Fund'.
- (2) Subject to subrule 5 (1), money paid into Court must be paid to the credit of the Litigants' Fund.
- (3) The Litigants' Fund comprises the money standing, from time to time, to the credit of the account established under subrule (1).

### 4      Payment out of a Litigants' Fund

- (1) Money may be paid out of a Litigants' Fund:
  - (a) for money paid under Order 62 paragraph 46 (3) (d):
    - (i) in accordance with an order of the Court or a Judge;  
or

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**Rule 6**

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- (ii) in accordance with a direction by the Registrar under Order 62, subparagraph 46 (6A) (c) (ii) or paragraph 46 (6B) (b); or
  - (b) in any other case — in accordance with an order of the Court or a Judge.
- (2) An order that directs that money in Court be paid out of a Litigants' Fund, or otherwise dealt with, must state the particulars of the payment out, the manner in which the money is otherwise to be dealt with and any other action to be taken by the Registry.

**5 Other application of money**

- (1) The Court or a Judge may, at any time, order that money paid, or to be paid, into Court, be paid, credited or applied in a manner other than by payment into the Litigants' Fund.
- (2) In the event that any interest is, or is to be, earned on money mentioned in subrule (1), the Court or a Judge may give directions as to the disbursement of the interest.

*Note* Information on the investments that may be made by the Registrar under an order under Order 63 rule 5 is set out in Practice Note CM 10.

**6 Notification of the parties**

- (1) Within 3 days after payment of money into Court, the District Registrar must notify each party in writing that the money has been:
  - (a) received; and
  - (b) paid, credited or applied as required under these Rules or an order of the Court.
- (2) If money that has been paid into Court is, after notice has been given under subrule (1), paid out, credited or applied under an order of the Court, the District Registrar must notify each party in writing, within 3 days of the payment out, credit or application, as the case may be, of the order and the details of the transaction.

**Rule 1**

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## **Order 64      Transitional provisions**

**1      Prior proceedings**

Proceedings commenced prior to the date these Rules come into operation shall continue under the repealed Rules (Statutory Rules 20 and 220 of 1977), subject to any order or direction of the Court or a Judge.

**2      Litigants' Fund**

Moneys paid into Court for or on behalf of litigants prior to the date these Rules come into operation shall be transferred to the Federal Court of Australia Litigants' Fund to be established pursuant to Order 63, rule 2.



## Order 65      *Life Insurance Act 1995*

### **1      Commencement of proceedings**

Originating proceedings under the *Life Insurance Act 1995*, except an application under rule 2 or rule 3, must be commenced by filing an application:

- (a) in accordance with Form 5 in Schedule 1; and
- (b) specifying the section of the *Life Insurance Act 1995* under which the proceeding is brought.

### **2      Payment into Court**

- (1) A company which makes a payment into Court pursuant to subsection 202 (3) or subsection 215 (1) of the *Life Insurance Act 1995* must, at the time of making such payment, commence proceedings in the Court for a declaration as to the persons entitled to the moneys so paid in.
- (2) An application for a declaration must be in accordance with Form 59 in Schedule 1.
- (3) An applicant must join as respondents to the application:
  - (a) all persons in respect of whom it has received express notice in writing of any trust, right, equity or interest in the moneys paid into Court; and
  - (b) all persons who may be affected by the declaration sought.
- (4) On the filing of an application, the applicant must also file the following documents:
  - (a) an affidavit showing the nature of the claim for a declaration and the material facts on which the claim is based;
  - (b) a notice of deposit in accordance with Form 31A in Schedule 1.

**Rule 3**

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**3 Judicial management or winding up**

Except for an application under section 157 of the *Life Insurance Act 1995*, an application under Part 8 of that Act by a judicial manager, the Commissioner, a liquidator or any other interested person, must be made by notice of motion and be supported by affidavit.

## **Order 66      *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988***

### **1      Application of Order**

The Federal Court Rules apply to proceedings referred to in this Order in so far as the Federal Court Rules are not inconsistent with the Rules in this Order.

### **2      Interpretation**

In this Order:

*the Act* means the *Family Court of Australia (Additional Jurisdiction and Exercise of Powers) Act 1988*.

*Enabling Act* means the *Administrative Decisions (Judicial Review) Act 1977*, the *Bankruptcy Act 1966*, the *Income Tax Assessment Act 1936*, or the *Trade Practices Act 1974* or any one or more of those Acts.

*the Family Court* means the Family Court of Australia.

### **3      Transfer to the Family Court**

The Court or a Judge may, subject to the provisions of the Enabling Act, at any time transfer a proceeding to the Family Court.

### **4      Form of application for transfer**

- (1) An application under the Act for transfer of a proceeding to the Family Court under an Enabling Act must be made by motion.

**Rule 5**

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- (2) The heading of the notice of motion must specify the Act and the relevant Enabling Act.
- (3) The application must be heard and determined by a single Judge.

**5 Proceedings transferred under the Act**

On the transfer of a proceeding to the Family Court, the Registrar shall send to the proper officer of the Family Court all documents filed and orders made in the proceeding.

## **Order 67      *Lands Acquisition Act 1989***

### **1      Application**

Subject to this Order, the Rules of Court provide the manner of making an application, bringing an action, instituting proceedings or obtaining the approval of the Court under sections 72, 73, 82, 100, 101, 108, 116, 127, 128, 129 or 133 of the *Lands Acquisition Act 1989* and, as far as practicable, apply to the conduct of such proceedings.

### **2      Compensation**

Proceedings to determine the amount of compensation to which a person is entitled under the *Lands Acquisition Act 1989* shall be commenced by an application in accordance with Form 61 in Schedule 1.

### **3      Approval**

Proceedings to obtain the approval of the Court under section 16 of the *Lands Acquisition Act 1989* shall be commenced by an application in accordance with Form 62 in Schedule 1.

### **4      Extension of time**

An application to extend a period of time under section 129 of the *Lands Acquisition Act 1989* shall be in accordance with Form 63 in Schedule 1.

### **5      Directions**

At the first directions hearing the parties shall file a minute describing all persons who have an interest in law or an equity in the land to which the application relates and all persons who may be affected by an order, declaration

**Rule 6**

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or determination sought.

**6 Statement of claim**

- (1) The statement of claim filed in a proceeding under section 82 of the *Lands Acquisition Act 1989* shall specify:
  - (a) the land in respect of whose acquisition the claim is brought;
  - (b) the nature of the interest of the applicant in the land;
  - (c) the amount claimed by way of compensation for the acquisition of that interest; and
  - (d) particulars of the manner in which that amount is calculated.
- (2) The statement of claim filed in a proceeding under section 108 of the *Lands Acquisition Act 1989* shall specify:
  - (a) the land in respect of which the claim is brought;
  - (b) the nature of the interest of the applicant in the land;
  - (c) the power in respect of which exercise the claim is brought;
  - (d) the amount claimed by way of compensation for the exercise of that power; and
  - (e) particulars of the manner in which that amount is calculated.

**7 Defence**

- (1) Within 14 days of service upon the respondent of the statement of claim, or within such further time as the Court may allow, the respondent shall file and serve upon the applicant a defence.
- (2) The defence shall identify any element in the claim made by the applicant, as specified in the statement of claim, which is disputed and shall specify:
  - (a) the amount of compensation (if any) to which, in the view of the respondent, the applicant is entitled; and
  - (b) the manner in which that amount is calculated.

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**8 Evidence by affidavit**

Except to the extent to which the Court may otherwise direct in any particular case the trial of any proceeding to which this Order applies shall take place upon the basis of affidavit evidence subject to cross-examination.

**9 Affidavits of valuation**

In the case of any affidavit deposing to the value of an interest in land:

- (a) the affidavit may take the form of an affidavit verifying a report of the deponent annexed to the affidavit; and
- (b) the affidavit, either by itself or by one or more annexures:
  - (i) shall set out with particularity the process of reasoning adopted by the deponent in reaching his conclusion as to value;
  - (ii) shall disclose full particulars of all transactions relied upon by the deponent in reaching that conclusion; and
  - (iii) shall indicate, by appropriate markings made on one or more maps included in or annexed to the affidavit or report, the parcels of land the subject of such transactions.

**10 Notice of disputed transaction**

- (1) In any case where an affidavit complying with paragraph (b) of the preceding rule has been filed and an opposing party:
  - (a) disputes the fact of any transaction particularized in such affidavit;
  - (b) disputes any of the stated particulars of any such transaction; or
  - (c) claims that any particularized transaction was subject to a term, condition or circumstance which renders the transaction an unreliable guide to value;

the opposing party shall, within 28 days of service upon him of the affidavit, file and serve upon the party on whose behalf the affidavit was served a notice of disputed transaction.

**Rule 10**

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- (2) A notice of disputed transaction shall specify:
  - (a) the respect or respects (if any) in relation to which it is said that the particulars are inaccurate;
  - (b) any term or condition the content of which is said to make that transaction an unreliable guide to value; and
  - (c) the nature of any circumstance which is said to render the transaction an unreliable guide to value.
- (3) Where a party fails to file and serve a notice of disputed transaction in relation to any particular transaction in accordance with the preceding subrule unless the Court otherwise directs, that party shall be taken to admit, for the purposes of the proceeding, the transaction, the particulars thereof contained in the affidavit and the fact that the transaction was not subject to any term, condition or circumstance rendering it an unreliable guide to value.



## Order 68      ***International Arbitration Act 1974***

### **1      Interpretation**

- (1) In this Order:

***International Arbitration Act*** means the *International Arbitration Act 1974*.

***Model Law*** means the UNCITRAL Model Law on International Commercial Arbitration, adopted by the United Nations Commission on International Trade Law on 21 June 1985, the English text of which is set out in Schedule 2 to the International Arbitration Act.

- (2) Unless the contrary intention appears, expressions used in this Order have the same meaning in this Order as they have in the International Arbitration Act.

### **2      Application of Order 68**

Each party to a proceeding to which the International Arbitration Act applies must comply with:

- (a) this Order; and
- (b) any other of these Rules that are relevant and consistent with this Order.

### **3      Enforcement of foreign arbitration agreement (International Arbitration Act, s 7)**

- (1) An application for an order under section 7 of the International Arbitration Act to stay the whole or part of a proceeding must be made by filing a motion on notice in accordance with Form 27.

**Rule 4**

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- (2) The application must be accompanied by a copy of the arbitration agreement and an affidavit stating the material facts on which the claim for relief is based.

*Note* **Arbitration agreement** is defined in subsection 3 (1) of the International Arbitration Act.

**4 Recognition of foreign award (International Arbitration Act, s 8)**

- (1) A party seeking leave under subsection 8 (3) of the International Arbitration Act to enforce a foreign award must file an application in accordance with Form 5.

*Note* **Foreign award** is defined in subsection 3 (1) of the International Arbitration Act.

- (2) The application must be accompanied by:
- (a) the documents mentioned in section 9 of the International Arbitration Act; and
  - (b) an affidavit stating:
    - (i) the extent to which the foreign award has not been complied with at the date the application is made; and
    - (ii) the usual or last known place of residence or business of the person against whom it is sought to enforce the foreign award or, if that is a corporation, its last known registered office.
- (3) The application may be made without notice to any person.

**5 Application for relief mentioned in article 6 of the Model Law (International Arbitration Act, s 18)**

- (1) A party seeking relief under articles 11 (3), 11 (4), 13 (3), 14, 16 (3) or 34 (3) of the Model Law must file an application in accordance with Form 5.
- (2) The application must be accompanied by an affidavit stating the material facts on which the claim for relief is based.

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**Rule 7****6 Recognition of award (International Arbitration Act, s 35)**

- (1) A party seeking leave under subsection 35 (4) of the International Arbitration Act to enforce an award must file an application in accordance with Form 5.

