



Statutory Rules 1995 No. 239¹

Federal Court Rules² (Amendment)

WE, Judges of the Federal Court of Australia, make the following Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 27 July 1995.

M. E. J. BLACK C. J.
J. A. KEELY J.
J. F. GALLOP J.
J. D. DAVIES J.
J. S. LOCKHART J.
K. J. JENKINSON J.
B. A. BEAUMONT J.
M. R. WILCOX J.
J. E. J. SPENDER J.
P. R. A. GRAY J.
J. C. S. BURCHETT J.
J. A. MILES J.
D. M. RYAN J.
R. S. FRENCH J.
M. L. FOSTER J.
M. C. LEE J.
H. W. OLNEY J.
D. G. HILL J.

M. F. O'LOUGHLIN J.
D. F. O'CONNOR J.
T. J. HIGGINS J.
P. C. HEEREY J.
D. P. DRUMMOND J.
R. E. COOPER J.
A. P. WHITLAM J.
M. J. BEAZLEY J.
C. J. S. M. CARR J.
M. F. MOORE J.
C. M. BRANSON J.
J. H. MATHEWS J.
K. E. LINDGREN J.
B. TAMBERLIN J.
S. M. KIEFEL J.
R. D. NICHOLSON J.
S. R. MARSHALL J.
Judges of the Federal
Court of Australia

W. G. SODEN
Registrar

1. Commencement

1.1 These Rules commence on 1 August 1995.

2. Amendment

2.1 The Federal Court Rules are amended as set out in these Rules.

3. Order 1, rule 4 (Interpretation)

3.1 Definition of "organisation":

Omit the definition.

4. Order 1, rule 10 (Industrial Relations Regulations)

4.1 Omit the rule.

5. Order 4, rule 14 (Suit in person)

5.1 Subrule 14 (3):

Omit the subrule.

6. Order 4, rule 15 (Proceeding by rule—Form 6)

6.1 Omit the rule.

7. Order 4, rule 16 (Proceeding under section 261 of the Industrial Relations Act 1988)

7.1 Omit the rule.

8. Order 27, rule 4 (Production by non-party)

8.1 Subrule 4 (1):

Omit “Registry from which the subpoena was issued”, substitute “Registry at the proper place”.

8.2 Subrule 4 (2A):

Omit “to the proper place”, substitute “to the proper place, or returning the document or thing to the person who produced it,”.

8.3 Subrule 4 (3):

Omit the subrule.

9. Order 27, rule 6 (Issue of subpoena)

9.1 Subrule 6 (5):

Omit the subrule.

10. Order 35, rule 5 (Fine)

10.1 Subrule 5 (3):

Omit the subrule.

11. Order 35, rule 10 (Consent orders)

11.1 Subrule 10 (2):

Omit the subrule, substitute:

“(2) Despite anything contained in these Rules:

- (a) if a written consent is filed under subrule (1), the Registrar must bring the matter before a Judge who may, without any other application being made to the Judge, direct the Registrar to draw up, sign and seal an order in accordance with the terms of the consent; or
- (b) if the written consent is in respect of an order which the Registrar has power to make, the Registrar may, unless the Registrar is of the opinion that the consent should be brought before a Judge, draw up, sign and seal an order in accordance with the terms of the consent.”.

12. Order 48 (Inquiries under the *Industrial Relations Act 1988*)

12.1 Omit the Order.

13. Order 50, rule 1 (Application)

13.1 Subrules 1 (1) and (2):

Omit the subrules, substitute:

“(1) A case to be stated, or a question to be reserved or to be referred for the consideration of the Court, must be in the form of a special case.

“(2) The special case must:

- (a) be divided into consecutively numbered paragraphs; and
- (b) state the facts concisely; and
- (c) annex all documents necessary to enable the Court to decide the questions raised by the special case.”.

