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Federal Court of Australia Act 1976

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About this compilation

This compilation

This is a compilation of the *Federal Court Rules 2011* that shows the text of the law as amended and in force on 5 June 2024 (the ***compilation date***).

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Chapter 1—Introductory provisions 1

Part 1—Preliminary 1

Division 1.1—Scope 1

1.01 Name of Rules 1
1.04 Application....1

Division 1.2—Application about procedures 2

1.21 Application for orders about procedures 2

Division 1.3—General powers of the Court 3

1.31 Orders to have regard to nature and complexity of proceeding....3
1.32 Court may make any order it considers appropriate in the interests of justice....3
1.33 Orders may be subject to conditions....3
1.34 Dispensing with compliance with Rules....3
1.35 Orders inconsistent with Rules 3
1.36 Orders other than in open court 3
1.37 Directions to Registrars 3
1.38 Fixing of time by Court 3
1.39 Extension and shortening of time 4
1.40 Exercise of Court's power 4
1.41 Other orders that may be made....4
1.42 Orders may include consequences of non-compliance....4

Division 1.4—Interpretation 5

1.51 Definitions—the Dictionary 5
1.52 References to Forms 5

Division 1.5—Time 6

1.61 Calculation of time....6

Part 2—Registry and documents 7

Division 2.1—Registry 7

2.01 Use of seal and stamps of Court 7
2.02 Transfer of proceeding to another place 7

Division 2.2—Documents 8

2.11 General provisions about documents....8
2.12 Compliance with approved forms....8
2.13 Titles of documents....8
2.14 Subsequent documents to be endorsed with Court number....8
2.15 Signature 9
2.16 Details at foot of each document 9

Division 2.3—Lodging and filing documents 10

2.21 How documents may be lodged with the Court....10
2.22 Faxing a document....10
2.23 Sending a document by electronic communication 11
2.24 Documents sent by electronic communication 11
2.25 When is a document filed 11

Authorised Version F2024C00519 registered 28/06/2024

2.26 Refusal to accept document for filing—abuse of process or frivolous or vexatious documents 12
2.27 When documents will not be accepted in a Registry 12
2.28 Documents accepted for filing—removal from Court file and storage 13
2.29 Documents on a Court file—removal, redaction and storage 13
Division 2.4—Custody and inspection of documents 15
2.31 Custody of documents 15
2.32 Inspection of documents 15
Division 2.5—Administration of money paid into Court and payment out 17
2.41 Establishment of Litigants' Fund 17
2.42 Dealing with money paid into Court 17
2.43 Payment out of Litigants' Fund 17
Part 3—Registrars 18
Division 3.1—Powers of Registrars 18
3.01 Powers of the Court that may be exercised by a Registrar 18
3.02 Authority to administer oaths and affirmations 18
3.03 Orders other than in open court 18
3.04 Application for orders in relation to Registrars 19
3.05 Application to a Registrar for an application to be determined by the Court 19
Division 3.2—Reviewing a Registrar's exercise of power 20
3.11 Application for review of a Registrar's exercise of power 20
Part 4—Lawyers 21
Division 4.1—General 21
4.01 Proceeding by lawyer or in person 21
4.02 Power to act by lawyer 21
4.03 Appointment of a lawyer—notice of acting 21
4.04 Termination of retainer by party 21
4.05 Termination of retainer by lawyer 21
Division 4.2—Court referral for legal assistance 23
4.11 Definitions for Division 4.2 23
4.12 Referral for legal assistance 23
4.13 A party has no right to apply for a referral 23
4.14 Acceptance of referral certificate and provision of legal assistance 23
4.15 Ceasing to provide legal assistance 23
4.16 Application for Registrar's permission to cease providing legal assistance 24
4.17 Cessation of referral certificate 24
4.18 Disbursements 25
4.19 Professional fees 25
Part 5—Court supervision of proceedings 26
Division 5.1—Return date and directions 26
5.01 Parties to attend Court on return date 26
5.02 Parties to file notice of address for service before return date 26
5.03 Respondent's genuine steps statement 26

Authorised Version F2024C00519 registered 28/06/2024

5.04 Making directions 26
5.05 Adjournment of directions hearing 28
5.06 Application for directions—cross-claims 28
5.07 Interlocutory orders 28
5.08 Hearing and determination of matter at directions hearing 28

Division 5.2—Orders on default 30

5.21 Self-executing orders 30
5.22 When a party is in default 30
5.23 Orders on default 30
5.24 Contempt 31

Part 6—Court supervision of parties and other persons 32

Division 6.1—Vexatious proceedings 32

6.01 Scandalous, vexatious or oppressive matter 32
6.02 Certificate of vexatious proceedings order 32
6.03 Application for leave to institute proceedings 32

Division 6.2—Use of communication and recording devices in Court 33

6.11 Use of communication device or recording device in place where hearing taking place 33
6.12 Contempt 33

Chapter 2—Original jurisdiction—proceedings generally 34

Part 7—Orders before start of a proceeding 34

Division 7.1—Injunctions, preservation of property and receivers 34

7.01 Order before start of proceeding 34

Division 7.2—Approval of agreement for person under a legal incapacity 35

7.11 Compromise or settlement of matter before proceeding 35

Division 7.3—Preliminary discovery 36

7.21 Definitions for Division 7.3 36
7.22 Order for discovery to ascertain description of respondent 36
7.23 Discovery from prospective respondent 37
7.24 Procedure for applications under this Division 37
7.25 List of documents 37
7.26 Privilege 37
7.27 Inspection of documents 38
7.28 Copying of documents produced for inspection 38
7.29 Costs 38

Division 7.4—Freezing orders 39

7.31 Definitions for Division 7.4 39
7.32 Freezing order 39
7.33 Ancillary order 39
7.34 Order may be against person not a party to proceeding 39
7.35 Order against judgment debtor or prospective judgment debtor or third party 40
7.36 Jurisdiction 41
7.37 Service outside Australia of application for freezing order or ancillary order 41
7.38 Costs 41

Authorised Version F2024C00519 registered 28/06/2024

Division 7.5—Search orders 42
7.41 Definitions for Division 7.5 42
7.42 Search order 42
7.43 Requirements for grant of search order 42
7.44 Jurisdiction 42
7.45 Terms of search order 43
7.46 Independent lawyers 43
7.47 Costs 43
Part 8—Starting proceedings 44
Division 8.1—Originating applications 44
8.01 Starting proceeding—application 44
8.02 Applicant's genuine steps statement 44
8.03 Application to state relief claimed 44
8.04 Application starting migration litigation to include certificate 45
8.05 Accompanying document for originating application 45
8.06 Service of originating documents 46
8.07 Changing return date 46
Division 8.2—Notice of constitutional matter 48
8.11 Notice of constitutional matter 48
8.12 Service of notice 48
Division 8.3—Amendments to an originating application 49
8.21 Amendment generally 49
8.22 Date on which amendment to substitute a party takes effect 49
8.23 Procedure for making amendment 50
8.24 Time for amending an originating application under Court order 50
8.25 Service of amended originating application 50
Part 9—Parties and proceedings 51
Division 9.1—Parties, interveners and causes of action 51
9.01 Multiple causes of action 51
9.02 Joinder in proceedings involving common questions etc. 51
9.03 Joinder of applicants with joint entitlement 51
9.04 Joinder of persons with common liability 51
9.05 Joinder of parties by Court order 52
9.06 Application for separate trials—inconvenient joinder of causes of action or parties 52
9.07 Errors in joinder of parties 52
9.08 Removal of parties by Court order 52
9.09 Death, bankruptcy or transmission of interest 53
9.10 No joinder or substitution after death of party 53
9.11 Substitution of party 53
9.12 Interveners 53
Division 9.2—Representative proceedings 55
9.21 Representative party—general 55
9.22 Enforcement of order for or against representative party 55
9.23 Representative party—beneficiaries 55
9.24 Deceased persons 55
9.25 Conduct of proceeding by particular party 56

Authorised Version F2024C00519 registered 28/06/2024

Division 9.3—Grouped proceedings under Part IVA of the Act 57
9.31 Interpretation for Division 9.3 57
9.32 Starting a representative proceeding....57
9.33 Person may give consent to be a group member 57
9.34 Opt out notices 57
9.35 Application for order relating to the procedure to be followed in a representative proceeding 57
Division 9.4—Partnerships 58
9.41 Proceeding by or against partners in partnership name 58
9.42 Disclosure of partners' names....58
9.43 Proceeding between members of partnerships....58
9.44 Denial by person served as partner 59
9.45 Defence to be in partnership name 59
9.46 Entry of order....59
Division 9.5—Business name proceedings 60
9.51 Proceeding against a person who carries on a business under a business name 60
9.52 Proceeding against a business name 60
9.53 Proceeding under this Division or Division 9.4....60
9.54 Amendment of parties....61
9.55 Variation of order....61
9.56 Order for discovery—proceeding brought against a person in the person's business name....61
Division 9.6—Persons under a legal incapacity 63
9.61 Proceeding by or against person under a legal incapacity 63
9.62 Persons who may be a litigation representative....63
9.63 Appointment of litigation representative by the Court 63
9.64 Consent to be filed 64
9.65 Removal of litigation representative by the Court....64
9.66 Conduct of proceeding....64
9.67 No deemed admissions 64
9.68 Discovery and interrogatories 65
9.69 Payment into Court 65
9.70 Compromise or settlement of matter in proceeding....65
9.71 Application by litigation representative for approval of agreement 65
Part 10—Service 66
Division 10.1—Personal service 66
10.01 Service on individual 66
10.02 Service on corporation 66
10.03 Service on unincorporated association 66
10.04 Service on organisation....66
10.05 Service on partnership 66
10.06 Service in a proceeding brought against a person in the person's business name 67
10.07 Service in a proceeding under the *Patents Act 1990* 67
10.08 Service in a proceeding under the *Trade Marks Act 1995*....68
10.09 Service on person under a legal incapacity....68
10.10 Personal service on a person under a legal incapacity....69
10.11 Deemed service of originating application 69

Authorised Version F2024C00519 registered 28/06/2024

10.12 Refusal to accept document served personally 69

Division 10.2—Service other than by personal service 70

10.21 Identity of person served 70
10.22 Acceptance of service by lawyer 70
10.23 Deemed service 70
10.24 Substituted service 70
10.25 Service by filing 71
10.26 Service by Court 71
10.27 Service of interlocutory injunction 71
10.28 Service under agreement 71

Division 10.3—Ordinary service 72

10.31 Ordinary service 72
10.32 Time of service 72

Division 10.4—Service outside Australia 73

10.41 Division does not apply to service in New Zealand of documents in or for certain trans-Tasman proceedings 73
10.42 When an originating application may be served outside Australia without leave 73
10.43 When an originating application may be served outside Australia with leave 75
10.43A Court's discretion whether to exercise jurisdiction 76
10.43B Notice to person served outside Australia 76
10.43C Time for filing notice of address for service 76
10.43D Leave to proceed if notice of address for service not filed 76
10.44 Service of other documents outside Australia 76
10.45 Application of other rules 77
10.46 Method of service 77
10.47 Proof of service 77
10.48 Deemed service 77
10.49 Substituted service 78

Division 10.5—Service through diplomatic channel or by transmission to foreign government 79

10.51 Documents to be lodged with the Court 79
10.52 Order for payment of expenses 79

Division 10.6—Service under Hague Convention 80

10.61 Definitions for Division 10.6 80
10.62 Provisions of this Division to prevail 81
10.63 Service abroad of local judicial documents—application of rules 10.64 to 10.68 81
10.64 Application for request for service abroad 81
10.65 How application to be dealt with 83
10.66 Procedure on receipt of certificate of service 83
10.67 Payment of costs 84
10.68 Evidence of service 84
10.69 Default judgment following service abroad of initiating process—application of rules 10.70 to 10.72 84
10.70 Restriction on power to enter default judgment if certificate of service filed 85

Authorised Version F2024C00519 registered 28/06/2024

10.71 Restriction on power to enter default judgment if certificate of service not filed....85
10.72 Setting aside judgment in default of appearance....86
10.73 Local service of foreign judicial documents – application of rules 10.74 to 10.76....86
10.74 Certain documents to be referred to Attorney-General's Department....87
10.75 Service....87
10.76 Affidavit as to service....88

Part 11—Address for service 89
11.01 Address for service—general....89
11.02 Address for service—corporations....89
11.03 Address for service—proceeding against person in person's business name....89
11.04 Address for service—partnership....89
11.05 Receivers....90
11.06 When must notice of address for service be filed....90
11.07 How to file notice of address for service....90
11.08 Service of notice of address for service....90
11.09 Change of address for service....90

Part 12—Submitting notices 91
12.01 Submitting notice....91

Part 13—Jurisdiction—setting aside originating application 92
13.01 Setting aside originating application etc....92

Part 14—Interlocutory orders for preservation of rights and property 93
Division 14.1—Inspection of property 93
14.01 Order for inspection etc of property....93
14.02 Service of application....93
14.03 View by Court....93
Division 14.2—Preservation etc of property 94
14.11 Preservation of property....94
14.12 Disposal of personal property....94
14.13 Interim distribution of property or income from property....94
14.14 Payment before determination of all interested persons....94
Division 14.3—Receivers 95
14.21 Application to appoint receiver....95
14.22 Guarantee....95
14.23 Powers....95
14.24 Remuneration....95
14.25 Accounts....95
14.26 Default....95
14.27 Death of receiver....96

Part 15—Cross-claims and third party claims 97
Division 15.1—Making cross-claim 97
15.01 Cross–claim by respondent....97
15.02 Starting cross-claim....97
15.03 Title of cross-claim and subsequent documents....97

Authorised Version F2024C00519 registered 28/06/2024

15.04 Time for bringing cross-claim 97
15.05 Application for extension of time to file cross-claim 97
15.06 Cross–claim to be accompanied by statement of cross-claim or affidavit 98
15.07 Cross–claim to state relief claimed 98
15.08 Service of notice of cross-claim on cross-respondent 99
15.09 Service of pleadings and documents 99
15.10 Conduct of proceeding after cross-claim is filed 99
15.11 Separate proceeding in relation to cross-claim 99
15.12 Cross-claim for contribution or indemnity 100
15.13 Hearings in relation to cross-claims 100
15.14 Co-cross-respondents 100

Division 15.2—Amendment of cross-claim 101

15.15 Amendment generally 101
15.16 Date on which amendment takes effect 101
15.17 Procedure for making amendment 101
15.18 Time for amending notice of cross-claim under Court order 102
15.19 Service of amended cross-claim 102

Part 16—Pleadings 103

Division 16.1—General 103

16.01A Application of Division 16.1 103
16.01 Pleading to include name of person who prepared it 103
16.02 Content of pleadings—general 103
16.03 Pleading of facts 104
16.04 References to documents or spoken words 104
16.05 Conditions precedent 104
16.06 Inconsistent allegations or claims 104
16.07 Admissions, denials and deemed admissions 104
16.08 Matters that must be expressly pleaded 105
16.09 Defence of tender before start of proceeding 105
16.10 Defence claiming set-off 105
16.11 Joinder of issue 105
16.12 Close of pleadings 105
16.13 Alternative accompanying documents 106

Division 16.2—Striking out pleadings 107

16.21 Application to strike out pleadings 107

Division 16.3—Progress of pleadings 108

16.31 Application of Division 16.3 108
16.32 Defence to application 108
16.33 Reply 108

Division 16.4—Particulars 109

16.41A Application of Division 16.4 109
16.41 General 109
16.42 Fraud, misrepresentation etc 109
16.43 Conditions of mind 109
16.44 Damages and exemplary damages 110
16.45 Application for order for particulars 110

Authorised Version F2024C00519 registered 28/06/2024

Division 16.5—Amendment of pleadings 111
16.51 Amendment without needing the leave of the Court 111
16.52 Disallowance of amendment of pleading....111
16.53 Application for leave to amend....111
16.54 Date on which amendment takes effect 112
16.55 Consequential amendment of defence 112
16.56 Consequential amendment of reply 112
16.57 Implied joinder of issue after amendment 112
16.58 Time for amending pleading under Court order 113
16.59 Procedure for making amendment to pleading 113
16.60 Service of amendment 113

Part 17—Interlocutory applications 114
17.01 Interlocutory application....114
17.02 Reliance on correspondence or undisputed documents 114
17.03 Service on others....114
17.04 Hearing and determination of interlocutory application—absence of party 115

Part 18—Interpleader proceedings 116

Division 18.1—Stakeholder's interpleader 116
18.01 Application for relief by way of interpleader 116
18.02 How application to be made 116
18.03 Orders that may be sought 116
18.04 Default by claimant....117
18.05 Neutrality of stakeholder 117
18.06 Order in several proceedings 117

Division 18.2—Sheriff's interpleader 118
18.11 Notice of claim....118
18.12 Notice of claim to be served on execution creditor 118
18.13 Admission of claim by execution creditor....118
18.14 Application by Sheriff for interpleader....119

Part 19—Security for costs 120
19.01 Application for an order for security for costs....120

Part 20—Discovery and inspection of documents 121

Division 20.1—General 121
20.01 Withholding documents on public interest grounds 121
20.02 Privilege....121
20.03 Undertakings or orders applying to documents 121

Division 20.2—Discovery 122
20.11 Discovery must be for the just resolution of the proceeding 122
20.12 No discovery without court order 122
20.13 Application for discovery 122
20.14 Standard discovery....123
20.15 Non-standard and more extensive discovery 123
20.16 Giving discovery....124
20.17 List of documents....124
20.18 Copies of documents....124

Authorised Version F2024C00519 registered 28/06/2024

20.19 Claim of privilege 125
20.20 Supplementary discovery 125
20.21 Order for particular discovery 125
20.22 Deponent for affidavit for discovery 125
20.23 Discovery from non-party 126
20.24 Non-party's obligation 126
20.25 Non-party's costs and expenses 126

Division 20.3—Production for inspection 128

20.31 Notice to produce document in pleading or affidavit 128
20.32 Order for production from party 128
20.33 Order for production from non-party 128
20.34 Copying of documents produced for inspection 128
20.35 Production to Court 129

Part 21—Interrogatories 130

21.01 Order for interrogatories 130
21.02 When application may be made 130
21.03 Answers to interrogatories 130
21.04 Affidavit verifying written answers to interrogatories 130
21.05 Orders dealing with insufficient answers 131
21.06 Answers tendered as evidence 131
21.07 Public interest 132

Part 22—Admissions 133

22.01 Notice to admit facts or documents 133
22.02 Notice disputing facts or documents 133
22.03 Disputing party to pay costs if document is proved etc 133
22.04 Facts or documents taken to be admitted if not disputed 133
22.05 Deemed admission 133
22.06 Withdrawal of admissions 133
22.07 Judgment on admissions 134

Part 23—Experts 135

Division 23.1—Court experts 135

23.01 Appointment of Court expert 135
23.02 Court expert's report 135
23.03 Court expert's report—use at trial 135
23.04 Other expert's reports on the question 136

Division 23.2—Parties' expert witnesses and expert reports 137

23.11 Calling expert evidence at trial 137
23.12 Provision of guidelines to an expert 137
23.13 Contents of an expert report 137
23.14 Application for expert report 137
23.15 Evidence of experts 138

Division 23.3—Examinations by a medical expert 139

23.21 Examinations by a medical expert 139

Part 24—Subpoenas 141

Division 24.1—Leave to issue subpoena 141

24.01 Leave to issue subpoena 141

Authorised Version F2024C00519 registered 28/06/2024

Division 24.2—Subpoenas to give evidence and to produce documents 142
24.11 Definitions for Division 24.2 142
24.12 Issuing of subpoena 142
24.13 Form of subpoena 143
24.14 Change of date for attendance or production 143
24.15 Setting aside or other relief 144
24.16 Service 144
24.17 Compliance with subpoena 144
24.18 Production otherwise than on attendance 145
24.19 Removal, return, inspection, copying and disposal of documents and things 145
24.20 Inspection of, and dealing with, documents and things produced otherwise than on attendance 146
24.21 Return of documents and things produced 147
24.22 Costs and expenses of compliance 147
24.23 Failure to comply with subpoena—contempt of court 147
24.24 Documents and things in custody of Court 147

Part 25—Offers to settle 149
25.01 Offer to compromise 149
25.02 Notice to be signed 149
25.03 Offer to compromise—content 149
25.04 Offer to be paid within 28 days 149
25.05 Timing of offer 149
25.06 No communication to Court of offer 149
25.07 Withdrawal of offer 150
25.08 Acceptance of offer 150
25.09 Withdrawal of acceptance 150
25.10 Failure to comply with offer 150
25.11 Multiple respondents 151
25.12 Taxation of costs where offer accepted 151
25.13 Contributor parties 151
25.14 Costs where offer not accepted 151

Part 26—Ending proceedings early 153

Division 26.1—Summary judgment and stay of proceedings 153
26.01 Summary judgment 153

Division 26.2—Withdrawal and discontinuance 154
26.11 Withdrawal of defence etc 154
26.12 Discontinuance 154
26.13 Service of notice 155
26.14 Effect of discontinuance 155
26.15 Stay of proceeding until costs paid 155

Part 27—Transfer of proceedings 156

Division 27.1—Federal Circuit and Family Court of Australia 156
27.01 Transfer to the Federal Circuit and Family Court of Australia 156
27.02 Transfer from the Federal Circuit and Family Court of Australia (Division 2) 156

Authorised Version F2024C00519 registered 28/06/2024

27.03 Order transferring proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court must be filed in the Federal Circuit and Family Court of Australia (Division 2) 157

Division 27.3—Cross-vesting 158

27.21 Transfer of proceeding from the Court 158
27.22 Application by Attorney-General for transfer of proceeding from the Court 158
27.23 Transfer of proceeding to the Court 158

Part 28—Alternative dispute resolution 159

Division 28.1—General 159

28.01 General 159
28.02 Orders that may be sought 159
28.03 Arbitration, mediation and ADR process 159
28.04 Court may terminate mediation or ADR process 159
28.05 Parties may refer proceeding to mediation, arbitration or ADR process 160

Division 28.2—Arbitration 161

28.11 Appointment of arbitrator 161
28.12 Applications by interlocutory application 161
28.13 Applications for registration 161
28.14 Applications for order in terms of an award 162

Division 28.3—Mediation 163

28.21 Nomination of mediator 163
28.22 Conduct of mediation 163
28.23 Report if only part of proceeding to be mediated 163
28.24 Termination of mediation—mediator initiated 163
28.25 Agreement at mediation 163

Division 28.4—ADR process 164

28.31 Nomination of person to conduct ADR process 164
28.32 Conduct of ADR process 164
28.33 Report if only part of proceeding to be subject of ADR process 164
28.34 Termination of ADR process 164
28.35 Agreement at ADR process 164

Division 28.5—International arbitration 165

28.41 Definitions for Division 28.5 165
28.42 Application of Division 165
28.43 Application for stay of a proceeding 165
28.44 Enforcing foreign award 165
28.44A Application for referral to arbitration under article 8 of the Model Law 166
28.45 Application for relief under Model Law 166
28.45A Application to set aside award under Model Law 166
28.46 Subpoenas for Division 28.5 167
28.47 Application under section 23A of International Arbitration Act 168
28.48 Application under section 23F or 23G of International Arbitration Act 168
28.48A Enforcement of Investment Convention 169
28.49 Recognition of award 169

Authorised Version F2024C00519 registered 28/06/2024

28.50 Documents not in English language 169
Division 28.6—Referral by Court to referee 170
28.61 Order of referral 170
28.62 Appointment of referees 170
28.63 Two or more referees 170
28.64 Security for remuneration 170
28.65 Conduct of inquiry 170
28.66 Report 171
28.67 Proceeding on report 171
Part 29—Evidence 173
Division 29.1—Affidavits 173
29.01 When affidavit may be sworn or affirmed 173
29.02 Form of affidavit 173
29.03 Content of affidavits 174
29.04 Swearing or affirming affidavit by person who has disability 174
29.05 Service of exhibits and annexures 175
29.06 Irregularity in form 175
29.07 Use of affidavit not filed or in irregular form 175
29.08 Serving of affidavits 175
29.09 Cross-examination of deponent 175
Division 29.2—Evidence on commission taken in Australia or abroad 176
29.11 Order for examination of witness 176
29.12 Letter of request 176
29.13 Procedure for orders under section 7(1)(a) or (b) of *Foreign Evidence Act 1994* 177
29.14 Documents for examiner 177
29.15 Appointment for examination 177
29.16 Conduct of examination 177
29.17 Examination of additional persons 177
29.18 Objection 178
29.19 Taking of depositions 178
29.20 Authentication and filing 178
29.21 Special report 178
29.22 Default of witness 179
29.23 Evidence of future right or claim 179
Part 30—Hearings 181
Division 30.1—Separate decisions on questions 181
30.01 Application for separate trials 181
30.02 Disposal of proceedings after hearing separate questions 181
Division 30.2—Consolidation 182
30.11 Consolidation of proceedings before trial 182
Division 30.3—Trial 183
30.21 Absence of party at trial 183
30.22 No appearance by any party 183
30.23 Trial limitations 183
30.24 Death before judgment 184
30.25 Evidence in other proceedings 184

Authorised Version F2024C00519 registered 28/06/2024

30.26 Plans, photographs and models....184
30.27 Consent....184
30.28 Notice to produce....184
30.29 Notice of intention to adduce evidence of previous representation....185
30.30 Notice of objection to tender of hearsay evidence if maker available....185
30.31 Notice of intention to adduce tendency evidence....185
30.32 Notice of intention to adduce coincidence evidence....185
30.33 Parties in lawful custody....185
30.34 Attendance and production....185

Division 30.4—Assessment of damages 187
30.41 Order for calculation of amount of damages by Registrar....187
30.42 Notice of objection to calculation....187
30.43 Procedure if notice given....187
30.44 Procedure if notice not given....187

Division 30.5—Accounts 188
30.51 Order for account to be taken....188
30.52 Form and filing of account....188
30.53 Notice of additional charge or error in account....188
30.54 Orders to deal with delay....188
30.55 Order for account or inquiry before Registrar....188
30.56 Notice of objection to certificate....189
30.57 Procedure if notice given....189
30.58 Procedure if notice not given....189

Chapter 3—Original jurisdiction—special classes of proceedings 190

Part 31—Judicial review 190

Division 31.1—Administrative Decisions (Judicial Review) Act 1977 190
31.01 Application for order of review....190
31.02 Application for extension of time....190
31.03 Documents to be filed and served....190
31.04 Service....191
31.05 Notice of objection to competency....191

Division 31.2—Judiciary Act 1903 192
31.11 Form of application....192
31.12 Joinder of claims for relief....192

Division 31.3—Migration Act 1958 193
31.21 Definitions for Division 31.3....193
31.22 Application for review of migration decision....193
31.23 Application for extension of time....193
31.24 Notice of objection to competency....193

Division 31.4—Australian Crime Commission Act 2002 195
31.31 Applications under section 57 of *Australian Crime Commission Act 2002*....195

Part 32—Remittals and referrals from the High Court 196

Division 32.1—Matters remitted from the High Court 196
32.01 Filing of order of remittal....196
32.02 Service of order and notice....196

Authorised Version F2024C00519 registered 28/06/2024

32.03 Address for service 196
32.04 Hearing of application to show cause 196
Division 32.2—Referral of petition under Commonwealth Electoral Act 1918 197
32.11 Filing of order referring petition or part of petition 197
32.12 Service of order and notice 197
32.13 Address for service 197
32.14 Lists of votes claimed or objected to 197
32.15 Counter-charges 198
32.16 Notice of trial 198
32.17 Withdrawal of petition and substitution of another petitioner 198
32.18 Death of petitioner 199
Part 33—Appeals from decisions of bodies other than courts 200
Division 33.1—Taxation appeals 200
33.01 Definitions for Division 33.1 200
33.02 Starting AOD appeals 200
33.03 Documents to be filed and served by Commissioner—matters other than private rulings 201
33.04 Documents to be filed and served by Commissioner—private rulings 201
33.05 Starting DPO appeals 202
33.06 Documents to be filed and served by Commissioner 202
Division 33.2—Administrative Appeals Tribunal 203
33.11 Definitions for Division 33.2 203
33.12 Starting an appeal—filing and service of notice of appeal 203
33.13 Application for extension of time to start appeal 204
33.14 Amendment of notice of appeal without leave—supplementary notice 204
33.15 Application for leave to raise other questions of law or rely on other grounds 204
33.16 Respondent's address for service 204
33.17 Form of application for stay of Tribunal decision 205
33.18 Registrar of Tribunal to send documents 205
33.19 No written reasons for decision 206
33.20 Notice of cross-appeal 206
33.21 Notice of contention 206
33.22 Directions hearing 206
33.23 Appeal books 207
33.24 Assistance from Registrar 208
33.25 Title of appeal books 208
33.26 Content of appeal books 208
33.27 Written submissions, chronology and lists of authorities 209
33.28 Filing of Part C documents 210
33.29 Further evidence on appeal 210
33.30 Notice of objection to competency of appeal 210
33.31 Discontinuance of appeal 211
33.32 Application to dismiss appeal 211
33.33 Absence of party 211

