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# Federal Court Amendment Rules 2004 (No. 1)<sup>1</sup>

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Statutory Rules 2004 No. 1<sup>2</sup>

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

Dated 1 2004

23 August

M.E.J. BLACK C.J.  
 B.A. BEAUMONT J.  
 M.R. WILCOX J.  
 J.E.J. SPENDER J.  
 P.R.A. GRAY J.  
 D.M. RYAN J.  
 R.S. FRENCH J.  
 M.C. LEE J.  
 D.G. HILL J.  
 T.J. HIGGINS J.  
 P.C. HEEREY J.  
 R.E. COOPER J.  
 A.P. WHITLAM J.  
 M.F. MOORE J.  
 C.M. BRANSON J.  
 K.E. LINDGREN J.  
 B.J.M. TAMBERLIN J.

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R. SACKVILLE J.  
S.M. KIEFEL J.  
R.D. NICHOLSON J.  
P.D. FINN J.  
R.A. SUNDBERG J.  
A.M. NORTH J.  
R.N. MADGWICK J.  
R. MERKEL J.  
A.H. GOLDBERG J.  
A.R. EMMETT J.  
R.A. FINKELSTEIN J.  
M.S. WEINBERG J.  
J.A. DOWSETT J.  
P.G. HELY J.  
S.C. KENNY J.  
R.V. GYLES J.  
R.A. CONTI J.  
M.A. STONE J.  
J.L.B. ALLSOP J.  
P.M. JACOBSON J.  
B.M. SELWAY J.  
A.C. BENNETT J.  
B.T. LANDER J.  
S.M. CRENNAN J.  
Judges of the Federal  
Court of Australia

W.G. SODEN  
Registrar

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**1 Name of Rules**

These Rules are the *Federal Court Amendment Rules 2004* (No.   ).

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**2 Commencement**

These Rules commence as follows:

- (a) on the date of their notification in the *Gazette* — rules 1 to 3 and Schedule 1;
- (b) on the commencement of item 1 of Schedule 1 to the *Law and Justice Legislation Amendment Act 2004* — Schedule 2.

**3 Amendment of Federal Court Rules**

Schedules 1 and 2 amend the Federal Court Rules.

## **Schedule 1 Amendments commencing on gazettal**

(rule 3)

**[1] Order 5, heading**

*substitute*

## **Order 5 Cross-claims and third party claims**

<i>Note</i> Order 35A deals with the procedure on default.
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[2] **Order 5, subrule 12 (3)**

*substitute*

- (3) Order 10, rules 4 to 6 (directions hearing) apply to a motion for directions under this rule.

[3] **Order 5, rules 13 and 14**

*omit*

[4] **Order 10, heading**

*substitute*

## **Order 10      Directions hearing**

*Note* Order 35A deals with the procedure on default.

[5] **Order 10, rule 3**

*substitute*

**3      Determination of proceeding**

If the Court thinks fit and the parties agree, the Court may hear and determine the proceeding on a directions hearing.

[6] **Order 10, rules 7 and 8**

*omit*

[7] **Order 11, Division 2, heading**

*substitute*

## **Division 2      Progress of pleadings**

*Note* Order 35A deals with the procedure on default.

---

**[8] Order 11, rule 19**

*omit*

rules 20 to 23

*insert*

rules 20 to 22

**[9] Order 11, rule 23**

*omit*

**[10] Order 15, subrule 2 (2)**

*omit everything before paragraph (a), insert*

- (2) Unless the Court or a Judge orders otherwise, a party must give discovery by serving:

**[11] Order 15, Division 3, heading**

*substitute*

**Division 3 General**

<i>Note</i> Order 35A deals with the procedure on default.
--

**[12] Order 15, rule 16**

*omit*

**[13] Order 16, subrule 8 (2)**

*substitute*

- (2) Subrule (1) does not limit the powers of the Court under Order 35A.

*Note* Order 35A deals with the procedure on default.