*Note* **Award** is defined in subsection 31 (1) of the International Arbitration Act.

- (2) The application must be accompanied by an affidavit stating:
- (a) the extent to which the award has not been complied with at the date the application is made; and
  - (b) the usual or last known place of residence or business of the person against whom it is sought to enforce the award or, if that is a corporation, its last known registered office.
- (3) The application may be made without notice to any person.

**7 Documents not in the English language**

A party to a proceeding to which this Order applies who wants to rely on a document that is not in the English language must provide a certified English translation of the document to:

- (a) the Court; and
- (b) any other party to the proceeding.

*Note* Section 9 of the International Arbitration Act also deals with the translation of awards and arbitration agreements in proceedings to which Part II of the International Arbitration Act applies.

# Order 69      Trans-Tasman Market Proceedings Rules

## Division 1      Preliminary

### 1      Short title

This Order may be cited as the Trans-Tasman Market Proceedings Rules.

### 2      Definitions for Order 69

In this Order:

*New Zealand registry* means a registry of the High Court of New Zealand.

*Trade Practices Act* means the *Trade Practices Act 1974*.

*Note* The following expressions are defined in section 32B of the Act:

- Australian injunction
- Australian judgment
- Australian proceeding
- High Court
- judgment creditor
- judgment debtor
- New Zealand injunction
- New Zealand judgment
- New Zealand proceeding
- registered.

### 3      Expressions used in the Trade Practices Act

An expression used in this Order and in the Trade Practices Act has the same meaning in this Order as in that Act.

**4 Application of this Order and other rules of the Court**

- (1) This Order applies to an Australian proceeding.
- (2) The other rules of the Court apply, so far as they are not inconsistent with this Order, to an Australian proceeding.

**Division 2 Conduct of Trans-Tasman market proceedings****5 Filing documents in an Australian proceeding in New Zealand**

- (1) A party may, unless the Court or a Judge otherwise orders, file a document in an Australian proceeding in a New Zealand registry.
- (2) A party that files a document in accordance with subrule (1) must, at the time of filing:
  - (a) obtain from the registry a receipt that gives a general description of the document that was filed; and
  - (b) specify whether the document is to be sent to the Court by facsimile or post; and
  - (c) pay the registry an amount to meet the costs of sending the document to the Court in the way specified under paragraph (b).

**6 Filing documents in a New Zealand proceeding in Australia**

- (1) A party may file a document in a New Zealand proceeding in a registry of the Court if permitted by a law of New Zealand to do so.
- (2) If a party files a document in accordance with subrule (1):
  - (a) the party must, at the time of filing:
    - (i) specify the New Zealand registry to which the document is to be sent; and
    - (ii) specify whether the document is to be sent to the New Zealand registry by facsimile or post; and

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- (iii) pay the registry an amount to meet the costs of sending the document to the New Zealand registry in the way specified under subparagraph (ii); and
- (b) the Registrar must, at the time of filing, give the party a receipt from the registry that:
  - (i) contains a general description of the document that was filed; and
  - (ii) states the way in which the document will be sent to the New Zealand registry; and
- (c) the Registrar must, as soon as practicable after the document is filed:
  - (i) notify the New Zealand registry that the document has been filed; and
  - (ii) send the document to the New Zealand registry.

**7 Stay of Australian proceeding**

The Court or a Judge may make an order staying an Australian proceeding in whole or in part if:

- (a) proceedings involving the same issues or questions of fact have been commenced in the Court and in the High Court of New Zealand; and
- (b) the Court or a Judge is satisfied that, in the interests of justice, the Australian proceeding should be stayed until the New Zealand proceeding is determined.

**8 Federal Court sittings in New Zealand**

The Court or a Judge may give directions about the procedures for conducting or continuing a proceeding at a place in New Zealand in accordance with section 32C of the Act.

**9 Offences under Part IIIA of the Act**

Order 49 applies to a prosecution for an offence under Part IIIA of the Act.

## **Division 3                      Registration of judgment of High Court of New Zealand**

### **10                      Definition for Division 3**

In this Division:

*judgment* means a final or interlocutory judgment or order.

### **11                      Application for registration of judgment of High Court of New Zealand**

- (1) An application by a judgment creditor for registration of a New Zealand judgment under section 32W of the Act must:
  - (a) be in accordance with Form 170; and
  - (b) subject to subrule (5), be accompanied by:
    - (i) a copy of the judgment certified by the High Court of New Zealand; and
    - (ii) an affidavit that complies with subrule (2).
- (2) The supporting affidavit must state:
  - (a) the full name, occupation and the usual or last known residential or business address of each party; and
  - (b) that the judgment was given in a proceeding in which a matter for determination arose, as is the case, under section 36A, 98H or 99A of the Commerce Act 1986 (New Zealand); and
  - (c) that, if the judgment were registered, the registration would not be, or be liable to be, set aside under section 32Y of the Act; and
  - (d) that, on the day on which the application was made, the judgment can be enforced in New Zealand; and
  - (e) if the judgment is a money judgment — that, on the day on which the application is made, the judgment has not been wholly satisfied.
- (3) If the judgment is a money judgment, a further supporting affidavit must be filed on the day of hearing stating:
  - (a) that the judgment has not been wholly satisfied; and

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- (b) if the judgment has been partly satisfied — the balance remaining payable on that day; and
  - (c) the amount of interest (if any) payable on the judgment under New Zealand law as at that date; and
  - (d) the sum of the amounts of the reasonable costs of registration of the judgment and the costs incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment from the High Court of New Zealand as at that date.
- (4) The further supporting affidavit must:
  - (a) set out the facts and grounds relied on for each statement made in the affidavit; and
  - (b) include any certificates issued by the original court with respect to the judgment, stating:
    - (i) the causes of action to which the judgment relates; and
    - (ii) the enforceability of the judgment in New Zealand; and
    - (iii) the rate of interest (if any) payable under the New Zealand law on any amount payable under the judgment.
- (5) If it is not practicable for the applicant to comply with subparagraph (1) (b) (i):
  - (a) a facsimile copy of the judgment certified by the High Court of New Zealand may be filed; and
  - (b) unless the Court or a Judge gives leave — a copy of the judgment certified by the High Court of New Zealand must be filed before any step is taken to enforce the judgment.
- (6) The application may be heard in the absence of the judgment debtor.
- (7) An order for the registration of a New Zealand judgment must:
  - (a) if the judgment is a money judgment — be in accordance with Form 171; or
  - (b) if the judgment is a non-money judgment — be in accordance with Form 172.



**12 Notice of registration of judgment of High Court of New Zealand**

- (1) The applicant must give notice, in accordance with subrule (2), of registration of a judgment of the High Court of New Zealand to the party against whom the registered judgment is enforceable.
- (2) Unless the Court or a Judge otherwise orders, the applicant must personally serve upon a party against whom the registered judgment is enforceable:
  - (a) a copy of the certified judgment of the High Court of New Zealand; and
  - (b) an authenticated copy of the order for registration of the judgment; and
  - (c) a copy of each supporting affidavit.
- (3) If the party against whom the registered judgment is enforceable is out of Australia, the documents mentioned in subrule (2) may be served without leave of the Court or a Judge.

*Note* Order 8 provides for service of documents outside Australia.
- (4) An affidavit of service of the documents mentioned in subrule (2) must be filed before any step is taken to enforce the registered judgment.
- (5) The Court may order the applicant to give such security as the Court thinks fit for the costs of the application and for the costs of any application that may be brought to set aside the registration of the judgment.

**13 Application to set aside registration of judgment of High Court of New Zealand**

- (1) An application to set aside the registration of the judgment (which may include an application for a stay of the enforcement of the registered judgment) must be made by motion on notice.
- (2) The Court may give such directions as may be necessary for the statement and trial of any issue arising in the application.

**Rule 14**

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**14 Record of registered judgments of High Court of New Zealand**

The Registrar must keep a record of the following details of each registered judgment:

- (a) the details of the judgment of the High Court of New Zealand;
- (b) the date of the order that the judgment be registered;
- (c) the full name and address of the judgment creditor, or the name and address of the judgment creditor's solicitor or agent on whom a document can be served;
- (d) the full name, occupation and last known address of the party against whom the judgment is enforceable;
- (e) if the judgment is a money judgment:
  - (i) the judgment amount expressed in Australian dollars; and
  - (ii) the amount of interest (if any) payable on the judgment under New Zealand law expressed in Australian dollars; and
  - (iii) the rate at which the registered judgment carries interest;
- (f) if the judgment is a non-money judgment — the terms of the judgment;
- (g) the sum of the amounts of the reasonable costs of registration of the judgment and the costs incidental to the registration of the judgment;
- (h) the details of any enforcement or proceeding in respect of the registered judgment.

# Order 69A      Trans-Tasman Proceedings

## Division 1      Preliminary

### 1      Short title

This Order may be cited as the Trans-Tasman Proceedings Rules.

### 2      Definition for Order 69A

In this Order:

*Evidence and Procedure Act* means the *Evidence and Procedure (New Zealand) Act 1994*.

*Note* The following expressions are defined in section 3 of the Evidence and Procedure Act:

- court
- document
- expenses
- family proceeding
- fax
- federal court
- inferior court
- New Zealand Act
- New Zealand Minister
- official instrument
- person named
- public document
- spouse
- subpoena
- subpoena for production
- subpoena to give evidence
- superior court.

**Rule 3**

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**3 Expressions used in the Evidence and Procedure Act**

An expression used in this Order and in the Evidence and Procedure Act has the same meaning in this Order as in that Act.

**4 Application of this Order and other rules of the Court**

- (1) This Order applies to a proceeding to which the Evidence and Procedure Act applies.
- (2) The other rules of the Court apply, so far as they are not inconsistent with this Order, to a proceeding to which the Evidence and Procedure Act applies.

**Division 2                      Service of Australian subpoena in  
New Zealand****5 Application for leave to serve a subpoena in New Zealand**

- (1) An application for leave to serve a subpoena in New Zealand must be made by motion on notice.
- (2) A single application may be made for leave to serve 2 or more subpoenas in New Zealand.
- (3) The application must be accompanied by:
  - (a) a copy of each subpoena in respect of which leave is sought; and
  - (b) an affidavit that complies with subrule (4).
- (4) The supporting affidavit must state the following matters:
  - (a) the name, designation or occupation and address of each person named;
  - (b) whether each person named is over 18 years old;
  - (c) the nature and significance of the evidence to be given, or the document or thing to be produced, by each person named;

- (d) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to each person named;
  - (e) the date by which it is intended to serve each subpoena in New Zealand;
  - (f) details of the amounts to be paid or tendered to each person named to meet the person's reasonable expenses of complying with the subpoena;
  - (g) details of the way in which the amounts mentioned in paragraph (f) are to be paid or tendered to each person named;
  - (h) if the subpoena requires a person named to give evidence — an estimate of the time that the person will be required to attend to give evidence;
  - (i) any facts or matters known to the applicant that may be grounds for an application by a person named to have the subpoena set aside under subsection 14 (2) or (3) of the Evidence and Procedure Act.
- (5) A subpoena to which this Order applies, if issued by the Court, must be in accordance with Form 69A.
- (6) Subrule (7) applies in relation to a person named in a subpoena if the person is not a party to the proceeding.
- (7) Before granting leave under the Evidence and Procedure Act to serve the subpoena, the Court may require the applicant for leave to undertake to meet the expenses reasonably incurred by the person named in complying with the subpoena, if those expenses exceed the allowances and travelling expenses to be provided to that person at the time of service of the subpoena.

## **6 Hearing of application for leave to serve a subpoena in New Zealand**

An application for leave to serve a subpoena issued by an inferior court may be heard by the Court or a Judge in the absence of any party or the person named.