Authorised Version F2024C00519 registered 28/06/2024

Division 33.3—Appeals from the Superannuation Complaints Tribunal or Australian Financial Complaints Authority 213
33.34 Appeals under section 46 of the *Superannuation (Resolution of Complaints) Act 1993* or section 1057 of the *Corporations Act 2001*.....213
Division 33.4—Appeals from the National Native Title Tribunal 214
33.40 Appeals under section 169 of the *Native Title Act 1993*.....214
Part 34—Other proceedings 215
Division 34.1—Fair Work proceedings 215
34.01 Definitions for Division 34.1.....215
34.02 Application of Division 34.1 and other provisions of these Rules.....216
34.03 Application in relation to dismissal from employment in contravention of a general protection.....216
34.04 Application in relation to alleged unlawful termination of employment.....216
34.05 Application in relation to alleged discrimination.....217
34.05A Application in relation to alleged sexual harassment.....217
34.06 Application for rule to show cause.....217
34.07 Requirements for applications for an inquiry or ballot.....218
34.08 Application for interim orders.....219
Division 34.3—Intellectual property 221
34.21 Definitions for Division 34.3.....221
34.22 Application of Division 34.3.....222
34.23 Appearance by Commissioner.....222
34.24 Starting an appeal—filing and service of notice of appeal.....222
34.25 Application for extension of time to file notice of appeal.....223
34.26 Grounds of appeal or particulars not stated in notice of appeal.....223
34.27 Particulars of non-patentable invention.....223
34.28 Notice of cross-appeal.....224
34.29 Notice of contention.....224
34.30 Provision of documents by Commissioner.....224
34.31 Evidence.....225
34.32 Application for determination of equitable remuneration.....225
34.33 Applications for determination of terms of doing an act.....225
34.34 Infringement of EL rights—particulars.....225
34.35 Infringement of copyright—particulars.....225
34.36 Infringement of registered designs—particulars.....225
34.37 Application for compulsory licence—Designs Act.....226
34.38 Revocation of registration or rectification of Register—Designs Act.....226
34.39 Infringement of monopoly in protected design—particulars—Olympic Insignia Protection Act.....226
34.40 Application for rectification of Register of Olympic Designs or dispute of validity of protected design.....226
34.41 Applications under section 105(1) of Patents Act.....227
34.42 Applications under section 120(1) of Patents Act.....228
34.43 Applications under section 125(1) of Patents Act.....228
34.44 Applications under section 128(1) of Patents Act.....228
34.45 Applications under Chapter 12 of Patents Act.....228
34.46 Dispute of validity of patent—particulars of invalidity.....229
34.47 Infringement of PBR—particulars.....230

Authorised Version F2024C00519 registered 28/06/2024

34.48 Infringement of registered trade marks—particulars 230
34.49 Dispute of validity of registration of trade mark—particulars of invalidity 230
34.50 Experimental proof as evidence 230

Division 34.4—Trans-Tasman proceedings—general 232
34.61 Definitions for Division 34.4 232
34.62 Proceedings under the Trans-Tasman Proceedings Act 232
34.63 Originating application under Trans-Tasman Proceedings Act 232
34.64 Interlocutory application under Trans-Tasman Proceedings Act 232
34.65 Application for interim relief 233
34.66 Application for leave to serve subpoena in New Zealand 233
34.67 Form of subpoena 234
34.68 Application to set aside subpoena 234
34.69 Application for issue of certificate of non-compliance with subpoena 234
34.70 Documents relating to application 235
34.71 Application to enforce compliance with order made by New Zealand court 235
34.72 Notice of registration of NZ judgment 235
34.73 Application for extension of time to give notice of registration of NZ judgment 236
34.74 Application to set aside registration of NZ judgment 236
34.75 Application for stay of enforcement of registered NZ judgment so that liable person can appeal judgment 236
34.76 Application for extension of time to apply for stay of enforcement of registered NZ judgment so that liable person can appeal judgment 236
34.77 Application for order for use of audio link or audiovisual link 237

Division 34.5—Trans-Tasman market proceedings 238
34.81 Definitions for Division 34.5 238
34.82 Application of Division 34.5 238
34.83 Filing documents in Australian market proceeding in New Zealand 238
34.84 Filing documents in a NZ market proceeding in Australia 238
34.85 Federal Court sittings in New Zealand 239
34.86 Application of rules 34.72 to 34.76 239

Division 34.6—Aboriginal and Torres Strait Islander Act 2005 240
34.91 Definition for Division 34.6 240
34.92 Form and service of election petition 240
34.93 Response to election petition 240
34.94 Reference as to qualifications or vacancy 241

Division 34.7—Native title proceedings 242
34.101 Interpretation for Division 34.7 242
34.102 Application of Division 34.7 242
34.103 Main application (native title and compensation) 242
34.104 Joinder of parties to main application within relevant period 243
34.105 Joinder of parties to main application after relevant period 243
34.106 Withdrawal of a party 243
34.107 Form of applications other than main applications 244
34.108 Service of applications other than main applications 244

Authorised Version F2024C00519 registered 28/06/2024

34.109 Application for review of decision not to accept claim for registration 244
34.110 Application to remove details of agreement from Register of Indigenous Land Use Agreements 245
34.111 Application for order about return of, or access to, records 245
34.112 Question to be special case 245
34.113 Special case to be prepared—referral by mediator 246
34.114 Special case to be prepared—referral by NNTT 246
34.115 Party having carriage of proceeding—referral by mediator 246
34.116 Party having carriage of proceeding—referral by NNTT 246
34.117 Referral of questions about whether a party should cease to be a party 246
34.118 Report about breaches of good faith requirement 247
34.119 Definition for rules 34.120 to 34.123 247
34.120 Evidentiary matters generally 247
34.121 Orders to take account of cultural or customary concerns 248
34.122 Disclosure of evidence or information of cultural or customary nature, contrary to court order 248
34.123 Evidence of cultural or customary nature 249
34.124 Documents referring to certain material 249
34.125 Evidence given in consultation with others 249
34.126 Evidence given not in normal course 249
34.127 Inspection 249
34.128 Taking evidence 250
34.129 Conflict of interest 250
34.130 Short title of proceeding 250
34.131 Notices of appointment of agent and change to agent's address for service 250
34.132 Application for leave to be represented by person who is not a lawyer 251
34.133 Native Title Registrar application to Court for order as to notice 251
34.134 Overlapping applications 251
34.135 Court may order adjournment for purpose of agreement between parties 251
34.136 Agreements regarding practical outcomes of native title determination 251
34.137 Appearance by NNTT 252

Division 34.8—Human rights proceedings 253

34.161 Definitions for Division 34.8 253
34.162 Application of Division 34.8 253
34.163 Starting a proceeding—application and claim 253
34.164 Copy of application to be given to Commission 253
34.165 Address for service 253
34.166 Appearance by special-purpose Commissioner 254
34.167 Conduct of proceeding by litigation representative 254

Authorised Version F2024C00519 registered 28/06/2024

Chapter 4—Appellate jurisdiction 255

Part 35—Leave to appeal 255

Division 35.1—Oral applications for leave to appeal from interlocutory judgments of the Court 255

35.01 Oral application for leave to appeal 255

Division 35.2—Written applications for leave to appeal 256

35.11 Application of Division 256
35.12 Form of application 256
35.13 Time for filing application 256
35.14 Extension of time to seek leave to appeal 257
35.15 Service of application 257
35.16 Method of service 257
35.17 Address for service of respondent 257
35.18 Certain applications may be dealt with without an oral hearing 258
35.19 Submissions 258
35.20 Objection to application being considered without oral hearing 258
35.21 Time for filing and serving affidavits 258
35.22 Directions 259

Division 35.3—Ending applications early 260

35.31 Withdrawing an application 260
35.32 Dismissing application for want of prosecution 260
35.33 Absence of a party 260

Division 35.4—Revocation of leave to appeal 261

35.41 Revocation or variation of grant of leave 261

Part 36—Appeals 262

Division 36.1—Institution of appeals 262

36.01 Form of notice of appeal 262
36.02 Filing of notice of appeal 263
36.03 Time for filing and serving notice of appeal 263
36.04 Service on parties and lodgments 263
36.05 Extension of time to file notice of appeal 263
36.06 Method of service 264
36.07 Address for service of respondent 264
36.08 Stay of execution or proceedings under judgment appealed from 264
36.09 Security for costs of appeal 264
36.10 Amendment to notice of appeal 265
36.11 Directions 265

Division 36.2—Cross–appeals and notices of contention 266

36.21 Cross-appeal 266
36.22 Time to file notice of cross-appeal 266
36.23 Extension of time to file notice of cross-appeal 266
36.24 Notice of contention 267

Division 36.3—Parties to appeals and interveners 268

36.31 Parties 268
36.32 Applications to intervene 268

Authorised Version F2024C00519 registered 28/06/2024

Division 36.4—Dealing with certain applications on the papers 269
36.41 Certain applications may be dealt with without an oral hearing....269
36.42 Submissions....269
36.43 Objection to application being considered without oral hearing....270
Division 36.5—Preparation of appeals 271
36.51 Appeal books....271
36.52 Assistance from Registrar....271
36.53 Title of appeal books....272
36.54 Content of appeal books....272
36.55 Written submissions, chronology and lists of authorities....273
36.56 Filing of Part C documents....273
36.57 Further evidence on appeal....273
Division 36.6—Ending appeals 275
36.71 Definitions for Division 36.6....275
36.72 Notice of objection to competency of appeal....275
36.73 Discontinuance of appeal....275
36.74 Application to dismiss appeal....276
36.75 Absence of party....276
Part 38—Cases stated and questions reserved 277
38.01 Application for case stated or question reserved....277
38.02 Case stated to be prepared etc....277
38.03 Directions....278
Chapter 5—Judgments, costs and other general provisions 279
Part 39—Orders 279
Division 39.1—Judgments and orders 279
39.01 Date of effect of judgment or order....279
39.02 Time for compliance with orders....279
39.03 Dismissal of proceedings and stay of further proceedings....279
39.04 Varying or setting aside a judgment or order before it has been entered....279
39.05 Varying or setting aside judgment or order after it has been entered....279
39.06 Interest on judgment....280
Division 39.2—Consent orders 281
39.11 Consent orders....281
Division 39.3—Undertakings 282
39.21 Orders dealing with failure to fulfil undertakings....282
Division 39.4—Judgments and orders—entry 283
39.31 When entry is required....283
39.32 Entry of an order....283
39.33 Lodgment of orders for entry....283
39.34 Order entered in Court....284
39.35 Authentication of orders....284
Part 40—Costs 285
Division 40.1—General 285
40.01 Party and party costs....285

Authorised Version F2024C00519 registered 28/06/2024

40.02 Other order for costs 285
40.03 Costs reserved 285
40.04 Costs on interlocutory application or hearing 285
40.05 Costs in other courts 285
40.06 Costs improperly, unreasonably or negligently incurred 285
40.07 Liability of lawyer to their client for misconduct 286
40.08 Reduction in costs otherwise payable 286

Division 40.2—Taxation of costs 288

40.12 Application of Division 40.2 and 40.3 288
40.13 Taxation of costs awarded on an interlocutory application 288
40.14 Order for taxation not required 288
40.15 Failure to file bill of costs 288
40.16 Unnecessary expense in proceeding before taxing officer 288
40.17 Filing bill for taxation 288
40.18 Contents of bill 289
40.19 Service of a bill 289
40.20 Estimate of costs 289
40.21 Objection to estimate 289
40.22 Resolution at confidential conference 290
40.23 Provisional taxation 290
40.24 Notice that bill is to be taxed 290
40.25 Notice of objection 291
40.26 Response to notice of objection 291
40.27 Taxation 291
40.28 Powers of taxing officer 292
40.29 Costs to be allowed on taxation 292
40.30 Costs not to be allowed on taxation 292
40.31 Exercise of taxing officer's discretion 293
40.32 Certificate of taxation 293
40.33 Costs of taxation 293
40.34 Review by Court 293
40.35 Stay of costs 294

Division 40.3—Short form bills 295

40.41 Short form bill on application for winding up under *Corporations Act 2001* 295
40.42 Procedure—short form bills under *Corporations Act 2001* 295
40.43 Short form bills for migration appeals 296
40.44 Procedure—short form bills for migration appeals 296

Division 40.4—Determination of maximum costs 298

40.51 Maximum costs in a proceeding 298

Part 41—Enforcement 299

Division 41.1—General 299

41.01 Application without notice for directions 299
41.02 Condition precedent not fulfilled 299
41.03 Application for stay of judgment or order 299
41.04 Failure to comply with Court order 299
41.05 Failure to attend Court in response to subpoena or order 299
41.06 Endorsement on order 300

Authorised Version F2024C00519 registered 28/06/2024

41.07 Service of order....300
41.08 Application where person fails to comply with order....301
41.09 Substituted performance....301
41.10 Execution generally....301
41.11 Stay of execution....302
Division 41.2—Enforcement against partnership 303
41.21 Execution of order against partnership....303
41.22 Execution against individual partner....303
41.23 Application to proceedings between co-partners....303
Division 41.3—Execution against business name 305
41.31 Execution of order—proceeding against person in person's business name....305
Division 41.4—Sheriff 306
41.41 Suspension of execution of process....306
41.42 Failure to execute process....306
41.43 Application for orders in relation to execution of process....306
Division 41.5—Fees 307
41.51 Definitions for Division 41.5....307
41.52 Security....307
41.53 Liability of lawyer....307
41.54 Bill of fees....308
41.55 Taxation....308
41.56 Failure by lawyer to pay Sheriff's fees....308
Division 41.6—Reciprocal enforcement of judgments under Foreign Judgments Act 1991 309
41.61 Interpretation for Division 41.6....309
41.62 Application for an order for registration of foreign judgment....309
41.63 Further affidavit to be filed on day of hearing....310
41.64 Registration....310
41.65 Notice of registration....310
41.66 Application to set aside registration of judgment or stay enforcement of judgment....311
41.67 Application to set aside registered foreign judgment....311
41.68 Security for costs....311
41.69 Record of registered judgments....311
Chapter 6—Disciplinary 313
Part 42—Contempt 313
Division 42.1—Contempt in face or hearing of Court 313
42.01 Arrest for contempt....313
42.02 Charge, defence and determination....313
42.03 Interim custody....313
Division 42.2—Applications for contempt 314
42.11 Procedure generally....314
42.12 Statement of charge....314
42.13 Service....314
42.14 Arrest....314
42.15 Procedure on the hearing....315

Authorised Version F2024C00519 registered 28/06/2024

42.16 Application or proceeding by a Registrar 315
Division 42.3—General 316
42.21 Warrant for imprisonment 316
42.22 Discharge before end of prison term 316
Chapter 7—Transitional provisions 317
Part 43—Transitional provisions 317
Division 43.2—Transitional provisions relating to the Federal Court Legislation Amendment Rules 2024 317
43.11 Definitions 317
43.12 Application of amendments relating to service in proceedings under particular acts 317
43.13 Application of amendments relating to service of originating applications outside Australia 317
43.14 Expiry of this Division 317
Schedule 1—Dictionary 318
Schedule 2—Powers of the Court that may be exercised by a Registrar 326
Part 3.1—Corporations (Aboriginal and Torres Strait Islander) Act 2006 326
Part 3.2—Trans-Tasman Proceedings Act 2010 327
Part 3.3—Federal Court of Australia Act 1976 328
Part 3.4—Foreign Evidence Act 1994 330
Part 3.5—Foreign Judgments Act 1991 331
Part 3.6—Native Title Act 1993 332
Part 3.7—Federal Court Rules 2011 333
Part 3.8—Fair Work Act 2009 339
Schedule 3—Costs allowable for work done and services performed 340
Endnotes 345
Endnote 1—About the endnotes 345
Endnote 2—Abbreviation key 346
Endnote 3—Legislation history 347
Endnote 4—Amendment history 348
Endnote 5—Editorial changes 359

Authorised Version F2024C00519 registered 28/06/2024

Authorised Version F2024C00519 registered 28/06/2024

Chapter 1—Introductory provisions

Part 1—Preliminary

Division 1.1—Scope

1.01 Name of Rules

These Rules are the *Federal Court Rules 2011*.

1.04 Application

(1) These Rules apply to a proceeding started in the Court on or after 1 August 2011.

(2) These Rules apply to a step in a proceeding that was started before 1 August 2011, if the step is taken on or after 1 August 2011.

(3) However, the Court may order that the Federal Court Rules as in force immediately before 1 August 2011 apply, with or without modification, to a step mentioned in subrule (2).

Note 1: For the rules governing proceedings in the Court under the *Bankruptcy Act 1966*, see the *Bankruptcy Regulations 2021* and the *Federal Court (Bankruptcy) Rules 2016*.

Note 2: For the rules governing proceedings in the Court under the *Corporations Act 2001*, see the *Federal Court (Corporations) Rules 2000*.

Note 3: For the rules governing proceedings in the Court under the *Admiralty Act 1988*, see the *Admiralty Rules 1988.*

Note 4: For the rules governing criminal proceedings in the Court, see the *Federal Court (Criminal Proceedings) Rules 2016*.

Rules 1.05–1.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 1.2—Application about procedures

1.21 Application for orders about procedures

A person who wants to start a proceeding, or take a step in a proceeding, may apply to the Court for an order about the procedure to be followed if:

(a) the procedure is not prescribed by the Act, these Rules or by or under any other Act; or

(b) the person is in doubt about the procedure.

Rules 1.22–1.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 1.3—General powers of the Court

1.31 Orders to have regard to nature and complexity of proceeding

(1) The Court may in making any order in the proceeding have regard to the nature and complexity of the proceeding.

(2) The Court may deal with the proceeding in a manner that is proportionate to the nature and complexity of that proceeding.

1.32 Court may make any order it considers appropriate in the interests of justice

The Court may make any order that the Court considers appropriate in the interests of justice.

Note: See sections 23 and 28 of the Act.

1.33 Orders may be subject to conditions

The Court may make an order subject to any conditions the Court considers appropriate.

1.34 Dispensing with compliance with Rules

The Court may dispense with compliance with any of these Rules, either before or after the occasion for compliance arises.

1.35 Orders inconsistent with Rules

The Court may make an order that is inconsistent with these Rules and in that event the order will prevail.

1.36 Orders other than in open court

The Court may make orders other than in open court.

Note: For the power of a Judge sitting in Chambers to exercise the jurisdiction of the Court, see section 17(2) of the Act.

1.37 Directions to Registrars

The Court may direct a Registrar to do, or not to do, an act or thing.

1.38 Fixing of time by Court

If no time for doing an act or thing in relation to a proceeding is fixed by these Rules, the Court may fix the time within which the act or thing is to be done.

Authorised Version F2024C00519 registered 28/06/2024

1.39 Extension and shortening of time

The Court may extend or shorten a time fixed by these Rules or by order of the Court:

(a) before or after the time expires; and

(b) whether or not an application for extension is made before the time expires.

1.40 Exercise of Court's power

The Court may, at any stage of the proceeding, exercise a power mentioned in these Rules in the proceeding:

(a) on its own initiative; or

(b) on the application of a party, or a person who has a sufficient interest in the proceeding.

1.41 Other orders that may be made

If a party makes an application, the Court may:

(a) grant the order sought; or

(b) refuse to grant the order sought; or

(c) make a different order.

1.42 Orders may include consequences of non-compliance

The Court may specify in an order the consequences of not complying with the order.

Rules 1.43–1.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 1.4—Interpretation

1.51 Definitions—the Dictionary

(1) In these Rules, a word or expression defined in Schedule 1 (the Dictionary) has the meaning given in the Dictionary.

Note: The Schedules to these Rules are deemed to form part of the Rules—see section 13 of the *Acts Interpretation Act 1901*.

(2) The Dictionary includes references to certain words and expressions that are defined elsewhere in these Rules (***signpost definitions***).

Note: The Dictionary includes a signpost definition for a word or expression that is defined elsewhere in these Rules only if the word or expression is used in more than one rule.

1.52 References to Forms

(1) In these Rules, a reference to a form by number is a reference to the form approved under subrule (2).

(2) The Chief Justice may approve a form for the purpose of a provision of these Rules.

Note: Approved forms are available on the Court's website at http://www.fedcourt.gov.au.

Rules 1.53–1.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 1.5—Time

1.61 Calculation of time

(1) A period of time for doing an act or thing fixed by these Rules or by an order of the Court is to be calculated in accordance with this rule.

(2) If the time fixed is to be calculated by reference to a particular day or event, and the time fixed is one day or more, the particular day or the day of the particular event is not to be counted.

(3) If the time fixed includes a day that is not a business day in the place where the act or thing is to be done, and the time fixed is 5 days or less, the day is not to be counted.

Example: The Court orders that a document is to be filed and served within 3 days from Wednesday. Under subrule (3), the document must be served on or before the following Monday (since Saturday and Sunday are not business days).

Note: ***Business day*** is defined in the Dictionary.

(4) An act or thing may be done on the next business day in a place if:

(a) the last day for doing the act or thing is not a business day in the place where the act or thing is to be done; and

(b) the act or thing may only be done on a day that is a business day in the place.

(5) If the time fixed includes a day in the period starting on 24 December in a year and ending on 14 January in the next year, the day is not to be counted.

Authorised Version F2024C00519 registered 28/06/2024

Part 2—Registry and documents

Division 2.1—Registry

2.01 Use of seal and stamps of Court

(1) The seal of the Court will be affixed to the following documents:
  (a) Rules of Court;
  (b) a commission issued by authority of the Court;
  (c) a document issued by the Court for use outside Australia;
  (d) any other document, as ordered by the Court or as provided under the Act or any other Act.

(2) The seal of the Court or the stamp of a District Registry will be affixed to the following documents:
  (a) an originating application, notice of address for service, interlocutory application, notice of appeal, subpoena, summons or warrant filed in the District Registry;
  (b) an order of the Court;
  (c) any other document as ordered by the Court.

(3) The following may be affixed to a document by hand or by electronic means:
  (a) the seal of the Court;
  (b) the signature of a Registrar;
  (c) the stamp of a District Registry;
  (e) the signature of an officer acting with the authority of the Chief Executive Officer or a District Registrar.

Note 1: Section 36 of the Act provides that the seal of the Court is to be kept in the Principal Registry. The Act provides for stamps for the Principal Registry and each District Registry designed as nearly as practicable to be the same as the seal.

Note 2: All documents to which the seal of the Court or the stamp of the District Registry has been affixed will also be signed by the Chief Executive Officer, a District Registrar or an officer acting with the authority of the Chief Executive Officer or a District Registrar—see section 37 of the Act.

2.02 Transfer of proceeding to another place

A party may apply at the proper place for an order that the proceeding be transferred to another place.

Note 1: ***Proper place*** is defined in the Dictionary.

Note 2: See section 48 of the Act.

Rules 2.03–2.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 2.2—Documents

2.11 General provisions about documents

A document that is to be filed in a proceeding must be in accordance with any approved form and the Court's requirements.

Note 1: ***Approved form*** is defined in the Dictionary.

Note 2: The Court's requirements in relation to preparing and lodging documents are set out in practice notes issued by the Chief Justice.

2.12 Compliance with approved forms

A requirement in these Rules that a document be in accordance with an approved form is complied with if the document:

(a) is substantially in accordance with the approved form and any practice notes issued by the Chief Justice; or

(b) has only those variations that the nature of the case requires.

2.13 Titles of documents

(1) The heading of a document in a proceeding must include a reference to:

(a) the District Registry where the document is filed; and

(b) the appropriate Division of the Court.

(2) A document in a proceeding between parties must include a title and details, in accordance with Form 1.

(3) A document in a proceeding in which there is no respondent must include a title and details, in accordance with Form 2.

(4) A document in a proceeding may include an abbreviated title, in accordance with Form 3, unless the document is:

(a) an originating application; or

(b) a notice of appeal; or

(c) a document to be served on a person not a party to the proceeding; or

(d) an order.

(5) The title of a document in a proceeding must be sufficient to identify the proceeding.

2.14 Subsequent documents to be endorsed with Court number

Each subsequent document filed in a proceeding must be endorsed, by the party filing the document, with the same number as that assigned by a Registrar to the originating application for the proceeding or to the notice of appeal.

Note: When an originating application that is not a cross-claim or a notice of appeal is filed, a Registrar will assign a distinctive number to the document and will endorse the document with that number. The number will include a reference to the Registry in

Authorised Version F2024C00519 registered 28/06/2024

which the document is filed and the calendar year in which the document is filed. A new series of numbers will be started at the beginning of each calendar year.

2.15 Signature

(1) A document (other than an affidavit, annexure or exhibit attached to another document) filed by a party in a proceeding must be dated and signed by:
  (a) the party's lawyer; or
  (b) the party, if the party does not have a lawyer.

(2) A signature affixed to a document by electronic means at the direction of the person required to sign the document complies with subrule (1).

Note: ***Lawyer*** is defined in the Dictionary.

2.16 Details at foot of each document

(1) A document filed in a proceeding must contain the following information under a horizontal line at the foot of the front page of the document:
  (a) the name and role of the party on whose behalf the document is filed;
  (b) the name of the person or lawyer responsible for preparation of the document;
  (c) if the party is represented by a lawyer—the telephone number, fax number and email address of the lawyer;
  (d) if the party is not represented by a lawyer—the telephone number, fax number and email address, if any, of the party;
  (e) the address for service of the party.

(2) In this rule:

role of the party means the capacity in which the party is participating in the proceeding.

Rules 2.17–2.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 2.3—Lodging and filing documents

2.21 How documents may be lodged with the Court

(1) A document may be lodged with the Court by:
  (a) being presented to a Registry when the Registry is open for business; or
  (b) being posted to a Registry with a written request for the action required in relation to the document; or
  (c) being faxed to a Registry in accordance with rule 2.22; or
  (d) being sent by electronic communication to a registry, in accordance with rule 2.23.

(2) A document in an existing proceeding that is to be lodged with the Court in accordance with paragraph (1)(b), (c) or (d) must be sent to the proper Registry.

(3) If a document in an existing proceeding is lodged with a Registry other than the proper Registry, the document must be accompanied by a letter:
  (a) identifying the proper place for the proceeding; and
  (b) requesting that the document be sent to the proper Registry.

(4) Subject to rules 2.22 and 2.23, a document that is required to be sealed, stamped or signed by the Court must be accompanied by the required number of copies for sealing, stamping or signing.

Note 1: ***Proper Registry*** is defined in the Dictionary.

Note 2: The Court's requirements in relation to preparing and lodging documents are set out in practice notes issued by the Chief Justice.

2.22 Faxing a document

(1) A document that is faxed to a Registry for filing must:
  (a) be sent to a fax number approved by a Registrar; and
  (b) be accompanied by a cover sheet clearly stating:
    (i) the sender's name, postal address, telephone number, fax number (if any) and email address (if any);
    (ii) the number of pages sent; and
    (iii) the action required in relation to the document.

(2) A document must not be faxed to a Registry if it is more than 20 pages.

(3) The sender of the document must:
  (a) keep the original document and the transmission report showing that the document was faxed successfully; and
  (b) produce the original document or transmission report if ordered to do so by the Court.

Note 1: If the document is accepted in the Registry, a Registrar will return a copy of the document by fax to the fax number stated on the cover sheet.

Authorised Version F2024C00519 registered 28/06/2024

Note 2: Details of the opening times for each District Registry are on the Court's website at http://www.fedcourt.gov.au.

2.23 Sending a document by electronic communication

(1) A document that is sent by electronic communication to a Registry for filing must:

(a) be sent by using the Court's website at http://www.fedcourt.gov.au; and

(b) be in an electronic format approved by a Registrar for the Registry; and

(c) if a document is required to be in accordance with an approved form—so far as is practicable, be in an approved form that complies with rule 2.12 or 2.13; and

(d) be capable of being printed in the form in which it was created without any loss of content.

Note: The electronic format approved by a Registrar for a Registry is available on the Court's website at http://www.fedcourt.gov.au.

(2) An affidavit must be sent as an image.

(3) If the document is in an existing proceeding, it must be sent to the proper Registry by using the Court's website at http://www.fedcourt.gov.au.

(4) The person who sends the document must:

(a) keep a paper or electronic copy of the document prepared in accordance with this rule; and

(b) if ordered to do so by the Court, produce the hard copy of the document.

2.24 Documents sent by electronic communication

(1) If a document sent to a Registry by electronic communication in accordance with rule 2.23 is accepted at the Registry, and is a document that must be signed or stamped, a Registrar will:

(a) for a document that these Rules require to be endorsed with a date for hearing—insert a notice of filing and hearing as the first page of the document; or

(b) for any other document—insert a notice of filing as the first page of the document.

(2) If a notice has been inserted as the first page of the document in accordance with subrule (1), the notice is taken to be part of the document for the purposes of the Act and these Rules.

2.25 When is a document filed

(1) A document is filed if:

(a) it is lodged with the Court in accordance with rule 2.21(1); and

(b) either:

(i) for a document in an existing proceeding—it is accepted in the proper Registry by having the seal of the Court affixed to it; or

Authorised Version F2024C00519 registered 28/06/2024

(ii) in any other case—it is accepted in a Registry by having the seal of the Court affixed to it.

Note: A document that is accepted for filing is added to the Court file. See the definition of ***Court file*** in the Dictionary.

(2) A document in an existing proceeding is taken to have been filed on the day when it was received by a Registry that is not the proper Registry if the document:

(a) is presented to a Registry other than the proper Registry; and

(b) is sent by the Registry to the proper Registry; and

(c) is filed in accordance with subparagraph (1)(b)(i).

(3) If a document is faxed or sent by electronic communication to a Registry, the document is, if accepted by a Registry under subrule (1), taken to have been filed:

(a) if the whole document is received by 4.30 pm on a business day for the Registry—on that day; or

(b) in any other case—on the next business day for the Registry.

Note 1: ***Business day*** is defined in the Dictionary.

Note 2: ***File*** is defined in the Dictionary as meaning file and serve.

Note 3: Because of the Court's computer security firewall, there may be a delay between the time a document is sent by electronic communication and the time the document is received by the Court.

2.26 Refusal to accept document for filing—abuse of process or frivolous or vexatious documents

A Registrar may refuse to accept a document (including a document that would, if accepted, become an originating application) if the Registrar is satisfied that the document is an abuse of the process of the Court or is frivolous or vexatious:

(a) on the face of the document; or

(b) by reference to any documents already filed or submitted for filing with the document.

2.27 When documents will not be accepted in a Registry

A document will not be accepted for filing if:

(a) it is not substantially complete; or

(b) it does not substantially comply with these Rules; or

(c) it is not properly signed; or

(d) a Registrar has refused to accept the document; or

(e) the Court has given a direction that the document not be accepted; or

(f) the Court has given a direction that the document not be accepted without the Court's leave, and leave has not been obtained.

Note: If a document is lodged with the Court in accordance with paragraph 2.21(1)(b), (c) or (d) and the Registry does not accept it, a Registrar will notify the sender of the document accordingly.