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[14] **Order 16, rule 9**

*omit*

[15] **Order 30, heading**

*substitute*

## **Order 30      Setting down**

<i>Note</i> Order 35A deals with the procedure on default.
--

[16] **Order 30, rule 5**

*omit*

[17] **After Order 35**

*insert*

## **Order 35A      Order or judgment on default**

### **1      Definitions**

In this Order:

*applicant* includes a cross-claimant.

*claim* includes a cross-claim.

*respondent* includes a cross-respondent.

### **2      When a party is in default**

- (1) For this Order, an applicant is in default if the applicant:
- (a) fails to comply with an order of the Court in the proceeding; or
  - (b) fails to attend a directions hearing; or

- 
- (c) fails to file and serve a pleading as required by Order 11; or
  - (d) fails to serve a list of documents or an affidavit or other document, or does not produce a document as required by Order 15; or
  - (e) fails to do any act required to be done by these Rules; or
  - (f) fails to prosecute the proceeding with due diligence.
- (2) For this Order, a respondent is in default if the respondent has not satisfied the applicant's claim and:
- (a) the time for the respondent to enter an appearance has expired and the respondent has failed to enter an appearance; or
  - (b) the time for the respondent to file a defence has expired and the respondent has failed to file a defence; or
  - (c) the respondent fails to attend a directions hearing; or
  - (d) the respondent fails to comply with an order of the Court in the proceeding; or
  - (e) the respondent fails to file and serve a pleading as required by Order 11; or
  - (f) the respondent fails to serve a list of documents or an affidavit or other document, or does not produce a document as required by Order 15; or
  - (g) the respondent fails to do any act required to be done by these Rules; or
  - (h) the respondent fails to defend the proceeding with due diligence.

### **3 Orders on default**

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

- 
- (2) If a respondent is in default, the Court may:
- (a) order that a step in the proceeding be taken within the time limited in the order; or
  - (b) if the claim against the respondent is for a debt or liquidated damages — grant leave to the applicant to enter judgment against the respondent for the debt or liquidated damages and, if appropriate:
    - (i) costs:
      - (A) in a sum fixed by the court; or
      - (B) to be taxed; and
    - (ii) interest; or
  - (c) if the proceeding was commenced by an application supported by a statement of claim or the Court has ordered that the proceeding continue on pleadings — give judgment against the respondent for the relief that:
    - (i) the applicant appears entitled to on the statement of claim; and
    - (ii) the Court is satisfied it has power to grant; or
  - (d) give judgment or make any other order against the respondent; or
  - (e) make an order specified in paragraph (b), (c) or (d) to take effect if the respondent does not take a step ordered by the Court in the proceeding in the time limited in the order.
- (3) If leave has been granted under paragraph (2) (b) and the applicant has filed in the Registry:
- (a) an affidavit, or affidavits, proving:
    - (i) service of the application claiming judgment for the debt or liquidated damages; and
    - (ii) that the respondent is in default; and
  - (b) an affidavit in respect of the debt or liquidated damages in accordance with Form 46C;
- the Registrar must enter judgment for the debt or liquidated damages, costs and interest against the respondent as specified in the leave given under paragraph (2) (b), without giving notice, or further notice, to the respondent.



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- (4) Unless the Court otherwise orders, if a respondent to a cross-claim is in default, a judgment (including a judgment by default or by consent), or decision (including a decision by consent), on any claim, question or issue in the proceeding on the originating process, or any other cross-claim in the proceeding, is binding as between the cross-claimant and the respondent to the cross-claim so far as the judgment or decision is relevant to any claim, question or issue in the proceeding on the cross-claim.
- (5) The Court may make an order of the kind mentioned in subrule (1), (2) or (4), or any other order, or may give such directions, and specify such consequences for non-compliance with the order, as the Court thinks just.

*Note* An order or judgment under this Order may be set aside or varied under Order 35 rule 7.

#### **4 Contempt**

This Order does not limit the power of the Court to punish for contempt.

#### **[18] Order 52, paragraph 38A (1) (c)**

*omit*

#### **[19] Order 52, subrule 38A (2)**

*substitute*

- (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.

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**[20] Order 52B, subparagraph 4 (3) (b) (ii)**

*omit*

Act.

