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Administering Panel

2001B00541

by member of Parliament of the Commonwealth of Australia

Enacted

Office of the Parliamt. Section,  
Office of Legislative Drafting,  
Attorney-General's Department.



Statutory Rules 1998 No. <sup>1</sup>

224

## Federal Court Rules<sup>2</sup> (Amendment)

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

Dated <sup>1</sup> 1998.

8 July

M.E.J. BLACK C.J.  
J.F. GALLOP J.  
B.A. BEAUMONT J.  
M.R. WILCOX J.  
J.E.J. SPENDER J.  
R.S. FRENCH J.  
M.R. EINFELD J.  
M.L. FOSTER J.  
M.C. LEE J.  
J.W. von DOUSSA 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.  
C.J.S.M. CARR J.  
M.F. MOORE J.  
C.M. BRANSON J.

K.E. LINDGREN J.  
B.J.M. TAMBERLIN J.  
R. SACKVILLE J.  
S.M. KIEFEL J.  
R.D. NICHOLSON J.  
P.D. FINN J.  
R.A. SUNDBERG J.  
S.R. MARSHALL J.  
J.R.F. LEHANE J.  
A.M. NORTH J.  
R.N. MADGWICK J.  
R. MERKEL J.  
J.R. MANSFIELD J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

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## **1. Commencement**

1.1 These Rules commence on gazettal.

## **2. Amendment**

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

**3. Order 1, rule 6 (Serial number)**

3.1 Subrule 6 (1):

Omit “for the Division of the Court and”.

3.2 Subrule 6 (1):

Omit “and Division”.

**4. Order 11, new rule 1A**

4.1 After rule 1, insert:

**Pleading to include name of person who prepared it**

“1A. A pleading must:

- (a) set out the name of the person who prepared the pleading; and
- (b) include a statement by the person that the person prepared the pleading.”.

**5. Order 30, rule 4 (Notice of date for trial and payment of setting down fees (Form 44A))**

5.1 Paragraph 4 (a):

Omit “regulation 2A”, substitute “regulation 2AA”.

**6. Order 32, new rule 4A**

6.1 After rule 4, insert:

**Limitation on time etc to be taken for trial**

“4A. (1) At any time before or during a trial, the Court or a Judge may make a direction limiting:

- (a) the time for examining, cross-examining or re-examining a witness; or
- (b) the number of witnesses (including expert witnesses) that a party may call; or
- (c) the time for making any oral submissions; or
- (d) the time for a party to present the party’s case; or

- (e) the time to hear the trial.

“(2) The Court or Judge may amend a direction made under this rule.”.

**7. Order 48, rule 4 (Application in relation to alleged unlawful termination of employment (Act, s 170CP))**

7.1 Subrule 4 (2):

Omit the subrule, substitute:

- “(2) The application must:
- (a) be in accordance with Form 5; and
  - (b) be accompanied by a claim in accordance with Form 5A; and
  - (c) have attached to it a certificate regarding the failure, or likely failure, of conciliation issued by the Australian Industrial Relations Commission under subsection 170CF (2) of the Workplace Relations Act.”.

**8. Order 48, rule 12 (Service of application and supporting documents)**

8.1 Subrule 12 (1):

Omit “each party”, substitute “each other party (if any)”.

**9. Order 52, rule 29 (Setting down appeal)**

9.1 Paragraph 29 (5) (a):

Omit “regulation 2A”, substitute “regulation 2AA”.

**10. Order 52, rule 40 (Order for production of prisoner)**

10.1 Omit the rule, substitute:

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

“**40. (1)** In the case of an appeal against conviction or sentence where a prisoner is in lawful custody, the Court or a Judge may, at the request of a party or on its, his or her own initiative, 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.”.

**11. Order 53, rule 6 (Filing and service of notice of appeal)**

11.1 Subrule 6 (2):

Omit “personally”.

**12. Order 53, rule 18 (Setting down appeal)**

12.1 Paragraph 18 (2) (a):

Omit “regulation 2A”, substitute “regulation 2AA”.

**13. Order 62, rule 4 (Taxed costs and other provisions)**

13.1 Paragraph 4 (2) (a):

Omit “costs;”, substitute “costs; or”.

13.2 Paragraph 4 (2) (b):

Omit “order;”, substitute “order; or”.

13.3 Paragraph 4 (2) (c):

Omit the paragraph, substitute:

“(c) a gross sum specified in the order; or”.

13.4 Add at the end:

“(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.”.

**14. Order 71, rule 48 (Appointment of provisional liquidator—section 472)**

14.1 Subrule 48 (1):

Omit “A creditor or contributory of a company, the company or the Commission”, substitute “A person who is entitled to apply to the Court for the winding up of a company”.