Authorised Version F2024C00519 registered 28/06/2024

2.28 Documents accepted for filing—removal from Court file and storage

(1) A document which has been accepted for filing will be removed from a Court file if:

(a) the Court has ordered that the document be removed from the Court file:

(i) on its own initiative; or

(ii) on the application of a party under rule 6.01 or subrule 16.21(2); or

(b) for an affidavit—the Court has ordered that the affidavit be removed from the Court file:

(i) on its own initiative; or

(ii) on the application of a party under subrule 29.03(2); or

(c) the Court is satisfied that the document:

(i) is otherwise an abuse of process of the Court; or

(ii) should not, under rule 2.27, have been accepted for filing.

(2) A party may apply to the Court for an order under subparagraph (1)(c)(i) or (ii) that a document be removed from the Court file.

(3) A document removed from a Court file under this rule must be stored:

(a) if an order mentioned in this rule specifies a way to store the document—in the way specified in the order; or

(b) otherwise—as directed by the District Registrar.

2.29 Documents on a Court file—removal, redaction and storage

(1) A document on a Court file will be removed from the Court file and replaced with a redacted copy if:

(a) the Court has ordered that the document be removed and replaced:

(i) on its own initiative; or

(ii) on the application of a party under rule 6.01 or subrule 16.21(2); or

(b) for an affidavit—the Court has ordered that the affidavit be removed and replaced with a redacted copy:

(i) on its own initiative; or

(ii) on the application of a party under subrule 29.03(2); or

(c) the Court is satisfied that:

(i) any part of the document is otherwise an abuse of process of the Court; and

(ii) it is reasonably practicable for that part of the document to be redacted.

(2) A party may apply to the Court for an order under paragraph (1)(c) that a document be removed from the Court file and replaced with a redacted copy.

(3) If a part or parts of a document are struck out or removed under this rule:

(a) the corresponding part or parts of the redacted copy of the document must be unable to be read in any way; and

(b) the redacted copy must be marked with:

Authorised Version F2024C00519 registered 28/06/2024

(i) the date on which the order was made; and
(ii) each date on which redaction was performed.

(4) A document removed from a Court file under this rule must be stored:
(a) if an order mentioned in this rule specifies a way to store the document—in the way specified in the order; or
(b) otherwise—as directed by the District Registrar.

Rule 2.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 2.4—Custody and inspection of documents

2.31 Custody of documents

(1) The District Registrar of a District Registry is to have custody of, and control over:
  (a) each document filed in a Registry in a proceeding; and
  (b) the records of the Registry.

(2) A person may remove a document from a Registry if:
  (a) a Registrar has given written permission for the removal because it is necessary to transfer the document to another Registry; or
  (b) the Court has given the person leave for the removal.

(3) If the Court or a Registrar permits a person to remove a document from the Registry, the person must comply with any conditions on the removal imposed by the Court or a Registrar.

2.32 Inspection of documents

(1) A party may inspect any document in the proceeding except:
  (a) a document for which a claim of privilege has been made:
    (i) but not decided by the Court; or
    (ii) that the Court has decided is privileged; or
  (b) a document that the Court has ordered be confidential.

(2) A person who is not a party may, after the first directions hearing or the hearing (whichever is earlier), inspect the following documents in a proceeding in the proper Registry:
  (a) an originating application or cross-claim;
  (b) a notice of address for service;
  (c) a pleading or particulars of a pleading or similar document;
  (d) a statement of agreed facts or an agreed statement of facts;
  (e) an interlocutory application;
  (f) a judgment or an order of the Court;
  (g) a notice of appeal or cross-appeal;
  (h) a notice of discontinuance;
  (i) a notice of change of lawyer;
  (j) a notice of ceasing to act;
  (k) in a proceeding to which Division 34.7 applies:
    (i) an affidavit accompanying an application, or an amended application, under section 61 of the *Native Title Act 1993*; or
    (ii) an extract from the Register of Native Title Claims received by the Court from the Native Title Registrar;
  (l) reasons for judgment;

Authorised Version F2024C00519 registered 28/06/2024

(m) a transcript of a hearing heard in open Court.

Note: ***Native Title Registrar*** and ***Register of Native Title Claims*** are defined in the Dictionary.

(3) However, a person who is not a party is not entitled to inspect a document that the Court has ordered:

(a) be confidential; or

(b) is forbidden from, or restricted from publication to, the person or a class of persons of which the person is a member.

Note: For the prohibition of publication of evidence or of the name of a party or witness, see sections 37AF and 37AI of the Act.

(4) A person may apply to the Court for leave to inspect a document that the person is not otherwise entitled to inspect.

(5) A person may be given a copy of a document, except a copy of the transcript in the proceeding, if the person:

(a) is entitled to inspect the document; and

(b) has paid the prescribed fee.

Note 1: For the prescribed fee, see the *Federal Court and Federal Circuit and Family Court Regulations 2012*.

Note 2: If there is no order that a transcript is confidential, a person may, on payment of the applicable charge, obtain a copy of the transcript of a proceeding from the Court's transcript provider.

Note 3: For proceedings under the Trans-Tasman Proceedings Act, see also rule 34.70.

Rules 2.33–2.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 2.5—Administration of money paid into Court and payment out

2.41 Establishment of Litigants' Fund

(1) The Chief Executive Officer will establish with a bank an account entitled 'Federal Court of Australia Official Exempt SPM Litigants' Fund'.

(2) The Litigants' Fund comprises the money standing, from time to time, to the credit of the account established under subrule (1).

Note: ***Bank*** and ***Litigants' Fund*** are defined in the Dictionary.

2.42 Dealing with money paid into Court

(1) Money paid into Court in a proceeding must:
  (a) if the Court has made an order under subrule (2)—be paid, credited or applied in accordance with the order; or
  (b) if paragraph (a) does not apply—be paid into the Litigants' Fund.

(2) A party may apply to the Court for an order:
  (a) 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; and
  (b) in relation to the disbursement of any interest earned on the money.

Note: As soon as practicable after money has been paid into Court in a proceeding, the relevant District Registrar will give a notice to each party stating that the money has been received and giving details of how the money has been paid, credited or applied.

2.43 Payment out of Litigants' Fund

(1) Money paid into Court under rule 2.42 may be paid out or applied only in accordance with an order of the Court.

(2) However, the District Registrar may pay out of the Litigants' Fund money that has been paid in as security for the costs of a taxation of a bill of costs.

Note 1: An order under this rule will state:
  (a) the details of the payment to be made; and
  (b) any other action to be taken by a Registrar in relation to the money.

Note 2: As soon as practicable after money is paid out of the Litigants' Fund, the relevant District Registrar will give a notice to each party.

Authorised Version F2024C00519 registered 28/06/2024

Part 3—Registrars

Note 1: For the appointment of the Chief Executive Officer, see section 18C of the Act. For the appointment of Registrars, District Registrars and Deputy District Registrars, see section 18N of the Act.

Note 2: For the powers of the Chief Executive Officer, see section 18D of the Act. Registrars, District Registrars and Deputy District Registrars have the duties, powers and functions given to them by the Act or the Chief Justice: see this Part, and sections 18N(2) and 35A of the Act.

Division 3.1—Powers of Registrars

3.01 Powers of the Court that may be exercised by a Registrar

(1) For section 35A(1)(h) of the Act, the following powers of the Court are prescribed:

(a) a power of the Court under a provision of an Act mentioned in column 2 of an item in Schedule 2;

(b) a power of the Court under a provision of these Rules mentioned in column 2 of an item in Schedule 2;

(c) the power of the Court to receive evidence on any application that a Registrar is empowered to decide;

(d) if the parties consent in writing:

(i) the power of the Court under section 23 of the Act to make an order for the dismissal of a proceeding and to make an order for the payment of costs;

(ii) the power of the Court under section 53A of the Act to make an order referring a proceeding to arbitration.

(e) the power of the Court under section 20A(2) of the Act to deal with a matter without an oral hearing.

(2) A description in column 3 of an item in Schedule 2 is for information only.

Note 1: For the powers of the Court that may, if the Court so directs, be exercised by a Registrar, see section 35A(1) of the Act.

Note 3: See also the following:

(a) sections 35A(1)(a) to (g) of the Act;

(b) rule 16.1 and Schedule 2 to the Corporations Rules;

(c) rule 2.02 and Schedule 1 to the Bankruptcy Rules;

(d) rule 1.10 of the *Federal Court (Criminal Proceedings) Rules 2016*.

3.02 Authority to administer oaths and affirmations

A Registrar may administer an oath or affirmation in a proceeding.

3.03 Orders other than in open court

A Registrar may make an order other than in open court.

Authorised Version F2024C00519 registered 28/06/2024

3.04 Application for orders in relation to Registrars

A person may apply to the Court without notice for an order that a Registrar do any act or thing that the Registrar is required or entitled to do but has refused to do.

Note: ***Without notice*** is defined in the Dictionary.

3.05 Application to a Registrar for an application to be determined by the Court

A party may apply orally to a Registrar under section 35A(7)(b) of the Act for the Registrar to arrange for the Court to determine an application for the exercise of a power mentioned in section 35A(1) of the Act.

Note: A party may apply to the Registrar to have the application determined by the Court—see section 35A(7)(b) of the Act.

Rules 3.06–3.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 3.2—Reviewing a Registrar's exercise of power

3.11 Application for review of a Registrar's exercise of power

(1) A party may apply to the Court under section 35A(5) of the Act for review of the exercise of a power of the Court by a Registrar.

(2) The application must be made within 21 days after the day on which the power was exercised.

Authorised Version F2024C00519 registered 28/06/2024

Part 4—Lawyers

Division 4.1—General

4.01 Proceeding by lawyer or in person

(1) A person may be represented in the Court by a lawyer or may be unrepresented.

(2) A corporation must not proceed in the Court other than by a lawyer.

Note 1: ***Corporation*** and ***lawyer*** are defined in the Dictionary.

Note 2: A notice of address for service for a corporation must be filed by a lawyer—see rule 11.02.

Note 3: The Court may dispense with compliance with this rule—see rule 1.34.

4.02 Power to act by lawyer

A party's lawyer may do an act or thing that the party is required or permitted to do unless the context or subject matter indicates otherwise.

4.03 Appointment of a lawyer—notice of acting

If a party is unrepresented when a proceeding starts and later appoints a lawyer to represent the party in the proceeding, the lawyer must file a notice of acting, in accordance with Form 4.

Note: ***File*** is defined in the Dictionary as meaning file and serve.

4.04 Termination of retainer by party

(1) If a party terminates a lawyer's retainer, and a new lawyer is appointed to represent the party, the new lawyer must file a notice of acting, in accordance with Form 5.

(2) If a party terminates a lawyer's retainer, and a new lawyer is not appointed to represent the party, the party must file a notice of termination of the lawyer's retainer, in accordance with Form 6, and a notice of address for service.

Note: Rule 11.01 contains requirements in relation to the address for service.

(3) If a party who has terminated a lawyer's retainer does not file the documents required by rule 4.04(2), the lawyer whose retainer has been terminated may file a notice of ceasing to act, in accordance with Form 8.

4.05 Termination of retainer by lawyer

(1) If a party's lawyer terminates the retainer, the lawyer must:

(a) serve on the party a notice of intention of ceasing to act, in accordance with Form 7; and

Authorised Version F2024C00519 registered 28/06/2024

(b) at least 7 days after serving the notice—file a notice of ceasing to act, in accordance with Form 8.

(2) A party whose lawyer has filed a notice under paragraph (1)(b) must file a notice of address for service within 5 days after the notice is filed.

Rules 4.06–4.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 4.2—Court referral for legal assistance

4.11 Definitions for Division 4.2

In this Division:

assisted party means a party receiving legal assistance under this Division.

legal assistance means any of the following:

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

Pro Bono lawyer means a lawyer who has agreed to accept a referral under rule 4.12 to provide pro bono legal assistance.

4.12 Referral for legal assistance

(1) The Court may refer a party to a lawyer for legal assistance by issuing a referral certificate, in accordance with Form 9.

(2) When making a referral under subrule (1), the Court may take the following matters into account:

(a) the means of the party;
(b) the capacity of the party to otherwise obtain legal assistance;
(c) the nature and complexity of the proceeding;
(d) any other matters the Court considers appropriate.

(3) The referral certificate may state the kind of legal assistance for which the party has been referred.

(4) A Registrar will attempt to arrange for the provision of legal assistance in accordance with the referral certificate to a Pro Bono lawyer.

4.13 A party has no right to apply for a referral

A party is not entitled to apply to the Court for a referral under rule 4.12.

4.14 Acceptance of referral certificate and provision of legal assistance

If a lawyer agrees to accept a referral under rule 4.12, the lawyer must provide legal assistance in accordance with the referral certificate.

4.15 Ceasing to provide legal assistance

(1) A Pro Bono lawyer may cease to provide legal assistance to the assisted party only:

Authorised Version F2024C00519 registered 28/06/2024

(a) with the assisted party's written agreement; or
(b) with a Registrar's permission under rule 4.16.

(2) If paragraph (1)(a) applies, the Pro Bono lawyer must, within 7 days after receiving the agreement, give a Registrar a copy of the agreement.

4.16 Application for Registrar's permission to cease providing legal assistance

(1) A Pro Bono lawyer may apply to a Registrar for permission to cease to provide legal assistance to a party.

(2) An application must be in writing and include the reasons for making the application.

(3) The Pro Bono lawyer must give a copy of the application only to the assisted party.

(4) The application:
(a) will be treated as confidential; and
(b) will not be treated as part of the proceeding; and
(c) will not be included on the Court file of the proceeding.

(5) A Registrar may consider the application without further notice to the assisted party.

(6) In considering an application, a Registrar will take into account the following:
(a) whether the Pro Bono lawyer would be likely to be able to cease to provide legal assistance to the assisted party under any practice rules governing professional conduct applying to the lawyer;
(b) any conflict of interest that the Pro Bono lawyer may have;
(c) whether there is a substantial disagreement between the Pro Bono lawyer and the assisted party about the conduct of the litigation;
(d) any view of the Pro Bono lawyer:
(i) that the assisted party's case is not well founded in fact or law; or
(ii) that the assisted party's prosecution of the litigation is an abuse of process;
(e) whether the Pro Bono lawyer lacks the time to provide adequate legal assistance to the assisted party because of other professional commitments;
(f) whether the assisted party has refused or failed to pay any disbursements requested under rule 4.18;
(g) whether it is unfair to require the Pro Bono lawyer to continue to provide legal assistance to the assisted party;
(h) any other relevant matter.

4.17 Cessation of referral certificate

A referral certificate ceases to have effect if:
(a) it is not accepted by a lawyer within 28 days after the referral; or

Authorised Version F2024C00519 registered 28/06/2024

(b) a Pro Bono lawyer has provided the legal assistance mentioned in the referral certificate; or

(c) a Pro Bono lawyer has ceased to provide legal assistance under rule 4.15; or

(d) the proceeding to which the referral certificate relates is finalised or transferred to another court.

4.18 Disbursements

A Pro Bono lawyer may ask the assisted party to pay any disbursements reasonably incurred, or reasonably to be incurred, by the Pro Bono lawyer on behalf of the assisted party in relation to the legal assistance.

4.19 Professional fees

(1) A Pro Bono lawyer must not seek or recover professional fees from an assisted party unless the Pro Bono lawyer and the assisted party have entered into a costs agreement.

(2) The costs agreement must provide that the Pro Bono lawyer be entitled to charge and the assisted party is liable to pay professional fees only:

(a) if an order for costs is made in favour of the assisted party; and

(b) to the extent that the party against whom the order for costs is made in fact pays the costs.

(3) If a costs agreement is entered into, the Court may order a party against whom an order for costs is made to pay the costs, including any disbursements incurred under rule 4.18, directly to the Pro Bono lawyer instead of the assisted party.

(4) A payment made to the Pro Bono lawyer under subrule (3) satisfies, to the extent of that payment, the order for costs made in favour of the assisted party.

Authorised Version F2024C00519 registered 28/06/2024

Part 5—Court supervision of proceedings

Division 5.1—Return date and directions

5.01 Parties to attend Court on return date

A party, or the party's lawyer, must attend the Court on the return date fixed in the originating application.

Note 1: ***Originating application*** is defined in the Dictionary.

Note 2: When a proceeding is started, a Registrar will fix a return date and place for hearing and endorse those details on the originating application.

5.02 Parties to file notice of address for service before return date

A respondent who has been served with an originating application must file a notice of address for service, in accordance with Form 10, before the return date fixed in the originating application.

Note: Rule 11.01 contains requirements in relation to the address for service.

5.03 Respondent's genuine steps statement

(1) If an applicant has filed a genuine steps statement the respondent must file the respondent's genuine steps statement, in accordance with Form 11, before the return date fixed in the originating application.

(2) The respondent's genuine steps statement must comply with section 7 of the Civil Dispute Resolution Act.

(3) The respondent's genuine steps statement must be no more than 2 pages.

Note 1: ***Civil Dispute Resolution Act*** is defined in the Dictionary.

Note 2: Rule 8.02 requires an applicant in a proceeding to which the Civil Dispute Resolution Act applies to file an applicant's genuine dispute resolution statement at the same time as the originating application is filed.

5.04 Making directions

(1) At any hearing, the Court may make directions for the management, conduct and hearing of a proceeding.

Note: ***Direction*** is defined in the Dictionary.

(2) A party, or the party's lawyer, must attend any hearing for the proceeding.

(3) Without limiting subrule (1), the Court may make a direction mentioned in the following table.

Item	A direction in relation to…
1	The defining of the issues by pleadings or otherwise

Authorised Version F2024C00519 registered 28/06/2024

Item	A direction in relation to…
2	The proceeding continuing or becoming an expedited proceeding
3	The standing of affidavits as pleadings
4	The proceeding to continue on affidavits even though the originating application is supported by a statement of claim
5	The filing of affidavits
6	Amendments to an originating application and pleadings
7	The mode and sufficiency of service
8	The joinder of parties
9	The giving of particulars
10	Discovery and inspection of documents
11	Interrogatories
12	Admissions of fact or of documents
13	Inspection of real or personal property
14	The appointment of a court expert
15	The disclosure and exchange of reports of experts
16	The number of expert witnesses to be called
17	The parties jointly instructing an expert to provide a report of the expert's opinion in relation to a particular issue in the proceeding
18	Requiring experts who are to give or have given reports to meet for the purpose of identifying and addressing the issues in dispute between the experts
19	An expert's opinion to be received by way of submission, and the manner and form of that submission, whether or not the opinion would be admissible as evidence
20	The giving of evidence at the hearing, including whether the evidence in chief of witnesses is to be given orally or by affidavit or both
21	The filing and exchange of signed statements of evidence and outlines of evidence of intended witnesses and their use in evidence at the hearing
22	The number of witnesses to be called
23	The evidence of a particular fact or facts being given at the hearing: (a) by statement on oath on information and belief; or (b) by production of documents or entries in books; or (c) by copies of documents or entries; or (d) otherwise
24	The manner in which documentary evidence is to be presented at the hearing
25	The number of documents to be tendered
26	The providing and limiting of written submissions
27	The taking of evidence and receipt of submissions by video link, audio link, electronic communication or other means that the Court considers appropriate
28	The proportion in which the parties are to bear the costs (if any) of taking evidence or making submissions in accordance with a direction mentioned in item 27
29	The attendance by parties before a Registrar for a conference: (a) to satisfy the Registrar that all reasonable steps for achieving a negotiated outcome of the

Authorised Version F2024C00519 registered 28/06/2024

Item	A direction in relation to…
	proceeding have been taken; or (b) to clarify the real issues in dispute so that appropriate directions may be made: (i) for the disposition of the matter; or (ii) to shorten the time taken in preparation for, and at, the trial
30	The use of mediation, arbitration or an ADR process to assist in the conduct and resolution of all or part of the proceeding
31	Referring the proceeding, or a matter arising out of the proceeding, to an arbitrator, a mediator or a suitable person for resolution by an ADR process
32	The attendance by parties at a case management conference with a Judge or Registrar to consider the most economic and efficient means of bringing the proceeding to trial and of conducting the trial
33	The place, time and mode of hearing
34	The transfer of the proceeding to another place at which there is a Registry
35	Costs

Note 1: If a proceeding is transferred under a direction mentioned in item 34 of the table, a Registrar at the place from which the proceeding is transferred will, on behalf of the District Registrar of that place, send all documents in the District Registrar's custody relating to the proceeding to the District Registrar at the place to which the proceeding is transferred.

Note 2: A Registrar may exercise the power in this rule—see rule 3.01 and Schedule 2.

Note 3: A party may seek directions as to the conduct of a hearing or trial—see rule 30.23.

5.05 Adjournment of directions hearing

The Court may adjourn a directions hearing from time to time.

Note: ***Directions hearing*** is defined in the Dictionary.

5.06 Application for directions—cross-claims

(1) If a cross-claim is filed, the parties, or the parties' lawyers, must attend the Court on the return date fixed in the cross-claim.

(2) A party may apply to the Court for directions for the management, conduct and hearing of the cross-claim.

5.07 Interlocutory orders

A party who wants to obtain an interlocutory order must make an application in accordance with rule 17.01.

Note: Part 17 deals with interlocutory applications.

5.08 Hearing and determination of matter at directions hearing

A party may apply to the Court at a directions hearing:

(a) to hear and determine the proceeding at the directions hearing; or

Authorised Version F2024C00519 registered 28/06/2024

(b) to dispose of an originating application or a cross-claim at the directions hearing.

Rules 5.09–5.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 5.2—Orders on default

5.21 Self-executing orders

A party may apply to the Court for an order that, unless another party does an act or thing within a certain time:

(a) the proceeding be dismissed; or

(b) the applicant's statement of claim, or alternative accompanying document referred to in rule 8.05, be struck out; or

(c) a pleading of the respondent be struck out; or

(d) the party have judgment against the other party.

5.22 When a party is in default

A party is in default if the party fails to:

(a) do an act required to be done, or to do an act in the time required, by these Rules; or

(b) comply with an order of the Court; or

(c) attend a hearing in the proceeding; or

(d) prosecute or defend the proceeding with due diligence.

5.23 Orders on default

(1) If an applicant is in default, a respondent may apply to the Court for an order that:

(a) a step in the proceeding be taken within a specified time; or

(b) the proceeding be stayed or dismissed for the whole or any part of the relief claimed by the applicant:

(i) immediately; or

(ii) on conditions specified in the order.

(2) If a respondent is in default, an applicant may apply to the Court for:

(a) an order that a step in the proceeding be taken within a specified time; or

(b) if the claim against the respondent is for a debt or liquidated damages—an order giving judgment against the respondent for:

(i) the debt or liquidated damages; and

(ii) if appropriate, interest and costs in a sum fixed by the Court or to be taxed; or

(c) if the proceeding was started by an originating application supported by a statement of claim or an alternative accompanying document referred to in rule 8.05, or if the Court has ordered that the proceeding continue on pleadings—an order giving judgment against the respondent for the relief claimed in the statement of claim or alternative accompanying document to which the Court is satisfied that the applicant is entitled; or

Authorised Version F2024C00519 registered 28/06/2024

(d) an order giving judgment against the respondent for damages to be assessed, or any other order; or

(e) an order mentioned in paragraph (b), (c) or (d) to take effect if the respondent does not take a step ordered by the Court in the proceeding in the time specified in the order.

Note 1: The Court may make any order that the Court considers appropriate in the interests of justice—see rule 1.32.

Note 2: An order or judgment under this Division may be set aside or varied.

5.24 Contempt

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

Authorised Version F2024C00519 registered 28/06/2024

Part 6—Court supervision of parties and other persons

Division 6.1—Vexatious proceedings

6.01 Scandalous, vexatious or oppressive matter

If a document filed in a proceeding contains matter that is scandalous, vexatious or oppressive, a party may apply to the Court for an order that:

(a) the document be removed from the Court file; or

(b) the matter be struck out of the document.

6.02 Certificate of vexatious proceedings order

(1) A person who wants the Chief Executive Officer to issue a certificate under subsection 37AP(1) of the Act must make the request in writing and include in the request:

(a) the person's name and address; and

(b) the person's interest in making the application.

(2) The request must be lodged in the District Registry in which the vexatious proceedings order was made.

(3) The certificate will state:

(a) the name of the person subject to the vexatious proceedings order; and

(b) if applicable, the name of the person who applied for the vexatious proceedings order; and

(c) the date on which the vexatious proceedings order was made; and

(d) the orders made by the Court.

6.03 Application for leave to institute proceedings

An application under subsection 37AR(2) of the Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made:

(a) in accordance with Form 2; and

(b) without notice to any other person.

Note 1: See subsection 37AR(2) of the Act for the right of a person who is subject to a vexatious proceedings order to apply to the Court to institute a proceeding.

Note 2: See subsection 37AR(3) of the Act for the contents of the affidavit that must be filed with the application.

Rules 6.04–6.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 6.2—Use of communication and recording devices in Court

6.11 Use of communication device or recording device in place where hearing taking place

(1) In this rule:

communication device includes a mobile telephone, audio link, video link or any other electronic communication equipment.

recording device means a device that is capable of being used to record images or sound, including a camera, tape recorder, video recorder, mobile telephone or digital audio recorder.

(2) A person must comply with any directions made by the Court at the hearing of any proceeding in the Court relating to the use of a communication device or recording device.

(3) A person must not use a recording device for the purpose of recording or making a transcript of the evidence or submissions in a hearing in the Court.

(4) A person must not use a communication device or a recording device that might:
  (a) disturb a hearing in the Court; or
  (b) cause any concern to a witness or other participant in the hearing; or
  (c) allow a person who is not present in the Court to receive information about the proceeding or the hearing to which the person is not entitled.

Note 1: The Court may have regard to any relevant matter, including the following:
  (a) why the person needs to use the device in the hearing;
  (b) if an order has been given excluding one or more witnesses from the Court—whether there is a risk that the device could be used to brief a witness out of court;
  (c) whether the use of the device would disturb the hearing or distract or cause concern to a witness or other participant in the hearing.

Note 2: The Court may dispense with compliance with this rule—see rule 1.34.

6.12 Contempt

Rule 6.11 does not limit the powers of the Court to punish for contempt.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 2—Original jurisdiction—proceedings generally

Part 7—Orders before start of a proceeding

Division 7.1—Injunctions, preservation of property and receivers

7.01 Order before start of proceeding

(1) If a matter is urgent, a person who intends to start a proceeding (a ***prospective applicant***) may apply to the Court, without notice, as if the prospective applicant had started the proceeding and the application had been made in the proceeding, for an order:

(a) granting an injunction; or

(b) if the matter relates to property:

(i) for the detention, custody, preservation or inspection of the property; and

(ii) to authorise any person to enter any land, or do any other act or thing, for the purpose of giving effect to the order; or

(c) if the matter relates to the right of a prospective applicant to an amount in a fund—that the amount in the fund be paid into Court or otherwise secured; or

(d) appointing a receiver with the power of a receiver and manager.

(2) An application mentioned in subrule (1) must be in accordance with Form 12 and accompanied by an affidavit stating the facts on which the prospective applicant relies.

(3) A prospective applicant seeking an order under this rule must give an undertaking to the Court to start a proceeding in relation to the subject matter of the application within 14 days after the application has been determined.

Note: ***Without notice*** is defined in the Dictionary.

Rules 7.02–7.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 7.2—Approval of agreement for person under a legal incapacity

7.11 Compromise or settlement of matter before proceeding

(1) If a claim that is enforceable by a proceeding in the Court is made by, for or against a person under a legal incapacity, an interested person may apply to the Court for an order:

(a) approving an agreement made by or for the person for compromise or settlement of the claim before any proceeding is started; and

(b) enforcing the claim.

Note 1: ***Interested person*** and ***person under a legal incapacity*** are defined in the Dictionary.

Note 2: Division 9.6 deals with a proceeding by or against a person under a legal incapacity.

(2) An application must be:

(a) in accordance with Form 13; and

(b) accompanied by the following:

(i) an affidavit stating the material facts on which the application relies;

(ii) the agreement that is sought to be approved;

(iii) an opinion of an independent lawyer that the agreement is in the best interests of the person under a legal incapacity.

(3) The Court may, as a condition of an approval, require that any money or other property payable for the benefit of a person under a legal incapacity be dealt with by way of a settlement or in any other way that the Court considers appropriate.

Note: The Court may give approval subject to conditions—see rule 1.33.

(4) If the Court does not approve the agreement, the agreement is not binding on the person under a legal incapacity.

Rules 7.12–7.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 7.3—Preliminary discovery

7.21 Definitions for Division 7.3

In this Division:

prospective applicant means a person who reasonably believes that there may be a right for the person to obtain relief against another person who is not presently a party to a proceeding in the Court.

prospective respondent means a person, not presently a party to a proceeding in the Court, against whom a prospective applicant reasonably believes the prospective applicant may have a right to obtain relief.

7.22 Order for discovery to ascertain description of respondent

(1) A prospective applicant may apply to the Court for an order under subrule (2) if the prospective applicant satisfies the Court that:
  (a) there may be a right for the prospective applicant to obtain relief against a prospective respondent; and
  (b) the prospective applicant is unable to ascertain the description of the prospective respondent; and
  (c) another person (the ***other person***):
    (i) knows or is likely to know the prospective respondent's description; or
    (ii) has, or is likely to have, or has had, or is likely to have had, control of a document that would help ascertain the prospective respondent's description.

(2) If the Court is satisfied of the matters mentioned in subrule (1), the Court may order the other person:
  (a) to attend before the Court to be examined orally only about the prospective respondent's description; and
  (b) to produce to the Court at that examination any document or thing in the person's control relating to the prospective respondent's description; and
  (c) to give discovery to the prospective applicant of all documents that are or have been in the person's control relating to the prospective respondent's description.

Note 1: ***Control*** and ***description*** are defined in the Dictionary.

Note 2: For how discovery is to be made, see rule 7.25.

(3) The prospective applicant must provide the person with sufficient conduct money to permit the person to travel to the Court.

Note: ***Conduct money*** is defined in the Dictionary.

Authorised Version F2024C00519 registered 28/06/2024

7.23 Discovery from prospective respondent

(1) A prospective applicant may apply to the Court for an order under subrule (2) if the prospective applicant:

(a) reasonably believes that the prospective applicant may have the right to obtain relief in the Court from a prospective respondent whose description has been ascertained; and

(b) after making reasonable inquiries, does not have sufficient information to decide whether to start a proceeding in the Court to obtain that relief; and

(c) reasonably believes that:

(i) the prospective respondent has or is likely to have or has had or is likely to have had in the prospective respondent's control documents directly relevant to the question whether the prospective applicant has a right to obtain the relief; and

(ii) inspection of the documents by the prospective applicant would assist in making the decision.