*insert*

Act; and

**[21] Order 52B, after paragraph 4 (3) (b)**

*insert*

- (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.

**[22] Order 52B, subrule 4 (4)**

*omit*

in that State or Territory.

*insert*

in the State or Territory in which the application was filed.

**[23] Order 58, subrule 5A (3)**

*omit everything before paragraph (a), insert*

- (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:

- 
- [24] **Order 81, paragraph 5 (2) (a)**  
*substitute*  
(a) be accompanied by a claim in accordance with Form 167;  
and
- [25] **Order 81, subrule 7 (2)**  
*omit*
- [26] **Order 82, subrule 5 (2)**  
*after*  
application  
*insert*  
for transfer
- [27] **Schedule 1, Form 15A**  
*omit*
- [28] **Schedule 1, after Form 46B**  
*insert*

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## Form 46C Affidavit in respect of debt or liquidated damages

(Order 35A, subrule 3 (3))

I, [name], of [address and occupation], \*say on oath/\*affirm:

1. I am [state deponent's relationship to the applicant(s)/cross-claimant(s), eg, 'the applicant/cross-claimant', '(name), one of the applicant(s)/cross-claimant(s)', 'a director of the applicant/cross-claimant', 'a director of (name), one of the applicant(s)/cross-claimant(s)'] named in the \*application/\*cross-claim relating to the \*debt/\*debts/\*liquidated damages owed by [name of respondent/cross-respondent].
2. [If the deponent is not the applicant/cross-claimant, state the facts entitling the deponent to make the affidavit, eg 'I am authorised by the applicant(s)/cross-claimant(s) to make this affidavit on its/their behalf].
3. [State the source of the deponent's knowledge of the matters stated in the affidavit in relation to the debt/each of the debts/liquidated damages, eg 'I am the person who, on behalf of the applicant(s)/cross-claimant(s), had the dealings with the respondent/cross-respondent that gave rise to the debt/debts/liquidated damages', 'I have inspected the business records of the applicant(s)/cross-claimant(s) in relation to the respondent's/cross-respondent's account with the applicant(s)/cross-claimant(s)'].
4. \*The debt/\*debts/\*liquidated damages of \$[amount] mentioned in the \*application/\*cross-claim, \*remains/\*remain \*fully/\*to the extent of \$[amount] due and payable by the respondent/cross-respondent.

\*Sworn/\*affirmed at: [place of swearing or affirmation] on [date]

[Signature of deponent]

Before me:

[Signature and designation of  
person before whom deponent  
swears or affirms affidavit]

\* Omit if not applicable

**Version 1**

**[29] Schedule 1, Forms 167 and 168***substitute***Form 167 Claim under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination**

(Order 81, rule 5)

**Claim alleging unlawful discrimination***Human Rights and Equal Opportunity Commission Act 1986, section 46PO***Details of applicant(s)**

1	Full name(s)	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms Family name: Given names: <i>Attach extra page for any additional applicants</i>
2	Home or contact address	Postcode:
3	Telephone No.  Fax No.	Business hours: (    ) After hours:     (    ) (    )
4	Are you more than 18 years old?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5	If you are an individual, what is your first language?  Do you need an interpreter?	<i>This includes languages such as Sign and Auslan.</i> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, please state language or type:

6 Do you have any special requirements?	<i>Please give details of any special requirements (eg wheelchair access, hearing loop, presence of personal assistant or carer) to enable this matter to proceed in Court</i>
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**Details of respondent(s)**


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7 Against whom are you bringing this claim?	Name of person: Address: <div style="text-align: right;">Postcode:</div> Phone: ( ) Fax: ( ) Name of organisation: Address: <div style="text-align: right;">Postcode:</div> Phone: ( ) Fax: ( ) <i>Attach extra page for any additional respondents</i>
8 What is your relationship to the person or organisation in question 7?	<input type="checkbox"/> Employee of person/organisation <input type="checkbox"/> Former employee of person/organisation <input type="checkbox"/> Co-employee <input type="checkbox"/> Customer of person/organisation <input type="checkbox"/> Other ( <i>please specify</i> )