**15. Order 77, rule 19 (Additional affidavits to be filed by applicant before hearing)**

15.1 Subrule 19 (3):

Omit “searched”, substitute “searched, or caused a search to be made,”.

**16. Order 78, rule 9 (Notification of hearing)**

16.1 Subrule 9 (2):

Omit the subrule, substitute:

“(2) The notice must be in a form that the Court or the Judge considers appropriate.”.

**17. Order 80 (Constitutional Convention (Election) Act 1997)**

17.1 Omit the Order.

**18. First Schedule**

18.1 Form 5 (Application):

Section B, item 1:

Omit “*final*”, substitute “*interlocutory*”.

18.2 Form 44A (Notice of date for trial):

Omit “hearing fee”, substitute “setting down fee”.

18.3 Form 44A (Notice of date for trial):  
Omit “regulation 2A” (twice occurring), substitute “regulation 2AA”.

18.4 Form 55A (Notice of appeal):  
Omit “To the Respondent: (*address*)”, substitute:

“*Note* Order 53, rule 6 (2) provides that within 7 days after filing this notice of appeal, the applicant must serve a copy of it on all other parties to the proceeding before the Tribunal and on the Registrar of the Tribunal.

To the respondent: (*address*)”.

18.5 Forms 161 and 162:  
Omit the Forms.

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

19.1 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 Matter for which charge may be made	Column 3 Charge (\$)
<i>Instructions</i>		
1	To sue or defend, to appeal or oppose an appeal or for any other originating proceeding	152.00
2	To make or oppose an interlocutory application or motion to the Court or a Judge or an officer of the Court	67.00
3	For a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	65.00
4	For an interrogatory, answer to an interrogatory or an affidavit (except a formal affidavit), an admission or a list of documents (and affidavit verifying)	90.00



Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
5	For brief for counsel on application in chambers or brief notes for solicitor (if necessary)  <i>or</i> in respect of items 1 to 5 of this scale, having regard to all the circumstances of the case	83.00   any other amounts that may be allowed by the taxing officer
6	For brief for counsel or brief notes for solicitor (if necessary), having regard to all the circumstances of the case	a sum that the taxing officer thinks fit
7	For a necessary document not otherwise provided for, having regard to all the circumstances of the case	a sum that the taxing officer thinks fit
8	Any notice of appearance, including copies, filing and service by respondent	84.00
9	Any application or notice of motion, including fixing return day, copies to file and serve, and attendance to file	67.00
	if more than 3 folios—add for each folio	3.00
10	Any simple notice or memorandum such as a notice for discovery, including copies, filing (if necessary) and service	54.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
11	Notice to produce, notice to admit or any similar notice, including copies, filing (if necessary) and service	67.00
	if more than 3 folios—add for each folio	3.00
12	A brief to counsel (including a brief to hear judgment) and attending counsel with the brief	58.00
	if more than 3 folios—add for each folio	6.00
	For copy documents to accompany brief	the other charges in this scale that are appropriate
13	Any necessary subpoena, including issuing one copy to serve and arranging for service	46.00
<i>Drawing</i>		
14	Any necessary document—for each folio	7.00
<i>Engrossing or Typing</i>		
15	Any necessary document—for each folio	2.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
<i>Copies</i>		
16	Of any document, including carbon, photographic or machine-made copy—for each page  except if allowance for 10 or more pages is claimed in respect of any document or documents	1.00  the costs to be allowed for the copies are at the discretion of the taxing officer
<i>Perusal</i>		
17	Of any document (if necessary) including special letter, telegram or telex, up to 3 folios  or per folio  except that, if allowance for 30 or more folios is claimed in respect of any document or documents	12.00  2.00  the costs to be allowed for perusal are at the discretion of the taxing officer
18	If it is not necessary to peruse but it is necessary to scan a document—for each page  except that, if allowance for 10 or more pages is claimed in respect of any document or documents	3.00  the costs to be allowed for scanning are at the discretion of the taxing officer

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
<i>Examination</i>		
19	If it is necessary to neither peruse nor scan a document, eg an examination of an appeal book: for examination—for each half hour	
	• solicitor	54.00
	• clerk	12.00
<i>Letters</i>		
20	Short letter—simple form of letter, eg formal acknowledgment	10.00
21	Ordinary letter, including letter between principal and agent	16.00
22	Circular letter (after the first)—for each letter	6.00
23	Special letter or letter including opinion	39.00 <i>or</i> an amount that is reasonable having regard to the length of the letter, the questions involved and appropriate items and charges in this scale