(2) If the Court is satisfied about matters mentioned in subrule (1), the Court may order the prospective respondent to give discovery to the prospective applicant of the documents of the kind mentioned in subparagraph (1)(c)(i).

7.24 Procedure for applications under this Division

(1) A prospective applicant who wants to make an application under rule 7.22 or 7.23 must:

(a) for an application under rule 7.22—file an originating application, in accordance with Form 14A; or

(b) for an application under rule 7.23—file an originating application, in accordance with Form 14.

(2) An application must be accompanied by an affidavit:

(a) stating the facts on which the prospective applicant relies; and

(b) identifying, as precisely as possible, the documents or categories of documents to which the application relates.

(3) A copy of the application and affidavit must be served personally on each person against whom the order is sought.

7.25 List of documents

If a person is ordered to give discovery under rule 7.22 or 7.23, the person must file a list of documents in accordance with rule 20.17.

Note: For the requirements for a list of documents, see rule 20.17.

7.26 Privilege

An order made under this Division does not require the person against whom the order is made to produce any document that, on the ground of privilege, the

Authorised Version F2024C00519 registered 28/06/2024

person could not be required to produce if the prospective applicant had started a proceeding against the person or made the person a party to the proceeding.

7.27 Inspection of documents

(1) If a document is discovered in accordance with this Division, the prospective applicant may apply to the Court to have the document produced for inspection.

(2) Division 20.3, with any necessary modification, applies to the inspection of the documents mentioned in a list of documents made and served in accordance with this Division as if the list were a list of documents as mentioned in rule 20.17.

7.28 Copying of documents produced for inspection

A prospective applicant to whom a document is produced for inspection may, at the prospective applicant's own expense, copy or make an electronic image of the document subject to any reasonable conditions imposed by the person producing the document.

7.29 Costs

A person against whom an order is sought or made under this Division may apply to the Court for an order that:

(a) the prospective applicant give security for the person's costs and expenses including:
  (i) the costs of giving discovery and production; and
  (ii) the costs of complying with an order made under this Division; and
(b) the prospective applicant pay the person's costs and expenses.

Note: Part 40 deals with costs and Division 40.2 deals with taxation of costs.

Rule 7.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 7.4—Freezing orders

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

7.31 Definitions for Division 7.4

In this Division:

ancillary order has the meaning given by rule 7.33.

another court means a court outside Australia or a court in Australia other than the Court.

applicant means a person who applies for a freezing order or an ancillary order.

freezing order has the meaning given by rule 7.32.

judgment includes an order.

respondent means a person against whom a freezing order or an ancillary order is sought or made.

7.32 Freezing order

(1) The Court may make an order (a ***freezing order***), with or without notice to a respondent, for the purpose of preventing the frustration or inhibition of the Court's process by seeking to meet a danger that a judgment or prospective judgment of the Court will be wholly or partly unsatisfied.

(2) A freezing order may be an order restraining a respondent from removing any assets located in or outside Australia or from disposing of, dealing with, or diminishing the value of, those assets.

Note: ***Without notice*** is defined in the Dictionary.

7.33 Ancillary order

(1) The Court may make an order (an ***ancillary order***) ancillary to a freezing order or prospective freezing order as the Court considers appropriate.

(2) Without limiting the generality of subrule (1), an ancillary order may be made for either or both of the following purposes:
  (a) eliciting information relating to assets relevant to the freezing order or prospective freezing order;
  (b) determining whether the freezing order should be made.

7.34 Order may be against person not a party to proceeding

The Court may make a freezing order or an ancillary order against a person even if the person is not a party in a proceeding in which substantive relief is sought against the respondent.

Authorised Version F2024C00519 registered 28/06/2024

Rule 7.35

7.35 Order against judgment debtor or prospective judgment debtor or third party

(1) This rule applies if:
  (a) judgment has been given in favour of an applicant by:
    (i) the Court; or
    (ii) for a judgment to which subrule (2) applies—another court; or
  (b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in:
    (i) the Court; or
    (ii) for a cause of action to which subrule (3) applies—another court.

(2) This subrule applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(3) This subrule applies to a cause of action if:
  (a) there is a sufficient prospect that the other court will give judgment in favour of the applicant; and
  (b) there is a sufficient prospect that the judgment will be registered in or enforced by the Court.

(4) The Court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the Court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because any of the following might occur:
  (a) the judgment debtor, prospective judgment debtor or another person absconds;
  (b) the assets of the judgment debtor, prospective judgment debtor or another person are:
    (i) removed from Australia or from a place inside or outside Australia; or
    (ii) disposed of, dealt with or diminished in value.

(5) The Court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a ***third party***) if the Court is satisfied, having regard to all the circumstances, that:
  (a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because:
    (i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
    (ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or
  (b) a process in the Court is or may ultimately be available to the applicant as a result of a judgment or prospective judgment, under which process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

Authorised Version F2024C00519 registered 28/06/2024

(6) Nothing in this rule affects the power of the Court to make a freezing order or ancillary order if the Court considers it is in the interests of justice to do so.

7.36 Jurisdiction

Nothing in this Division diminishes the inherent, implied or statutory jurisdiction of the Court to make a freezing order or ancillary order.

7.37 Service outside Australia of application for freezing order or ancillary order

An application for a freezing order or an ancillary order may be served on a person who is outside Australia (whether or not the person is domiciled or resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

7.38 Costs

(1) The Court may make any order as to costs as it considers appropriate in relation to an order made under this Division.

(2) Without limiting the generality of subrule (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

Rules 7.39–7.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 7.5—Search orders

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

7.41 Definitions for Division 7.5

In this Division:

applicant means an applicant for a search order.

described includes described generally whether by reference to a class or otherwise.

premises includes a vehicle or vessel of any kind.

respondent means a person against whom a search order is sought or made.

search order has the meaning given by rule 7.42.

7.42 Search order

The Court may make an order (a ***search order***), in any proceeding or in anticipation of any proceeding in the Court, with or without notice to the respondent, for the purpose of securing or preserving evidence and requiring a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence that is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

Note: ***Without notice*** is defined in the Dictionary.

7.43 Requirements for grant of search order

The Court may make a search order if the Court is satisfied that:

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that:

(i) the respondent possesses important evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

7.44 Jurisdiction

Nothing in this Division diminishes the inherent, implied or statutory jurisdiction of the Court to make a search order.

Authorised Version F2024C00519 registered 28/06/2024

7.45 Terms of search order

(1) A search order may direct each person who is named or described in the order:

(a) to permit, or arrange to permit, other persons named or described in the order:

(i) to enter premises specified in the order; and

(ii) to take any steps that are in accordance with the terms of the order; and

(b) to provide, or arrange to provide, other persons named or described in the order with any information, thing or service described in the order; and

(c) to allow other persons named or described in the order to take and retain in their custody any thing described in the order; and

(d) not to disclose any information about the order, for up to 3 days after the date the order was served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any act as the Court considers appropriate.

(2) Without limiting the generality of subparagraph (1)(a)(ii), the steps that may be taken in relation to a thing specified in a search order include:

(a) searching for, inspecting or removing the thing; and

(b) making or obtaining a record of the thing or any information it may contain.

(3) A search order may contain other provisions the Court considers appropriate.

(4) In subrule (2):

record includes a copy, photograph, film or sample.

7.46 Independent lawyers

(1) If the Court makes a search order, the Court must appoint one or more lawyers, each of whom is independent of the applicant's lawyer, (the ***independent lawyers***) to supervise the execution of the order, and to do any other acts or things in relation to the order that the Court considers appropriate.

(2) The Court may appoint an independent lawyer to supervise execution of the order at any one or more premises, and a different independent lawyer or lawyers to supervise execution of the order at other premises, with each independent lawyer having power to do any other acts or things in relation to the order that the Court considers appropriate.

7.47 Costs

(1) The Court may make any order for costs that it considers appropriate in relation to an order made under this Division.

(2) Without limiting the generality of subrule (1), an order for costs includes an order for the costs of any person affected by a search order.

Authorised Version F2024C00519 registered 28/06/2024

Part 8—Starting proceedings

Division 8.1—Originating applications

8.01 Starting proceeding—application

(1) A person who wants to start a proceeding in the Court's original jurisdiction must file an originating application, in accordance with Form 15.

(2) An originating application must include:
  (a) the applicant's name and address; and
  (b) the applicant's address for service; and
  (c) if an applicant sues in a representative capacity—a statement of that fact.

Note: The originating application must have the applicant's address for service—see rule 11.01.

(3) If an originating application states that the applicant is represented by a lawyer:
  (a) the lawyer must, if requested in writing by a respondent, declare in writing whether the lawyer filed the originating application; and
  (b) if the lawyer declares in writing that the lawyer did not file the originating application, the respondent may apply to the Court to stay the proceeding.

Note: ***File*** is defined in the Dictionary as meaning file and serve.

8.02 Applicant's genuine steps statement

(1) If Part 2 of the Civil Dispute Resolution Act applies to a proceeding, the applicant must, when filing the applicant's originating application, file the applicant's genuine steps statement, in accordance with Form 16.

(2) The applicant's genuine steps statement must comply with section 6 of the Civil Dispute Resolution Act.

(3) The applicant's genuine steps statement must be no more than 2 pages.

Note 1: ***Civil Dispute Resolution Act*** is defined in the Dictionary.

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

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

8.03 Application to state relief claimed

(1) An originating application must state:
  (a) the relief claimed; and
  (b) if the relief is claimed under a provision of an Act—the Act and the provision under which the relief is claimed.

Authorised Version F2024C00519 registered 28/06/2024

(2) An originating application claiming relief of the kind mentioned in column 2 of following table must state the details mentioned in column 3 of the table.

Item	Relief sought	Details
1	Interlocutory relief	The interlocutory order sought
2	An injunction	The order sought
3	A declaration	The declaration sought
4	Exemplary damages	The claim for exemplary damages

(3) The originating application need not include a claim for costs.

8.04 Application starting migration litigation to include certificate

(1) For section 486I of the *Migration Act 1958*, a lawyer may file an originating application starting migration litigation only if the application includes a certificate in accordance with the certificate contained in Form 15, signed by the lawyer.

Note 1: See section 486I of the *Migration Act 1958*.

Note 2: The Court will refuse to accept an originating application unless a certificate is provided in accordance with this subrule.

(2) In this rule:

lawyer has the meaning given by section 5 of the *Migration Act 1958*.

Note: ***Migration litigation*** is defined in the Dictionary.

8.05 Accompanying document for originating application

(1) An originating application seeking relief that includes damages must be accompanied by:

(a) unless paragraph (b) or (c) applies—a statement of claim; or

(b) if a practice note issued by the Chief Justice requires the originating application to be accompanied by an alternative accompanying document—the alternative accompanying document; or

(c) if a practice note issued by the Chief Justice permits the originating application to be accompanied by an alternative accompanying document—the alternative accompanying document or a statement of claim.

(2) An originating application seeking relief that does not include damages must be accompanied by:

(a) unless paragraph (b) or (c) applies—a statement of claim or an affidavit; or

(b) if a practice note issued by the Chief Justice requires the originating application to be accompanied by an alternative accompanying document—the alternative accompanying document; or

(c) if a practice note issued by the Chief Justice permits the originating application to be accompanied by an alternative accompanying

Authorised Version F2024C00519 registered 28/06/2024

document—the alternative accompanying document, a statement of claim or an affidavit.

Note 1: A practice note issued by the Chief Justice may require or permit an alternative accompanying document to accompany an originating application by:
(a) expressly requiring or permitting the alternative accompanying document to accompany the originating application; or
(b) referring to another document that requires or permits the alternative accompanying document to accompany the originating application.

Note 2: When an originating application and accompanying document are filed, a Registrar will fix a return date and place for hearing and endorse those details on the application.

Note 3: If the Court has made an order shortening the time for service of the application, a Registrar will endorse details of the order on the application.

(3) A statement of claim mentioned in this rule must be in accordance with Form 17.

(4) An affidavit mentioned in subrule (2) must state the material facts on which the applicant relies that are necessary to give the respondent fair notice of the case to be made against the respondent at trial.

Note 1: For the content of a statement of claim, see Division 16.1.

Note 2: For the content of an alternative accompanying document, see rule 16.13.

(5) This rule has effect subject to any other rule of the Court.

Note 1: For some special classes of proceedings, requirements for the documents that must accompany an originating application are found in Chapter 3.

Note 2: This rule does not apply to initiating process in proceedings under the *Admiralty Act 1988*—see the *Admiralty Rules 1988*.

8.06 Service of originating documents

The applicant must, as soon as practicable and at least 5 days before the return date fixed in an originating application, serve a copy of the following personally on each respondent named in the originating application:

(a) the originating application;
(b) each other document required to accompany the application by rule 8.05 or any other rule of the Court.

Note 1: The Court may extend or shorten the time for service—see rule 1.39.

Note 2: Division 10.1 deals with personal service.

Note 3: Service should generally be effected as soon as practicable after filing (which may be immediately). This will provide time for steps required under practice notes issued by the Chief Justice to be undertaken before the return date.

8.07 Changing return date

(1) If an originating application has not been served, a party may apply to a Registrar to change the return date fixed in the originating application.

(1A) An application to change the return date may be made by sending, in accordance with rule 2.23, an amended originating application by electronic communication to a Registry for filing.

Authorised Version F2024C00519 registered 28/06/2024

Note 1: If an application to change the return date is made in accordance with this subrule and a Registrar changes the return date, a Registrar will insert a notice of filing and hearing that shows the changed return date as the first page of the amended originating application (see rule 2.24).

Note 2: ***File*** is defined in the Dictionary as meaning file and serve.

(2) If:

(a) an application to change the return date is made otherwise than by sending an amended originating application by electronic communication to a Registry for filing; and

(b) a Registrar changes the return date;

the applicant must change the return date endorsed on the copy of the application that is to be served.

(3) This rule does not apply to a proceeding to which the Corporations Rules apply if a public notice or advertisement is required under those Rules or under an order made by the Court in the proceeding.

Rules 8.08–8.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 8.2—Notice of constitutional matter

8.11 Notice of constitutional matter

(1) In this Division:

constitutional matter means a matter arising under the Constitution or involving its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*.

(2) If a proceeding in the Court involves a constitutional matter, the party who has raised the matter must file a notice in the proper Registry, in accordance with Form 18, stating:

(a) briefly but specifically, the nature of the constitutional matter; and

(b) the facts showing that the matter is one to which this rule applies.

8.12 Service of notice

(1) The party filing the notice must:

(a) serve a copy of the notice on:

(i) each person as required by section 78B of the *Judiciary Act 1903*; and

(ii) each other party; and

(b) as soon as practicable after serving the notice, file an affidavit of service; and

(c) give a copy of each document filed in the proceeding relevant to the constitutional matter (whether filed before or after the notice) to any Attorney-General who has intervened, as soon as practicable after notice of the intervention is given to the party.

(2) The notice must be served:

(a) if the matter arises in any originating application—within 7 days after the day the application is filed; or

(b) if the matter arises in any pleading—within 7 days after the pleading is filed; or

(c) if the matter arises before the date fixed for a hearing of a proceeding and paragraph (a) or (b) does not apply—not later than 14 days before the date fixed for the hearing; or

(d) in any other case—within the time that the Court directs.

Note: For the Court's powers when a constitutional matter arises, see sections 78B(2) and (5) of the *Judiciary Act 1903*.

Rules 8.13–8.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 8.3—Amendments to an originating application

8.21 Amendment generally

(1) An applicant may apply to the Court for leave to amend an originating application for any reason, including:

(a) to correct a defect or error that would otherwise prevent the Court from determining the real questions raised by the proceeding; or

(b) to avoid the multiplicity of proceedings; or

(c) to correct a mistake in the name of a party to the proceeding; or

(d) to correct the identity of a party to the proceeding; or

(e) to change the capacity in which the party is suing in the proceeding, if the changed capacity is one that the party had when the proceeding started, or has acquired since that time; or

(f) to substitute a person for a party to the proceeding; or

(g) to add or substitute a new claim for relief, or a new foundation in law for a claim for relief, that arises:

(i) out of the same facts or substantially the same facts as those already pleaded to support an existing claim for relief by the applicant; or

(ii) in whole or in part, out of facts or matters that have occurred or arisen since the start of the proceeding.

Note: For paragraph (1)(b) and the avoidance of multiplicity of proceedings, see section 22 of the Act.

(2) An applicant may apply to the Court for leave to amend an originating application in accordance with paragraph (1)(c), (d), (e) or subparagraph (g)(i) even if the application is made after the end of any relevant period of limitation applying at the date the proceeding was started.

(3) However, an applicant must not apply to amend an originating application in accordance with subparagraph (1)(g)(ii) after the time within which any statute that limits the time within which a proceeding may be started has expired.

Note 1: ***Applicant***, ***claim*** and ***originating application*** are defined in the Dictionary.

Note 2: For the Court's power to make rules amending a document, see section 59(2B) of the Act.

Note 3: Rule 9.05 deals with joinder of parties by court order.

8.22 Date on which amendment to substitute a party takes effect

If an originating application is amended with the effect that another person is substituted as a party to the proceeding, the proceeding is to be taken to have started for that person on the day the originating application is amended or as otherwise ordered by the Court.

Authorised Version F2024C00519 registered 28/06/2024

8.23 Procedure for making amendment

(1) An applicant given leave to amend an originating application must, if reasonably practicable to do so:
  (a) make the alterations on the originating application; and
  (b) write on the originating application the following information:
    (i) the date on which the amendment is made;
    (ii) the date on which the order permitting the amendment was made.

(2) If the amendments to the originating application are so numerous or lengthy to make it difficult to read, or if the originating application was lodged by electronic communication, the applicant must file an amended originating application that:
  (a) incorporates and distinguishes the amendments; and
  (b) is marked with the information mentioned in subrule (1).

8.24 Time for amending an originating application under Court order

An order that an applicant be permitted to amend an originating application ceases to have effect unless the applicant amends the originating application in accordance with the order within:
  (a) the period specified in the order; or
  (b) if no period is specified in the order—14 days after the date on which the order permitting the amendment was made.

Note: If the Court permits an applicant to amend an originating application, the Court may also make orders about the procedure for amending the originating application and serving the originating application.

8.25 Service of amended originating application

If an originating application is amended after it has been served, the applicant who made the amendment must, as soon as practicable after the amendment is made, serve a copy of the amended originating application on the parties on whom the originating application was served.

Note: The Court may dispense with service of the amended document.

Authorised Version F2024C00519 registered 28/06/2024

Part 9—Parties and proceedings

Division 9.1—Parties, interveners and causes of action

9.01 Multiple causes of action

An applicant may claim relief in the same proceeding in relation to as many causes of action as the applicant has against a respondent, whether or not the applicant is claiming the relief in the same capacity.

9.02 Joinder in proceedings involving common questions etc.

(1) Two or more persons may be joined (as applicants or respondents) in any proceeding:
  (a) if separate proceedings by or against each of them would give rise to a common question of fact or of mixed fact and law; or
  (b) if all rights to relief claimed in the originating application are in respect of, or arise out of, the same transaction or series of transactions; or
  (c) by leave of the Court.

(2) Leave under paragraph (1)(c) may be granted before or after the originating application is filed.

(3) If 2 or more persons are joined under subrule (1), the Court may at any stage of the proceedings order that proceedings by or against any party or parties be conducted separately.

9.03 Joinder of applicants with joint entitlement

If an applicant claims relief to which any other person is entitled jointly with the applicant:
  (a) each person so entitled must be joined as a party to the proceeding; and
  (b) any person so entitled who does not consent to being joined as an applicant must be made a respondent to the proceeding.

Note: For actions in relation to joint contracts, where one of the contractors is bankrupt, see section 62 of the *Bankruptcy Act 1966*.

9.04 Joinder of persons with common liability

(1) If relief is claimed against a respondent who is both jointly and severally liable with another person, the other person need not be made a respondent to the proceeding.

(2) If 2 or more persons may be jointly, but not severally, liable and relief is claimed against some, but not all, of the persons, a respondent may apply to the Court for an order that the proceeding be stayed until each person who is jointly liable is made a respondent to the proceeding.

Authorised Version F2024C00519 registered 28/06/2024

9.05 Joinder of parties by Court order

(1) A party may apply to the Court for an order that a person be joined as a party to the proceeding if the person:
  (a) ought to have been joined as a party to the proceeding; or
  (b) is a person:
    (i) whose cooperation might be required to enforce a judgment; or
    (ii) whose joinder is necessary to ensure that each issue in dispute in the proceeding is able to be heard and finally determined; or
    (iii) who should be joined as a party in order to enable determination of a related dispute and, as a result, avoid multiplicity of proceedings.

(2) A person must not be added as an applicant without the person's consent.

(3) If a person is joined as a party under this rule, the start date of the proceeding for the person is the date on which the order is made.

(4) An application under subrule (1) need not be served on any person who was not served with a copy of the originating application.

Note: The Court may make an order for any of the following:
  (a) service of the order and any other document in the proceeding;
  (b) amendment of a document in the proceeding;
  (c) the filing of a notice of address for service by a party.

9.06 Application for separate trials—inconvenient joinder of causes of action or parties

A party may apply to the Court for an order that separate trials be held on the ground that a joinder of parties, or causes of action, in a proceeding may:
  (a) complicate or delay the trial of the proceeding; or
  (b) cause any other inconvenience.

9.07 Errors in joinder of parties

A proceeding will not be defeated only because:
  (a) a party has been improperly or unnecessarily joined as a party; or
  (b) a person who should have been joined as a proper or necessary party has not been joined.

9.08 Removal of parties by Court order

A party may apply to the Court for an order that a party that has been improperly or unnecessarily joined as a party, or has ceased to be a proper or necessary party, cease to be a party.

Note: The Court may make an order for the future conduct of the proceeding.

Authorised Version F2024C00519 registered 28/06/2024

9.09 Death, bankruptcy or transmission of interest

(1) If a party dies, or becomes bankrupt, during a proceeding but a cause of action in the proceeding survives, the proceeding is not dismissed only because of the party's death or bankruptcy.

(2) If the interest or liability of a party passes to another person during a proceeding, by assignment, transmission, devolution or by any other means, the party or the person may apply to the Court for an order for the joinder of the person as a party or for the removal of the party.

(3) If a person is joined as a party under this rule, the start date of the proceeding for the person is the date on which the order is made.

Note: The Court may make an order for the future conduct of the proceeding.

9.10 No joinder or substitution after death of party

A person may apply to the Court for an order that, unless an order for substitution is made within a specified time, the proceeding be dismissed to the extent that it relates to relief on a cause of action if:

(a) a party dies during a proceeding and the cause of action survives the party's death; and

(b) no order is made substituting another party for the deceased party within 3 months after the death.

Note: The Court may make orders for service of the order on any person who has an interest in continuing the proceeding.

9.11 Substitution of party

If a party (the ***new party***) is substituted for another party (the ***old party***):

(a) any thing done, or action taken, in the proceeding before the substitution has the same effect in relation to the new party as it had in relation to the old party; and

(b) the new party must file a notice of address for service.

9.12 Interveners

(1) A person may apply to the Court for leave to intervene in a proceeding with such rights, privileges and liabilities (including liabilities for costs) as may be determined by the Court.

(2) The Court may have regard to:

(a) whether the intervener's contribution will be useful and different from the contribution of the parties to the proceeding; and

(b) whether the intervention might unreasonably interfere with the ability of the parties to conduct the proceeding as the parties wish; and

(c) any other matter that the Court considers relevant.

Authorised Version F2024C00519 registered 28/06/2024

Rule 9.12

(3) When giving leave, the Court may specify the form of assistance to be given by the intervener and the manner of participation of the intervener, including:

(a) the matters that the intervener may raise; and

(b) whether the intervener's submissions are to be oral, in writing, or both.

Note 1: The Court may give leave subject to conditions—see rule 1.33.

Note 2: The Court may appoint an amicus curiae.

Rules 9.13–9.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 9.2—Representative proceedings

9.21 Representative party—general

(1) A proceeding may be started and continued by or against one or more persons who have the same interest in the proceeding, as representing all or some of the persons who have the same interest and could have been parties to the proceeding.

(2) The applicant may apply to the Court for an order appointing one or more of the respondents or other persons to represent all or some of the persons against whom the proceeding is brought.

(3) If the Court makes an order appointing a person who is not a respondent, the order has the effect of joining the person as a respondent to the proceeding.

(4) This rule does not apply to a proceeding dealing with property that is subject to a trust or included in a deceased estate.

Note: For the representation of beneficiaries in a proceeding dealing with property that is subject to a trust or included in a deceased estate, see rule 9.23.

9.22 Enforcement of order for or against representative party

(1) An order made in a proceeding for or against a representative party is binding on each person represented by the representative party.

(2) However, the order can be enforced against a person who is not a party only if the Court gives leave.

(3) An application for leave under subrule (2) must be served personally on the person against whom it is sought to enforce the order.

(4) A person who is served with a notice under subrule (3) may dispute liability to have the order to which the notice relates enforced against the person on the ground that facts and matters particular to the person entitle the person to be exempt from liability.

9.23 Representative party—beneficiaries

(1) A proceeding dealing with property that is subject to a trust or included in a deceased estate may be started by or against a trustee or personal representative without joining as a party a person who has a beneficial interest in the trust or estate (a ***beneficiary***).

(2) However, a person may apply to the Court for an order that a beneficiary be joined as a party to the proceeding.

9.24 Deceased persons

(1) If:

Authorised Version F2024C00519 registered 28/06/2024

(a) a deceased person was interested in, or the estate of a deceased person is interested in, any matter or question in a proceeding; and

(b) the deceased person has no personal representative;

a party may apply to the Court for an order:

(c) that the proceeding continue in the absence of a person representing the deceased person; or

(d) that a person who has consented in writing represent the deceased person's estate for the purpose of the proceeding.

(2) An order under subrule (1) and any subsequent order made in the proceeding binds the estate of the deceased person as the estate would have been bound if the deceased person's personal representative had been a party to the proceeding.

Note: Before making an order under this rule, the Court may require the application to be served on persons having an interest in the estate, as the Court considers appropriate.

9.25 Conduct of proceeding by particular party

A person may apply to the Court for an order that the whole, or any part, of a proceeding be conducted by the person or a particular party.

Rules 9.26–9.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 9.3—Grouped proceedings under Part IVA of the Act

9.31 Interpretation for Division 9.3

A word or expression that is used in this Division and in Part IVA of the Act has the same meaning in this Division as it has in that Part.

Note: ***Group member***, ***representative party*** and ***representative proceeding*** are defined in section 33A of Part IVA of the Act. Part IVA of the Act provides for the procedure that must be adopted in representative proceedings.

9.32 Starting a representative proceeding

A person who wants to start a representative proceeding under Part IVA of the Act must file an originating application, in accordance with Form 19.

Note: For the contents of an application starting a representative proceeding, or a document filed in support of such an application, see section 33H of the Act.

9.33 Person may give consent to be a group member

A person mentioned in section 33E(2) of the Act may give consent to be a group member, in accordance with Form 20.

9.34 Opt out notices

An opt out notice under section 33J(2) of the Act must be in accordance with Form 21.

Note: A group member may opt out in accordance with section 33J of the Act.

9.35 Application for order relating to the procedure to be followed in a representative proceeding

(1) A party may apply to the Court for an order under section 33K, 33W, 33X or 33ZA of the Act, in accordance with Form 22.

(2) An application for an order under subrule (1) must be accompanied by an affidavit stating:
  (a) the identity of the group members; and
  (b) the whereabouts of the group members; and
  (c) the means by which a notice is most likely to come to the attention of the group members.

Rules 9.36–9.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 9.4—Partnerships

9.41 Proceeding by or against partners in partnership name

(1) Two or more persons claiming as partners may start a proceeding in the partnership name.

(2) A proceeding may be brought against 2 or more persons who it is claimed are liable as partners in the partnership name.

(3) The partnership name must be the name of the partnership when the cause of action arose.

(4) The proceeding must continue in the partnership name and not in the names of the individual partners.

Note 1: ***Partnership name*** is defined in the Dictionary.

Note 2: For service of a proceeding against partners in the partnership name, see rule 10.05.

Note 3: An address for service must be entered if a proceeding is brought against a partnership name—see rule 10.05.

9.42 Disclosure of partners' names

(1) A party may, by written notice, require a partnership that is a party to a proceeding to disclose the description of each person who was a partner in the partnership at the time when the cause of action is claimed to have arisen.

(2) If the partnership does not give the required information to the party as soon as practicable after being requested to do so, the party may apply to the Court:

(a) for an order requiring the partnership to give the information to the party; and

(b) if the partnership is an applicant or a cross-claimant in the proceeding—for an order that the proceeding be stayed until the information is given.

Note 1: ***Description*** is defined in the Dictionary.

Note 2: See Part 10 in relation to service.

9.43 Proceeding between members of partnerships

(1) If one or more partnerships carry on business in Australia, this Division applies to:

(a) a proceeding between a partnership and one or more of its members; and

(b) a proceeding between partnerships having one or more common members.

(2) However, no order may be executed in a proceeding to which subrule (1) applies without the leave of the Court.

Note: Division 41.2 deals with enforcement proceedings involving partnerships.

Authorised Version F2024C00519 registered 28/06/2024

9.44 Denial by person served as partner

(1) If a proceeding is brought against a person (the ***respondent***) as a partner, the respondent may deny being a partner:

(a) at the date specified in the originating application as the date that the cause of action arose; or

(b) when the proceeding was started.

(2) If the respondent makes a denial under subrule (1), the respondent must, when filing the respondent's notice of address for service, file an affidavit stating the facts on which the denial is based.

(3) The respondent may also make the denial at a later stage of the proceeding.

9.45 Defence to be in partnership name

(1) Despite rule 9.44, if a proceeding has been brought against a partnership, a partner must not file a defence in the partner's name.

(2) However, the partner may file a defence in the partnership name.

(3) If, under subrule (2), 2 or more partners file a defence and the defences raise different grounds of defence, the applicant is only entitled to an order against the partnership if none of the grounds of defence is a proper defence to the applicant's claim.