**Rule 7**

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**7 Documents relating to application**

Except with the leave of the Court or a Judge, a person must not search in the Registry for, inspect or copy any document relating to an application under the Evidence and Procedure Act for leave to serve a subpoena issued in a proceeding in New Zealand.

**Division 3 Setting aside Australian subpoena****8 Application to set aside subpoena**

- (1) An application to set aside a subpoena served in New Zealand must be made by motion on notice.
- (2) The heading of the motion must be the same as the heading on the copy of the order giving leave to serve the subpoena in New Zealand.
- (3) The application must be accompanied by:
  - (a) a copy of the subpoena; and
  - (b) an affidavit that complies with subrule (4).
- (4) The supporting affidavit must state:
  - (a) the grounds on which the application is based; and
  - (b) an address for service within Australia or New Zealand of the person named; and
  - (c) whether the person named requests that the hearing be held by video link or telephone.

*Note* Order 7 rule 6 sets out the requirements for an address for service.
- (5) The application must be filed in the District Registry shown on the order of the Court granting leave to serve the subpoena in New Zealand.
- (6) Upon receipt of the application, the Registrar must serve a copy of the application on the party that obtained leave to serve the subpoena in New Zealand.

## **Division 4                      Compliance with subpoena**

### **9                      Subpoena for production**

If the Registrar receives information under section 17 of the Evidence Amendment Act 1994 (New Zealand) that a document or thing has been produced to a registry of the High Court of New Zealand in compliance with a subpoena issued by the Court, the Registrar may ask the registry to confirm that the document or thing is able to be delivered to the Court before the date specified in the subpoena for production.

## **Division 5                      Failure to comply with subpoena**

### **10                      Application for issue of certificate of non-compliance with subpoena**

- (1) The Court may issue a certificate of non-compliance with a subpoena.
- (2) An application for a certificate of non-compliance may be made:
  - (a) orally to the Court if the proceeding in which the subpoena was issued is before the Court; or
  - (b) by motion on notice.
- (3) The application must be accompanied by:
  - (a) an affidavit of service of the subpoena and the order giving leave to serve the subpoena; and
  - (b) an affidavit that complies with subrule (4); and
  - (c) a draft certificate of non-compliance.
- (4) The supporting affidavit must:
  - (a) include a copy of:
    - (i) the subpoena and the order giving leave to serve the subpoena; and
    - (ii) any other application to set aside the subpoena; and
    - (iii) any material in support of that application; and
    - (iv) the order finally deciding that application; and

**Rule 11**

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- (b) set out the circumstances that are alleged to constitute a failure to comply with the subpoena.

**11 Form of certificate of non-compliance with subpoena**

- (1) A certificate of non-compliance with a subpoena must be in accordance with Form 69AB.
- (2) The Registrar must affix the stamp of the Court to a certificate issued under subrule (1).

**Division 6 Enforcement of orders made in New Zealand proceedings****12 Request for enforcement of order made in New Zealand proceeding**

- (1) This rule applies to a request for enforcement of an order made by a New Zealand court under section 32 of the Evidence and Procedure Act.
- (2) A request for enforcement of the order may be made:
  - (a) by the New Zealand court that made the order; or
  - (b) by a party to the proceeding.
- (3) The request for enforcement must be made by filing:
  - (a) a request in accordance with Form 69AC; and
  - (b) an affidavit that complies with subrule (4); and
  - (c) if the circumstances that are alleged to constitute a contravention of the order were recorded — a copy of the recording.
- (4) The supporting affidavit must:
  - (a) set out the order that is alleged to have been contravened; and
  - (b) state the name of the person alleged to have contravened the order; and
  - (c) set out the circumstances that are alleged to constitute a contravention of the order.



- (5) On receipt of a request for enforcement of the order, the Court must determine whether to direct that:
- (a) the provisions of Division 1 of Order 40, with any necessary modifications, apply; or
  - (b) rules 8 and 9 of Order 40, with any necessary modifications, apply.
- (6) Nothing in this rule affects the power of the Court to punish for contempt.

## **Division 7                      Use of video links or telephones in Australian proceedings**

### **13                      Application for direction for use of video link or telephone**

Subject to paragraph 8 (4) (c), an application for a direction that evidence be taken, or submissions be made, by video link or telephone from New Zealand, may be in accordance with Form 69AD.

**Rule 1**

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# **Order 70      *Aboriginal and Torres Strait Islander Act 2005***

## **1      Interpretation**

- (1) In this Order:  
*ATSI Act* means the *Aboriginal and Torres Strait Islander Act 2005*.
- (2) An expression used in this Order and in Schedule 4 to the ATSI Act has the same meaning in this Order as in that Schedule.

## **2      Election petitions**

- (1) An election petition lodged in accordance with Schedule 4 to the ATSI Act shall be in or substantially in the form numbered 73 in Schedule 1 and shall name as respondent the person returned at the election.
- (2) Upon the receipt of a petition, the Registrar shall:
  - (a) sign and affix the stamp of the Court to the petition; and
  - (b) provide or forward a sealed copy to the petitioner and a note endorsed on the petition of the time and place at which the matter is listed for a directions hearing.
- (3) (a) Not later than two days before the date appointed for a directions hearing the petitioner shall serve a sealed copy of the petition upon the respondent.
  - (b) The copy of the petition for service under paragraph (a) shall bear a note:
    - (i) of the time and place for a directions hearing; and
    - (ii) that if there is no appearance by the parties served at the directions hearing the proceeding may be heard and orders made in his or her absence.

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**Rule 3**

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- (c) The Registrar shall upon receipt and sealing of a petition forward a sealed copy to the Electoral Commission and to the Minister.
- (4) At the directions hearing the Court shall give such directions as are necessary or desirable for the further hearing of the petition including directions as to the joinder of any further parties as respondents and the giving of notice of the proceedings to them.
- (5) On filing an election petition, the petitioner must deposit with the Registrar the amount of \$100 as security for costs to be repaid or otherwise disposed of in accordance with Schedule 4 to the ATSI Act.
- (6) (a) When a petition claims a declaration that a person was duly elected who was not returned and a respondent desires to contend that the person for whom the declaration is sought was not duly elected he shall, within seven (7) days after entering his or her appearance or within such further time as the Court or a Judge allows, file in the Registry and deliver to the petitioner at his or her address for service a statement of the facts upon which he or she intends to rely.  
(b) The statement shall set out the facts in the same way in which facts relied upon to invalidate an election are to be set out in a petition.
- (7) The Court or a Judge may order a party to the proceedings on a petition to deliver to another party particulars or further and better particulars of a matter alleged by that party.

**3 Reference as to qualifications or vacancy**

- (1) A reference to the Court under section 17 of Schedule 4 to the ATSI Act must be in accordance with Form 74.
- (2) After receipt of a reference, the Registrar must:
  - (a) sign and affix the stamp of the Court to the reference; and
  - (b) provide or forward a sealed copy to the Minister with a note endorsed on the reference of the time and place at which the matter is listed for a directions hearing.

**Rule 4**

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- (3) As soon as practicable after making the reference, the applicant must send a sealed copy of the reference to the Torres Strait Regional Authority.
- (4) The applicant must, at least twice before the directions hearing, publish a notice of the reference and the date of the directions hearing in a newspaper circulated in each Torres Strait Regional Authority ward.
- (5) At the directions hearing the Court must give such directions as are necessary or desirable for the further hearing of the reference including:
  - (a) directions permitting any person who in the Court's opinion is interested in the determination of a question to be heard on the hearing of the reference; and
  - (b) directions that notice of a reference be served on any person; and
  - (c) directions relating to the lodgment of documents in the Minister's possession.

**4 General**

- (1) When the Court is of the opinion that the hearing of a petition or reference will be assisted by production of any document or thing, the Court may direct the Registrar to issue subpoenas for production or attendance.
- (2) The Registrar shall arrange for the service of such subpoenas and the payment of attendance money and witness expenses in connection therewith.

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## **Order 71      Corporations Act and ASIC Act proceedings**

*Note* For the rules governing proceedings in the Court under the *Corporations Act 2001* or the *Australian Securities and Investments Commission Act 2001*, see the *Federal Court (Corporations) Rules 2000*.

Rule 1

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**Order 71A    *Corporations  
(Aboriginal and Torres  
Strait Islander) Act 2006*  
proceedings****1        Conduct of proceedings**

A proceeding under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* must be conducted in accordance with the *Federal Court (Corporations) Rules 2000* to the extent that those rules can apply, including any modification of those rules for the nature of the proceeding.

# **Order 72      Mediation and arbitration**

## **Division 1      Preliminary**

### **1      Definition for Order 72**

In this Order:

*suitable person* means a person appointed under rule 10 to conduct an alternative dispute resolution process.

### **1A      Mediation, arbitration or alternative dispute resolution process procedure**

If the Court or a Judge orders proceedings, part of proceedings, or any matter arising out of proceedings, to be referred to a mediator, arbitrator or suitable person, the mediation, arbitration or alternative dispute resolution process must proceed in accordance with this Order unless the Court or a Judge orders otherwise.

### **2      Application of Order**

- (1) Division 2 of this Order does not apply if a Judge undertakes a mediation.
- (2) Nothing in this Order affects an order or direction made under Order 10, rule 1.

### **3      If a Judge undertakes mediation**

If a Judge undertakes a mediation, the Judge may give any directions with respect to the conduct of the mediation that the Judge thinks fit.

**Rule 4**

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**4 Adjournment of proceedings**

- (1) If the Court or a Judge makes an arbitration, mediation or alternative dispute resolution process order in relation to proceedings, the proceedings are adjourned until the mediator, arbitrator or suitable person reports back to the Court unless the Court or a Judge considers that in all the circumstances the proceedings should not be adjourned.
- (2) The Court or a Judge may adjourn the proceedings to a fixed date when the mediator, arbitrator or suitable person must report to the Court on progress in the mediation, arbitration or alternative dispute resolution process.

**5 Court may terminate mediation, arbitration or alternative dispute resolution process**

- (1) Nothing in this Order prevents the Court from:
  - (a) terminating a mediation, arbitration or alternative dispute resolution process at any time; or
  - (b) terminating the appointment of a mediator, arbitrator or suitable person; or
  - (c) appointing a new mediator, arbitrator or suitable person to replace a mediator, arbitrator or suitable person who has died or ceased to hold office, or whose appointment has been terminated.
- (2) If, when the Court appoints a new arbitrator, the Court considers it appropriate in all the circumstances, the Court may order that:
  - (a) the new arbitrator must treat any evidence given, or any record, document or anything else produced, or anything done, in the course of earlier proceedings as if it had been given, produced or done before or by the new arbitrator; or
  - (b) any interim award made in the course of the earlier proceedings is to be taken to have been made by the new arbitrator; or
  - (c) the new arbitrator must adopt and act on any determination of a matter made by the previous arbitrator without applying his or her own judgment to the matter.



- (3) If the Court appoints a new mediator or a new suitable person, the Court may order that the mediation or alternative dispute resolution process continue in any way the Court directs.

## **Division 2                      Mediation**

### **6                      Nomination of mediator**

- (1) As soon as practicable after a mediation order is made, the 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 of mediation; and
    - (iii) of any further documents that one or more of the parties must give direct to the mediator for the purposes of the mediation.
- (2) In fixing the time and date for the mediation, the Registrar must:
- (a) consult the parties to ascertain their wishes; and
  - (b) have regard to the time fixed by the Court within which the mediation must be commenced, or completed, or both.

### **7                      Conduct of mediation conferences**

- (1) A mediation conference must be conducted:
- (a) in accordance with any directions given by the Court or a Judge; 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 and if the parties consent, the agreement can be included in a consent order under Order 35, rule 10.