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
24	Telegram, facsimile copy, or telex including attendance to dispatch	46.00 <i>or</i> an amount that is reasonable in the circumstances
25	Receiving and filing any incoming letter  <i>Note</i> Postage and transmission fees may be claimed as a disbursement properly incurred	6.00
<i>Service</i>		
26	Personal service (except if service is able to be claimed under another item of this scale) of any document of which personal service is required	45.00 <i>or</i> an amount that is reasonable, having regard to time occupied, distance travelled and other relevant circumstances
27	Service of any document at the office of the address for service, either by delivery or by post	12.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
<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—for each hour: <ul style="list-style-type: none"> <li>• solicitor</li> <li>• clerk</li> </ul>	        98.00 25.00
29	If 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 is 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 that is capable of being made by a clerk, such as at the court registry	25.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
31	An attendance that requires the attendance of a solicitor or managing clerk and involves the exercise of skill or legal knowledge (including an attendance to inspect or negotiate)—for each quarter hour: <ul style="list-style-type: none"> <li>• solicitor</li> <li>• managing clerk</li> </ul>	 43.00 11.00
32	An attendance for which no other provision is made in this scale	39.00
33	An attendance by telephone that does not involve the exercise of skill or legal knowledge	9.00
34	An attendance on counsel: <ul style="list-style-type: none"> <li>• with brief or papers (if not otherwise provided for)</li> <li>• to appoint a conference or consultation</li> <li>• if appointment made by telephone</li> </ul>	 25.00 25.00 9.00
35	A necessary conference or consultation with counsel: <ul style="list-style-type: none"> <li>• if half an hour or less</li> <li>• if over half an hour—for each hour or part of an hour</li> </ul>	 67.00 98.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
36	In court or chambers or before the Registrar for hearing without counsel: <ul style="list-style-type: none"> <li>• for each hour or part of an hour of the hearing</li> <li>• for each hour or part of an hour when likely to be heard, but not heard</li> <li>• not to exceed per day</li> </ul>	197.00 197.00 883.00
37	In court or chambers or before the Registrar for hearing with counsel: <ul style="list-style-type: none"> <li>• for each hour or part of an hour of the attendance during the hearing</li> <li>• for each hour or part of an hour of the attendance when likely to be heard, but not heard</li> <li>• not to exceed per day</li> </ul> <p>If a person other than a solicitor attends in place of a solicitor:</p> <p>(a) attendance by a managing clerk:</p> <ul style="list-style-type: none"> <li>• for each hour</li> <li>• not to exceed per day</li> </ul> <p>(b) attendance by any other clerk:</p> <ul style="list-style-type: none"> <li>• for each hour</li> <li>• not to exceed per day</li> </ul>	161.00 161.00 725.00  67.00 296.00 36.00 158.00
38	To hear judgment	45.00
39	On taxation of costs: <ul style="list-style-type: none"> <li>• if a solicitor attends—for each hour or part of an hour</li> <li>• if a clerk attends—for each hour or part of an hour</li> </ul>	98.00 25.00



Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
40	If a 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, and it is neither appropriate nor proper for an agent to attend, the taxing officer may allow for each day of absence from the place of business (except a Saturday, Sunday or public holiday) an amount that the taxing officer thinks reasonable—not exceeding	223.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
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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 other item that appears in this scale, for general care and conduct (if appropriate) including the following:
- (a) the complexity of the matter and the difficulty and novelty of questions raised;
  - (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 taken 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. The fees incurred may be claimed as a disbursement

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
43	If 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 is permitted by the Supreme Court Rules of the State or Territory concerned (Order 62, rule 35)
<i>Corporations Law—Short Form Bill</i>		
43A	<p>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</p> <p>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</p>	2068.00

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
<i>Bankruptcy Act—Short Form Bills</i>		
43B	Short form amount that may be claimed by an applicant on the making of a sequestration order	1326.00
43C	Short form amount that may be claimed by an applicant on the dismissal of a petition	1142.00
<i>Witnesses' Expenses</i>		
44	Witnesses called because of their professional, scientific or other special skill or knowledge—for each day	116.00 to 578.00
45	Witnesses called, other than those covered in item 44—for each day	67.00 to 109.00
46	Witnesses remunerated in their occupation by wages, salary or fees	the amount lost by attendance at Court
47	If a witness lives more than 50 kilometres from the Court	a sum that the taxing officer thinks reasonable for the actual cost of travel, together with a reasonable amount for meals and accommodation

Column 1 Item	Column 2 Matter for which charge may be made	Column 3 Charge (\$)
<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
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	Matters not included in this scale may be allowed to the extent they are covered by Order 62, rule 21	
	<i>Note 1</i> Bills of costs prepared in accordance with Order 62, rule 40 must identify costs and disbursements claimed with an item number.	
	<i>Note 2</i> A folio comprises 72 words (there are generally 3 folios to each page).	

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on 1 1998.
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, 46, 239 and 449; 1996 Nos. 29 and 308; 1997 Nos. 82, 87, 143, 174, 204, 277 and 425.

15 July