<b>Representation</b>	
<p>9 Are you represented by a lawyer, or will you seek to be represented by someone else (eg a union official) who is not a lawyer?</p>	<p><input type="checkbox"/> No <i>Go to question 10</i></p> <p><input type="checkbox"/> Yes</p> <p>Representative's name:</p> <p>Name of firm or organisation:</p> <p>Address:</p> <p style="text-align: right;">Postcode:</p> <p>DX:</p> <p>Phone: ( )</p> <p>Fax: ( )</p> <p><i>Go to question 11</i></p>
<p>10 Have you applied for legal aid?</p>	<p><input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes</p>
<b>Relevant legislation</b>	
<p>11 Describe the discrimination you are complaining of</p> <p><i>(The unlawful discrimination must:</i></p> <p><i>(a) be the same or substantially the same as the discrimination that was the subject of the complaint terminated by the Human Rights and Equal Opportunity Commission;</i></p> <p><i>or</i></p>	

<p><i>(b) arise out of the same or substantially the same acts, omissions or practices that were the subject of complaint.)</i></p> <p>12 Under what Act is the discrimination you are complaining of unlawful?</p> <p>13 State all sections of the Act that are relevant to this claim</p>	<p><i>Attach an extra page if necessary</i></p> <p><input type="checkbox"/> the <i>Disability Discrimination Act 1992</i></p> <p><input type="checkbox"/> the <i>Racial Discrimination Act 1975</i></p> <p><input type="checkbox"/> the <i>Sex Discrimination Act 1984</i></p>
<p><b>Remedy sought</b></p>	
<p>14 What remedy are you asking the Court for?</p>	<p><input type="checkbox"/> Apology from respondent</p> <p><input type="checkbox"/> Compensation</p> <p><i>Please give details on an attached sheet of how much compensation you are claiming and how the amount has been calculated (eg loss of income).</i></p> <p><input type="checkbox"/> Other</p> <p><i>Please give details on an attached sheet</i></p>



<b>Extension of time</b>	
15 Do you need an extension of time?	<p><i>You must complete this section if your application and claim is made more than 28 days after the date of issue of written notice of the termination of the complaint by the President of the Human Rights and Equal Opportunity Commission.</i></p> <p>I am seeking an extension of time to lodge my application and claim because (<i>give reasons</i>).</p> <p><i>Attach an extra page if necessary</i></p>
<b>Required documents</b>	
16 <i>These documents must accompany your application and claim</i>	<p><input type="checkbox"/> A copy of your original complaint to the Human Rights and Equal Opportunity Commission (if available)</p> <p><input type="checkbox"/> The notice of termination of complaint given by the President of the Human Rights and Equal Opportunity Commission</p>

Prepared and filed by:

Name: (*please print*)

Signature:

Date:

**Version 3**

**Form 168 Defence to application under the *Human Rights and Equal Opportunity Commission Act 1986* alleging unlawful discrimination**

(Order 81, rule 7)

**Defence to application alleging unlawful discrimination**

*Human Rights and Equal Opportunity Commission Act 1986,*  
section 46PO

**Details of applicant(s)**

1	Full name of person(s) bringing application against you	Family name: Given names: <i>Attach extra page for any additional applicants</i>
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**Details of respondent(s)**

2	Full name of person(s) or organisation	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms Family name: Given names: Name of organisation: <i>Attach extra page for any additional respondents</i>
3	Home or contact address	
	Telephone No.	Business hours: ( )
	Fax No.	After hours: ( )
		Postcode: ( )

4 Who is the contact person in your organisation (if applicable)?	Family name: Given names: Phone: ( ) Fax: ( )
5 If you are an individual, what is your first language?  Do you need an interpreter?	<i>This includes languages such as Sign and Auslan.</i>  <input type="checkbox"/> Yes <input type="checkbox"/> No  If yes, please state language or type:
6 Do you have any special requirements?	<i>Please give details of any special requirements (eg wheelchair access, hearing loop, presence of personal assistant or carer) to enable this matter to proceed in Court</i>