Note: For defences, see rule 16.32.

9.46 Entry of order

An order for or against a partnership must be entered in the partnership name and not in the name of an individual partner.

Note: For execution of judgment against a partnership, see rule 41.21. For execution of judgment against an individual partner, see rule 41.22.

Rules 9.47–9.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 9.5—Business name proceedings

9.51 Proceeding against a person who carries on a business under a business name

A proceeding must be started against a person in the person's name or under Division 9.4 if:

(a) the proceeding is started against the person in relation to anything done, omitted to be done or otherwise related to a business carried on in Australia by that person under a business name; and

(b) the business name is registered in a register in a State or Territory in which the business is carried on and discloses the name and residential address of the person.

Note 1: ***Business name*** and ***description*** are defined in the Dictionary.

Note 2: In a proceeding against a person in the person's business name the person must file a notice of address for service in the person's name—see rule 11.03.

9.52 Proceeding against a business name

(1) A proceeding may be started against a business name if:

(a) the proceeding relates to anything done, omitted to be done or otherwise related to a business carried on by a person under that business name; and

(b) the person's name is not registered in any register mentioned in paragraph 9.51(1)(b).

(2) If a proceeding is brought under subrule (1), the business name is sufficient designation of the person in any process.

(3) Any judgment or order made in the proceeding may be enforced against the person.

9.53 Proceeding under this Division or Division 9.4

A party to a proceeding may proceed under this Division or Division 9.4 if:

(a) a proceeding is brought against a person in the person's business name; and

(b) the person files a notice of address for service under rule 11.03; and

(c) a statement filed with the notice of address for service sets out the name of at least one other person with whom the person carried on business under the business name:

(i) at the date specified in the originating application as the date that the cause of action arose; or

(ii) when the proceeding was started.

Note: Rule 11.03 provides that if an originating application is brought against a business name, the person served must file an address for service in the person's name.

Authorised Version F2024C00519 registered 28/06/2024

9.54 Amendment of parties

(1) As soon as practicable after filing an originating application against a person in the person's business name, the applicant must:

(a) take all reasonable steps to find out the person's description; and

(b) apply to the Court for leave to amend the application, and any other document filed in the proceeding, to enable the proceeding to continue against the person in the person's name.

Note 1: ***Description*** is defined in the Dictionary.

Note 2: Amendments to originating applications are dealt with in Division 8.3 and amendments to pleadings are dealt with in Division 16.5.

(2) The applicant may take a step in the proceeding (other than those mentioned in paragraph (1)(a) and arranging for service of a copy of the application under paragraph (1)(b)) only if the amendments required under paragraph (1)(b) are made or the Court gives leave.

Note: For service on a person under a legal incapacity, see rule 10.09.

(3) Nothing in this rule prevents a party from amending a document under rule 16.51 or 16.53.

9.55 Variation of order

(1) Despite rule 41.31, a person may apply to the Court for the variation of an order made against a person in the person's business name so that the order is made against the person in the person's name.

(2) An application for a variation of an order under subrule (1) must be served personally on the person against whom the order was made.

(3) An order that is varied under subrule (1) may be enforced personally against the person against whom the order was made.

Note: Rule 41.31 deals with enforcement against a business name.

9.56 Order for discovery—proceeding brought against a person in the person's business name

(1) An applicant may apply to the Court for an order under subrule (2) if the applicant:

(a) starts a proceeding against a person (the ***respondent***) in the respondent's business name; and

(b) satisfies the Court that another person:

(i) knows or is likely to know the respondent's description; or

(ii) has or is likely to have or has had or is likely to have had control of a document that would help ascertain the respondent's description.

(2) If the Court is satisfied of the matters mentioned in paragraph (1)(b), the Court may order the other person:

Authorised Version F2024C00519 registered 28/06/2024

(a) to attend before the Court to be examined orally about the respondent's description; and

(b) to produce to the Court at that examination any document or thing in the person's control relating to the respondent's description; and

(c) to give discovery to the applicant of all documents that are or have been in the other person's control relating to the respondent's description.

Note: ***Description*** is defined in the Dictionary.

(3) The applicant must provide the person with sufficient conduct money to permit the person to travel to the Court.

Note: ***Conduct money*** is defined in the Dictionary.

Rules 9.57–9.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 9.6—Persons under a legal incapacity

9.61 Proceeding by or against person under a legal incapacity

A person under a legal incapacity may start, or defend, a proceeding only by the person's litigation representative.

Note: ***Litigation representative*** and ***person under a legal incapacity*** are defined in the Dictionary.

9.62 Persons who may be a litigation representative

(1) A person, other than the following persons, may consent to being appointed a litigation representative:
  (a) a person under a legal incapacity;
  (b) a person who has a different interest in the proceeding to the person under a legal incapacity;
  (c) a corporation or organisation.

(2) However, the following corporations or organisations may be a litigation representative:
  (a) the NSW Public Trustee and Guardian;
  (b) the State Trustees of Victoria;
  (c) the Public Trustee of Queensland;
  (d) the Public Trustee of Western Australia;
  (e) the Public Trustee of South Australia;
  (f) the Public Trustee of Tasmania;
  (g) the Public Trustee for the Australian Capital Territory;
  (h) the Public Trustee for the Northern Territory;
  (i) a trustee company that, under a law of a State or Territory, is authorised to act as a trustee, executor or administrator.

9.63 Appointment of litigation representative by the Court

(1) A party or an interested person may apply to the Court for an order appointing a person as a litigation representative.

Note: ***Interested person*** is defined in the Dictionary.

(2) A copy of the application must be served on the person under a legal incapacity.

(3) The application must be accompanied by an affidavit stating:
  (a) that the person for whom the appointment is to be made is a person under a legal incapacity and giving details of the nature of the legal incapacity; and
  (b) that the proposed litigation representative:
    (i) has consented, in writing, to the appointment; and
    (ii) is a person who, under rule 9.62, may be appointed as a litigation representative.

Authorised Version F2024C00519 registered 28/06/2024

Note: For service on a person under a legal incapacity, see rule 10.09.

9.64 Consent to be filed

A litigation representative must not take a step in the proceeding unless the following documents have been filed:

(a) the litigation representative's consent;

(b) a certificate, including a statement that the litigation representative has no interest in the proceeding that is adverse to the interest of the person under a legal incapacity, signed by:

(i) if the litigation representative is a lawyer—the litigation representative; and

(ii) if the litigation representative is not a lawyer—the litigation representative's lawyer.

9.65 Removal of litigation representative by the Court

(1) The following persons may apply to the Court for an order that the litigation representative be removed:

(a) a party to the proceeding;

(b) the litigation representative;

(c) the person being represented if that person is no longer a person under a legal incapacity;

(d) an interested person in relation to a person under a legal incapacity.

(2) A person mentioned in paragraph (1)(a), (b) or (d) may apply to the Court for an order that the proceeding be stayed until a replacement litigation representative has been appointed.

9.66 Conduct of proceeding

(1) Anything in a proceeding that is required or authorised by these Rules to be done for a person under a legal incapacity by the person may only be done by the person's litigation representative.

Note: A litigation representative who is defending a proceeding for a person under a legal incapacity may bring a cross-claim under Part 15.

(2) If a litigation representative (the ***first representative***) has been appointed for a person under a legal incapacity, no other litigation representative may be appointed for the person unless the first representative dies or is removed.

(3) A litigation representative who is not a lawyer must be represented by a lawyer.

9.67 No deemed admissions

Rule 16.07 does not apply to a person under a legal incapacity.

Note: For deemed admissions, see rule 16.07.

Authorised Version F2024C00519 registered 28/06/2024

9.68 Discovery and interrogatories

Parts 20 and 21 apply to a person under a legal incapacity and the person's litigation representative.

Note: Part 20 deals with discovery and Part 21 deals with interrogatories.

9.69 Payment into Court

A litigation representative must not:

(a) pay money into Court in a proceeding; or

(b) other than on condition that the settlement is subject to the Court's approval—agree to the compromise or settlement of any matter in dispute in the proceeding.

Note: The Court may dispense with compliance with this rule—see rule 1.34.

9.70 Compromise or settlement of matter in proceeding

(1) If a litigation representative agrees to the compromise or settlement of any matter in dispute in a proceeding, the litigation representative must apply to the Court for approval of the agreement.

(2) If the Court approves the agreement, the agreement is binding on the person by or for whom it was made as if:

(a) the person were not under a legal incapacity; and

(b) the litigation representative had made the agreement as the person's agent.

(3) The Court may, as a condition of approval, require that any money or other property payable for the benefit of a person under a legal incapacity be dealt with by way of a settlement, or in any other way that the Court considers appropriate.

Note: The Court may give approval subject to conditions—see rule 1.33.

(4) If the Court does not approve the agreement, the agreement is not binding on the person under a legal incapacity.

9.71 Application by litigation representative for approval of agreement

(1) An application by a litigation representative for approval of an agreement must be made by filing an interlocutory application.

(2) The interlocutory application must be accompanied by the following:

(a) an affidavit stating the material facts on which the application relies;

(b) the agreement that is sought to be approved;

(c) an opinion of an independent lawyer that the agreement is in the best interests of the person under a legal incapacity.

Authorised Version F2024C00519 registered 28/06/2024

Part 10—Service

Division 10.1—Personal service

10.01 Service on individual

A document that is to be served personally on an individual must be served by leaving the document with the individual.

10.02 Service on corporation

A document that is to be served personally on a corporation, or on the liquidator or administrator of a corporation, must be served in accordance with section 109X(1) of the *Corporations Act 2001*.

Note: Section 109X(1) of the *Corporations Act 2001* is as follows:

'(1) For the purposes of any law, a document may be served on a company by:

(a) leaving it at, or posting it to, the company's registered office; or

(b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or

(c) if a liquidator of the company has been appointed—leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or

(d) if an administrator of the company has been appointed—leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.'.

10.03 Service on unincorporated association

A document that is to be served personally on an unincorporated association must be served at the principal place of business, or principal office, of the association by leaving the document with a person who:

(a) is apparently an adult; and

(b) appears to be engaged in the service of the association.

10.04 Service on organisation

A document that is to be served personally on an organisation must be served at the office of the organisation shown in the records of the organisation lodged with the Fair Work Commission in accordance with section 233 of the *Fair Work (Registered Organisations) Act 2009*, by leaving the document with a person who:

(a) is apparently an adult; and

(b) appears to be engaged in the service of the organisation.

Note: ***Organisation*** is defined in the Dictionary.

10.05 Service on partnership

(1) A document that is to be served personally on a partnership must be served:

Authorised Version F2024C00519 registered 28/06/2024

(a) on any one or more of the partners; or

(b) at a place where the partnership business is carried on, by leaving a copy of the document with a person who:

(i) is apparently an adult; and

(ii) appears to be engaged in the service of the partnership.

(2) Service of the document is taken to be service on each partner of the partnership, including any partner who was not in Australia at the time the proceeding was started.

(3) If the applicant is aware that a partnership has been dissolved before the proceeding was started, a document must be served on any person:

(a) against whom a claim is made in the proceeding; and

(b) who the applicant is aware was a partner in the partnership at the time that the cause of action arose.

10.06 Service in a proceeding brought against a person in the person's business name

A document that is to be served personally in a proceeding brought against a person in the person's business name must be served at a place where the business is carried on by leaving the document with:

(a) the person; or

(b) another person who:

(i) is apparently an adult; and

(ii) appears to be engaged in the service of the business.

10.07 Service in a proceeding under the *Patents Act 1990*

(1) In a proceeding brought against a patentee (the ***respondent***) in relation to a cause of action under the *Patents Act 1990*, a document to be served on the respondent may be served, if the respondent has an address for service under section 221 of the *Patents Act 1990*, by sending it to the respondent at that address for service in accordance with section 221 of the *Patents Act 1990*.

(2) In an appeal brought against either:

(a) an applicant for the grant of a standard patent under section 60(4) of the *Patents Act 1990* (the ***applicant***); or

(b) a patentee for the grant of an innovation patent under section 101N(7) of the *Patents Act 1990* (the ***patentee***);

a document to be served on the applicant or patentee (as the case may be) may be served, if the applicant or patentee has an address for service under section 221 of the *Patents Act 1990*, by sending it to the applicant or patentee at that address for service in accordance with section 221 of the *Patents Act 1990*.

(3) In an appeal brought against either:

(a) an opponent to the grant of a standard patent under section 60(4) of the *Patents Act 1990* (the ***opponent***); or

Authorised Version F2024C00519 registered 28/06/2024

(b) an opponent to an innovation patent under section 101N(7) of the *Patents Act 1990* (the ***opponent***);

a document to be served on the opponent may be served, if the opponent provided the applicant with an address for service within Australia at the time that it filed its notice of opposition to the grant of the standard patent or to the innovation patent, by sending it to the opponent at that address for service.

10.08 Service in a proceeding under the *Trade Marks Act 1995*

In a proceeding brought against either:

(a) the owner of a registered trade mark (the ***respondent***) in relation to a cause of action under the *Trade Marks Act 1995*; or

(b) a party in an appeal from a decision of the Registrar of Trade Marks under section 56 or 104 of the *Trade Marks Act 1995* (the ***respondent***);

a document to be served on the respondent may be served, if the respondent has an address for service under section 215 of the *Trade Marks Act 1995*, at that address for service in accordance with section 215 of the *Trade Marks Act 1995*.

10.09 Service on person under a legal incapacity

(1) If a person under a legal incapacity has a litigation representative, a document that must be served personally on the person must be served on the litigation representative.

(2) If the person is under a legal incapacity only because of minority and does not have a litigation representative, the document must be served:

(a) if the minor is at least 16 and is not a mentally disabled person:

(i) on the minor; and

(ii) on the minor's parent or guardian; or

(b) if the minor has no parent or guardian:

(i) on a person with whom the minor lives; or

(ii) on a person who is responsible for the care of the minor.

(3) If the person under a legal incapacity is a mentally disabled person and does not have a litigation representative, the document must be served:

(a) on the mentally disabled person's guardian; or

(b) if the mentally disabled person has no guardian:

(i) on a person with whom the mentally disabled person lives; or

(ii) on a person who is responsible for the care of the mentally disabled person.

(4) If the person under a legal incapacity cannot be served in any of the ways mentioned in subrule (2) or (3), a party may apply to the Court for an order that the document be served in some other way or on some other person.

(5) The application may be made before or after the document has been given to some other person.

Authorised Version F2024C00519 registered 28/06/2024

10.10 Personal service on a person under a legal incapacity

(1) Despite rule 10.09, the following documents must be served personally on a person under a legal incapacity:

(a) if the person is a respondent to the originating application, and an order has been made requiring the person to do or not do an act or thing—the application or order;

(b) a subpoena requiring the person to attend before the Court.

(2) However, subrule (1) does not apply to an order:

(a) to answer interrogatories; or

(b) for discovery; or

(c) to produce documents for inspection.

Note: ***Mentally disabled person***, ***minor*** and ***person under a legal incapacity*** are defined in the Dictionary.

10.11 Deemed service of originating application

Unless an application has been made under rule 13.01, if a respondent files a notice of address for service, defence or affidavit, or appears before the Court in response to an originating application, the originating application is taken to have been served personally on the respondent:

(a) on the date on which the first of those events occurred; or

(b) if personal service on the respondent is proved on an earlier date—on the earlier date.

10.12 Refusal to accept document served personally

(1) If a person refuses to accept a document that is required to be served personally on the person, the document is taken to have been served personally if the person serving the document:

(a) puts it down in the individual's presence; and

(b) tells the individual what the document is.

(2) It is not necessary to show the original of the document to the person being served.

Rules 10.13–10.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 10.2—Service other than by personal service

10.21 Identity of person served

For the purpose of proving service, a statement by a person of the person's identity, or that the person holds a particular office or position, is evidence of the person's identity or that the person holds the office or position.

10.22 Acceptance of service by lawyer

(1) A lawyer may accept service of an originating application for a respondent if:
  (a) the lawyer has authority to accept service of an originating application for the respondent; and
  (b) the lawyer endorses a note on a copy of the document that the lawyer accepts service of the document for the respondent.

(2) A document that is endorsed by a lawyer under paragraph (1)(b) is taken to have been served personally:
  (a) on the date that the endorsement is made; or
  (b) if personal service on the respondent is proved on an earlier date—on the earlier date.

10.23 Deemed service

A party may apply to the Court, without notice, for an order that a document is taken to have been served on a person on a date mentioned in the order if:
  (a) it is not practicable to serve a document on the person in a way required by these Rules; and
  (b) the party provides evidence that the document has been brought to the attention of the person to be served.

Note: ***Without notice*** is defined in the Dictionary.

10.24 Substituted service

If it is not practicable to serve a document on a person in a way required by these Rules, a party may apply to the Court without notice for an order:
  (a) substituting another method of service; or
  (b) specifying that, instead of being served, certain steps be taken to bring the document to the attention of the person; or
  (c) specifying that the document is taken to have been served:
    (i) on the happening of a specified event; or
    (ii) at the end of a specified time.

Note: ***Without notice*** is defined in the Dictionary.

Authorised Version F2024C00519 registered 28/06/2024

10.25 Service by filing

The filing of a document has effect as service of the document on the person to be served if:

(a) personal service of the document is not required; and

(b) the person to be served:

(i) has not filed an address for service; or

(ii) does not have a current address for service; and

(c) the document was sent to the person's proper address and there is proof of non-delivery of the document.

Note: ***Proper address***, for a person to be served, is defined in the Dictionary.

10.26 Service by Court

An order, notice or other document in a proceeding that is to be given to, or served on, a person by the Court or an officer of the Court may be given or served in any way permitted under rule 10.31.

10.27 Service of interlocutory injunction

If the Court grants an interlocutory injunction, a party may serve a copy of the Court's order by sending a copy of it by fax or electronic communication to each party on whom the order is to be served.

10.28 Service under agreement

(1) If a respondent in a proceeding has agreed that an originating application or other document in the proceeding may be served on the respondent, or on another person for the respondent, in a way or at a place mentioned in the agreement, the document may be served in accordance with the agreement.

(2) If an applicant in a proceeding has agreed that a document in the proceeding may be served on the applicant, or on another person for the applicant, in a way or at a place mentioned in the agreement, the document may be served in accordance with the agreement.

Rules 10.29–10.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 10.3—Ordinary service

10.31 Ordinary service

A document that is not required to be served personally may be served in any of the following ways:

(a) by serving the document personally, in accordance with Division 10.1;

(b) by sending the document by pre-paid post addressed to the person at the person's proper address;

(c) if the person has filed a notice authorising service by fax—by sending the document to the fax number;

(d) if the person has filed a notice authorising service by electronic communication—by sending the document to the email address;

(e) at a party's lawyer's email address if:

(i) the party is represented by a lawyer; and

(ii) the lawyer has filed a notice of address for service that conforms with rule 11.01.

Note: ***Proper address***, for a person to be served, is defined in the Dictionary.

10.32 Time of service

A document that is served on a person under rule 10.31 is taken to be served on the person:

(a) if the document was sent by pre-paid post—on the seventh business day after the document was sent; or

(b) if the document was sent by fax—on the next business day after the document was sent; or

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

Rules 10.33–10.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 10.4—Service outside Australia

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

10.41 Division does not apply to service in New Zealand of documents in or for certain trans-Tasman proceedings

This Division (which contains rules about service outside Australia) does not apply to service in New Zealand of an originating application for a proceeding, or of any other document to be served in or for a proceeding, if an originating application for the proceeding may be served in New Zealand under Division 2 of Part 2 of the *Trans-Tasman Proceedings Act 2010*.

10.42 When an originating application may be served outside Australia without leave

An originating application, together with each document required to accompany the application by rule 8.05, rule 10.43B or any other rule of the Court, may be served outside Australia without leave in the following cases:

(a) if the proceeding is founded on a tortious act or omission:
  (i) that was done or occurred wholly or partly in Australia; or
  (ii) in respect of which the damage was sustained wholly or partly in Australia;

(b) if the proceeding is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in respect of a breach of, a contract that:
  (i) was made or entered into in Australia; or
  (ii) was made by or through an agent trading or residing within Australia; or
  (iii) was to be wholly or partly performed in Australia; or
  (iv) was by its terms or by implication to be governed by a law of the Commonwealth, a State or a Territory, or to be enforceable or cognizable in an Australian court;

(c) if the proceeding is for a breach in Australia of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach outside Australia that rendered impossible the performance of that part of the contract that ought to have been performed in Australia;

(d) if the proceeding:
  (i) is for an injunction to compel or restrain the performance of any act in Australia; or
  (ii) is for interim or ancillary relief in respect of any matter or thing in or connected with Australia, where such relief is sought in relation to judicial or arbitral proceedings commenced or to be commenced, or an arbitration agreement made, in or outside Australia (including without limitation interim or ancillary relief in relation to any proceedings under the *International Arbitration Act 1974* or any

Authorised Version F2024C00519 registered 28/06/2024

proceedings under a law of a State or Territory relating to commercial arbitration in relation to which the Court may exercise jurisdiction); or

(iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under Division 7.4 in respect of any matter or thing in or connected with Australia;

(e) if the subject matter of the proceeding is land or other property situated in Australia, or any act, deed, will, instrument, or thing affecting such land or property, or the proceeding is for the perpetuation of testimony relating to such land or property;

(f) if the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to the law of the Commonwealth, a State or a Territory;

(g) if any relief is sought against any person domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

(h) if any person outside Australia is:

(i) a necessary or proper party to a proceeding properly brought against another person served or to be served (whether within Australia or outside Australia) under any other provision of these Rules; or

(ii) a respondent to a proceeding seeking contribution or indemnity in respect of a liability enforceable by a proceeding in the Court;

(i) if the proceeding is for:

(i) the administration of the estate of any deceased person who died domiciled in Australia; or

(ii) any relief or remedy that might be obtained in any such proceeding;

(j) if the proceeding arises under a law of the Commonwealth, a State or a Territory, and:

(i) any act or omission to which the proceeding relates was done or occurred in Australia; or

(ii) any loss or damage to which the proceeding relates was sustained in Australia; or

(iii) the law applies expressly or by implication to an act or omission that was done or occurred outside Australia in the circumstances alleged; or

(iv) the law expressly or by implication confers jurisdiction on the Court over persons outside Australia (in which case any requirements of the law relating to service must be complied with);

(k) if the person to be served has submitted to the jurisdiction of the Court;

(l) if a claim is for restitution or for the remedy of a constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or occurred wholly or partly in Australia;

(m) if it is sought to recognise or enforce any judgment;

(n) if the proceeding is founded on a cause of action arising in Australia;

(o) if the proceeding affects the person to be served in respect of the person's membership of a corporation incorporated in Australia, or of a partnership or an association formed or carrying on any part of its affairs in Australia;

Authorised Version F2024C00519 registered 28/06/2024

(p) if the proceeding relates to the construction, effect or enforcement of a law of the Commonwealth, a State or a Territory;

(q) if the proceeding:

(i) relates to an arbitration held in Australia or governed by a law of the Commonwealth, a State or a Territory; or

(ii) is to enforce in Australia an arbitral award wherever made; or

(iii) is for orders necessary or convenient for carrying into effect in Australia the whole or any part of an arbitral award wherever made;

(r) if the proceeding is for relief relating to the custody, guardianship, protection or welfare of a minor present in Australia or who is domiciled or ordinarily or habitually resident in Australia (whether present in Australia or not);

(s) if the proceeding, so far as it relates to the person to be served, falls partly within one or more of paragraphs (a) to (r) and, as to the residue, within one or more of the others of paragraphs (a) to (r).

Note 1: An originating application includes certain third party claims and other cross-claims—see the definitions of ***originating application*** and ***cross-claim*** in the Dictionary.

Note 2: If a proceeding is instituted in the Court and an originating application is served outside Australia under this rule but the Court later decides that it is more appropriate that the proceeding be determined by another court, the Court may transfer the proceeding to that other court under the *Jurisdiction of Courts (Cross-vesting) Act 1987* and may make an order for costs that relate to the conduct of the proceeding before the transfer.

10.43 When an originating application may be served outside Australia with leave

(1) In any proceeding, if service is not allowed under rule 10.42, an originating application, together with each document required to accompany the application by rule 8.05, rule 10.43B or any other rule of the Court, may be served outside Australia with the leave of the Court.

(2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.

(3) An application for leave under this rule must be accompanied by an affidavit stating any facts or matters related to the desirability of the Court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.

(4) The Court may give leave if satisfied that:

(a) the proceeding has a real and substantial connection with Australia; and

(b) Australia is an appropriate forum for the proceeding; and

(c) in all the circumstances the Court should exercise jurisdiction.

(5) A sealed copy of every order made under this rule must be served with the document to which it relates.

Authorised Version F2024C00519 registered 28/06/2024

10.43A Court's discretion whether to exercise jurisdiction

(1) On application by a person on whom an originating application has been served outside Australia, the Court may dismiss or stay the proceeding or set aside service of the originating application.

(2) Without limiting subrule (1), the Court may make an order under this rule if satisfied that:
  (a) service of the originating application is not authorised by these Rules; or
  (b) Australia is an inappropriate forum for the proceeding; or
  (c) the claim has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending it.

10.43B Notice to person served outside Australia

If a person is to be served outside Australia with an originating application, the person must also be served with a notice, in accordance with Form 26A, informing the person of:
  (a) the scope of the jurisdiction of the Court in respect of proceedings against persons who are served outside Australia; and
  (b) the grounds alleged by the applicant to found jurisdiction; and
  (c) the person's right to challenge service of the originating application or the jurisdiction of the Court or to file a conditional appearance.

10.43C Time for filing notice of address for service

(1) Unless the Court otherwise orders, a respondent who has been served outside Australia must file a notice of address for service before the later of:
  (a) the return date fixed in the originating application; and
  (b) the 43rd day after the day of service.

(2) Subrule (1) has effect despite rules 5.02 and 11.06.

10.43D Leave to proceed if notice of address for service not filed

(1) If an originating application is served on a person outside Australia and the person does not file a notice of address for service within the time fixed by rule 10.43C, the party serving the document may not proceed against the person served except by leave of the Court.

(2) An application for leave under subrule (1) may be made without notice.

Note: ***Without notice*** is defined in the Dictionary.

10.44 Service of other documents outside Australia

Any document other than an originating application may be served outside Australia with the leave of the Court, which may be given with any directions that the Court considers appropriate.

Authorised Version F2024C00519 registered 28/06/2024

10.45 Application of other rules

The other provisions of this Part apply to service of a document on a person outside Australia in the same way as the provisions apply to service on a person in Australia, to the extent that the provisions are:

(a) relevant and consistent with this Division; and

(b) consistent with:

(i) if a convention applies—the convention; or

(ii) if the Hague Convention applies—the Hague Convention; or

(iii) in any other case—the law of the country in which service is to be effected.

10.46 Method of service

A document to be served outside Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

Note: The law of a foreign country may permit service through the diplomatic channel or service by a private agent—see Division 10.5.

10.47 Proof of service

(1) This rule does not apply to a document served in accordance with the Hague Convention.

Note: Rules 10.63 to 10.68 deal with service of local judicial documents in a country, other than Australia, that is a party to the Hague Convention.

(2) An official certificate or declaration (whether made on oath or otherwise) is sufficient proof of the service of a document on a person in a country other than Australia if the certificate or declaration states:

(a) that the document has been personally served on the person in that other country; or

(b) that the document has been served on the person in accordance with the law of that other country.

(3) If filed, a certificate or declaration mentioned in subrule (2):

(a) is taken to be a record of the service of the document; and

(b) has effect as if it were an affidavit of service.

10.48 Deemed service

A party may apply to the Court without notice for an order that a document is taken to have been served on a person on the day mentioned in the order, if:

(a) it is not practicable to serve the document on the person outside Australia in accordance with a convention, the Hague Convention or the law of the country in which the person resides; and

(b) the party provides evidence that the document has been brought to the attention of the person.

Authorised Version F2024C00519 registered 28/06/2024

Note: ***Without notice*** is defined in the Dictionary.

10.49 Substituted service

If service on a person outside Australia, in accordance with a convention, the Hague Convention or the law of a foreign country, was not successful, a party may apply to the Court without notice for an order:

(a) substituting another method of service; or

(b) specifying that, instead of being served, certain steps be taken to bring the document to the attention of the person; or

(c) specifying that the document is taken to have been served:

(i) on the happening of a specified event; or

(ii) at the end of a specified time.

Note: ***Without notice*** is defined in the Dictionary.

Rule 10.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 10.5—Service through diplomatic channel or by transmission to foreign government

10.51 Documents to be lodged with the Court

If a party wants to serve a document on a person in a foreign country:

(a) through the diplomatic channel; or

(b) by transmission to a foreign government in accordance with a convention (the ***relevant convention***);

the party must lodge in the District Registry:

(c) a request for service, in accordance with Form 23; and

(d) a request for transmission, in accordance with Form 24; and

(e) the party's or the party's lawyer's written undertaking, to pay to the Chief Executive Officer the amount of the expenses incurred by the Court in giving effect to the party's request; and

(f) the number of copies of each document that are required by the relevant conventions to be served; and

(g) if necessary, a translation into the foreign country's official language (including a statement by the translator attesting to the accuracy of the translation) of the following:

(i) the request for transmission mentioned in paragraph (d);

(ii) each document to be served.

Note: This rule does not apply if service of a document is to be effected on a person in a country, other than Australia, that is a party to the Hague Convention. Service in a country that is a party to the Hague Convention is dealt with in Division 10.6.

10.52 Order for payment of expenses

If a party, or a party's lawyer, gives an undertaking under paragraph 10.51(e) and does not, within 14 days after being sent an account for expenses incurred in relation to the request, pay to the Chief Executive Officer the amount of the expenses, the Court may without notice make an order that:

(a) the amount of the expenses be paid to the Chief Executive Officer within a specified period of time; and

(b) the proceeding be stayed, to the extent that it concerns the whole or any part of a claim for relief by the party, until the amount of the expenses is paid.

Note: ***Without notice*** is defined in the Dictionary.