14. Order 50, rule 2 (Special case to be prepared etc.)

14.1 Omit “Tribunal, Commission, Industrial Registrar” (wherever occurring), substitute “Tribunal”.

15. Order 50, rule 4 (Party having carriage of the proceeding)

15.1 Omit the rule, substitute:

Party having carriage of the proceedings

“4. If a question is referred to the Court by a Tribunal, the party having the carriage of the proceeding for the purpose of rule 2 must be:

- (a) if the question is referred by the Tribunal at the request of a party—that party; and
- (b) if the question is referred by a Tribunal of its own motion—the person who made the decision to which the proceeding before the Tribunal relates.”.

16. Order 50, rule 5 (Question referred pursuant to section 82 of the *Industrial Relations Act 1988*)

16.1 Omit the rule.

17. Order 52, rule 26 (Draft index of appeal papers)

17.1 Omit the rule, substitute:

Draft index of appeal papers

“(1) Before the date appointed for settling appeal papers, the appellant must prepare and file in the Registry:

- (a) a draft index of the appeal papers; and
- (b) a separate, chronological, list of all documents received in evidence and proposed to be reproduced in the appeal papers, including documents exhibited to, or annexed to affidavits.

“(2) The appellant must serve the draft index, and list, on the respondent a reasonable time before the appointment to settle the appeal papers.”.

18. Order 52, rule 28 (Preparation of Appeal Papers)

18.1 Subrules 28 (2) and (3):

Omit the subrules, substitute:

“(2) Following the title page, there must be:

- (a) an index of the documents comprising the appeal papers and showing the date and page number of each document; and
- (b) a chronological list of all documents received in evidence, including documents exhibited to, or annexed to, affidavits, showing the date and page number of each document.

“(3) The appeal papers must be paginated and the documents arranged in the following order:

- (a) process and pleading;
- (b) evidence, as follows:
 - (i) oral evidence;
 - (ii) affidavit evidence in which, after each affidavit, documents exhibited to, or annexed to, that affidavit, are arranged in the order in which they have been lettered or numbered in the affidavit;
 - (iii) other exhibits (other than affidavits and documents exhibited or annexed to each affidavit) arranged in the order in which they have been lettered or numbered as exhibits in the court below, and any list of exhibits appearing in the transcript;
- (c) testimony taken on commission or before an examiner and received in evidence;
- (d) if the court or judge below was hearing an appeal from a tribunal or board:
 - (i) reasons for decisions of the tribunal or board;
 - (ii) formal decision of the tribunal or board;
 - (iii) any notice of appeal to the court below;
- (e) reasons for the judgment of the court below;
- (f) the formal order of the court below;
- (g) notice of appeal;
- (h) any notice of cross-appeal or notice of contention;
- (i) the Certificate required by subrule (6).”

19. Order 62, rule 27 (Payment into court)

19.1 Omit the rule.

20. Order 62, rule 41 (Appointment to tax bill)

20.1 Subrule 41 (2):

Omit “7 days”, substitute “14 days”.

20.2 Subrule 41 (4):

Add at the end “and the amount which it is contended should be taxed off.”.

20.3 Subrule 41 (5):

Omit “2 clear days”, substitute “7 days”.

20.4 Subrules 41 (6) and (7):

Omit the subrules, substitute:

“(6) Subject to the discretion of the taxing officer, to be exercised in exceptional circumstances, on taxation of the bill, no amount is to be taxed off, nor any ground of objection to an item or part of an item allowed, unless each amount, ground, item or part of an item, as the case may be, is specifically set out in a notice under subrule (3).

“(7) Subject to subrule 46 (4A), the taxing officer has a discretion to:

- (a) tax the costs of the 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:
 - (i) add it to; or
 - (ii) deduct it from;any sum payable by or to a party to the taxation.”.

21. Order 62, rule 43 (Reconsideration)

21.1 Subrule 43 (2):

Omit “unless”, substitute “unless, in exceptional circumstances,”.