**Representation**

7 Are you represented by a lawyer, or will you seek to be represented by someone else (eg a union official) who is not a lawyer?	<input type="checkbox"/> No <i>Go to question 8</i> <input type="checkbox"/> Yes  Representative's name: Name of firm or organisation: Address:  Postcode:  DX: Phone: ( ) Fax: ( )  <i>Go to question 9</i>
8 Have you applied for legal aid?	<input type="checkbox"/> No <input type="checkbox"/> Yes

**Address for service**

- |   |   |
|---|---|
| <p>9 At what address do you want documents in proceedings left for you and posted for you? (<i>The address must be within the District for the Registry in which the application is filed.</i>)</p> | <p><input type="checkbox"/> To the address in question 2</p> <p><input type="checkbox"/> To the address of the representative in question 7</p> <p><input type="checkbox"/> Other (<i>give details</i>)</p> |
|---|---|

Prepared and filed by:

Name: (please print)

Signature:

Date:

**Version 2**

**[30] Schedule 2**

*substitute*

**Schedule 2 Scale of costs for work done and services performed**

(Order 62, rule 12)

Item	Matter for which charge may be made	Charge (\$)
<i>Instructions</i>		
1	To sue or defend, to appeal or oppose an appeal or for any other originating proceeding	201.00
2	To make or oppose an interlocutory application or motion to the Court or a Judge or an officer of the Court	89.00
3	For a case for opinion of counsel or for counsel to advise (including attendance on counsel with brief)	87.00

Item	Matter for which charge may be made	Charge (\$)
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)	120.00
5	For brief for counsel on application in chambers or brief notes for solicitor (if necessary)	109.00
	<i>or</i>	
	in respect of items 1 to 5 of this scale, having regard to all the circumstances of the case	any other amounts that the taxing officer considers appropriate
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
<i>Documents</i>		
8	Any notice of appearance, including copies, filing and service by respondent	110.00
9	Any application or notice of motion, including fixing return day, copies to file and serve, and attendance to file	89.00
	if more than 3 folios — add for each folio	6.00
10	Any simple notice or memorandum such as a notice for discovery, including copies, filing (if necessary) and service	71.00
11	Notice to produce, notice to admit or any similar notice, including copies, filing (if necessary) and service	89.00
	if more than 3 folios — add for each folio	6.00

Item	Matter for which charge may be made	Charge (\$)
12	A brief to counsel (including a brief to hear judgment) and attending counsel with the brief	77.00
	if more than 3 folios — add for each folio	7.00
	For copy documents to accompany brief	the other charges in this scale that are appropriate
13	Any necessary subpoena, including issuing 1 copy to serve and arranging for service	61.00
	<i>Drawing</i>	
14	Any necessary document — for each folio	8.00
	<i>Engrossing or Typing</i>	
15	Any necessary document — for each folio	4.00
	<i>Copies</i>	
16	Of any document, including carbon, photographic or machine-made copy — for each page	2.00
	except if allowance for 10 or more pages is claimed in respect of any document or documents	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	16.00
	or per folio	4.00
	except if allowance for 30 or more folios is claimed in respect of any document or documents	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	6.00
	except if allowance for 10 or more pages is claimed in respect of any document or documents	at the discretion of the taxing officer

Item	Matter for which charge may be made	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	71.00
	• clerk	16.00
<i>Letters</i>		
20	Short letter — simple form of letter, eg formal acknowledgment	12.00
21	Ordinary letter, including letter between principal and agent	23.00
22	Circular letter (after the first) — for each letter	7.00
23	Special letter or letter including opinion	48.00 <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
24	Telegram, facsimile copy, or telex including attendance to dispatch	61.00 <i>or</i> an amount that is reasonable in the circumstances
25	Receiving and filing any incoming letter	7.00
	<i>Note</i> Postage and transmission expenses may be claimed as a disbursement properly incurred.	