**Rule 8**

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- (2) If part only of proceedings before the Court is the subject of a mediation order, the mediator may, on the conclusion of the mediation, report back to the Court in terms agreed between the parties.

**8 Termination of mediation**

- (1) If the mediator considers that a mediation should not continue, the mediator must, subject to any order of the Court or a Judge:
- (a) terminate the mediation; and
  - (a) report back to the Court.

**Division 3 Arbitration****9 Appointment of arbitrator**

- (1) If an arbitration order is made, the Court or a Judge may, with the consent of the parties, nominate a particular person to be the arbitrator.
- (2) A nomination under subrule (1) must be accompanied by the arbitrator's written consent to the appointment.
- (3) The parties may, at the time of appointment, or at any subsequent directions hearing, ask the Court or a Judge to make orders by consent setting out:
- (a) the manner in which the arbitration is to be conducted; and
  - (b) the time by which the arbitration is to be completed; and
  - (c) the manner in which the arbitrator, and the expenses of the arbitration, are to be paid.
- (4) The parties may ask the Court or a Judge to indicate to the arbitrator the manner in which the arbitrator's report on the proceedings, part of the proceedings, or any matter arising out of the proceedings, are to be reported back to the Court.

## **Division 4                      Alternative dispute resolution process**

### **10                      Nomination of suitable person**

- (1) As soon as practicable after an alternative dispute resolution process order is made, the Registrar must:
  - (a) nominate a person as the suitable person; and
  - (b) give the parties written notice:
    - (i) of the name and address of the suitable person; and
    - (ii) of the time, date and place of the alternative dispute resolution process; and
    - (iii) of any further documents that one or more of the parties must give direct to the suitable person for the purposes of the alternative dispute resolution process.
- (2) In fixing the time and date for the alternative dispute resolution process, the Registrar must:
  - (a) consult the parties to ascertain their wishes; and
  - (b) have regard to the time fixed by the Court within which the alternative dispute resolution process must be commenced or completed, or both.

### **11                      Conduct of alternative dispute resolution process**

- (1) An alternative dispute resolution process must be conducted in accordance with any directions given by the Court or a Judge.
- (2) If part only of proceedings before the Court is the subject of an alternative dispute resolution process order, the suitable person may, on the conclusion of the alternative dispute resolution process, report back to the Court in terms agreed between the parties.

**Rule 12**

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**12 Termination of alternative dispute resolution process**

If the suitable person considers that an alternative dispute resolution process should not continue, the suitable person must, subject to any order of the Court or a Judge:

- (a) terminate the alternative dispute resolution process; and
- (b) report back to the Court.

## **Order 72A Referral by the Court to referee**

### **1 Order of referral**

- (1) At any stage of a proceeding, the Court may make an order under section 54A of the Act referring any of the following matters to 1 or more referees for inquiry and report:
  - (a) a proceeding in the Court;
  - (b) 1 or more questions or issues arising in a proceeding, whether of fact or law or both, and whether raised by pleadings, agreement of parties or otherwise.
- (2) A referee, if referred a matter under section 54A of the Act, must give the referee's opinion on the matter in a report, unless the Court otherwise orders.
- (3) The Court may set a time, when making the referring order or after making the order, for a referee to give an opinion and, if a time has been set, the referee must provide the opinion within the set time.

### **2 Appointment of referees**

- (1) The Court may appoint any appropriate person as either:
  - (a) a referee; or
  - (b) a senior referee.
- (2) The Court must appoint a person as a senior referee if it appoints more than 1 referee to conduct an inquiry into a matter referred under section 54A of the Act.

### **3 Two or more referees**

- (1) The decision of the senior referee is to prevail if:
  - (a) the Court appoints 2 referees; and

**Rule 4**

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- (b) the 2 referees cannot agree upon a decision to be made during an inquiry.
- (2) If the Court appoints 3 or more referees:
  - (a) the decision of the majority is to prevail in relation to a decision to be made during an inquiry; or
  - (b) if there is no majority — the decision of the senior referee is to prevail.

**4 Inquiry and report**

If the Court makes an order under section 54A of the Act, it may at any time:

- (a) authorise a referee to inquire into, and report on, any facts relevant to the inquiry; or
- (b) direct a referee to conduct a further inquiry into a referred matter, or a supplementary inquiry into a related matter, and provide a further report; or
- (c) give any instruction the Court thinks fit about the conduct of the inquiry, or about the content of the report, including an instruction about the conduct of an experiment or test for the purpose of the inquiry or report.

**5 Remuneration of referee**

- (1) The Court may make directions about the remuneration of a referee, including a direction that a party give security for the remuneration.
- (2) Subrule (1) does not affect the powers of the Court as to costs.

**6 Court rooms and other facilities**

The Court may make directions, for the purpose of an order under section 54A of the Act, for the provision of:

- (a) services of officers of the Court; or
- (b) court rooms and other facilities.

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**Rule 7****7 Conduct of inquiry**

- (1) The Court may make directions with respect to the conduct of an inquiry by a referee.
- (2) Subject to a direction made by the Court under subrule (1) or paragraph 4 (c), a referee:
  - (a) may conduct the inquiry in any way the referee thinks fit; and
  - (b) is not bound in the inquiry by the rules of evidence but may inform himself or herself in any way the referee thinks fit.
- (3) Evidence before a referee in an inquiry:
  - (a) may be given orally or in writing; and
  - (b) must, if the Court requires, be given:
    - (i) on oath or by affirmation; or
    - (ii) by affidavit.
- (4) A referee may administer an oath or affirmation to a witness giving evidence in an inquiry.
- (5) The Court may order that a referee is authorised to take evidence in an inquiry for the purposes of a subpoena issued under Order 27.
- (6) Each party to an inquiry must give to all the referees conducting the inquiry, and to all other parties to the inquiry, a brief statement of the findings of fact and law contended by the party by the conclusion of evidence for the inquiry or, if another period of time has been fixed by the referee, within the time fixed.
- (7) A party to an inquiry must:
  - (a) do all things required of the party by the referee so that the referee can form a just opinion about the matter; and
  - (b) not wilfully do, or cause to be done, any act to delay or prevent the referee forming an opinion.

**Rule 8**

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**8 Interlocutory directions**

The Court may, on application by a party to an inquiry, or by the referee conducting the inquiry, give directions about any matter arising during an inquiry.

**9 Setting aside or varying an order**

- (1) The Court may, on application by a party to an inquiry or a referee conducting an inquiry, set aside or vary an order made under section 54A of the Act.
- (2) Subrule (1) does not affect any other power of the Court to set aside or vary an order made under section 54A of the Act.

**10 Report**

- (1) A referee must, unless the Court otherwise orders, give a written report to the Court about the matter referred to the referee by an order under section 54A of the Act that:
  - (a) has annexed to it the statements given by the parties under subrule 7 (6); and
  - (b) sets out the referee's opinion on the matter; and
  - (c) sets out the referee's reasons for the opinion.
- (2) The referee must give the report mentioned in subrule (1) within any period fixed by the Court.
- (3) The Court will send the report to the parties on receipt of the report.

**11 Proceeding on the report**

- (1) After a report has been given to the Court under rule 10, the Court may:
  - (a) on a question of fact or law, or both, do any of the following:
    - (i) adopt, vary or reject the report, in whole or in part;
    - (ii) require an explanation by way of a further report by the referee;



**Rule 11**

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- (iii) remit on any ground, for further consideration by the referee, the whole or any part of the matter that was referred to the referee for inquiry and report;
    - (iv) decide any matter on the evidence taken before the referee, with or without additional evidence; and
  - (b) give any judgment or order in relation to the question it thinks fit.
- (2) Evidence given in an inquiry may not be adduced before the Court except with the leave of the Court.

Rule 1

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## Order 73      Representative proceedings

### 1      Interpretation

- (1) In this Order, unless the contrary intention appears:
- application for an order involving notice* means an application for an order under section 33K, 33W, 33X or 33ZA of the Act in relation to which the Court may require notice to be given to group members.
- opt out notice* means a notice under section 33J of the Act.
- (2) An expression used in this Order that is defined for the purposes of Part IVA of the Act has the same meaning in this Order as it has in that Part.

### 2      Application of Order

This Order applies to the commencement of representative proceedings and, as far as practicable, to the conduct of those proceedings.

### 3      Commencement of proceedings

Representative proceedings must be commenced by filing an application in accordance with Form 129.

### 4      Consent to be a group member

A person referred to in subsection 33E (2) of the Act may give consent to be a group member in accordance with Form 130.

### 5      Applications for orders involving notice

- (1) An application for an order involving notice must be made by notice of motion.

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**Rule 6**

- (2) The notice of motion must:
  - (a) have attached a supporting affidavit that sets out to the best information, knowledge and belief of the applicant:
    - (i) the identity or description of the group members; and
    - (ii) the whereabouts of the group members; and
    - (iii) the means by which a notice ordered by the Court is most likely to come to the attention of the group members; and
  - (b) be served on all other parties.

**6 Opt out notices**

- (1) An opt out notice filed under section 33J of the Act may be in accordance with Form 131.
- (2) The heading of the notice must state:
  - (a) the names of the parties to the proceeding; and
  - (b) the serial number of the proceeding; and
  - (c) the District Registry where the notice is filed.

Rule 1

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## **Order 74      Reciprocal enforcement of judgments under the *Foreign Judgments Act* 1991**

### **1      Interpretation**

Unless the contrary intention appears, expressions used in this Order have, in relation to proceedings taken under the *Foreign Judgments Act 1991*, the same meaning in this Order as they have in that Act.

### **2      Application of Order**

This Order applies to an application for an order for the registration of a money judgment or a non-money judgment to which paragraph 6 (2) (a) or 6 (2) (b) of the *Foreign Judgments Act 1991* applies.

### **3      Application for an order for registration of foreign judgment**

- (1) An application under subsection 6 (1) of the *Foreign Judgments Act 1991* to have a judgment registered in the Court must:
  - (a) be in Form 132; and
  - (b) have attached a copy of the judgment certified by the original court and, if the judgment is not in the English language, a translation of the judgment authenticated by affidavit; and
  - (c) be supported by affidavits in accordance with rule 4.
- (2) An application under this rule may be made *ex parte*.

**Rule 4**

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**4 Matters to be included in affidavit**

- (1) An affidavit in support of an application must be filed with the application and must state:
  - (a) the full name, occupation and the usual or last known place of residence, or of business, of the parties; and
  - (b) if paragraph 6 (1) (b) of the *Foreign Judgments Act 1991* is relied on — the date of the last judgment in proceedings by way of appeal; and
  - (c) that the judgment was given in a proceeding in which a matter for determination arose under the Commerce Act 1986 of New Zealand (other than a proceeding or a part of a proceeding in which a matter for determination arose under section 36A, 98H or 99A of that Act); and
  - (d) that Part 2 of the *Foreign Judgments Act 1991* applies to the judgment; and
  - (e) that if the judgment were registered the registration would not be, or be liable to be, set aside under section 7 of the Act; and
  - (f) the amount of costs of, and incidental to, the registration sought to be included in the registered judgment; and
  - (g) if the judgment is a money judgment:
    - (i) that judgment was given in a superior court of a country in relation to which Part 2 extends or an inferior court of such a country, being an inferior court in relation to which Part 2 extends; and
    - (ii) if section 13 of the *Foreign Judgments Act 1991* does not apply to the country of the original court — that that section does not so apply; and
  - (h) if the judgment is a non-money judgment — that the judgment is a non-money judgment of a kind prescribed pursuant to subsection 5 (6) of the *Foreign Judgments Act 1991*.
- (2) A further affidavit in support of the application must be filed on the day of hearing the application and must state that on that day:
  - (a) the judgment can be enforced in the country of the original court; and

**Rule 5**

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- (b) if the judgment is a money judgment:
  - (i) the judgment has not been wholly satisfied; and
  - (ii) if the judgment has been partly satisfied — the balance remaining payable on that day; and
  - (iii) the interest (if any) which by the law of the country of the original court has become due under the judgment up to the time of registration; and
  - (iv) if the amount payable under the judgment is expressed in a currency other than Australian currency and the application does not state that the judgment is to be registered in the currency in which it is expressed — the judgment is to be registered for the equivalent amount in Australian currency, based on the rate of exchange prevailing on that day.
- (3) The affidavit must set out the facts and grounds relied on for each statement made in the affidavit and attach any certificates which have been issued by the original court with respect to the judgment stating:
  - (a) the causes of action to which the judgment relates; and
  - (b) the enforceability of the judgment in that country; and
  - (c) the rate of interest (if any) payable under the law of that country on any amount payable under the judgment.