21.2 Subrule 43 (4):

Omit the subrule, substitute:

“(4) The taxing officer may deal with the costs of the objections to the decision in any manner allowed under subrule 41 (7).”.

22. Order 62, rule 46 (Assessment procedures)

22.1 Paragraph 46 (4) (g):

Omit the paragraph.

22.2 New subrule 46 (4A):

After subrule 46 (4), insert:

“(4A) If a notice of objection is filed under paragraph 46 (3) (c), or a notice requiring a full taxation is filed under paragraph 46 (4) (c), the party filing the notice shall 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.”.

22.3 Subrule 46 (6):

Omit the subrule, substitute:

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

22.4 Subrule 46 (6A):

Omit the subrule, substitute:

“(6A) If:

- (a) 21 days have passed after notification by the Registrar to the parties of a completed taxation or provisional taxation under this rule; and
- (b) no party has objected to the taxation or provisional taxation;

the Registrar, after having regard to the liability of any party to pay the costs of the taxation under this Rule, must:

- (c) determine how the amount paid to the Registrar as security for the costs of taxation is to be distributed or refunded to the parties; and
- (d) direct that payment be made out of Court accordingly.”.

23. First Schedule

23.1 Form 6:

Omit the Form.

23.2 Form 41:

Subparagraph (c) (ii):

Omit “above place not later than the day before the first day”, substitute “above place, or at the Registry of the Court nearest to the place at which this subpoena was served, not later than 2 days before the day”.

23.3 Form 41:

Note 2:

Omit “party”, substitute “person”.

23.4 Form 43:

Note 2:

Omit the note.

24. Second Schedule (Costs allowable in respect of work done and services performed)

24.1 Omit the Schedule, substitute:

SECOND SCHEDULE Order 62, rule 12**COSTS ALLOWABLE IN RESPECT OF WORK DONE AND SERVICES PERFORMED**

Column 1 Item	Column 2 Scale of costs	Column 3 \$
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Instructions