Item	Matter for which charge may be made	Charge (\$)
<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	60.00 <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	16.00
<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>	129.00 33.00
29	If appeal books are prepared in a solicitor's office, a sum that the taxing officer considers 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 scale	



Item	Matter for which charge may be made	Charge (\$)
<i>Attendances</i>		
30	An attendance that is capable of being made by a clerk, such as at the court registry	33.00
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>	58.00 13.00
32	An attendance for which no other provision is made in this scale	54.00
33	An attendance by telephone that does not involve the exercise of skill or legal knowledge	11.00
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>	34.00 34.00 11.00
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>	89.00 129.00
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>	260.00 260.00 1 166.00

Item	Matter for which charge may be made	Charge (\$)
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	211.00
	• for each hour or part of an hour of the attendance when likely to be heard, but not heard	211.00
	• not to exceed per day	958.00
	If a person other than a solicitor attends in place of a solicitor:	
	(a) attendance by a managing clerk:	
	• for each hour	89.00
	• not to exceed per day	391.00
	(b) attendance by any other clerk:	
	• for each hour	47.00
	• not to exceed per day	208.00
38	To hear judgment	60.00
39	On taxation of costs:	
	• if a solicitor attends — for each hour or part of an hour	129.00
	• if a clerk attends — for each hour or part of an hour	33.00
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 considers reasonable — not exceeding	295.00

Item	Matter for which charge may be made	Charge (\$)
<i>General Care and Conduct</i>		
41	<p>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:</p> <ul style="list-style-type: none"> <li>(a) the complexity of the matter and the difficulty and novelty of questions raised;</li> <li>(b) the importance of the matter to the party and the amount involved;</li> <li>(c) the skill, labour, specialised knowledge and responsibility involved in the matter on the part of the solicitor;</li> <li>(d) the number and importance of the documents prepared or perused, without regard to length;</li> <li>(e) the time taken by the solicitor;</li> <li>(f) research and consideration of questions of law and fact</li> </ul>	<p>a percentage of the total amount of the allowed costs excluding disbursements</p>
<i>Counsel's Fees</i>		
42	<p>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</p>	

Item	Matter for which charge may be made	Charge (\$)
43	If a solicitor briefs another solicitor as counsel, when it would be appropriate to brief counsel	a sum as a counsel's fee that the taxing officer considers 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 Act 2001 — 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 <i>Corporations Act 2001</i> 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 37, as the case may be	2 732.00
<i>Bankruptcy Act 1966 — Short Form Bills</i>		
43B	Short form amount that may be claimed by an applicant on the making of a sequestration order	1 751.00
43C	Short form amount that may be claimed by an applicant on the dismissal of a petition	1 509.00
<i>Migration Act 1958 — Short Form Bills</i>		
43D	Short form amount, including costs and disbursements, that may be claimed by a party in a standard migration case	4 463.00

Item	Matter for which charge may be made	Charge (\$)
43E	Short form amount, including costs and disbursements, that may be claimed by the respondent in a migration case on dismissal or discontinuance of the case	1 575.00
<i>Witnesses' Expenses</i>		
44	Witnesses called because of their professional, scientific or other special skill or knowledge — for each day	154.00 to 763.00
45	Witnesses called, other than those covered in item 44 — for each day	89.00 to 143.00
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 considers reasonable for the actual cost of travel, together with a reasonable amount for meals and accommodation
<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	reasonable travelling expenses to the extent to which they have been reasonably incurred and paid

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Item	Matter for which charge may be made	Charge (\$)
<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).	

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**Schedule 2      Amendment commencing on  
the commencement of item 1  
of Schedule 1 to the *Law and  
Justice Legislation  
Amendment Act 2004***

(rule 3)

**[1]      Order 70, subrule 2 (5)**

*substitute*

- (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 Act.

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**Notes**

1. These Rules amend 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 Nos. 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; 1998 Nos. 224, 297 and 323; 1999 Nos. 15, 70, 94, 194, 232, 295, 296 and 360; 2000 Nos. 53, 54, 189, 233, 235, 300 and 372; 2001 Nos. 20, 201, 322 and 329; 2002 Nos. 130, 222 and 281; 2003 Nos. 35, 78, 206 and 377; 2004 Nos. ~~38 and 98~~
2. Notified in the *Commonwealth of Australia Gazette* on / 2004.

, and 219  
30 August