**5 Registration**

- (1) An order for the registration of a money judgment must be in Form 133.
- (2) An order for the registration of a non-money judgment must be in Form 134.

**6 Notice of registration**

- (1) The applicant must serve a notice of registration, in Form 135 or Form 136, as the case requires, on the party against whom the registered judgment is enforceable.

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- (2) The notice must have attached:
  - (a) an office copy of the order for registration of the judgment; and
  - (b) copies of the supporting affidavits.
- (3) The notice, the office copy of the order and a copy of each supporting affidavit must be served personally in accordance with these Rules unless some other mode of service is ordered by the Court or a Judge.
- (4) An affidavit of due service must be filed before any step is taken to enforce the registered judgment.

**7 Time limit**

- (1) Order 3, rule 3 applies to an application to have the registration of a judgment set aside.
- (2) On an application to have the registration of a judgment set aside, the Court may give such directions as may be necessary for the statement and trial of any issue arising in the application.

**8 Security for costs**

The Court may order an applicant for registration of a judgment give such security as the Court thinks fit for the costs of the application and for the costs of any application which may be brought to set aside the registration of the judgment.

**9 Record of registered judgments**

The Registrar must maintain a record of the following particulars of each registered judgment:

- (a) the details of the judgment of the original court;
- (b) the date of the order that the judgment be registered;
- (c) in relation to the judgment creditor — the full name and address of the judgment creditor or the name and address of the judgment creditor's solicitor or agent on whom a document can be served;

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- (d) in relation to the party against whom the judgment is enforceable — the full name, occupation and last known address of that party;
- (e) if the judgment is a money judgment:
  - (i) the sum expressed in the currency in which the judgment is registered; and
  - (ii) the interest (if any) due under the judgment up to the time of registration; and
  - (iii) the rate at which the registered judgment carries interest;
- (f) if the judgment is a non-money judgment — the terms of the judgment;
- (g) the costs of, and incidental to, registration included in the registered judgment;
- (h) the particulars of any enforcement or proceeding in respect of the registered judgment.



## **Order 76      Enforcement of determinations of the Australian Human Rights Commission or Privacy Commissioner**

### **1      Application**

This rule applies to determinations of:

- (a) the Australian Human Rights Commission under the *Disability Discrimination Act 1992*, the *Racial Discrimination Act 1975* and the *Sex Discrimination Act 1984*; and
- (b) the Privacy Commissioner under the *Privacy Act 1988*.

### **2      Commencement**

A proceeding for an order to enforce a determination to which this Order applies must be commenced by filing an application in accordance with Form 5.

### **3      Service**

The applicant must serve a copy of the application on each other party to the matter to which the determination relates and on the Commission or Commissioner, as the case may be, within 7 days of the day on which the application is filed.

## **Order 77      Bankruptcy proceedings**

*Note* For the rules governing proceedings in the Court under the *Bankruptcy Act 1966*, see the *Federal Court (Bankruptcy) Rules 2005*. Those Rules commenced on 6 February 2006.

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# Order 78      Native title proceedings

## Division 1      Introductory

### 1      Interpretation for Order 78

- (1) In this Order:

*main application* means an application made under section 61 of the Native Title Act.

*Native Title Act* means the *Native Title Act 1993*.

*Old Native Title Act* means the *Native Title Act 1993* as in force immediately before 30 September 1998.

*Registrar* means:

- (a) for an application made to the Native Title Registrar before 30 September 1998 — the District Registrar of the Court in the State or Territory in which the application was made; or
  - (b) in any other case — the District Registrar of the Court in the State or Territory in which the application is filed.
- (2) In this Order, a reference to the Native Title Registrar or the NNTT includes a reference to a State or Territory body that is an equivalent body under section 207B of the Native Title Act.

### 2      Expressions used in the Native Title Act

Unless the contrary intention appears, an expression used in this Order and in the Native Title Act has the same meaning in this Order as it has in the Native Title Act.

*Note* See, for example, the definitions of *claimant application*, *Commonwealth Minister*, *Native Title Registrar*, *NNTT*, *non-claimant application* and *recognised State/Territory body* in section 253 of the Native Title Act.

**3 Application of Order 78**

- (1) This Order applies to a proceeding in the Court to which the Native Title Act applies.
- (2) The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court to which the Native Title Act applies.
- (3) This Order applies to a recognised State/Territory body in relation to a power delegated to the body by the Native Title Registrar under section 191 of the Native Title Act.

**3A Exercise of powers by Registrars**

For the purposes of paragraph 35A (1) (h) of the Act, the Court or a Judge may direct a Registrar to exercise a power of the Court under a provision of the Native Title Act mentioned in Schedule 4.

**4 Cultural or customary concerns**

- (1) At any time in a proceeding, the Court may give the directions and make the orders it considers appropriate to take account of the cultural or customary concerns of a party to the proceeding or another person.

*Example*

The Court may make a ruling on the naming of recently deceased people.

- (2) In considering orders to be made, the Court may seek any information it considers appropriate from a party to the proceeding.

## **Division 2                      Applications**

### **Subdivision 1                      Applications made before 30 September 1998**

#### **5                      Applications taken to be made to the Court**

- (1) This rule applies to an application made before 30 September 1998 to the Native Title Registrar under section 61 of the Old Native Title Act, and taken to be made to the Federal Court under the *Native Title Amendment Act 1998*.

*Note* Certain applications given to the Native Title Registrar are taken to have been made to the Federal Court as a consequence of the commencement of the *Native Title Amendment Act 1998*. For this and other consequences, see Part 3 of Schedule 5 to the *Native Title Amendment Act 1998*.

- (2) As soon as reasonably practicable on or after 30 September 1998, the Registrar must fix a time, date and place for a directions hearing.
- (3) The Court may give the directions and make the orders it considers appropriate in relation to the application.

### **Subdivision 2                      Applications made on or after 30 September 1998**

#### **6                      Main application (native title and compensation)**

- (1) An applicant must file 2 copies of a main application and each map and other accompanying document with the Court.

*Note 1* The *Native Title (Federal Court) Regulations 1998* prescribe the following forms for applications under section 61 of the Native Title Act:

- Form 1 (Native title determination application — claimant application)
- Form 2 (Native title determination application — non-claimant application)
- Form 3 (Revised native title determination application)
- Form 4 (Compensation application).

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*Note 2* Form 1 is also the prescribed form for amending a claimant application (see Schedule S to Form 1). Form 2 and 4 may be used for amending a non-claimant application and compensation application respectively.

- (2) If the applicant is an individual, the application must be signed, and the accompanying affidavit sworn or affirmed, by the applicant.
- (2A) If the applicant is a body corporate, the application must be signed, and the accompanying affidavit sworn or affirmed, by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to sign the application and make the affidavit.
- (2B) If the applicant is a number of individuals jointly:
  - (a) the application must be signed by each individual, or by 1 individual who is authorised by each other individual to sign the application; and
  - (b) the accompanying affidavit must be sworn or affirmed by each individual.
- (3) As soon as reasonably practicable after an application is filed, the Registrar must forward 1 copy of the application and each map and accompanying document to the Native Title Registrar.
- (4) The Registrar must fix a time, date and place for a directions hearing.
- (5) The Court may give the directions and make the orders it considers appropriate.

**7 Form of amendment of main application**

- (1) A person applying under section 64 or 66B of the Native Title Act to amend a main application must file 2 copies of the application and each map and other accompanying document with the Court.

*Note 1* An application may be amended under section 64 of the Native Title Act or in any other way as ordered by the Court. For consequences of amending an application, see section 190 of that Act.

*Note 2* For replacing an applicant, see section 66B of the Native Title Act.

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- (2) As soon as reasonably practicable after an application is filed, the Registrar must forward 1 copy of the application and each map and accompanying document to the Native Title Registrar.
  - (3) The Court may give the directions and make the orders it considers appropriate, including (but without limiting the generality of this power) an order that claimant applications be combined.

## **8 Joinder of parties to main application**

- (1) This rule applies to a person who wants to be a party to a main application.
- (2) If the 3 month period mentioned in paragraph 66 (10) (c) of the Native Title Act (the *relevant period*) has not ended for the application, the person must notify the Court in writing, which may be in the form prescribed in the *Native Title (Federal Court) Regulations 1998*.

*Note* The *Native Title (Federal Court) Regulations 1998* prescribe Form 5 as a form which may be used for notice of intention to become a party to an application.

- (3) At the end of the relevant period, the Registrar must give notice of each party joined to the application to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.
- (4) If the relevant period has ended, the person must apply to the Court to be joined as a party.
- (4A) An application under subrule (4) must:
  - (a) be in writing; and
  - (b) set out:
    - (i) how the person's interests may be affected by a determination in the proceeding; and
    - (ii) why it is in the interests of justice that the person be joined as a party to the proceeding.

*Note* The Court may at any time join any person as a party to a proceeding in relation to a main application if the Court is satisfied that the person's interests may be affected by a determination in the proceeding and it is in

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the interests of justice to do so — see subsection 84 (5) of the Native Title Act.

- (5) The person applying for leave must, within the time directed by the Court, give notice of his or her intention to apply to be joined to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.
- (6) If the Court grants the person leave to be joined, notice of the decision must be given to the applicant and to any other party to the proceeding as the Court directs, and in the manner that the Court directs.

**9 Withdrawal of a party**

If a party to a proceeding, other than the applicant, wishes to cease to be a party, the party may:

- (a) at any time before the first hearing of the proceeding — give written notice to the Court in accordance with Form 162; or
- (b) in any other case — apply to the Court for leave to withdraw from the proceeding.

*Note* A party who gives notice to the Court under paragraph (9) (a) ceases to be a party to the proceeding (see subsection 84 (6) of the Native Title Act). For replacing an applicant, see section 66B of the Native Title Act.

**10 Applications other than main applications**

- (1) This rule applies to an application other than a main application.
- (2) Unless the Court otherwise directs, an application to the Court for which no form is prescribed under the *Native Title (Federal Court) Regulations 1998*, must be:
  - (a) in the appropriate form under these Rules with any variations that the nature of the case requires; and
  - (b) accompanied by an affidavit setting out the grounds in support of the application.



*Example*

The appropriate form for a notice of motion is Form 27, and the appropriate form for an application for which no other form is provided in the Rules is Form 5 of the Rules.

*Note* At 30 September 1998, no form is prescribed under the *Native Title (Federal Court) Regulations 1998* for certain applications, including:

- for **just terms** compensation (under section 53 of the Native Title Act)
- to review a decision of the Native Title Registrar not to accept a claim for registration (under subsection 69 (1) of the Native Title Act)
- to remove details of an agreement from the Register of Indigenous Land Use Agreements (under subsection 69 (1) of the Native Title Act)
- for transfer of records (under subsection 69 (1) of the Native Title Act)
- to be joined as a party to proceeding (subsection 84 (5) of the Native Title Act)
- for leave to withdraw as a party to proceeding (subsection 84 (7) of the Native Title Act)
- to strike out an application (under section 84C of the Native Title Act)
- for an order that mediation cease (under section 86C of the Native Title Act).