1	to sue or defend or to appeal or oppose an appeal or for any other originating proceeding	136.00
2	to make or oppose an interlocutory application or motion to the Court of a Judge or an officer of the Court	60.00
3	for a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	58.00
4	for interrogatories, answers to interrogatories or an affidavit (not being a formal affidavit), admissions or a list of documents, and affidavit verifying	81.00
5	for brief for counsel on application in chambers or brief notes for solicitor (where necessary) or in respect of items 1 to 5 of this scale, any other amounts that may be allowed by the taxing officer, having regard to all the circumstances of the case	74.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
6	for brief for counsel or brief notes for solicitor (where necessary)—the fee to be allowed is to be a sum that the taxing officer thinks fit, having regard to all the circumstances of the case	
7	for a necessary document not otherwise provided for—the fee to be allowed is to be a sum that the taxing officer thinks fit, having regard to all the circumstances of the case	
<i>Documents</i>		
8	any notice of appearance including copies, filing and service by respondent	75.00
9	any application or notice of motion including fixing return day, copies to file and serve and attendance to file if more than 3 folios—add per folio	60.00 3.00
10	any simple notice or memorandum such as a notice for discovery, including copies, filing (where necessary) and service	48.00
11	notice to produce, notice to admit or any like notice including copies, filing (when necessary) and service if more than 3 folios—add per folio	60.00 3.00
12	a brief to counsel (including a brief to hear judgment) and attending counsel with the brief if more than 3 folios—add per folio for copy documents to accompany brief—the other charges in this scale that are appropriate	52.00 5.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
13	any necessary subpoena including issuing one copy to serve and arranging for service	41.00
	<i>Drawing</i>	
14	any necessary document per folio	6.00
	<i>Engrossing or Typing</i>	
15	any necessary document per folio	2.00
	<i>Copies</i>	
16	of any document, including carbon, photographic or machine made copy—per page except that, if allowance for 10 or more pages is claimed in respect of any document or documents, the costs to be allowed for the copies are at the discretion of the taxing officer	1.00
	<i>Perusal</i>	
17	of any document (when necessary) including special letter, telegram or telcx if 3 folios or less or per folio except that, if allowance for 30 or more folios is claimed in respect of any document or documents, the costs to be allowed for perusal are at the discretion of the taxing officer	11.00 2.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
18	if it is not necessary to peruse but it is necessary to scan a document—per page except that, if allowance for 10 or more pages is claimed in respect of any document or documents, the costs to be allowed for scanning are at the discretion of the taxing officer	3.00
<i>Examination</i>		
19	if it is necessary to neither peruse nor scan a document, for example, an examination of an appeal book: for examination—per half hour	
	solicitor	48.00
	clerk	11.00
<i>Letters</i>		
20	short letter—simple form of letter e.g. formal acknowledgment	9.00
21	ordinary letter including letters between principal and agent.	14.00
22	circular letter (after the first) each	5.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
23	special letter or letter including opinion or the fee to be allowed is an amount that is reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this scale	35.00
24	telegram, facsimile copy, or telex including attendance to dispatch or the fee to be allowed is an amount that is reasonable in the circumstances	41.00
25	receiving and filing any incoming letter (Postage and transmission fees may be claimed as a disbursement properly incurred)	5.00
<i>Service</i>		
26	personal service (except where service is claimable under other items in this scale) of any document of which personal service is required or the fee is to be an amount that is reasonable having regard to time occupied, distance travelled and other relevant circumstances	40.00
27	service of any document at the office of the address for service either by delivery or by post	11.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
<i>Preparation of Appeal Books</i>		
28	preparation of appeal books including collating all necessary material, attendances on the printer, general oversight of their preparation in cases where the taxing officer is satisfied it has been done efficiently—per hour: solicitor clerk	88.00 22.00
29	where appeal books are prepared in a solicitor's office, the taxing officer may in his or her discretion allow a sum that he or she thinks just and reasonable having regard to work and labour properly performed and charges for material used. In exercising his or her discretion the taxing officer must have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine made copy costs otherwise allowable in this Schedule	
<i>Attendances</i>		
30	an attendance which is capable of being made by a clerk, such as at the court registry	22.00
31	an attendance which requires the attendance of the solicitor or managing clerk and involves the exercise of skill or legal knowledge (including an attendance to inspect or negotiate)—per quarter hour: solicitor managing clerk	39.00 10.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
32	an attendance for which no other provision is made in this scale	35.00
33	an attendance by telephone which does not involve the exercise of skill or legal knowledge	8.00
34	an attendance on counsel: with brief or papers (where not otherwise provided for)	22.00
	to appoint a conference or consultation	22.00
	if appointment made by telephone	8.00
35	a necessary conference or consultation with counsel: if half an hour or less	60.00
	if over half an hour—for each hour or part of an hour	88.00
36	in court or chambers or before the Registrar for hearing without counsel: for each hour or part of an hour of the hearing	177.00
	for each hour or part of an hour when likely to be heard but not heard	177.00
	not to exceed per day	792.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
37	in court or chambers or before the Registrar for hearing with counsel: for each hour or part of an hour of the attendance during the hearing for each hour or part of an hour of the attendance when likely to be heard but not heard not to exceed per day if a person other than a solicitor attends in place of a solicitor—for each hour: (a) managing clerk not to exceed per day (b) any other clerk not to exceed per day	144.00 144.00 650.00 60.00 265.00 32.00 142.00
38	to hear judgment	40.00
39	on taxation of costs: if a solicitor attends—per hour or part of an hour if a clerk attends—per hour or part of an hour	88.00 22.00
40	if the solicitor attends at court or chambers for the hearing of an application or appeal, or on conference with counsel, at a distance of more than 50 kilometres from his or her place of business when it is neither appropriate nor proper for an agent to attend, the taxing officer may allow for each day of absence from place of business, not being a Saturday, Sunday or public holiday, an amount that the taxing officer thinks reasonable—not exceeding	200.00