Rules 10.53–10.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 10.6—Service under Hague Convention

Note 1: This Division forms part of a scheme to implement Australia's obligations under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. Under the Convention, the Attorney-General's Department of the Commonwealth is designated as the Central Authority (under Article 2 of the Convention) and certain courts and government departments are, for certain purposes, designated as 'other' or 'additional' authorities (under Article 18 of the Convention).

Note 2: This Division provides (in rules 10.63 to 10.68) for service in overseas Convention countries of local judicial documents (documents that relate to proceedings in the Court) and (in rules 10.69 to 10.72) for default judgment in proceedings in the Court after service overseas of such a document. Rules 10.74 to 10.76, on the other hand, deal with service by the Court or arranged by the Court in its role as an other or additional authority, of judicial documents emanating from overseas Convention countries.

Note 3: The Attorney-General's Department of the Commonwealth maintains a copy of the Convention, a list of all Convention countries, details of declarations and objections made under the Convention by each of those countries and the names and addresses of the Central and other authorities of each of those countries. A copy of the Convention can be found at http://www.hcch.net.

10.61 Definitions for Division 10.6

In this Division:

additional authority, for a Convention country, means an authority that is:

(a) for the time being designated by the country, under Article 18 of the Hague Convention, to be an authority (other than the Central Authority) for the country; and

(b) competent to receive requests for service abroad emanating from Australia.

applicant, for a request for service abroad or a request for service in this jurisdiction, means the person on whose behalf service is requested.

Note: The term ***applicant*** may have a different meaning in other provisions of these Rules.

Central Authority, for a Convention country, means an authority that is for the time being designated by that country, under Article 2 of the Hague Convention, to be the Central Authority for that country.

certificate of service means a certificate of service that has been completed for the purposes of Article 6 of the Hague Convention.

certifying authority, for a Convention country, means the Central Authority for the country or some other authority that is for the time being designated by the country, under Article 6 of the Hague Convention, to complete certificates of service in the form annexed to the Hague Convention.

civil proceedings means any judicial proceedings in relation to civil or commercial matters.

Convention country means a country, other than Australia, that is a party to the Hague Convention.

Authorised Version F2024C00519 registered 28/06/2024

defendant, for a request for service abroad of an initiating process, means the person on whom the initiating process is requested to be served.

foreign judicial document means a judicial document that originates in a Convention country and relates to civil proceedings in a court of that country.

forwarding authority means:

(a) for a request for service of a foreign judicial document in this jurisdiction—the authority or judicial officer of the Convention country in which the document originates that forwards the request (being an authority or judicial officer that is competent under the law of that country to forward a request for service under Article 3 of the Hague Convention); or

(b) for a request for service of a local judicial document in a Convention country—a Registrar.

initiating process means any document by which proceedings (including proceedings on any cross-claim or third party notice) are started.

local judicial document means a judicial document that relates to civil proceedings in the Court.

request for service abroad means a request for service in a Convention country of a local judicial document mentioned in rule 10.64(1).

request for service in this jurisdiction means a request for service in this jurisdiction of a foreign judicial document mentioned in rule 10.73(1).

this jurisdiction means Australia.

10.62 Provisions of this Division to prevail

The provisions of this Division prevail to the extent of any inconsistency between those provisions and any other provisions of these Rules.

10.63 Service abroad of local judicial documents—application of rules 10.64 to 10.68

(1) Subject to subrule (2), rules 10.64 to 10.68 apply to service in a Convention country of a local judicial document.

(2) Rules 10.64 to 10.68 do not apply if service of the document is effected, without application of any compulsion, by an Australian diplomatic or consular agent mentioned in Article 8 of the Hague Convention.

10.64 Application for request for service abroad

(1) A person may apply to a Registrar, in the Registrar's capacity as a forwarding authority, for a request for service in a Convention country of a local judicial document.

Authorised Version F2024C00519 registered 28/06/2024

(2) The application must be accompanied by 3 copies of each of the following documents:

(a) the draft request for service abroad, which must be in accordance with Part 1 of Form 25;

(b) the document to be served;

(c) a summary of the document to be served, which must be in accordance with Form 26;

(d) if, under Article 5 of the Hague Convention, the Central Authority or any additional authority of the country to which the request is addressed requires the document to be served to be written in, or translated into, an official language or one of the official languages of that country, a translation into that language of both the document to be served and the summary of the document to be served.

(3) The application must contain a written undertaking to the Court, signed by the lawyer on the record for the applicant in the proceeding to which the local judicial document relates or, if there is no lawyer on the record for the applicant in the proceeding, by the applicant:

(a) to be personally liable for all costs that are incurred:

(i) by the employment of a person to serve the documents to be served, being a person who is qualified to do so under the law of the Convention country in which the documents are to be served; or

(ii) by the use of any particular method of service that has been requested by the applicant for the service of the documents to be served; and

(b) to pay the amount of those costs to the Chief Executive Officer within 28 days after receipt from a Registrar of a notice specifying the amount of those costs under rule 10.66(3); and

(c) to give such security for those costs as a Registrar may require.

(4) The draft request for service abroad, in accordance with Form 25:

(a) must be completed (except for signature) by the applicant; and

(b) must state whether (if the time fixed for entering an appearance in the proceeding to which the local judicial document relates expires before service is effected) the applicant wants service to be attempted after the expiry of that time; and

(c) must be addressed to the Central Authority, or to an additional authority, for the Convention country in which the person is to be served; and

(d) may state that the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority.

(5) Any translation required under paragraph (2)(d) must bear a certificate (in both English and the language used in the translation) signed by the translator stating:

(a) that the translation is an accurate translation of the documents to be served; and

(b) the translator's full name and address and the translator's qualifications for making the translation.

Authorised Version F2024C00519 registered 28/06/2024

10.65 How application to be dealt with

(1) If satisfied that the application and its accompanying documents comply with rule 10.64, the Registrar:

(a) must sign the request for service abroad; and

(b) must forward 2 copies of the relevant documents:

(i) if the applicant has asked for the request to be forwarded to a nominated additional authority for the Convention country in which service of the document is to be effected—to the nominated additional authority; or

(ii) in any other case—to the Central Authority for the Convention country in which service of the document is to be effected.

(2) The ***relevant documents*** mentioned in paragraph (1)(b) are the following:

(a) the request for service abroad (duly signed);

(b) the document to be served;

(c) the summary of the document to be served;

(d) if required under paragraph 10.64(2)(d), a translation into the relevant language of each of the documents mentioned in paragraphs (b) and (c).

(3) If not satisfied that the application or any of its accompanying documents complies with rule 10.64, the Registrar must inform the applicant of the respects in which the application or document fails to comply.

10.66 Procedure on receipt of certificate of service

(1) Subject to subrule (5), on receipt of a certificate of service in due form in relation to a local judicial document to which a request for service abroad relates, a Registrar:

(a) must arrange for the original certificate to be filed in the proceeding to which the document relates; and

(b) must send a copy of the certificate to:

(i) the lawyer on the record for the applicant in the proceeding; or

(ii) if there is no lawyer on the record for the applicant in the proceeding—the applicant.

(2) For the purposes of subrule (1), a certificate of service is in due form if:

(a) it is in accordance with Part 2 of Form 25; and

(b) it has been completed by a certifying authority for the Convention country in which service was requested; and

(c) if the applicant requires a certificate of service that is completed by an additional authority to be countersigned by the Central Authority, it has been so countersigned.

(3) On receipt of a statement of costs in due form in relation to the service of a local judicial document mentioned in subrule (1), a Registrar must send to the applicant or the applicant's lawyer who gave the undertaking mentioned in rule 10.64(3) a notice specifying the amount of those costs.

Authorised Version F2024C00519 registered 28/06/2024

(4) For the purposes of subrule (3), a statement of costs is in due form if:
   (a) it relates only to costs of a kind mentioned in paragraph 10.64(3)(a); and
   (b) it has been completed by a certifying authority for the Convention country in which service was requested.

(5) Subrule (1) does not apply unless:
   (a) adequate security to cover the costs mentioned in subrule (3) has been given under paragraph 10.64(3)(c); or
   (b) to the extent to which the security so given is inadequate to cover those costs, an amount equal to the amount by which those costs exceed the security so given has been paid to the Chief Executive Officer.

10.67 Payment of costs

(1) On receipt of a notice under rule 10.66(3) in relation to the costs of service, the applicant or the applicant's lawyer, as the case may be, must pay to the Chief Executive Officer the amount specified in the notice as the amount of the costs.

(2) If the applicant or the applicant's lawyer fails to pay that amount within 28 days after receiving the notice:
   (a) except by leave of the Court, the applicant may not take any further step in the proceeding to which the local judicial document relates until the costs are paid to the Chief Executive Officer; and
   (b) the Chief Executive Officer may take such steps as are appropriate to enforce the undertaking for payment of the costs.

10.68 Evidence of service

A certificate of service in relation to a local judicial document (being a certificate in due form within the meaning of rule 10.66(2)) that certifies that service of the document was effected on a specified date is, in the absence of any evidence to the contrary, sufficient proof that:
   (a) service of the document was effected by the method specified in the certificate on that date; and
   (b) if that method of service was requested by the applicant, that method is compatible with the law in force in the Convention country in which service was effected.

10.69 Default judgment following service abroad of initiating process—application of rules 10.70 to 10.72

Rules 10.70 to 10.72 apply to civil proceedings for which an initiating process has been forwarded following a request for service abroad to the Central Authority (or to an additional authority) for a Convention country.

Authorised Version F2024C00519 registered 28/06/2024

10.70 Restriction on power to enter default judgment if certificate of service filed

(1) This rule applies if:

(a) a certificate of service of initiating process has been filed in the proceeding (being a certificate in due form (within the meaning of rule 10.66(2)), stating that service has been duly effected; and

(b) the respondent has not appeared or filed a notice of address for service.

(2) In circumstances to which this rule applies, default judgment may not be given against the respondent unless the Court is satisfied that:

(a) the initiating process was served on the respondent:

(i) by a method of service prescribed by the internal law of the Convention country for the service of documents in domestic proceedings on persons who are within its territory; or

(ii) if the applicant requested a particular method of service (being a method under which the document was actually delivered to the respondent or to the respondent's residence) and that method is compatible with the law in force in the country, by that method; or

(iii) if the applicant did not request a particular method of service, in circumstances where the respondent accepted the document voluntarily; and

(b) the initiating process was served in sufficient time to enable the respondent to enter an appearance in the proceeding.

(3) In paragraph (2)(b), ***sufficient time*** means:

(a) 42 days from the date specified in the certificate of service in relation to the initiating process as the date service of the process was effected; or

(b) such lesser time as the Court considers, in the circumstances, to be a sufficient time to enable the respondent to enter an appearance in the proceeding.

10.71 Restriction on power to enter default judgment if certificate of service not filed

(1) This rule applies if:

(a) a certificate of service of initiating process has not been filed in the proceeding; or

(b) a certificate of service of initiating process has been filed in the proceeding (being a certificate in due form within the meaning of rule 10.66(2)), stating that service has not been effected;

and the respondent has not appeared or filed a notice of address for service.

(2) If this rule applies, default judgment may not be given against the respondent unless the Court is satisfied that:

(a) the initiating process was forwarded to the Central Authority, or to an additional authority, for the Convention country in which service of the initiating process was requested; and

Authorised Version F2024C00519 registered 28/06/2024

(b) a period that is adequate in the circumstances (being a period of not less than 6 months) has elapsed since the date initiating process was so forwarded; and

(c) every reasonable effort has been made:

(i) to obtain a certificate of service from the relevant certifying authority; or

(ii) to effect service of the initiating process;

as the case requires.

10.72 Setting aside judgment in default of appearance

(1) This rule applies if default judgment has been entered against the respondent in proceedings to which this Division applies.

(2) If this rule applies, the Court may set aside the judgment on the application of the respondent if it is satisfied that the respondent:

(a) without any fault on the respondent's part, did not have knowledge of the initiating process in sufficient time to defend the proceeding; and

(b) has a prima facie defence to the proceeding on the merits.

(3) An application to have a judgment set aside under this rule may be filed:

(a) at any time within 12 months after the date the judgment was given; or

(b) after the expiry of that 12-month period, within such time after the respondent acquires knowledge of the judgment as the Court considers reasonable in the circumstances.

(4) Nothing in this rule affects any other power of the Court to set aside or vary a judgment.

10.73 Local service of foreign judicial documents – application of rules 10.74 to 10.76

(1) Rules 10.74 to 10.76 apply to service in this jurisdiction of a foreign judicial document in relation to which a due form of request for service has been forwarded to the Court:

(a) by the Attorney-General's Department, whether in the first instance or following a referral under rule 10.74; or

(b) by a forwarding authority.

(2) Subject to subrule (3), a request for service in this jurisdiction is in due form if it is in accordance with Form 27 and is accompanied by the following documents:

(a) the document to be served;

(b) a summary of the document to be served, which must be in accordance with Form 26;

(c) a copy of the request and of each of the documents mentioned in paragraphs (a) and (b);

(d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

Authorised Version F2024C00519 registered 28/06/2024

(3) Any translation required under paragraph (2)(d) must bear a certificate (in English) signed by the translator stating:
  (a) that the translation is an accurate translation of the document; and
  (b) the translator's full name and address and the translator's qualifications for making the translation.

10.74 Certain documents to be referred to Attorney-General's Department

If, after receiving a request for service in this jurisdiction, a Registrar is of the opinion:
  (a) that the request does not comply with rule 10.73; or
  (b) that the document to which the request relates is not a foreign judicial document; or
  (c) that compliance with the request may infringe Australia's sovereignty or security;

the Registrar must refer the request to the Attorney-General's Department, together with a statement of the Registrar's opinion.

Note: The Attorney-General's Department will deal with misdirected and non-compliant requests, make arrangements for the service of extrajudicial documents and assess and decide questions concerning Australia's sovereignty and security.

10.75 Service

(1) Subject to rule 10.73, on receipt of a request for service in this jurisdiction, the Court must arrange for the service of the relevant documents in accordance with the request.

(2) The relevant documents mentioned in subrule (1) are the following:
  (a) the document to be served;
  (b) a summary of the document to be served;
  (c) a copy of the request for service in this jurisdiction;
  (d) if either of the documents mentioned in paragraphs (a) and (b) is not in the English language, an English translation of the document.

(3) Service of the relevant documents may be effected by any of the following methods of service:
  (a) by a method of service prescribed by the law in force in this jurisdiction:
    (i) for the service of a document of a kind corresponding to the document to be served; or
    (ii) if there is no such corresponding kind of document—for the service of initiating process in proceedings in the Court;
  (b) if the applicant has requested a particular method of service and that method is compatible with the law in force in this jurisdiction—by that method;
  (c) if the applicant has not requested a particular method of service and the person requested to be served accepts the document voluntarily—by delivery of the document to the person requested to be served.

Authorised Version F2024C00519 registered 28/06/2024

10.76 Affidavit as to service

(1) If service of a document has been effected pursuant to a request for service in this jurisdiction, the person by whom service has been effected must lodge with the Court an affidavit of service stating:
  (a) the time, day of the week and date the document was served; and
  (b) the place where the document was served; and
  (c) the method of service; and
  (d) the person on whom the document was served; and
  (e) the way in which that person was identified.

(2) If attempts to serve a document pursuant to a request for service in this jurisdiction have failed, the person by whom service has been attempted must lodge with the Court an affidavit stating:
  (a) the attempts made to serve the document; and
  (b) why service has not been possible.

(3) When an affidavit as to service of a document has been lodged in accordance with this rule, a Registrar:
  (a) must complete a certificate of service, sealed with the seal of the Court, on the reverse side of, or attached to, the request for service in this jurisdiction; and
  (b) must forward the certificate of service, together with a statement as to the costs incurred in relation to the service or attempted service of the document, directly to the forwarding authority from which the request was received.

(4) A certificate of service must be:
  (a) in accordance with Part 2 of Form 25; or
  (b) if a form or certificate that substantially corresponds to Part 2 of Form 25 accompanies the request for service, in that accompanying form.

Authorised Version F2024C00519 registered 28/06/2024

Part 11—Address for service

11.01 Address for service—general

(1) An address for service for a party must include the address of a place within Australia at which a document in the proceeding may, during ordinary business hours, be left for the party and to which a document in the proceeding may be posted to the party.

(2) If a party is represented by a lawyer who has general authority to act for that party, the address for service for the party must be the address of the lawyer.

(3) The address for service must contain the information mentioned in rule 2.16.

(4) If the party is represented by a lawyer, the party agrees for the party's lawyer to receive documents at the lawyer's email address.

(5) If the party is not represented by a lawyer but provides an email address, the party agrees to receive documents at the email address.

Note: The parties may agree on how service is to be effected. For example, the parties may agree that service be at a fax number.

11.02 Address for service—corporations

A notice of address for service for a corporation must be filed by a lawyer.

Note 1: Division 4.1 deals with lawyers.

Note 2: A corporation must not proceed in the Court other than by a lawyer—see rule 4.01(2).

Note 3: The Court may dispense with compliance with the Rules—see rule 1.34.

11.03 Address for service—proceeding against person in person's business name

(1) If an originating application is brought against a business name, the person served must file an address for service in the person's name.

(2) A notice of address for service must be accompanied by a statement setting out the name and residential address of any person with whom, at the start of the proceeding or the date specified in the originating application (if any) when the cause of action arose, the person carried on business under the business name.

11.04 Address for service—partnership

(1) If an originating application claims that 2 or more persons are liable as partners, a person who is served with the originating application must file a notice of address for service in the person's name.

(2) However, the proceeding continues in the partnership name.

Note: For the filing of a defence in a proceeding against a partnership, see rule 9.45.

Authorised Version F2024C00519 registered 28/06/2024

11.05 Receivers

A person who is appointed as a receiver must, within 7 days after the appointment, file a notice of address for service.

Note: Divisions 7.1 and 14.3 relate to receivers.

11.06 When must notice of address for service be filed

A person who is required to file a notice of address for service in a proceeding must do so before the return date fixed in the originating application and before filing any other document in the proceeding.

11.07 How to file notice of address for service

A person who is required to file a notice of address for service must do so in accordance with Form 10.

11.08 Service of notice of address for service

As soon as practicable after a person files a notice of address for service, the person must serve a stamped copy of the notice on each other party to the proceeding.

Note: The stamp of the District Registry will be affixed to the notice of address for service—see paragraph 2.01(2)(a).

11.09 Change of address for service

A person may change the person's address for service in a proceeding by:

(a) filing a notice of the change showing the new notice of address for service, in accordance with Form 28; and

(b) as soon as reasonably practicable, serving a copy of the new notice on each party to the proceeding.

Authorised Version F2024C00519 registered 28/06/2024

Part 12—Submitting notices

12.01 Submitting notice

(1) A party who has been served with an originating application or a notice of appeal who does not want to contest the relief sought in the originating application or the notice of appeal may file a submitting notice, in accordance with Form 29.

Note: ***Submitting notice*** is defined in the Dictionary.

(2) A submitting notice must:
  (a) state that the party submits to any order that the Court may make; and
  (b) state whether the party wants to be heard on the question of costs; and
  (c) include an address for service; and
  (d) be filed:
    (i) for a party served with an originating application—before the return date; or
    (ii) for a party served with a notice of appeal—within 14 days after being served with the notice of appeal.

(3) A party who has filed a submitting notice may apply to the Court for leave to withdraw the notice.

(4) An application under subrule (3) must be accompanied by an affidavit stating:
  (a) why the party wants to withdraw the submitting notice; and
  (b) the party's intentions in relation to the further conduct of the proceeding.

Authorised Version F2024C00519 registered 28/06/2024

Part 13—Jurisdiction—setting aside originating application

13.01 Setting aside originating application etc

(1) A respondent may apply to the Court for an order:
  (a) setting aside an originating application; or
  (b) setting aside the service of an originating application on the respondent; or
  (c) declaring that an originating application has not been duly served on the respondent; or
  (d) discharging any order giving leave to serve an originating application outside Australia.

Note: Rule 10.43 deals with service of originating applications outside Australia with leave.

(2) If an order under paragraph (1)(b) or (c) is sought, the application must be accompanied by an affidavit stating:
  (a) the date on which the originating application was served on the respondent; and
  (b) details of the service.

(3) A respondent applying for an order under subrule (1) must file the interlocutory application and affidavit at the same time that the respondent files a notice of address for service.

Authorised Version F2024C00519 registered 28/06/2024

Part 14—Interlocutory orders for preservation of rights and property

Division 14.1—Inspection of property

14.01 Order for inspection etc of property

(1) A party may apply to the Court for an order:
  (a) for any of the following:
    (i) inspection of any property;
    (ii) taking a sample of any property;
    (iii) making an observation of any property;
    (iv) trying an experiment on or with any property;
    (v) observation of a process;
    (vi) copying, transcription or production of a document or other material, data or information (however stored or recorded); or
  (b) authorising a person to enter land, or do any other act or thing, for the purpose of gaining access to the property.

(2) An application under subrule (1) must be accompanied by an affidavit stating the following:
  (a) the property to be inspected, sampled, observed or subject to experiment;
  (b) the process to be observed;
  (c) the document, material, data or information to be copied or transcribed;
  (d) why the order is necessary;
  (e) the access required for entry on to the land or for doing any other act or thing.

(3) In this rule:

property includes land, a document or any other thing, whether or not the land, document or other thing is in the possession, custody or power of a party to the proceeding.

14.02 Service of application

An application for an order under rule 14.01 must be served personally on each other party.

Note: Division 10.1 deals with personal service.

14.03 View by Court

A party may apply to the Court to have the Court inspect any place, process or other thing that relates to a matter in question.

Rules 14.04–14.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 14.2—Preservation etc of property

14.11 Preservation of property

(1) A party may apply to the Court for an order:
  (a) for the detention, custody, preservation or inspection of property; or
  (b) authorising a person to do any act or thing for the purpose of giving effect to an order

Note: A party may apply in a proceeding concerning property, or in a proceeding in which any question may arise as to any property.

(2) In a proceeding about the right of any party to a fund, a party may apply for an order that the fund be paid into Court or otherwise secured.

Note: Division 14.1 deals with the inspection of property.

14.12 Disposal of personal property

A party may apply to the Court for an order for the sale or disposal of personal property, or any part of the property, if:
  (a) the proceeding concerns personal property; and
  (b) the property is perishable or is of a kind that requires that it be sold or disposed of before the hearing of the proceeding.

14.13 Interim distribution of property or income from property

If a proceeding concerns property, a party may apply to the Court for an order that:
  (a) the property be conveyed, transferred or delivered to a person having an interest in the property; or
  (b) the income, or a part of the income, from the property be paid, during a specified period, to a person having an interest in the income.

Note: In considering whether to make an order under rule 14.13, the Court will take into account whether an order would defeat a party's claim or defence.

14.14 Payment before determination of all interested persons

If 2 or more persons are entitled to share an amount in a fund, any of the persons may apply to the Court for an order for the immediate payment to the person of the amount of the person's share.

Rules 14.15–14.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 14.3—Receivers

14.21 Application to appoint receiver

A party may apply to the Court for an order:

(a) appointing a receiver to have the powers of a receiver and manager; and

(b) requiring the person appointed as receiver to file a guarantee; and

(c) providing that the person's appointment does not take effect until the guarantee is filed.

14.22 Guarantee

A guarantee mentioned in rule 14.21 must:

(a) be in accordance with Form 30; and

(b) be approved by the Court.

Note 1: The Court may order that any guarantee filed under this rule be discharged.

Note 2: A receiver must file a notice of address for service—see rule 11.05.

14.23 Powers

A receiver may apply to the Court for authority to do any act or thing in a proceeding in the receiver's name or in the name of another party.

14.24 Remuneration

A receiver may apply to the Court to have the Court fix the receiver's remuneration.

14.25 Accounts

(1) A receiver must file accounts at the times ordered by the Court.

(2) On the date on which the receiver files an account, the receiver must serve a copy of the account, endorsed with the time and the return date for the examination of the account, on:

(a) each party who has an address for service in the proceeding; and

(b) any interested person.

Note: A Registrar will fix a return date and a place for hearing on the account.

(3) The receiver must attend the appointment for examination of an account.

14.26 Default

(1) If a receiver fails to pay into Court an amount due by the receiver, a party or an interested person may apply to the Court for an order for:

(a) the discharge of the receiver; and

Authorised Version F2024C00519 registered 28/06/2024

(b) the appointment of another person as receiver; and
(c) the payment of costs.

(2) If a receiver fails to pay into Court an amount due by the receiver, a party or an interested person may apply to the Court for an order that the receiver be charged interest on the unpaid amount.

(3) For subrule (2) the rate of interest is the cash rate of interest set by the Reserve Bank of Australia from time to time during the period of the receiver's failure, plus 4%.

Note 1: ***Interested person*** is defined in the Dictionary.

Note 2: This rule is in addition to the Court's power to punish a person for contempt.

14.27 Death of receiver

(1) If a receiver dies, a party or an interested person affected by the receiver's death may apply to the Court for an order for:
(a) the filing and examination of accounts prepared by the deceased receiver's representative; or
(b) the payment into Court of any amount shown to be due from the receiver; or
(c) the delivery of any property that is subject to the receivership.

(2) The application must be served on the deceased receiver's representative personally.

Note: See Part 10 for rules for service.

Authorised Version F2024C00519 registered 28/06/2024

Part 15—Cross-claims and third party claims

Division 15.1—Making cross-claim

15.01 Cross–claim by respondent

A respondent may make a cross-claim in a proceeding:

(a) against an applicant—for any relief to which the respondent would be entitled against the applicant in a separate proceeding; or

(b) against any other respondent or person—for any relief, including for contribution or indemnity, that is related to the subject of the proceeding.

Note: ***Cross-claim***, ***cross-claimant*** and ***cross-respondent*** are defined in the Dictionary.

15.02 Starting cross-claim

(1) A respondent who wants to start a cross-claim against any party or person must file a notice of cross-claim, in accordance with Form 31.

(2) A notice of cross-claim must include the following:

(a) the cross-claimant's name and address;

(b) the cross-claimant's address for service that is the same as in the principal proceeding;

(c) if a cross-claimant sues in a representative capacity—a statement of that fact.

Note 1: ***Principal proceeding*** is defined in the Dictionary.

Note 2: A respondent who starts a cross-claim is the cross-claimant. The party or person against whom the cross-claim is brought is the cross-respondent.

Note 3: A Registrar will fix a return date and place for hearing and endorse those details on the notice of cross-claim.

15.03 Title of cross-claim and subsequent documents

All documents filed in a cross-claim must have the same title as the notice of cross-claim that started the cross-claim.

15.04 Time for bringing cross-claim

A notice of cross-claim must be filed at the same time as the filing of:

(a) the respondent's defence; or

(b) the respondent's affidavit in reply to the applicant's affidavit in the principal proceeding.

15.05 Application for extension of time to file cross-claim

(1) A respondent who wants to file a notice of cross-claim, but has not complied with rule 15.04, must apply to the Court for leave to file a notice of cross-claim.

Authorised Version F2024C00519 registered 28/06/2024

(2) An application under subrule (1) must be accompanied by:
  (a) an affidavit stating:
    (i) briefly but specifically, the nature of the cross-claim and its relationship to the subject matter of the proceeding; and
    (ii) why the notice of cross-claim was not filed in accordance with rule 15.04; and
  (b) a draft notice of cross-claim that complies with rule 15.02.

15.06 Cross–claim to be accompanied by statement of cross-claim or affidavit

(1) A notice of cross-claim must be accompanied by:
  (a) if the originating application was accompanied by a statement of claim or an alternative accompanying document referred to in rule 8.05—a statement of cross-claim; or
  (b) if the originating application was accompanied by an affidavit—an affidavit; or
  (c) if an order has been made in the principal proceeding that the principal proceeding continue on pleadings—a statement of cross-claim.

Note 1: In some cases in Chapter 3, the rules prescribe the documents that must accompany an originating application.

Note 2: A cross-claimant's statement of cross-claim must comply with rule 16.02.

(2) An affidavit mentioned in paragraph (1)(b) must state the material facts on which the cross-claimant relies that are necessary to give the cross-respondent fair notice of the case to be made against the cross-respondent at trial.

Note: Division 16.1 provides for the content of a statement of claim.

15.07 Cross–claim to state relief claimed

(1) A notice of cross-claim must state:
  (a) the relief claimed; and
  (b) if the relief is claimed under a provision of an Act—the Act and the provision under which the relief is claimed.

(2) A notice of cross-claim claiming relief of the kind mentioned in column 2 of following table must state the details mentioned in column 3 of the table.

Item	Relief sought	Details
1	Interlocutory relief	The interlocutory order sought
2	An injunction	The order sought
3	A declaration	The declaration sought
4	Exemplary damages	The claim for exemplary damages

(3) A notice of cross-claim need not include a claim for costs.

Authorised Version F2024C00519 registered 28/06/2024

15.08 Service of notice of cross-claim on cross-respondent

(1) A cross-claimant must, as soon as reasonably practicable, serve a copy of the notice of cross-claim on each cross-respondent who has an address for service.

(2) If a cross-respondent has not filed a notice of address for service, the notice of cross-claim must be served personally.

(3) Rule 10.25 does not apply to the service of a notice of cross-claim.

Note: Rule 10.25 provides for filing to have effect as service in certain circumstances.

15.09 Service of pleadings and documents

(1) If a person has been made a cross-respondent to the proceeding by the filing of a notice of cross-claim, the person:

(a) must file a notice of address for service; and

(b) may file a notice, in accordance with Form 32, requiring the cross-claimant to serve all or any of the pleadings or documents filed in the proceeding before the filing of the cross-claim.

(2) A cross-claimant who has been served with a notice under subrule (1) must, within 3 days after service of the notice on the cross-claimant, serve on the cross-respondent issuing the notice the pleadings and documents mentioned in the notice.

15.10 Conduct of proceeding after cross-claim is filed

(1) To the extent practicable and not inconsistent with this Part:

(a) the parties must conduct a cross-claim in the same way as the principal proceeding; and

(b) these Rules apply to the cross-claim in the same way as they apply to the principal proceeding; and

(c) the trial or a hearing, or any other step, in relation to the cross-claim is to be carried out at the same time as the trial or hearing, or any other step, in relation to the originating application.