- (3) If the applicant is an individual, the application must be signed, and the accompanying affidavit sworn or affirmed, by the applicant.
- (3A) If the applicant is a body corporate, the application must be signed, and the accompanying affidavit sworn or affirmed, by a director, secretary or other principal officer of the body corporate, or by a person employed by the body corporate who is authorised to sign the application and make the affidavit.
- (3B) If the applicant is a number of individuals jointly:
- (a) the application must be signed by each individual, or by 1 individual who is authorised by each other individual to sign the application; and
  - (b) the accompanying affidavit must be sworn or affirmed by each individual.
- (4) Unless the Court otherwise directs, the application must be served on the applicant to the main application and on the Commonwealth and each State or Territory having jurisdiction over the area to which the main application relates.

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- (5) The Court may order that the application be served on, or notice of the application be given to, other parties to the main application.

*Note* For giving notice, see rule 43 of this Order.

- (6) If an applicant, the Commonwealth, a State or Territory served with an application under this rule, or the NNTT, believes another person has an interest in the application, the applicant, the Commonwealth, the State or Territory or the NNTT may, within 14 days of receiving the application, notify the Court of the name and address of the person believed to have an interest.
- (7) The Court may order that the application be served on, or notice be given to, any person that the Court is satisfied has an interest in the application.
- (8) A person served with, or given notice of, the application may file and serve a notice of appearance and, unless the Court otherwise directs, becomes a respondent to the application on filing the notice of appearance.
- (9) In this rule, **person** may include a group of persons or an organisation.
- (10) Nothing in this rule affects any right a person may otherwise have to be joined as a party to a proceeding, or the power of the Court, on its own initiative or at the request of a party, to order that a person be joined as a party to a proceeding.

**11 Application to strike out main application**

- (1) This rule applies to an application by a party to a proceeding to strike out a main application under section 84C of the Native Title Act.

*Note* Section 84C applies where the main application was made either before or after the commencement of that section: see item 21 of Schedule 5 to the *Native Title Amendment Act 1998*.

- (2) A copy of the application must be served on the applicant to the main application and any other party to the main application as the Court directs.

- (3) As soon as reasonably practicable after the application is filed, the Registrar must:
- (a) give a copy of the application and any accompanying documents to the Native Title Registrar; and
  - (b) fix a time, date and place for a directions hearing.

*Note* The Court must consider the application before proceeding with the main application (see section 84C of the Native Title Act).

## **12 Application for review of decision not to accept claim for registration**

- (1) This rule applies to an application under subsection 190F (1) of the Native Title Act for review of a decision of the Native Title Registrar not to accept a claim for registration.
- (2) The application must be filed within 42 days from the date of notification of the decision under subsection 190D (1) of the Native Title Act.
- (3) Unless the Court otherwise directs:
  - (a) each State and Territory having jurisdiction over the area to which the main application relates must be joined as a respondent to the application; and
  - (b) the Commonwealth may be joined as a respondent to the application.

## **13 Application to remove details of agreement from the Register of Indigenous Land Use Agreements**

- (1) This rule applies to an application under subsection 199C (2) of the Native Title Act for the removal of details of an agreement from the Register of Indigenous Land Use Agreements.
- (2) The affidavit accompanying the application must include a statement of:
  - (a) if the ground relied on is fraud — the day when the fraud first came to the notice of the applicant; and
  - (b) if the ground relied on is undue influence — the date of the first occurrence of the act of undue influence; and

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- (c) if the ground relied on is duress — the date of the first occurrence of the act of duress.

**14                    Application for order about return of, or access to, records**

- (1) This rule applies to an application of the Native Title Act for an order under subsection 203FC (4) of that Act to ensure compliance with directions in accordance with subsection 203FC (3) of that Act.
- (2) The application must be filed within 42 days from the day when the directions take effect.
- (3) However, if the directions nominate a day for completion of compliance with the directions, the application must be filed within 42 days from that day.

**15                    Application for payment of amount secured by bank guarantee**

- (1) This rule applies to an application to the Court for a direction as to payment of an amount secured by a bank guarantee in accordance with a determination or declaration mentioned in subsection 52 (1) of the Native Title Act.  
*Note* See items 5, 8 and 9 of the table in subsection 52 (2), and subsection 52 (3), of the Native Title Act.
- (2) If the applicant believes another person has an interest in the Court's direction, the applicant must name the person as a respondent in the application.

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## Division 3                      Reference to Court of questions of fact or law

### 16                      Question to be special case

- (1) A reference to the Court of the following matters must be in the form of a special case:
  - (a) a question of fact or law referred under subsection 94H (1) of the Native Title Act by a person conducting a mediation (a *mediator*);
  - (b) a question of law referred under subsection 145 (1) of the Native Title Act by the NNTT.
- (2) The special case must:
  - (a) be divided into consecutively numbered paragraphs; and
  - (b) state the facts concisely; and
  - (c) be accompanied by all documents necessary to enable the Court to decide the questions raised by the special case.
- (3) The Court may draw from the facts stated in the special case and the accompanying documents any inference, whether of fact or law, which might have been drawn from them if proved at trial.

### 17                      Special case to be prepared — referral by mediator

For a reference under subsection 94H (1) of the Native Title Act, unless the Court otherwise directs, the special case must be:

- (a) settled by the mediator; and
- (b) transmitted, with 4 additional copies, by the mediator to the Registrar.

### 17A                      Special case to be prepared — referral by NNTT

For a reference under subsection 145 (1) of the Native Title Act, unless the Court otherwise directs, the special case must be:

- (a) settled by the presiding member of the NNTT; and

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- (b) transmitted, with 4 additional copies, by the NNTT to the Registrar.

**18 Setting down for hearing — referral by mediator**

For a reference under subsection 94H (1) of the Native Title Act, the Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the mediator, and each party to the proceedings, of the date for the directions hearing.

**18A Setting down for hearing — referral by NNTT**

For a reference under subsection 145 (1) of the Native Title Act, the Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify the NNTT, and each party to the proceedings, of the date for the directions hearing.

**19 Party having carriage of proceeding — referral by mediator**

For a reference under subsection 94H (1) of the Native Title Act, the party having carriage of the proceeding is:

- (a) if the question is referred by the mediator at the request of a party — that party; and
- (b) if the question is referred by the mediator of the mediator's own motion — the party appointed by the mediator to have carriage of the proceeding.

**19A Party having carriage of proceeding — referral by NNTT**

For a reference under subsection 145 (1) of the Native Title Act, the party having carriage of the proceeding is:

- (a) if the question is referred by the NNTT at the request of a party — that party; and

- (b) if the question is referred by the NNTT of its own motion — the party appointed by the NNTT to have carriage of the proceeding.

## **20 Court's discretion**

Nothing in this Division affects the general power of the Court to exercise its discretion in relation to cases stated and questions reserved.

## **Division 3A Referral to Court of questions under section 94J of Native Title Act**

### **20A Referral of questions about whether a party should cease to be a party**

- (1) A referral under section 94J of the Native Title Act must:
  - (a) be in accordance with Form 166A; and
  - (b) state the facts giving rise to the referral concisely; and
  - (c) be accompanied by each document that is necessary to enable the Court to consider the question raised by the referral.
- (2) The Court may draw from a document mentioned in paragraph (1) (c) any inference of fact that the Court considers appropriate.

### **20B Preparation of referral**

The referral must be:

- (a) settled by the person conducting the mediation (the *mediator*); and
- (b) provided by the mediator to each of the following:
  - (i) the Registrar;
  - (ii) the party to whom the referral relates;
  - (iii) the applicant to the main application;

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- (iv) each State and Territory that has jurisdiction over the area to which the main application relates.

**20C Setting down for hearing**

The Registrar must:

- (a) set down the proceeding for a directions hearing; and
- (b) notify each of the following of the date appointed for the directions hearing:
  - (i) the mediator;
  - (ii) each party to whom the referral was provided under rule 20B.

**Division 4 Mediation**

*Note* See also Division 4 of Part 4 of the Native Title Act.

**21A Report about breaches of good faith requirement**

- (1) A report to the Court under subsection 94P (4) of the Native Title Act that a party or the party's representative did not act or is not acting in good faith in relation to the conduct of a mediation must:
  - (a) be in writing; and
  - (b) describe the conduct of the party or the party's representative that is the subject of the report; and
  - (c) refer to the evidence of the conduct mentioned in paragraph (b); and
  - (d) give reasons why the conduct is considered to be a failure to act in good faith.

*Note* If a person conducting a mediation considers that a party, or the party's representative, did not act or is not acting in good faith in relation to the conduct of the mediation, the presiding member may report the failure to the Court — see subsections 94P (4) and (5) of the Native Title Act.

- (2) The report must be provided to the Registrar in a sealed envelope that is marked 'confidential'.



- (3) The Registrar must provide the report to the Court only if the mediator or a party to the main application seeks to rely on the report.

## **Division 5                      Appeals from decisions or determinations of NNTT**

### **22                      Definition for Division 5**

In this Division:

*NNTT proceeding* means a proceeding in the NNTT from which an appeal to the Court is made.

### **23                      Application of Division**

This Division applies to:

- (a) an appeal to the Court under subsection 169 (1) of the Native Title Act on a question of law relating to a right to negotiate application; and
- (b) an appeal to the Court under subsection 169 (2) of that Act on a question of law in relation to a subsection 24DJ (1) objection application.

### **24                      Instituting an appeal**

- (1) An appeal must be instituted by filing a notice of appeal, in accordance with Form 141, in the District Registry of the Court in the State or Territory where the NNTT proceeding was heard.

*Note* Subsection 169 (4) of the Native Title Act provides that an appeal must be instituted within the period of 28 days starting on the day on which the decision or determination of the NNTT is given to the person instituting the appeal or within such further time as the Court allows.

- (2) The person instituting the appeal is, for the purposes of the appeal, the applicant.
- (3) Each party to the NNTT proceeding other than the person instituting the appeal must be named in the notice of appeal as a respondent.

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**25 Extension of time to appeal**

- (1) An applicant may apply to the Court for an extension of time to institute the appeal.
- (2) An application for an extension of time must:
  - (a) be made in accordance with the section headed 'Application for extension of period in which to appeal' in Form 141; and
  - (b) be accompanied by an affidavit:
    - (i) explaining why the applicant did not institute the appeal within the 28 day period or will not be able to institute the appeal within that period; and
    - (ii) setting out the grounds for seeking the extension of time.

**26 Serving notice of appeal**

Unless the Court otherwise directs, the applicant must serve a copy of the notice of appeal and any supporting affidavit on each respondent within:

- (a) 7 days after filing the notice of appeal; or
- (b) any further period allowed by the Court.

**27 Procedure after notice of appeal is filed**

- (1) If a notice of appeal is filed, the Registrar must:
  - (a) fix a time, date and place for a directions hearing; and
  - (b) endorse those details on the notice of appeal; and
  - (c) send a copy of the notice of appeal and any supporting affidavit to the Native Title Registrar; and
  - (d) ask the Native Title Registrar to:
    - (i) make a list of the documents and other things that were before the NNTT at the end of the NNTT proceeding; and
    - (ii) give the list, and the documents and other things mentioned in the list, to the Registrar.
- (2) On receiving a list, the Registrar must:

- (a) endorse the date of receipt on the list; and
  - (b) send a copy of the list endorsed with the date to the Native Title Registrar; and
  - (c) notify the applicant that paragraphs (a) and (b) have been complied with.
- (3) As soon as possible after receiving notice under paragraph (2) (c), the applicant must serve notice on each respondent that the Native Title Registrar has given the Registrar the list and the documents and other things mentioned in the list.
- (4) A party may apply to the Court for an order that a document or thing in the list, or any part of a document or thing in the list, which would otherwise be able to be inspected under Order 46, subrule 6 (2) not be disclosed to 1 or more parties, or that disclosure be on conditions as included in the order.
- (5) An application under subrule (4) must be made:
  - (a) if the party applying is the applicant — within 28 days after the day the applicant receives notice from the Registrar under paragraph (2) (c); and
  - (b) if the party applying is a respondent — within 28 days after the day the respondent is served with notice from the applicant under subrule (3).
- (6) The Court may make any order it considers appropriate in relation to the application.