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
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General Care and Conduct

- 41 if the case or circumstances warrant it, an allowance may be claimed under this item, in addition to any item which appears in this scale, for general care and conduct (where appropriate) including the following:
- (a) the complexity of the matter and the difficulty and novelty of the questions raised or any of them;
 - (b) the importance of the matter to the party and the amount involved;
 - (c) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor;
 - (d) the number and importance of the documents prepared or perused without regard to length;
 - (e) the time expended by the solicitor;
 - (f) research and consideration of questions of law and fact

Counsel's Fees

- 42 it is proper for a solicitor to incur an amount for counsel's fees that appears to be fair and reasonable according to the circumstances of the case and the seniority of counsel and the fees incurred may be claimed as a disbursement

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
43	where a solicitor briefs another solicitor as counsel, when it would be appropriate to brief counsel, the taxing officer may allow a sum as a counsel's fee that the taxing officer thinks just and reasonable having regard to the practice of allowing these fees that are permitted by the Supreme Court Rules of the State or Territory concerned (Order 62, rule 35)	
<i>Corporations Law Short Form Bill</i>		
43A	the amount as to the costs of obtaining a winding up order up to and including entry and service of the order under section 470 of the Corporations Law and the obtaining of a certificate of taxation additional costs are allowable for any adjournment in which costs have been reserved by the Court in accordance with item 36 or item 37, as the case may be	1854.00
<i>Witnesses Expenses</i>		
44	witnesses called because of their professional, scientific or other special skill or knowledge—per day	104.00 to 518.00
45	witnesses called, other than those covered in item 44—per day	60.00 to 98.00
46	witnesses remunerated in their occupation by wages, salary or fees—the amount lost by attendance at Court	

SECOND SCHEDULE—continued

Column 1 Item	Column 2 Scale of costs	Column 3 \$
47	if the witness resides more than 50 kilometres from the Court—a sum that the taxing officer thinks reasonable for the actual cost of conveyance, together with a reasonable amount for sustenance or maintenance	
<i>Disbursements</i>		
48	all court fees and other fees and payments to the extent to which they have been properly and reasonably incurred and paid must be allowed	
49	if a solicitor attends at court or chambers, or on conference with counsel, in the circumstances outlined in item 40, the taxing officer may allow reasonable travelling expenses to the extent to which they have been reasonably incurred and paid	
<i>Miscellaneous</i>		
50	<p>matters not included in this scale may be allowed to the extent they are covered by Order 62, rule 21</p> <p>bills of costs prepared in accordance with Order 62, rule 40 must identify costs and disbursements claimed with an item number a folio comprises 72 words; there are generally 3 folios to each page</p>	

25. Transitional

25.1 In spite of subrule 24.1, the Schedule omitted from the Federal Court Rules by subrule 24.1 continues to apply in relation to all work done and services performed before the commencement of these Rules.

NOTES

1. Notified in the *Commonwealth of Australia Gazette* on 1 August 1995.
2. Statutory Rules 1979 No. 140 as amended by 1980 No. 87; 1982 Nos. 217 and 408; 1983 No. 264; 1984 Nos. 9 and 258; 1985 Nos. 16, 97, 168 and 227; 1986 Nos. 61, 157 and 324; 1987 Nos. 73, 174 and 197; 1988 Nos. 14, 54, 144, 217 and 306; 1989 Nos. 50, 253 and 318; 1990 Nos. 72, 102, 276, 319, 414 and 453; 1991 Nos. 70, 249, 395 and 461; 1992 Nos. 43, 44, 86, 87, 186, 330, 421 and 453; 1993 No. 40, 45, 137, 225 and 290; 1994 Nos. 63, 130, 224, 279, 332 and 463; 1995 Nos. 31 and 46.