(2) For the purpose of giving effect to this rule:

(a) a cross-claimant is to be treated as an applicant; and

(b) a cross-respondent is to be treated as a respondent.

15.11 Separate proceeding in relation to cross-claim

A cross-claim may proceed even if:

(a) an order has been made and entered in the principal proceeding or any other cross-claim in the proceeding; or

(b) the principal proceeding or any other cross-claim has been stayed, dismissed or discontinued.

Authorised Version F2024C00519 registered 28/06/2024

15.12 Cross-claim for contribution or indemnity

If a cross-claimant makes a cross-claim for contribution or indemnity against another party or person and an order for contribution is made, the order must not be enforced until any order for the applicant against that cross-claimant has been satisfied.

15.13 Hearings in relation to cross-claims

A party to a cross-claim may apply to the Court for an order:

(a) that any claim, question or issue arising in the cross-claim be tried in accordance with an order of the Court; or

(b) permitting a cross-respondent to defend the claim made in the principal proceeding or any other cross-claim in the proceeding, either alone or with another party; or

(c) permitting a cross-respondent to appear at the hearing of the principal proceeding or any other cross-claim in the proceeding, and to participate in the hearing as the Court considers appropriate; or

(d) determining the extent to which the cross-claimant, and a cross-respondent, are to be bound as between each other by an order or a decision made in relation to the principal proceeding or any other cross-claim in the proceeding; or

(e) for the hearing and determination of the principal proceeding and the cross-claim; or

(f) dismissing the cross-claim.

15.14 Co-cross-respondents

If a cross-claimant claims relief against 2 or more cross-respondents, and requires any cross-respondent to give discovery under Part 20, the cross-respondent must serve the cross-respondent's list of documents and affidavit on the cross-claimant and on each other cross-respondent who has filed a defence.

Authorised Version F2024C00519 registered 28/06/2024

Division 15.2—Amendment of cross-claim

15.15 Amendment generally

(1) A cross-claimant may apply to the Court for leave to amend a notice of cross-claim for any reason, including:

(a) to correct a defect or error that would otherwise prevent the Court from determining the real questions raised by the cross-claim; or

(b) to avoid the multiplicity of proceedings; or

(c) to correct a mistake in the name of a party to the proceeding; or

(d) to correct the identity of a party to the proceeding; or

(e) to change the capacity in which the party is suing in the proceeding, if the changed capacity is one that the party had when the proceeding was started, or has acquired since that time; or

(f) to substitute a person for a party to the proceeding; or

(g) to add or substitute a new claim for relief, or a new foundation in law for a claim for relief, that arises:

(i) out of the same facts or substantially the same facts as those already pleaded to support an existing claim for relief by the applicant; or

(ii) in whole or in part, out of facts or matters that have occurred or arisen since the start of the proceeding.

Note: For paragraph (1)(b) and the avoidance of multiplicity of proceedings, see section 22 of the Act.

(2) A cross-claimant may apply to the Court for leave to amend a notice of cross-claim in accordance with paragraph (1)(c), (d) or (e) or subparagraph (g)(i) even if the application is made after the end of any relevant period of limitation applying at the date the proceeding was started.

(3) However, a cross-claimant must not apply to amend a notice of cross-claim in accordance with subparagraph (1)(g)(ii) after the time within which any statute that limits the time within which a proceeding may be started has expired.

Note 1: ***Cross claim*** and ***cross-claimant*** are defined in the Dictionary.

Note 2: For the Court's power to make rules amending a document, see section 59(2B) of the Act.

Note 3: Rule 9.05 deals with joinder of parties by court order.

15.16 Date on which amendment takes effect

If a notice of cross-claim is amended with the effect that another person is substituted as a party to the proceeding, the cross-claim is to be taken to have started for that person on the date on which the notice of cross-claim is amended.

15.17 Procedure for making amendment

(1) A cross-claimant given leave to amend a notice of cross-claim must:

Authorised Version F2024C00519 registered 28/06/2024

(a) make the alterations on the notice of cross-claim; and
(b) write on the notice of cross-claim the following information:
(i) the date on which the amendment is made;
(ii) the date on which the order permitting the amendment was made.

(2) If the amendments to the notice of cross-claim are so numerous or lengthy to make it difficult to read, or if the notice of cross-claim was lodged by electronic communication, the cross-claimant must file an amended notice of cross-claim that:
(a) incorporates and distinguishes the amendments; and
(b) is marked with the information mentioned in subrule (1).

15.18 Time for amending notice of cross-claim under Court order

An order that a cross-claimant be permitted to amend a notice of cross-claim ceases to have effect unless the cross-claimant amends the notice of cross-claim in accordance with the order within:
(a) the period specified in the order; or
(b) if no period is specified in the order—14 days after the date on which the order permitting the amendment was made.

Note: If the Court permits a cross-claimant to amend a notice of cross-claim, the Court may also make orders about the procedure for amending the cross-claim and serving the notice of cross-claim.

15.19 Service of amended cross-claim

If a notice of cross-claim is amended after it has been served, the cross-claimant who made the amendment must, as soon as practicable after the amendment is made, serve a copy of the amended notice of cross-claim on the parties on whom the notice of cross-claim was served.

Note: The Court may dispense with service of the amended document.

Authorised Version F2024C00519 registered 28/06/2024

Part 16—Pleadings

Division 16.1—General

16.01A Application of Division 16.1

Subject to rule 16.13, this Division does not apply in relation to a pleading that is an alternative accompanying document referred to in rule 8.05.

16.01 Pleading to include name of person who prepared it

A pleading must:

(a) state the name of the person who prepared the pleading; and

(b) include a statement by the person that the person prepared the pleading; and

(c) for a pleading prepared by a lawyer, other than a pleading referred to in paragraph (d)—include a certificate signed by the lawyer that any factual and legal material available to the lawyer provides a proper basis for:

(i) each allegation in the pleading; and

(ii) each denial in the pleading; and

(iii) each non-admission in the pleading; and

(d) for an alternative accompanying document referred to in rule 8.05 that is prepared by a lawyer—include a certificate signed by the lawyer that any factual and legal material available to the lawyer provides a proper basis for the matters set out in the pleading.

16.02 Content of pleadings—general

(1) A pleading must:

(a) be divided into consecutively numbered paragraphs, each, as far as practicable, dealing with a separate matter; and

(b) be as brief as the nature of the case permits; and

(c) identify the issues that the party wants the Court to resolve; and

(d) state the material facts on which a party relies that are necessary to give the opposing party fair notice of the case to be made against that party at trial, but not the evidence by which the material facts are to be proved; and

(e) state the provisions of any statute relied on; and

(f) state the specific relief sought or claimed.

(2) A pleading must not:

(a) contain any scandalous material; or

(b) contain any frivolous or vexatious material; or

(c) be evasive or ambiguous; or

(d) be likely to cause prejudice, embarrassment or delay in the proceeding; or

Authorised Version F2024C00519 registered 28/06/2024

(e) fail to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or

(f) otherwise be an abuse of the process of the Court.

(3) A pleading may raise a point of law.

(4) A party is not entitled to seek any additional relief to the relief that is claimed in the originating application.

(5) A party may plead a fact or matter that has occurred or arisen since the proceeding started.

16.03 Pleading of facts

(1) A party must plead a fact if:

(a) it is necessary to plead it to meet an express denial of the fact pleaded by another party; or

(b) failure to plead the fact may take another party by surprise.

(2) However, a party need not plead a fact if the burden of proving the fact does not lie on that party.

16.04 References to documents or spoken words

(1) A pleading that refers to a document or spoken words need only state the effect of the document or words without including the terms of the document or the words themselves.

(2) However, if the words are material to the pleading, the pleading must include the words.

16.05 Conditions precedent

(1) A party need not state in a pleading that a condition precedent to the party's right of action has been satisfied.

(2) However, a party who wants to deny that a condition precedent has been satisfied must expressly plead the denial.

16.06 Inconsistent allegations or claims

A party must not plead inconsistent allegations of fact or inconsistent grounds or claims except as alternatives.

16.07 Admissions, denials and deemed admissions

(1) A party pleading to an allegation of fact in another party's pleading must specifically admit or deny every allegation of fact in the pleading.

(2) Allegations that are not specifically denied are taken to be admitted.

Authorised Version F2024C00519 registered 28/06/2024

(3) However, a party may state that the party does not know and therefore cannot admit a particular fact.

(4) If a party makes a statement mentioned in subrule (3), the particular fact is taken to be denied.

Note: This rule requires a party to address each material fact pleaded in an opposing party's pleading. A general denial or an evasive answer will not be sufficient.

16.08 Matters that must be expressly pleaded

In a pleading subsequent to a statement of claim, a party must expressly plead a matter of fact or point of law that:

(a) raises an issue not arising out of the earlier pleading; or

(b) if not expressly pleaded, might take another party by surprise if later pleaded; or

(c) the party alleges makes another party's claim or defence not maintainable.

16.09 Defence of tender before start of proceeding

A respondent cannot plead the defence of tender before the start of the proceeding unless the respondent has made an offer to pay the money, in accordance with Part 25.

16.10 Defence claiming set-off

A respondent who relies on a claim to an amount of money as a defence to the whole or part of an applicant's claim may include the claim in the respondent's defence by way of set off against the applicant's claim, whether or not the respondent also cross-claims for the money.

16.11 Joinder of issue

(1) If no reply to a defence is filed, a joinder of issue is implied in relation to any allegation of fact in the defence and each allegation of fact is taken to be denied.

(2) If, in a reply, a party admits, or expressly pleads to an allegation of fact, a joinder of issue operates as a denial of any other allegation of fact in the pleading.

Note: A joinder of issues means that the fact alleged in the pleading is taken to be denied. Joinder of issue only relates to any pleading subsequent to a defence.

16.12 Close of pleadings

(1) As between an applicant and a respondent, the pleadings close at the end of the latest of the times fixed by these Rules for filing a defence or reply, or other pleading between those parties.

(2) The pleadings close under subrule (1) even if a request or order for particulars has not been complied with.

Authorised Version F2024C00519 registered 28/06/2024

16.13 Alternative accompanying documents

(1) The following provisions apply to an alternative accompanying document referred to in rule 8.05:

(a) paragraphs 16.01(a), (b) and (d);

(b) subrule 16.02(2).

(2) The content of such an alternative accompanying document must also comply with any practice notes issued by the Chief Justice.

Rules 16.14–16.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 16.2—Striking out pleadings

16.21 Application to strike out pleadings

(1) A party may apply to the Court for an order that all or part of a pleading be struck out on the ground that the pleading:

(a) contains scandalous material; or

(b) contains frivolous or vexatious material; or

(c) is evasive or ambiguous; or

(d) is likely to cause prejudice, embarrassment or delay in the proceeding; or

(e) fails to disclose a reasonable cause of action or defence or other case appropriate to the nature of the pleading; or

(f) is otherwise an abuse of the process of the Court.

(2) A party may apply for an order that the pleading be removed from the Court file if the pleading contains material of a kind mentioned in paragraph (1)(a), (b) or (c) or is otherwise an abuse of the process of the Court.

Rules 16.22–16.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 16.3—Progress of pleadings

16.31 Application of Division 16.3

This Division applies if a proceeding is started by an originating application supported by a statement of claim or the Court has ordered that the proceeding continues on pleadings.

16.32 Defence to application

A respondent must file a defence, in accordance with Form 33, within 28 days after service of the statement of claim.

16.33 Reply

If a respondent files a defence and the applicant wants to plead a matter of fact or point of law of the kind mentioned in rule 16.08, the applicant must file a reply, in accordance with Form 34, within 14 days after being served with the defence.

Rules 16.34–16.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 16.4—Particulars

16.41A Application of Division 16.4

This Division does not apply in relation to a pleading that is an alternative accompanying document referred to in rule 8.05.

16.41 General

(1) A party must state in a pleading, or in a document filed and served with the pleading, the necessary particulars of each claim, defence or other matter pleaded by the party.

Note: See rule 16.45.

(2) Nothing in rules 16.42 to 16.45 is intended to limit subrule (1).

Note 1: The object of particulars is to limit the generality of the pleadings by:
(a) informing an opposing party of the nature of the case the party has to meet; and
(b) preventing an opposing party being taken by surprise at the trial; and
(c) enabling the opposing party to collect whatever evidence is necessary and available.

Note 2: The function of particulars is not to fill a gap in a pleading by providing the material facts that the pleading must contain.

Note 3: A party does not plead to the opposite party's particulars.

Note 4: Particulars should, if they are necessary, be contained in the pleading but they may be separately stated if sought by the opposite party or ordered by the Court.

16.42 Fraud, misrepresentation etc

A party who pleads fraud, misrepresentation, unconscionable conduct, breach of trust, wilful default or undue influence must state in the pleading particulars of the facts on which the party relies.

16.43 Conditions of mind

(1) A party who pleads a condition of mind must state in the pleading particulars of the facts on which the party relies.

(2) If a party pleads that another party ought to have known something, the party must give particulars of the facts and circumstances from which the other party ought to have acquired the knowledge.

(3) In this rule:

condition of mind, for a party, means:
(a) knowledge; and
(b) any disorder or disability of the party's mind; and
(c) any fraudulent intention of the party.

Authorised Version F2024C00519 registered 28/06/2024

16.44 Damages and exemplary damages

(1) A party who claims damages that includes money that the party has paid, or is liable to pay, must state in a pleading the amount of the money paid or liable to be paid.

(2) If the party claims exemplary damages, the pleading must also state particulars of the facts on which the claim is based.

16.45 Application for order for particulars

(1) If a pleading does not give a party fair notice of the case to be made against that party at trial and, as a result, the party may be prejudiced in the conduct of the party's case, the party may apply to the Court for an order that the party who filed the pleading serve on the party:

(a) particulars of the claim, defence or other matter stated in the pleading; or

(b) a statement of the nature of the case relied on; or

(c) if there is a claim for damages—particulars of the damages claimed.

(2) An application under subrule (1) may be made only if:

(a) the particulars in the pleading are inadequate; and

(b) the party seeking the order could not conduct the party's case without further particulars.

(3) A respondent who applies to the Court for an order under subrule (1) before filing the respondent's defence must satisfy the Court that an order is necessary or desirable to enable the respondent to plead.

Note: The intent of the pleading rules is that a party should include all material facts in its pleadings as initially filed so that there is no unfairness to another party by any lack of particularity. If the party has not done so, the Court may at trial refuse to allow the party to present a case that is outside the terms of their pleading.

Rules 16.46–16.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 16.5—Amendment of pleadings

16.51 Amendment without needing the leave of the Court

(1) A party may amend a pleading once, at any time before the pleadings close, without the leave of the Court.

(2) However, a party may not amend a pleading if the pleading has previously been amended in accordance with the leave of the Court.

(3) A party may further amend a pleading at any time before the pleadings close if each other party consents to the amendment.

(4) An amendment may be made to plead a fact or matter that has occurred or arisen since the proceeding started.

Note 1: The object of this rule is to ensure that all necessary amendments may be made to enable the real questions between the parties to be decided and to avoid multiplicity of proceedings.

Note 2: For when the pleadings close, see rule 16.12.

16.52 Disallowance of amendment of pleading

(1) If a party amends a pleading under rule 16.51(1), another party may apply to the Court for an order disallowing the amendment.

(2) If a party purports to amend a pleading under rule 16.51(3) without obtaining the consent of another party, any other party may apply to the Court for an order disallowing the amendment.

(3) A party applying for an order under subrule (1) or (2) must apply by interlocutory application within 14 days after the date on which the amended pleading was served on the party.

Note: The Court will disallow the amendment if the Court is satisfied that it would not have given leave on the date on which the amendment was made.

16.53 Application for leave to amend

(1) Unless rule 16.51 applies, a party must apply for the leave of the Court to amend a pleading.

(2) A party may apply under subrule (1) for leave to amend a pleading to add or substitute a new claim for relief, or a new foundation in law for a claim for relief that arises out of the same facts or substantially the same facts as those already pleaded to support an existing claim for relief by the party, even if the application is made after the end of any relevant period of limitation applying at the date the proceeding was started.

(3) A party must not apply under subrule (1) for leave to amend a pleading to add or substitute a new claim for relief, or a new foundation in law for a claim for relief, that arises, in whole or in part, out of facts or matters that have occurred or arisen

Authorised Version F2024C00519 registered 28/06/2024

since the start of the proceeding if the application would be made after the end of any relevant period of limitation applying at the date the proceeding was started.

16.54 Date on which amendment takes effect

An amendment of a pleading that is made under rule 16.51 takes effect on the date the amendment is made or as otherwise ordered by the Court.

16.55 Consequential amendment of defence

(1) The respondent may amend the defence if:
  (a) an applicant amends the statement of claim; and
  (b) the respondent has filed a defence before being served with a copy of the amended statement of claim.

(2) The amended defence must identify the statement of claim to which it relates.

(3) The right to amend the defence under subrule (1) is in addition to the right to amend a pleading under rule 16.51.

(4) The respondent must file an amended defence within 28 days after the respondent is served with a copy of the amended statement of claim.

16.56 Consequential amendment of reply

(1) The applicant may amend the reply if:
  (a) a respondent amends the defence; and
  (b) the applicant has filed a reply before being served with a copy of the amended defence.

(2) The amended reply must identify the defence to which it relates.

(3) The right to amend the reply under subrule (1) is in addition to the right to amend a pleading under rule 16.51.

(4) The applicant must file an amended reply within 14 days after the applicant is served with a copy of the amended defence.

Note: For when an amended reply must be filed, see rule 16.58.

16.57 Implied joinder of issue after amendment

(1) If a party does not amend a defence or reply when entitled to do so under rules 16.55 or 16.56, the party's existing defence or reply operates as a pleading in answer to the other party's amended pleading.

(2) Rule 16.11 does not apply to the pleadings but, if no further pleading between the parties is filed, there is taken to be, at the close of pleadings, an implied joinder of issue in relation to the second pleading.

Authorised Version F2024C00519 registered 28/06/2024

16.58 Time for amending pleading under Court order

An order that a party be permitted to amend a pleading ceases to have effect unless the party amends the pleading in accordance with the order within:

(a) the period specified in the order; or

(b) if no period is specified in the order—14 days after the date of the order.

Note: If the Court permits a party to amend a pleading, the Court may also make orders about the procedure for amending the pleading and serving the amended pleading.

16.59 Procedure for making amendment to pleading

(1) A party entitled to amend a pleading without the leave of the Court, or a party who has been given leave to amend a pleading, must, if reasonably practicable to do so:

(a) make the alterations on the pleading; and

(b) write on the pleading the following information:

(i) the date on which the amendment is made;

(ii) the date on which the order permitting the amendment was made.

(2) If the amendments to the pleading are so numerous or lengthy to make it difficult to read, or if the pleading was lodged by electronic communication, the applicant must file an amended pleading that:

(a) incorporates and distinguishes the amendments; and

(b) is marked with the information mentioned in subrule (1).

16.60 Service of amendment

If a pleading is amended after it has been served, the party who made the amendment must, as soon as reasonably practicable, serve a copy of the revised pleading on the parties on whom the previous pleading was served.

Authorised Version F2024C00519 registered 28/06/2024

Part 17—Interlocutory applications

17.01 Interlocutory application

(1) A party who wants to apply for an order in a proceeding that has already started must file an interlocutory application, in accordance with Form 35, that must:
  (a) state, briefly but specifically, each order that is sought; and
  (b) if appropriate, be accompanied by an affidavit.

(2) The party filing the interlocutory application must serve the interlocutory application and any accompanying affidavit on any other party at least 3 days before the date fixed for the hearing.

(3) However, a party may make an oral application for an interlocutory order at a hearing.

Example: If a party is seeking to have a proceeding dismissed as disclosing no cause of action, the application should be made by interlocutory application.

Note 1: ***Interlocutory application*** is defined in the Dictionary.

Note 2: ***File*** is defined in the Dictionary as meaning file and serve.

Note 3: On the filing of an interlocutory application, a Registrar will fix the return date and place for hearing and endorse those details on the interlocutory application for service.

17.02 Reliance on correspondence or undisputed documents

(1) An interlocutory application need not be accompanied by an affidavit if a party (the ***first party***) wants to rely on correspondence or other documents, the authenticity of which is not in dispute.

(2) However:
  (a) the first party must provide a list of the correspondence or other documents to each other party; and
  (b) each other party must notify the first party of any further documents that should be added to the list; and
  (c) the first party must file the documents mentioned in paragraphs (a) and (b); and
  (d) if the documents mentioned in paragraphs (a) and (b) number more than 6 documents, the documents must be indexed and paginated.

17.03 Service on others

A party may apply to the Court for an order that the interlocutory application be served:
  (a) on a party who has not filed a notice of address for service; and
  (b) on a person who is not then a party.

Authorised Version F2024C00519 registered 28/06/2024

17.04 Hearing and determination of interlocutory application—absence of party

An interlocutory application may be heard and determined in the absence of a party if:

(a) service of the interlocutory application on that party is not required; or

(b) service has been effected but the party does not appear; or

(c) the Court has dispensed with service.

Authorised Version F2024C00519 registered 28/06/2024

Part 18—Interpleader proceedings

Division 18.1—Stakeholder's interpleader

18.01 Application for relief by way of interpleader

A person (the ***stakeholder***) may apply to the Court for relief by way of interpleader if:

(a) the stakeholder is liable for a debt or personal property in the stakeholder's possession (the ***property in dispute***); and

(b) the stakeholder:

(i) does not know the identity of the person to whom the property in dispute is owed or belongs; or

(ii) has received competing claims about the property in dispute; or

(iii) expects to be sued in the Court for the property in dispute by 2 or more persons making adverse claims.

Note: Interpleader is a special procedure available to a person who is faced with 2 or more claims about the same debt or personal property. The procedure enables the competing claimants to litigate their difference while the stakeholder abides by the result.

18.02 How application to be made

(1) An application for relief by way of interpleader must be made:

(a) if a proceeding has been started against the stakeholder in relation to the property in dispute—by filing an interlocutory application in the proceeding; or

(b) if paragraph (a) does not apply—by filing an originating application, joining each claimant as a respondent.

(2) If an application is made under paragraph (1)(a), the interlocutory application must be served:

(a) on each party to the proceeding who claims any interest in the property in dispute; and

(b) personally on each claimant who is not a party to the proceeding.

18.03 Orders that may be sought

(1) A stakeholder may, in an application for relief by way of interpleader, apply for:

(a) if a proceeding has been started against the stakeholder in relation to the property in dispute—an order that any claimant be added as a respondent in that proceeding in addition to, or in substitution for, the stakeholder; or

(b) an order that the stakeholder pay or transfer part or all of the property in dispute into Court or otherwise to dispose of part or all of the property in dispute; or

(c) an order for the sale of part or all of the property in dispute and for the application of the proceeds of sale.

Authorised Version F2024C00519 registered 28/06/2024

(2) A party may apply to the Court for an order determining any or all questions of fact or law, in which the party is interested, arising on the application.

18.04 Default by claimant

(1) A stakeholder may apply to the Court for an order that the claimant and those claiming under the claimant be barred from starting or continuing a proceeding against the stakeholder and those claiming under the stakeholder if:

(a) a claimant has been served with an application for relief by way of interpleader and does not appear at the hearing; or

(b) a claimant does not comply with an order made on the application.

(2) An order under subrule (1) does not affect the claimants' rights amongst themselves.

18.05 Neutrality of stakeholder

If a stakeholder applies for relief by way of interpleader, the Court will dismiss the application unless the Court is satisfied that the stakeholder:

(a) claims no interest in the property in dispute except for charges or costs; and

(b) has not colluded with any claimant.

Note: This rule does not affect the Court's power to dismiss the application or to pronounce judgment against the stakeholder for other reasons.

18.06 Order in several proceedings

(1) A stakeholder may apply to the Court for orders in any or all of several proceedings if:

(a) an application for relief by way of interpleader is made; and

(b) 2 or more of the proceedings are pending in the Court for or in relation to part or all of the property in dispute.

(2) An order under subrule (1) is binding on each party in the proceeding in which it is made.

Rules 18.07–18.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 18.2—Sheriff's interpleader

Note: The Sheriff is responsible for the service and execution of all processes of the Court directed to the Sheriff—see section 18P of the Act.

18.11 Notice of claim

(1) If a Sheriff takes, or intends to take, any personal property in execution under process, a person making a claim for the property, or the proceeds or value of the property, may give notice of a claim to the Sheriff, in accordance with Form 36.

(2) A notice of claim given under this rule must:
  (a) state the description of the claimant; and
  (b) specify the claim; and
  (c) state an address for service.

Note: ***Description*** is defined in the Dictionary.

(3) A person entitled to give notice of a claim under subrule (1) must do so as soon as practicable after having knowledge of the facts.

(4) However, the Sheriff may apply to the Court for an order restraining a person starting or continuing a proceeding in any Court against the Sheriff for an act or thing done by the Sheriff in execution of the process.

(5) An application under subrule (4) must be made:
  (a) if a proceeding has been started in the Court against the Sheriff—by filing an interlocutory application in the proceeding; or
  (b) if paragraph (a) does not apply—by filing an interlocutory application in the proceeding in which the process is issued.

(6) The Sheriff must serve a copy of the application personally on the person against whom the order is sought.

18.12 Notice of claim to be served on execution creditor

If the Sheriff is given a notice of claim, the Sheriff must serve a copy of the notice on the execution creditor.

18.13 Admission of claim by execution creditor

(1) An execution creditor served with a notice of claim who wants to admit the claim must serve the Sheriff with a notice of admission, in accordance with Form 37 (a ***notice of admission***).

(2) If the execution creditor serves a notice of admission, the execution creditor is not liable to the Sheriff for any fees or expenses incurred by the Sheriff under the process after the notice is served.

(3) On being served with a notice of admission, the Sheriff must withdraw from possession of the property claimed.

Authorised Version F2024C00519 registered 28/06/2024

(4) However, the Sheriff may apply to the Court for an order that the person whose claim is admitted be restrained from starting or continuing any proceeding in any Court against the Sheriff for an act or thing done by the Sheriff in execution of the processes.

(5) An application under subrule (4) must be made:
  (a) if a proceeding has been started in the Court against the Sheriff—by filing an interlocutory application in the proceeding; or
  (b) if paragraph (a) does not apply—by filing an interlocutory application in the proceeding in which the process is issued.

18.14 Application by Sheriff for interpleader

(1) The Sheriff may apply to the Court for relief by way of interpleader if:
  (a) the Sheriff has served a copy of a notice of claim on the execution creditor; and
  (b) the execution creditor has not, within 4 days after service of the notice, served on the Sheriff a notice of admission; and
  (c) the claim has not been withdrawn.

(2) An application by the Sheriff under this rule must be made by filing an interlocutory application in the proceeding in which the process is issued.

(3) The Sheriff must serve the interlocutory application on each party to the proceeding who claims an interest in the property in dispute and on each claimant.

Note: The Court may require the Sheriff to satisfy the Court:
  (a) that the Sheriff claims no interest in the property in dispute except for charges or costs;
  (b) that the Sheriff has not colluded with any claimant.

Authorised Version F2024C00519 registered 28/06/2024

Part 19—Security for costs

19.01 Application for an order for security for costs

(1) A respondent may apply to the Court for an order:

(a) that an applicant give security for costs and for the manner, time and terms for the giving of the security; and

(b) that the applicant's proceeding be stayed until security is given; and

(c) that if the applicant fails to comply with the order to provide security within the time specified in the order, the proceeding be stayed or dismissed.

(2) An application under subrule (1) must be accompanied by an affidavit stating the facts on which the order for security for costs is sought.

(3) The respondent's affidavit should state the following:

(a) whether there is reason to believe that the applicant will be unable to pay the respondent's costs if so ordered;

(b) whether the applicant is ordinarily resident outside Australia;

(c) whether the applicant is suing for someone else's benefit;

(d) whether the applicant is impecunious;

(e) any other relevant matter.

Note: Section 56 of the Act deals with security for costs.

(4) In this rule:

applicant includes a cross-claimant.

respondent includes a cross-respondent.

Authorised Version F2024C00519 registered 28/06/2024

Part 20—Discovery and inspection of documents

Division 20.1—General

20.01 Withholding documents on public interest grounds

This Part does not affect any rule of law under which a document may be withheld on the ground that its disclosure would injure the public interest.

20.02 Privilege

An order made under this Part does not require the person against whom the order is made to produce any document that is privileged.

20.03 Undertakings or orders applying to documents

(1) If a document is read or referred to in open court in a way that discloses its contents, any express order or implied undertaking not to use the document except in relation to a particular proceeding no longer applies.

(2) However, a party, or a person to whom the document belongs, may apply to the Court for an order that the order or undertaking continue to apply to the document.

Rules 20.04–20.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 20.2—Discovery

Note: A party should have regard to any Practice Note for discovery.

20.11 Discovery must be for the just resolution of the proceeding

A party must not apply for an order for discovery unless the making of the order sought will facilitate the just resolution of the proceeding as quickly, inexpensively and efficiently as possible.

20.12 No discovery without court order

(1) A party must not give discovery unless the Court has made an order for discovery.

(2) If a party gives discovery without being ordered by the Court, the party is not entitled to any costs or disbursements for the discovery.

Note: ***Party*** is defined in the Dictionary.

20.13 Application for discovery

(1) A party may apply to the Court for an order that another party to the proceeding give discovery.

(2) The application must state:
(a) whether the party is seeking standard discovery; or
(b) the proposed scope of the discovery.

(3) An application may not be made until 14 days after all respondents have filed:
(a) a defence; or
(b) an affidavit in response to the affidavit accompanying the originating application.

(4) The Court may order that discovery be given by an electronic means.

(5) If a party who is required to give discovery wants an order under paragraph 43(3)(h) of the Act, the party must file an affidavit stating:
(a) the orders sought; and
(b) the party's calculation of the cost of making discovery; and
(c) why the orders should be made.

Note: Section 43 of the Act provides for the Court or a Judge to do any of the following in relation to discovery:
(i) order the party requesting discovery to pay in advance for some or all of the estimated cost of discovery;
(ii) order the party requesting discovery to give security for the payment of the cost of discovery;
(iii) make an order specifying the maximum cost that may be recovered for giving discovery or taking inspection.