## **27A Appeal book**

The Court may, at any time in a proceeding, make any order it considers appropriate relating to the preparation, filing and service of an appeal book.

## **28 Directions hearing**

At the directions hearing:

- (a) the Court must decide whether any person should be joined as a party to the appeal; and

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- (b) the Court may direct the applicant to file an affidavit providing any further information that the Court considers necessary or desirable.

**29 Notification of hearing appeal**

After the directions hearing, the Registrar must notify the applicant and each other party to the appeal, of the time, date and place fixed for the hearing of the appeal.

**30 Reference to Chief Justice for direction**

A Judge or the Registrar may refer the appeal to the Chief Justice for a direction as to whether the appeal should be heard by a single Judge or the Full Court.

**Division 6 Evidence**

**31 Evidentiary matters generally**

- (1) The Rules generally and the Rules of evidence apply, subject to this Order, to a proceeding under this Order.
- (2) The Court may, at any time in a proceeding, make any order it considers appropriate relating to evidentiary matters.
- (3) Without limiting subrule (2), the Court may make orders:
  - (a) restricting access to the transcript of a proceeding; or
  - (b) restricting access to the content of any pleading or any other document on the Court file; or
  - (c) relating to the manner in which evidence may be presented to the Court; or
  - (d) relating to the time when and the place where certain evidence is to be taken; or
  - (e) relating to the manner of identifying and referring to evidence about specified subject matters; or
  - (f) relating to the presentation of evidence about a cultural or customary subject.

**32 Evidence of a cultural or customary subject**

If evidence of a cultural or customary subject is to be given by way of singing, dancing, storytelling or in any other way other than in the normal course of giving evidence, the party intending to adduce the evidence must tell the Court, within a reasonable time before the evidence is proposed to be given:

- (a) where, when and in what form it is proposed to give the evidence; and
- (b) of any issues of secrecy or confidentiality relating to the evidence or part of the evidence.

**33 Documents referring to certain material**

- (1) A document used in a proceeding that refers to material relating to a cultural or customary subject that a party claims is of a confidential or secret nature must contain a notice of the claim.
- (2) The notice must:
  - (a) appear on the front page of the document; and
  - (b) include a short description of the material and the reason for its confidential or secret nature.
- (3) The material must be contained in a sealed envelope attached to the document.
- (4) The sealed envelope must not be opened except by leave of the Court.
- (5) Leave may be conditional on non-disclosure of the material or part of the material.

**34 Evidence given in consultation with others**

- (1) The Court may, if it considers that in all the circumstances it is in the interests of justice to do so, receive into evidence statements from a group of witnesses, or a statement from a witness after that witness has consulted with other persons.

**Rule 35**

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- (2) If a statement is made by a witness after consultation with other persons, the identity of the persons may, at the direction of the Court, be recorded in the transcript.

**35 Evidence given not in normal course**

- (1) If the Court considers that a person's evidence should be given at a time other than when such evidence would normally be given, the Court may give directions as to how, when and in what form the evidence is to be given.
- (2) Subrule (1) applies even if the proceeding has been referred to mediation.

**36 Evidence that may disclose certain information, contrary to a Court order**

- (1) This rule applies if the adducing of evidence or inspection of a document in a proceeding might disclose evidence or information relating to the culture, genealogy, customs or traditions of Aboriginal peoples or Torres Strait Islanders contrary to a direction or order of a court or tribunal.
- (2) The person wishing to adduce the evidence or inspect the document must give reasonable notice to:
- (a) the court or tribunal that gave the direction or made the order; and
  - (b) each person, or the representative of each person, who gave the evidence or produced the information; and
  - (c) any other person as the Court may direct.
- (3) Notice may be given under paragraph (2) (a) by giving notice to the Registrar of the court or tribunal, or a person performing the duties of a Registrar or holding a similar office.
- (4) In this rule, a ***court or tribunal*** includes the Aboriginal Land Commissioner and any other body or entity with jurisdiction under a law of the Commonwealth or a State or Territory to hear and determine, or make findings and recommendations, or mediate or otherwise act in relation to indigenous land proceedings.

**37 Inspection**

- (1) To enable the proper determination of any matter in question in a proceeding, the Court may make orders for the inspection of any place.
- (2) Without limiting subrule (1), the Court may make orders about the method, manner and means of inspection, including orders relating to:
  - (a) the provision of maps; or
  - (b) the obtaining of permission of owners and occupiers of land; or
  - (c) the giving of notice; or
  - (d) particulars of travel and accommodation details; or
  - (e) particulars of arrival and departure times; or
  - (f) the type, number and description of motor vehicles; or
  - (g) route description (for example the physical features of route including condition of road surfaces); or
  - (h) particulars of distances to be travelled and estimated times of travel and inspection; or
  - (i) details of any third party controlling the inspection and any related costs.

**Division 7 Assessors****Subdivision 2 Assessors****39 Taking evidence**

- (1) The Court may direct an assessor:
  - (a) to take evidence from a party to a proceeding at a time, date and place arranged with the party; and
  - (b) to decide how the evidence is to be recorded; and
  - (c) to prepare a report of the evidence and give it to the Court by a specified time.

*Note* Section 83 of the Native Title Act allows the Chief Justice to direct an assessor to assist the Court in relation to a proceeding, subject to the control and direction of the Court.

**Rule 40**

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- (2) The Court may, on the application of the assessor or on its own initiative, order a person to be summoned to appear before the assessor to give evidence or produce documents or other things.
- (3) If a party wishes the assessor to apply for an order under subrule (2), the party must:
  - (a) prepare the summons; and
  - (b) give 2 copies of the summons to the assessor for submission to the Court.
- (4) The summons must be in accordance with Form 138.
- (5) If the summons is to produce documents or other things, the documents or other things must be specified in the summons.

**40 Conflict of interest**

- (1) If, at any stage of a proceeding, an assessor becomes aware that the assessor has, or may have, a conflict of interest (within the meaning of subsection 37L (3) of the Act) in relation to the proceeding, the assessor must immediately notify:
  - (a) the Chief Justice of the Court; and
  - (b) the Judge listed to hear the matter; and
  - (c) if the proceeding is being heard by a Full Court — the presiding Judge; and
  - (d) each party to the proceeding.
- (2) The notice is to be given by the assessor in person or by telephone.
- (3) However, if it is not possible to comply with subrule (2), the assessor may give notice by facsimile transmission.

**Division 8 Other**

**41 Change of address for service**

A party to a proceeding must inform the Court in writing in accordance with Form 163 of any change in address for service or contact details within 14 days of the change.



**41A Short title of proceeding**

- (1) This rule applies to a document in a proceeding under the Native Title Act that is not:
  - (a) an originating process; or
  - (b) a document to be served on a person who is not a party to the proceeding; or
  - (c) a final order.
- (2) The document may be headed in accordance with Form 2 using a short title of the proceeding specified by the Registrar.
- (3) Despite Order 41, subrule 1 (2), the short title need not refer to the parties to the proceeding.

**42 Appointment of agent**

- (1) If a party to a proceeding appoints an agent in relation to the proceeding under subsection 84B (1) of the Native Title Act, the party must inform the Court in writing in accordance with Form 164, within 14 days of the appointment, of the name, contact details and address for service of the agent.
- (2) The party must inform the Court in writing in accordance with Form 165 of any change in name, contact details or address for service within 14 days of the change.

**42A Leave to be represented by person who is not a barrister or solicitor**

An application by a party under section 85 of the Native Title Act for leave to be represented by a person who is not a barrister or a solicitor must be in accordance with Form 166.

**43 Notice**

- (1) If notice is required to be given under the Native Title Act, these Rules or by order of the Court, the notice must be:
  - (a) in the form determined by the Commonwealth Minister; or
  - (b) in any other form that the Court considers appropriate.
- (2) The notice must be given:

**Rule 44**

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- (a) by ordinary pre-paid post; or
  - (b) in any other way the Court considers appropriate.
- (3) The Court may direct an applicant or the Registrar to give public notice of any hearing before the Court, or any order of the Court, in the manner and at the time the Court considers appropriate.

**44 Native Title Registrar application to Court for order as to notice**

- (1) The Court may, on the written request of the Native Title Registrar under subsection 66 (7) or 66A (3) of the Native Title Act, make orders as to:
  - (a) whether a particular person or class of persons must be given notice of an application; and
  - (b) how the notice is to be given.
- (2) The Court may also direct the Native Title Registrar to give any additional notice that the Court considers appropriate.
- (3) The Registrar must enter and affix the stamp of the Court to the orders and forward a sealed copy to the Native Title Registrar by ordinary pre-paid post or as otherwise determined by the Court.

**45 Overlapping applications**

- (1) If any party to an application has knowledge of the existence of another proceeding before the Court that relates to a native title determination that covers (in whole or in part) the same area as that application, the party must immediately give notice to the Court identifying the other application.
- (2) If the Court receives notice under subrule (1), the Court must convene a directions hearing in both proceedings together to consider the future conduct of the proceedings.
- (3) The Court may give the directions and make the orders it considers proper for the future conduct of the proceedings.

**46 Court may order adjournment for the purpose of agreement between parties**

- (1) The Court may, at any time in a proceeding, order an adjournment to allow the parties time for negotiation.
- (2) Negotiations for which an adjournment may be allowed may relate to an agreement about matters other than native title.
- (3) The Court may order that an adjournment end:
  - (a) if the NNTT reports that the negotiations are unlikely to succeed; or
  - (b) for any other reason the Court considers appropriate.
- (4) This rule does not limit the general power of the Court in relation to mediation.

**47 Agreements regarding the practical outcomes of a native title determination**

Before the Court makes a final determination as to native title, the Court may direct the parties to confer, with the aim of reaching agreement about the practical management of any aspect of the rights and interests to be the subject of the final determination.

**48 Appearance by NNTT**

- (1) A person may appear on behalf of the NNTT only if authorised by the President of the NNTT to do so.

*Note* See also section 86BA of the Native Title Act.

- (2) A person appearing on behalf of the NNTT at a hearing is not required to file and serve a notice of appearance.
- (3) A person appearing on behalf of the NNTT at a hearing must, at least 5 days before the hearing, file in the Registry, and serve on each party to the proceeding, a written notice that includes:
  - (a) the person's name; and
  - (b) the office the person holds in the NNTT; and
  - (c) the person's address, telephone number, fax number and email address (if any); and

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- (d) a summary of the submissions that the person proposes to make on behalf of the NNTT.

# Order 80      Court appointed referral for legal assistance

## 1      Interpretation

- (1) In the interpretation of this order, preference must be given to a construction that will promote, and be consistent with, the purpose in subrule (2) and the statements in subrules (3) and (4).
- (2) The purpose of this order is to facilitate, where it is in the interests of the administration of justice, the provision of legal assistance to litigants who are otherwise unable to obtain assistance.
- (3) The provision of legal assistance under this order is not intended to be a substitute for legal aid.
- (4) A referral under this order is not an indication that the Court has formed an opinion on the merits of a litigant's case.
- (5) Nothing in this order requires the Court to make a referral, or to consider a litigant's case for referral, under this order.

## 2      Definitions

In this order:

***litigant***, in a proceeding, means a person who is a party to the proceeding or who has been served with an originating process, summons or subpoena in the proceeding.

***Pro Bono Panel*** means the list of lawyers mentioned in rule 3.

***scheme*** means the scheme for the provision of legal assistance to litigants under this order.

**Rule 3**

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**3 Pro Bono Panel**

The Registrar may maintain, in each District Registry, a list of persons:

- (a) who are lawyers in the State or Territory where the District Registry is located; and
- (b) who have agreed to participate in the scheme.

**4 Referral to a lawyer**

- (1) The Court or a Judge may, if it is in the interests of the administration of justice, refer a litigant to the Registrar for referral to a lawyer on the Pro Bono Panel for legal assistance in relation to a proceeding before the Court.
- (2) For subrule (1), the Court or Judge may take into account:
  - (a) the means of the litigant; and
  - (b) the capacity of the litigant to obtain legal assistance outside the scheme; and
  - (c) the nature and complexity of the proceeding; and
  - (d) any other matter that the Court, or Judge, considers appropriate.
- (3) A referral to the Registrar is effected by the issue of a Referral Certificate in accordance with Form 161 in relation to the litigant.
- (4) If a Referral Certificate has been issued, the Registrar must attempt to arrange for the legal assistance mentioned in the certificate to be provided to the litigant by a lawyer on the Pro Bono Panel.
- (5) However, the Registrar may refer a litigant to a particular lawyer only if the lawyer has agreed to accept the referral.

**4A Further direction**

The Registrar may seek the direction of the Court or a Judge in relation to a referral made under rule 4.

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**Rule 7****5 Kind of assistance**

A referral may be made for the following kinds of assistance:

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

**6 Provision of assistance by lawyer**

Subject to rule 7, if a lawyer agrees to accept a referral, the lawyer must provide assistance to the litigant in accordance with the referral.

**6A Cessation of Referral Certificate**

Unless the Court or a Judge otherwise directs, a Referral Certificate ceases to have effect if:

- (a) the Referral Certificate is not accepted by a lawyer within 28 days of the referral; or
- (b) a lawyer has provided the legal assistance mentioned in the referral; or
- (c) a lawyer has ceased to provide legal assistance under rule 7; or
- (d) the proceeding the referral relates to is finalised or transferred to another court.

**7 Cessation of assistance**

- (1) A lawyer who has agreed to accept a referral may cease to provide legal assistance to the litigant only:
  - (a) in the circumstances set out in any practice rules governing professional conduct that apply to the lawyer; or
  - (b) with the written agreement of the litigant; or
  - (c) with the leave of the Registrar.

**Rule 8**

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- (2) If a lawyer ceases to provide legal assistance to a litigant, the lawyer must inform the Registrar in writing within 7 days.

**8 Application for leave**

- (1) An application by a lawyer to the Registrar for leave to cease to provide legal assistance must be in writing and must briefly state the reasons for the application.
- (2) A copy of the application for leave must be served on the litigant.
- (3) An application for leave may be heard by the Registrar in chambers and may be heard ex parte.
- (4) In deciding whether to grant leave under this rule, the Registrar must consider:
- (a) whether the lawyer would be likely to be able to cease to provide legal assistance to the litigant under any practice rules governing professional conduct that apply to the lawyer; and
  - (b) any conflict of interest that the lawyer may have; and
  - (c) whether there is a substantial disagreement between the lawyer and the litigant in relation to the conduct of the litigation; and
  - (d) any view of the lawyer:
    - (i) that the litigant's case is not well founded in fact or law; or
    - (ii) that the litigant's prosecution of the litigation is an abuse of process; and
  - (e) whether the lawyer lacks the time to provide adequate legal assistance to the litigant because of other professional commitments; and
  - (f) whether the litigant has refused or failed to pay any disbursements requested under rule 10; and
  - (g) whether it is unfair to require the lawyer to continue to provide legal assistance under the scheme; and
  - (h) any other matter that the Registrar considers relevant.



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**Rule 9**

- (5) An application for leave under this rule and any related correspondence:
  - (a) is confidential; and
  - (b) is not part of the proceeding in relation to which the referral was made; and
  - (c) does not form part of the Court file in relation to that proceeding.

**9 Professional fees and disbursements**

- (1) Subject to subrule (5), a lawyer who provides legal assistance to a litigant under the scheme (an *assisted litigant*) may seek or recover from the assisted litigant professional fees or disbursements for the legal assistance only if the lawyer enters into an agreement with the assisted litigant.
- (2) The agreement must provide that the lawyer is entitled to charge, and the assisted litigant is liable to pay, professional fees and disbursements only:
  - (a) if an order for costs is made in favour of the assisted litigant; and
  - (b) to the extent that the litigant against whom the order for costs is made in fact pays the fees and disbursements.
- (3) If the agreement is entered into, the Court may also order the litigant against whom the order for costs is made to pay the fees and disbursements to the lawyer instead of to the assisted litigant.
- (4) Payment made to the lawyer in accordance with an order under subrule (3) satisfies, to the extent of the payment, the order for costs made in favour of the assisted litigant.
- (5) The lawyer may ask the assisted litigant to pay any disbursements reasonably incurred, or reasonably to be incurred, by the lawyer on behalf of the assisted litigant in connection with the legal assistance.

Rule 1

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# Order 81      Human rights proceedings

## 1      Citation

This Order may be cited as the Human Rights Rules.

## 2      Definitions for Order 81

In this Order:

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

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

## 3      Expressions used in the Human Rights Act

Unless the contrary intention appears, an expression used in this Order and in the Human Rights Act has the same meaning in this Order as it has in the Human Rights Act.

*Note* See the definitions of *affected person*, *alleged unlawful discrimination*, *complaint* and *unlawful discrimination* in subsection 3 (1) of the Human Rights Act, and the definition of *special-purpose Commissioner* in subsection 46PV (3) of that Act.

## 4      Application of Order 81

- (1) This Order applies to a proceeding in the Court alleging unlawful discrimination.

*Note* Under section 46PO of the Human Rights Act, 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.

- (2) The other Orders of these Rules apply, so far as they are relevant and not inconsistent with this Order, to a proceeding in the Court alleging unlawful discrimination.

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**Rule 8****5 Commencement of proceeding**

- (1) A proceeding alleging unlawful discrimination must be commenced by filing an application in accordance with Form 5.

*Note* See section 33C of the *Federal Court of Australia Act 1976* and Order 6, rule 2 in relation to representative proceedings and joinder of parties.

- (2) The application must:
- (a) be accompanied by a claim in accordance with Form 167; and
  - (b) include details of any claim that is made in addition to the allegation of unlawful discrimination.

**6 Copy of application to be given to Commission**

At least 5 days before the date fixed for the directions hearing for the application, the applicant must give the Commission:

- (a) a stamped copy of the application, showing the date, time and place of the directions hearing; and
- (b) a copy of the claim mentioned in paragraph 5 (2) (a).

**7 Defence to an application — Form 168**

- (1) A defence to an application must be in accordance with Form 168.
- (3) Unless the Court or a Judge otherwise orders, a respondent need not file an appearance under Order 9, rule 3 if the respondent files and serves a defence before the date fixed for the directions hearing for the application.

**8 Appearance by special-purpose Commissioner**

If the Court grants leave to a special-purpose Commissioner to assist the Court in a proceeding alleging unlawful discrimination, the special-purpose Commissioner must:

- (a) file a notice of appearance in accordance with Order 9, rule 3; and

**Rule 9**

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- (b) serve a stamped copy of the notice on each party to the proceeding in accordance with Order 9, rule 5.

**9 Conduct of proceeding by tutor**

Order 43, subrule 5 (2) (which provides that a tutor must act by a solicitor) does not apply to a proceeding alleging unlawful discrimination.

# **Order 82      Federal Magistrates Court**

## **Division 1      Transfer of proceedings from the Federal Magistrates Court**

### **1      Transfer of a proceeding from the Federal Magistrates Court to the Court**

- (1) A sealed copy of the order of the Federal Magistrates Court transferring a proceeding to the Court must, unless the Federal Magistrates Court otherwise directs, be filed:
  - (a) if the order is obtained by a party — by that party; or
  - (b) if the order is made by the Federal Magistrates Court on its own motion — by the applicant in the proceeding.
- (2) The sealed copy of the order must be filed:
  - (a) if the order names a District Registry — in the District Registry named in the order; and
  - (b) otherwise — in a District Registry in the State or Territory where the Federal Magistrates Court heard the proceeding.

### **2      Filing and service**

- (1) The Registrar must give the order a serial number as if it were an application filed in the Registry.
- (2) The Registrar must attach to the order a notice in accordance with Form 169:
  - (a) stating the date for a directions hearing in the proceeding; and
  - (b) bearing a note stating 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 Federal Magistrates Court.

**Rule 3**

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- (3) The party who files the order must serve a sealed copy of the notice with a copy of the order attached:
  - (a) on each other party to the proceeding in the Federal Magistrates Court; and
  - (b) on any other person as the Court or a Judge directs.
- (4) If a party has an address for service in the Federal Magistrates Court proceeding, the notice may be served on the party by delivery to that address.

**3                      Conduct of a transferred proceeding**

These Rules apply to a proceeding transferred from the Federal Magistrates Court as if it were a proceeding instituted in the Court.

**Division 2                      Transfer of proceedings to the  
Federal Magistrates Court**

**4                      Definitions**

In this Division:

*appeal* means an appeal under section 44 of the *Administrative Appeals Tribunal Act 1975*.

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

**5                      Application for transfer by a party**

- (1) A party may apply by motion on notice:
  - (a) under the Act for the transfer of a proceeding to the Federal Magistrates Court; or
  - (b) under the Tribunal Act for the transfer of an appeal to the Federal Magistrates Court.
- (2) The heading of the notice of motion must refer to the Act under which the application for transfer is made.
- (3) The motion must be heard and determined by a single Judge.

**6 Transfer on Court's own motion**

- (1) Subject to the relevant Act, the Court or a Judge may at any time on the Court's or the Judge's own motion transfer a proceeding or an appeal to the Federal Magistrates Court.
- (2) This rule applies whether or not there is an application under rule 5 before the Court.

**7 Factors to be considered**

In deciding whether to transfer a proceeding or an appeal to the Federal Magistrates Court, factors that the Court or a Judge may take into account, in addition to the factors to which the Court or the Judge is required to have regard under subsection 32AB (6) of the Act or subsection 44AA (7) of the Tribunal Act, include:

- (a) whether the proceeding or appeal 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 or appeal is transferred, it is, in the opinion of the Court or the Judge, likely to be heard and determined at less cost and more convenience to the parties than if the proceeding or appeal is not transferred;
- (c) whether the proceeding or appeal is, in the opinion of the Court or the Judge, likely to be heard and determined earlier in the Federal Magistrates Court;
- (d) the wishes of the parties.

*Note* Subsection 32AB (6) of the Act and subsection 44AA (7) of the Tribunal Act provide that, in deciding whether a proceeding or appeal should be transferred to the Federal Magistrates Court, the Court must have regard to:

- (a) any Rules of the Court made for the purposes of the transfer of proceedings; and
- (b) whether proceedings in respect of an associated matter are pending in the Federal Magistrates Court; and
- (c) whether the resources of the Federal Magistrates Court are sufficient to hear and determine the proceeding; and
- (d) the interests of the administration of justice.

**Rule 8**

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**8                    Proceedings transferred to the Federal Magistrates Court**

On the transfer of a proceeding to the Federal Magistrates Court, the Registrar must send to the proper officer of the Federal Magistrates Court all documents filed and orders made in the proceeding.