Authorised Version F2024C00519 registered 28/06/2024

20.14 Standard discovery

(1) If the Court orders a party to give standard discovery, the party must give discovery of documents:
  (a) that are directly relevant to the issues raised by the pleadings or in the affidavits; and
  (b) of which, after a reasonable search, the party is aware; and
  (c) that are, or have been, in the party's control.

(2) For paragraph (1)(a), the documents must meet at least one of the following criteria:
  (a) the documents are those on which the party intends to rely;
  (b) the documents adversely affect the party's own case;
  (c) the documents support another party's case;
  (d) the documents adversely affect another party's case.

(3) For paragraph (1)(b), in making a reasonable search, a party may take into account the following:
  (a) the nature and complexity of the proceeding;
  (b) the number of documents involved;
  (c) the ease and cost of retrieving a document;
  (d) the significance of any document likely to be found;
  (e) any other relevant matter.

(4) In this rule, a reference to an affidavit is a reference to:
  (a) an affidavit accompanying an originating application; and
  (b) an affidavit in response to the affidavit accompanying the originating application.

Note: ***Control*** is defined in the Dictionary.

20.15 Non-standard and more extensive discovery

(1) A party seeking an order for discovery (other than standard discovery) must identify the following:
  (a) any criteria mentioned in rules 20.14(1) and (2) that should not apply;
  (b) any other criteria that should apply;
  (c) whether the party seeks the use of categories of documents in the list of documents;
  (d) whether discovery should be given in an electronic format;
  (e) whether discovery should be given in accordance with a discovery plan.

(2) An application by a party under subrule (1) must be accompanied by the following:
  (a) if categories of documents are sought—a list of the proposed categories; and
  (b) if discovery is sought by an electronic format—the proposed format; and
  (c) if a discovery plan is sought to be used—a draft of the discovery plan.

Authorised Version F2024C00519 registered 28/06/2024

(3) An application by a party seeking more extensive discovery than is required under rule 20.14 must be accompanied by an affidavit stating why the order should be made.

(4) For this Division:

category of documents includes documents, or a bundle of documents, of the same or a similar type of character.

Note: A discovery plan is a plan that has regard to the issues in dispute and the likely number, nature and significance of the documents discoverable in relation to those issues—see the Court's Practice Note CM6, 'Electronic Technology in Litigation'.

20.16 Giving discovery

(1) A party gives discovery by serving on all parties to the proceeding a list of documents, in accordance with rule 20.17.

(2) The list must specify any category of documents for which a search was not made and state why a search was not made.

Note 1: The list of documents must not be filed in the Court.

Note 2: The Court will, in its order, specify the time for compliance.

20.17 List of documents

(1) A list of documents must be in accordance with Form 38.

(2) The list must describe:
(a) each category of documents in the party's control sufficiently to identify the category but not necessarily the particular document; and
(b) each document that has been, but is no longer in the party's control, a statement of when the document was last in the party's control and what became of it; and
(c) each document in the party's control for which privilege from production is claimed and the grounds of the privilege.

(3) A party may apply to the Court, before or after the list of documents has been served, for an order:
(a) about the use of categories in the list; or
(b) that a more detailed list of documents be provided; or
(c) that each document in a category be separately described.

(4) The list of documents must be verified by an affidavit sworn in accordance with rule 20.22**.**

Note: ***Control*** is defined in the Dictionary.

20.18 Copies of documents

If a party is required to give discovery and the party has or has had in the party's control one or more copies of a particular document, the party need not give

Authorised Version F2024C00519 registered 28/06/2024

discovery of the copies only because the original or any other copy is discoverable.

20.19 Claim of privilege

A party may not claim that a document is privileged from production on the ground that:

(a) it relates solely to, and does not tend to undermine, the party's own case; and

(b) it does not relate to or tend to support another party's case.

20.20 Supplementary discovery

(1) A party who has been ordered to give discovery is under a continuing obligation to discover any document:

(a) not previously discovered; and

(b) that would otherwise be necessary to be discovered to comply with the order.

(2) However, a party is not obliged to discover any document that has been created after the proceeding was started, if the party is entitled to claim privilege from production for the document.

20.21 Order for particular discovery

(1) If a party (the ***first party***) claims that a document or category of documents may be or may have been in another party's control (the ***second party***), the first party may apply to the Court for an order that the second party file an affidavit stating:

(a) whether the document or any document of that category is or has been in the second party's control; and

(b) if the document or category of documents has been but is no longer in the second party's control—when it was last in the second party's control and what became of it.

(2) The first party seeking an order under subrule (1) must identify the document or category of documents as precisely as possible.

20.22 Deponent for affidavit for discovery

(1) An affidavit verifying a party's list of documents or an affidavit to be filed by a party under an order under rule 20.21 must be made by one of the following:

(a) the party;

(b) if the party is a person under a legal incapacity—the party's litigation representative;

(c) if the party is a corporation or organisation—an officer of the corporation or organisation;

Authorised Version F2024C00519 registered 28/06/2024

(d) if the party is a body or persons lawfully suing or being sued in the name of the body or in the name of any officer or other person—a member or officer of the body;

(e) if the party is the Crown or an officer of the Crown suing or being sued in the party's official capacity—an officer of the Crown.

(2) However, if the party is a person mentioned in paragraph (1)(b), (c), (d) or (e), the party to whom discovery is made may apply to the Court for an order specifying:

(a) by name or otherwise—the person to make the affidavit; or

(b) by reference to an officer or office—the persons from whom the party may choose the person to make the affidavit.

(3) A person making an affidavit under paragraph (1)(c), (d) or (e) must know the facts to make the affidavit.

20.23 Discovery from non-party

(1) If a party believes that a person who is not a party has or is likely to have, or has had or is likely to have had, in the person's control, documents that are directly relevant to an issue raised on the pleadings or affidavits, the party may apply to the Court for an order that the person make discovery of the documents to the party.

(2) An application under this rule must:

(a) be served personally on the person; and

(b) be accompanied by an affidavit:

(i) stating the facts on which the applicant relies; and

(ii) identifying, as precisely as possible, the documents, or categories of documents to which the application relates.

(3) A copy of the accompanying affidavit for an application must be served on each person on whom the application is served.

(4) In subrule (1), a reference to an affidavit is a reference to:

(a) an affidavit accompanying an originating application; and

(b) an affidavit in response to the affidavit accompanying the originating application.

20.24 Non-party's obligation

If the Court orders a person who is not a party to make discovery, the person must file a list of documents, in accordance with rule 20.17.

Note: For production by a non-party, see rule 20.33.

20.25 Non-party's costs and expenses

A person against whom an order is sought or made under rule 20.23 may apply to the Court for an order:

Authorised Version F2024C00519 registered 28/06/2024

(a) that the party applying for the discovery give security for the person's costs and expenses; and

(b) that the party who applied for the discovery pay the person's costs and expenses, including:

(i) the expense of making discovery and giving production; and

(ii) the expense of complying with the order made under rule 20.23.

Rules 20.26–20.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 20.3—Production for inspection

20.31 Notice to produce document in pleading or affidavit

(1) A party (the ***first party***) may serve on another party (the ***second party***) a notice to produce, in accordance with Form 39, for the inspection of any document mentioned in a pleading or affidavit filed by the second party.

(2) The second party must, within 4 days after being served with the notice to produce, serve the first party with a notice:

(a) stating:

(i) a time, within 7 days after service of the notice, when the document may be inspected; and

(ii) a place where the document may be inspected; or

(b) stating:

(i) that the document is not in the second party's control; and

(ii) to the best of the second party's knowledge—where the document is and in whose control it is; or

(c) claiming that the document is privileged and stating the grounds of the privilege.

(3) If the second party does not comply with paragraph (2)(a) or (b) or claims that the document is privileged, the first party may apply to the Court for an order for production for inspection of the document.

Note: ***Control*** is defined in the Dictionary

20.32 Order for production from party

(1) A party (the ***first party***) may apply to the Court for an order that another party (the ***second party***) produce for inspection any document that is included in the second party's list of documents and that is in that party's control.

(2) The Court may order that production for inspection be by electronic means.

20.33 Order for production from non-party

If a non-party is ordered to give discovery under rule 20.23 but refuses or neglects to allow inspection of the documents, the party who applied for the discovery may apply to the Court for an order that the non-party produce for inspection any document that is included in the non-party's list of documents and that is in the person's control.

20.34 Copying of documents produced for inspection

A party to whom a document is produced for inspection under this Division may, at the party's expense, copy or make an electronic image of the document subject to any reasonable conditions imposed by the person producing the document.

Authorised Version F2024C00519 registered 28/06/2024

20.35 Production to Court

(1) A party may apply to the Court for an order that another party produce to the Court a document in the party's control relating to an issue in the proceeding.

(2) The Court may inspect a document to decide the validity of an objection to production, including a claim that the document is privileged from production.

Authorised Version F2024C00519 registered 28/06/2024

Part 21—Interrogatories

21.01 Order for interrogatories

(1) A party may apply to the Court for an order that another party provide written answers to interrogatories.

(2) The application must be accompanied by an affidavit annexing the proposed interrogatories.

21.02 When application may be made

A party must not make an application under rule 21.01 until 14 days after the pleadings have closed and, if an order has been made under Division 20.2, the parties have served any lists of documents.

21.03 Answers to interrogatories

(1) A party who is ordered to answer interrogatories must do so by filing:
  (a) written answers in accordance with:
    (i) Form 40; and
    (ii) subrules (3) and (4); and
  (b) an affidavit verifying the answers in accordance with rule 21.04.

(2) The party must serve the documents mentioned in subrule (1) on each party who has filed a notice of address for service.

(3) The answers must address each interrogatory:
  (a) by directly answering the substance of the interrogatory; or
  (b) by objecting to answer the interrogatory on a ground mentioned in subrule (4) and briefly stating the facts on which the objection is based.

(4) A party may object to answering an interrogatory only on one or more of the following grounds:
  (a) that the interrogatory does not relate to an issue raised on the pleadings and in issue;
  (b) that the interrogatory is vexatious or oppressive;
  (c) privilege.

Note: The Court will, in its order, specify the time for compliance.

21.04 Affidavit verifying written answers to interrogatories

(1) An affidavit verifying a party's written answers to interrogatories must be made by one of the following:
  (a) the party;

Authorised Version F2024C00519 registered 28/06/2024

(b) if the party is a person under a legal incapacity—the person's litigation representative;
(c) if the party is a corporation or organisation—an officer of the corporation or organisation;
(d) if the party is a body of persons lawfully suing or being sued in the name of the body or in the name of any officer or other person—a member or officer of the body;
(e) if the party is the Crown or an officer of the Crown suing or being sued in the party's official capacity—an officer of the Crown.

(2) However, if the party is a person mentioned in paragraph (1)(b), (c), (d) or (e), the party applying for the written answers may apply to the Court for an order specifying:
(a) by name or otherwise, the person to make the affidavit; or
(b) by reference to an officer or an office—the persons from whom the party may choose the person to make the affidavit.

(3) A person making an affidavit under paragraph (1)(b), (c), (d) or (e) must know the facts to make the affidavit.

21.05 Orders dealing with insufficient answers

If a party fails to answer an interrogatory sufficiently, the party applying for the written answers may apply to the Court for an order:
(a) that the other party give a sufficient answer verified by affidavit in accordance with rule 21.04; or
(b) that the party, or a person mentioned in paragraph 21.04(1)(b), (c), (d) or (e), attend before the Court or a Registrar to be interrogated orally.

21.06 Answers tendered as evidence

(1) A party other than the party who made the answers may tender as evidence:
(a) an answer to an interrogatory without tendering the answers to the other interrogatories; or
(b) part of an answer to an interrogatory without tendering the whole of the answer.

(2) If a party applies to tender:
(a) an answer, but not the answers to all the other interrogatories; or
(b) part of an answer to an interrogatory, but not the whole answer;
the party against whom the interrogatory is sought to be tendered may ask the Court:
(c) to consider all of the other answers or the whole of the answer; and
(d) to reject the tender unless all the other answers are, or the whole answer is, also tendered.

Authorised Version F2024C00519 registered 28/06/2024

Rule 21.07

21.07 Public interest

This Part does not affect any rule of law that authorises or requires the withholding of any matter on the ground that its disclosure would be injurious to the public interest.

Authorised Version F2024C00519 registered 28/06/2024

Part 22—Admissions

22.01 Notice to admit facts or documents

A party (the ***first party***) may serve on another party (the ***second party***) a notice, in accordance with Form 41 (the ***notice to admit***), requiring the second party, for the purpose of the proceeding only, to admit the truth of any fact and the authenticity of any document specified in the notice to admit.

Note: ***Authenticity of a document*** is defined in the Dictionary.

22.02 Notice disputing facts or documents

The second party may, within 14 days after service of the notice to admit, serve on the first party a notice of dispute, in accordance with Form 42, disputing the truth of any fact or the authenticity of any document specified in the notice to admit.

22.03 Disputing party to pay costs if document is proved etc

If a party serves a notice of dispute under rule 22.02 and the truth of any fact or the authenticity of any document disputed in the notice is proved, the party that served the notice of dispute must pay the costs of proving the truth of the fact or the authenticity of the document.

22.04 Facts or documents taken to be admitted if not disputed

If the second party does not serve a notice of dispute in accordance with rule 22.02, the second party will be taken to have admitted the truth of each fact or the authenticity of each document specified in the notice to admit.

Note: The Court may dispense with compliance with this rule—see rule 1.34.

22.05 Deemed admission

A party (the ***first party***) will be taken to have admitted the authenticity of any document specified in another party's list of documents for which inspection has been permitted unless:

(a) the authenticity has been denied in the first party's pleadings or affidavits; or

(b) the first party has given the other party notice within 14 days after inspection was permitted that the authenticity of the document is denied.

Note: The Court may dispense with compliance with this rule—see rule 1.34.

22.06 Withdrawal of admissions

A party may apply for the leave of the Court to withdraw an admission made under this Part.

Authorised Version F2024C00519 registered 28/06/2024

Rule 22.07

22.07 Judgment on admissions

If a party makes an admission, another party may apply to the Court for any judgment or order to which the party is entitled on the admission.

Authorised Version F2024C00519 registered 28/06/2024

Part 23—Experts

Division 23.1—Court experts

23.01 Appointment of Court expert

(1) A party may apply to the Court for an order:

(a) that an expert be appointed (a ***Court expert***) to inquire into and report on any question or on any facts relevant to any question arising in a proceeding; and

(b) fixing the Court expert's remuneration, including the cost of preparing the expert's report; and

(c) for the Court expert's attendance before the Court; and

(d) terminating the liability to pay the Court expert's remuneration.

Note 1: ***Expert*** is defined in the Dictionary.

Note 2: The Court may give instructions relating to the inquiry and report including the carrying out of an experiment or test.

Note 3: The Court may make an order of its own motion—see rule 1.40.

(2) If the Court makes an order under paragraph (1)(b), the expert's remuneration is payable jointly and severally by the parties.

23.02 Court expert's report

(1) The Court expert must provide the report to the Court within the time fixed by the Court.

Note: A Registrar will provide a copy of the report to any party interested in the question.

(2) The Court expert's report must:

(a) be signed by the Court expert; and

(b) contain particulars of the training, study or experience by which the Court expert has acquired specialised knowledge; and

(c) identify the questions that the Court expert was asked to address; and

(d) set out separately each of the factual findings or assumptions on which the Court expert's opinion is based; and

(e) set out separately from the factual findings or assumptions each of the Court expert's opinions; and

(f) set out the reasons for those opinions; and

(g) contain an acknowledgement that the opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (b).

23.03 Court expert's report—use at trial

(1) A report that complies with rule 23.02 will be admissible at trial as the evidence of the Court expert.

Authorised Version F2024C00519 registered 28/06/2024

Note: Section 177 of the *Evidence Act 1995* deals with the tender of an expert's report.

(2) A party may apply to the Court for an order:

(a) to cross-examine a Court expert before or at trial; and

(b) if the cross-examination is to take place before trial—that the cross-examination take place before a Registrar or an examiner.

Note: ***Examiner*** is defined in the Dictionary.

23.04 Other expert's reports on the question

A party who has delivered to another party interested in the question a copy of another expert's report that complies with Division 23.2 may apply to the Court for leave to adduce the evidence of the other expert on the question.

Note: The question is referred to in rule 23.02.

Rules 23.05–23.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 23.2—Parties' expert witnesses and expert reports

23.11 Calling expert evidence at trial

A party may call an expert to give expert evidence at a trial only if the party has:

(a) delivered an expert report that complies with rule 23.13 to all other parties; and

(b) otherwise complied with this Division.

Note: ***Expert*** and ***expert report*** are defined in the Dictionary.

23.12 Provision of guidelines to an expert

If a party intends to retain an expert to give an expert report or to give expert evidence, the party must first give the expert any practice note dealing with guidelines for expert witnesses in proceedings in the Court (the ***Practice Note***).

Note: A copy of any practice notes may be obtained from the District Registry or downloaded from the Court's website at http://www.fedcourt.gov.au.

23.13 Contents of an expert report

(1) An expert report must:

(a) be signed by the expert who prepared the report; and

(b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and

(c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and

(d) identify the questions that the expert was asked to address; and

(e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and

(f) set out separately from the factual findings or assumptions each of the expert's opinions; and

(g) set out the reasons for each of the expert's opinions; and

(ga) contain an acknowledgement that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and

(h) comply with the Practice Note.

(2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

23.14 Application for expert report

A party may apply to the Court for an order that another party provide copies of that other party's expert report.

Authorised Version F2024C00519 registered 28/06/2024

23.15 Evidence of experts

If 2 or more parties to a proceeding intend to call experts to give opinion evidence about a similar question, any of those parties may apply to the Court for one or more of the following orders:

(a) that the experts confer, either before or after writing their expert reports;

(b) that the experts produce to the Court a document identifying where the expert opinions agree or differ;

(c) that the expert's evidence in chief be limited to the contents of the expert's expert report;

(d) that all factual evidence relevant to any expert's opinions be adduced before the expert is called to give evidence;

(e) that on the completion of the factual evidence mentioned in paragraph (d), each expert swear an affidavit stating:

(i) whether the expert adheres to the previously expressed opinion; or

(ii) if the expert holds a different opinion;

(A) the opinion; and

(B) the factual evidence on which the opinion is based.

(f) that the experts give evidence one after another;

(g) that each expert be sworn at the same time and that the cross-examination and re-examination be conducted by putting to each expert in turn each question relevant to one subject or issue at a time, until the cross-examination or re-examination is completed;

(h) that each expert gives an opinion about the other expert's opinion;

(i) that the experts be cross-examined and re-examined in any particular manner or sequence.

Note 1: For the directions a Court may make before trial about expert reports and expert evidence, see rule 5.04 (items 14 to 19).

Note 2: The Court may dispense with compliance with the Rules and may make orders inconsistent with the Rules—see rules 1.34 and 1.35.

Rules 23.16–23.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 23.3—Examinations by a medical expert

23.21 Examinations by a medical expert

Application of this rule

(1) This rule applies to a proceeding if:
  (a) a person's (the ***relevant person's***) physical or mental condition is relevant to a matter in question; and
  (b) the relevant person is a party or a person for whose benefit a party is claiming relief.

Party may request medical examination

(2) A notice requesting the relevant person to submit to an examination by a specified medical expert at a specified time and place may be served on the party referred to in paragraph (1)(b) by another party to the proceeding.

(3) The relevant person may have a medical expert of their choice attend the examination.

(4) A party who serves a notice under subrule (2) must, on request by the relevant person, pay to the relevant person a reasonable sum to meet the travel and other expenses incurred by the relevant person in connection with the examination, including the expenses of having a medical expert chosen by the relevant person attend the examination in accordance with subrule (3).

(5) The party who serves a notice under subrule (2) must, as soon as reasonably practicable after the examination:
  (a) obtain a medical report from the medical expert referred to in that subrule; and
  (b) serve a copy of that report on the relevant person.

Court may order medical examination

(6) The Court may:
  (a) order the relevant person to submit to an examination by a medical expert (including an order that the relevant person submit to an examination by a specified medical expert at a specified time and place); and
  (b) make any other order the Court considers appropriate in relation to the examination.

(7) If the Court makes an order under subrule (6) requiring the relevant person to submit to an examination by a medical expert, the relevant person must do all things reasonably requested, and answer all questions reasonably asked, by the medical expert for the purposes of the examination.

Authorised Version F2024C00519 registered 28/06/2024

Rule 23.21

Definitions for this rule

(8) In this rule:

medical expert means a person who, under a law of a State or Territory, is registered or licenced to practice in a health profession or allied health profession, including the following:

(a) dental;
(b) medical;
(c) occupational therapy;
(d) optometry;
(e) physiotherapy;
(f) psychology.

Authorised Version F2024C00519 registered 28/06/2024

Part 24—Subpoenas

Division 24.1—Leave to issue subpoena

24.01 Leave to issue subpoena

(1) A subpoena may be issued only with the leave of the Court.

(2) A party may apply to the Court for leave to issue a subpoena without notice to any other party.

Note 1: ***Without notice*** is defined in the Dictionary.

Note 2: The Court may give leave to issue a subpoena:
(a) generally or in relation to a particular subpoena or subpoenas; and
(b) subject to conditions.

Note 3: A Registrar will, in accordance with the leave given under subrule (2) and on the request of a party, issue:
(a) a subpoena to attend to give evidence; or
(b) a subpoena to produce the subpoena or a copy of it and a document or thing; or
(c) a subpoena to do both of those things.

Rules 24.02–24.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 24.2—Subpoenas to give evidence and to produce documents

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

24.11 Definitions for Division 24.2

(1) In this Division:

addressee means the person who is the subject of the order expressed in a subpoena.

issuing officer means an officer empowered to issue a subpoena for the Court.

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

subpoena means an order in writing requiring the addressee:
(a) to attend to give evidence; or
(b) to produce the subpoena or a copy of it and a document or thing; or
(c) to do both of those things.

(2) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a ***subpoena to attend to give evidence***.

(3) To the extent that a subpoena requires the addressee to produce the subpoena or a copy of it and a document or thing, it is called a ***subpoena to produce***.

24.12 Issuing of subpoena

(1) The Court may, in any proceeding, by subpoena, order the addressee:
(a) to attend to give evidence as directed by the subpoena; or
(b) to produce the subpoena or a copy of it and any document or thing as directed by the subpoena; or
(c) to do both of those things.

(2) An issuing officer must not issue a subpoena:
(a) if the Court has made an order, or there is a rule of the Court, having the effect of requiring that the proposed subpoena:
(i) not be issued; or
(ii) be issued only with the leave of the Court and that leave has not been given; or
(b) requiring the production of a document or thing in the custody of the Court or another court.

Note for paragraph (a) Division 24.1 deals with applications to the Court for leave to issue a subpoena.

(3) The issuing officer must seal with the seal of the Court, or otherwise authenticate, a sufficient number of copies of the subpoena for service and proof of service.

Authorised Version F2024C00519 registered 28/06/2024

(4) A subpoena is taken to have been issued when it is sealed or otherwise authenticated in accordance with subrule (3).

24.13 Form of subpoena

(1) A subpoena must be in accordance with:
  (a) for a subpoena to give evidence—Form 43A; or
  (b) for a subpoena to produce documents—Form 43B;
  (c) for a subpoena to give evidence and produce documents—Form 43C.

(2) A subpoena must not be addressed to more than one person.

(3) A subpoena must identify the addressee by name or by description of office or position.

(4) A subpoena to produce must:
  (a) identify the document or thing to be produced; and
  (b) specify the date, time and place for production.

(5) A subpoena to attend to give evidence must specify the date, time and place for attendance.

(6) The date specified in a subpoena must be the date of trial or any other date as permitted by the Court.

(7) The place specified for production may be the Court or the address of any person authorised to take evidence in the proceeding as permitted by the Court.

(8) The last date for service of a subpoena:
  (a) is:
    (i) the date 5 days before the earliest date the addressee is required to comply with the subpoena; or
    (ii) an earlier or later date fixed by the Court; and
  (b) must be specified in the subpoena.

(9) If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

24.14 Change of date for attendance or production

(1) The issuing party may give notice to the addressee of a date or time later than the date or time specified in a subpoena as the date or time for attendance or for production or for both.

(2) If notice is given under subrule (1), the subpoena has the effect as if the date or time notified appeared in the subpoena instead of the date or time that appeared in the subpoena.

Authorised Version F2024C00519 registered 28/06/2024

24.15 Setting aside or other relief

(1) The Court may, on the application of a party or any person having a sufficient interest, set aside a subpoena in whole or in part, or grant other relief in relation to it.

(2) An application under subrule (1) must be made on notice to the issuing party.

(3) The Court may order that the applicant give notice of the application to any other party or to any other person having a sufficient interest.

24.16 Service

(1) A subpoena must be served personally on the addressee.

(2) The issuing party must serve a copy of a subpoena to produce on each other party as soon as practicable after the subpoena has been served on the addressee.

24.17 Compliance with subpoena

(1) An addressee need not comply with the requirements of a subpoena if conduct money has not been handed or tendered to the addressee a reasonable time before the date or time specified in the subpoena as the date or time for attendance or for production or for both.

(2) An addressee need not comply with the requirements of a subpoena if it is not served on or before the date specified in the subpoena as the last date for service of the subpoena.

(3) Despite rule 24.16(1), an addressee must comply with the requirements of a subpoena even if it has not been served personally on the addressee if the addressee has, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(4) The addressee must comply with a subpoena to produce by:
   (a) attending at the date, time and place specified for production and producing the subpoena or a copy of it and the document or thing to the Court or to the person authorised to take evidence in the proceeding as permitted by the Court; or
   (b) delivering or sending the subpoena or a copy of it and the document or thing to a Registrar at the address specified for the purpose in the subpoena, or, if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production.

(5) For a subpoena that is both a subpoena to attend to give evidence and a subpoena to produce, production of the subpoena or a copy of it and of the document or thing in any of the ways permitted by subrule (4) does not discharge the addressee from the obligation to attend to give evidence.

Authorised Version F2024C00519 registered 28/06/2024

(6) Unless a subpoena specifically requires the production of the original document, the addressee may produce a copy of any document required to be produced by the subpoena.

(7) The copy of a document may be:
  (a) a photocopy; or
  (b) in an electronic form that the issuing officer has indicated will be acceptable.

(7A) If the addressee produces a document in accordance with subrule (4), the addressee must declare whether the document is an original by completing the declaration within the subpoena, or the copy of the subpoena, that accompanies the document produced.

(8) The issuing party must, at that party's expense:
  (a) make an electronic image of any photocopy of a document produced under subrule (7); and
  (b) lodge the electronic image with a Registrar within the time specified by a Registrar.

Note: ***Conduct money*** is defined in the Dictionary.

24.18 Production otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with paragraph 24.17(4)(b).

(2) A Registrar must, if requested by the addressee, give a receipt for the document or thing to the addressee.

(3) If the addressee produces more than one document or thing, the addressee must, if requested by a Registrar, provide a list of the documents or things produced.

(4) The addressee may, with the consent of the issuing party, produce a copy, instead of the original, of any document required to be produced.

(5) The addressee may at the time of production tell a Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

24.19 Removal, return, inspection, copying and disposal of documents and things

The Court may give directions about the removal from and return to the Court, and the inspection, copying and disposal, of any document or thing that has been produced to the Court in response to a subpoena.

Authorised Version F2024C00519 registered 28/06/2024

24.20 Inspection of, and dealing with, documents and things produced otherwise than on attendance

(1) This rule applies if an addressee produces a document or thing in accordance with rule 24.17.

(2) On the request in writing of a party, a Registrar must tell the party whether production in response to a subpoena has occurred and, if so, include a description, in general terms, of the documents and things produced.

(3) Subject to this rule, a person may inspect a document or thing produced only if the Court has granted leave and the inspection is in accordance with the leave.

(4) A Registrar may permit the parties to inspect at the Registry any document or thing produced unless the addressee, a party or any person having sufficient interest objects to the inspection under this rule.

(5) If the addressee objects to a document or thing being inspected by any party to the proceeding, the addressee must, at the time of production, notify a Registrar in writing of the objection and of the grounds of the objection.

(6) If a party or person having a sufficient interest objects to a document or thing being inspected by a party to the proceeding, the objector may notify a Registrar in writing of the objection and of the grounds of the objection.

(7) On receiving notice of an objection under this rule, a Registrar:
  (a) must not permit any, or any further, inspection of the document or thing the subject of the objection; and
  (b) must refer the objection to the Court for hearing and determination.

(8) A Registrar must notify the issuing party of the objection and of the date, time and place at which the objection will be heard.

(9) After being notified under subrule (8), the issuing party must notify the addressee, the objector and each other party of the date, time and place at which the objection will be heard.

(10) A Registrar may permit any document or thing produced to be removed from the Registry only on application in writing signed by the lawyer for a party.

(11) A lawyer who signs an application under subrule (10) and removes a document or thing from the Registry is taken to undertake to the Court that:
  (a) the document or thing will be kept in the personal custody of the lawyer or a barrister briefed by the lawyer in the proceeding; and
  (b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by a Registrar.

(12) A Registrar may grant an application under subrule (10) subject to conditions or refuse to grant the application.

Authorised Version F2024C00519 registered 28/06/2024

24.21 Return of documents and things produced

(1) A Registrar may return to the addressee any document or thing produced in response to the subpoena.

(2) A Registrar may return any document or thing under subrule (1) only if a Registrar has given to the issuing party at least 14 days' notice of the intention to do so and that period has expired.

(3) A Registrar may, on the expiry of 4 months from the conclusion of the proceeding, cause to be destroyed all the documents produced in the proceeding in compliance with a subpoena that:

(a) the addressee did not declare, in accordance with subrule 24.17(7A), to be original documents; and

(b) are no longer required in connection with the proceeding, including on any appeal.

24.22 Costs and expenses of compliance

(1) The Court may order the issuing party to pay the amount of any reasonable loss or expense incurred in complying with the subpoena.

(2) If an order is made under subrule (1), the Court must fix the amount or direct that it be fixed in accordance with the Court's usual procedure in relation to costs.

(3) An amount fixed under this rule is separate from and in addition to:

(a) any conduct money paid to the addressee; and

(b) any witness expenses payable to the addressee.

24.23 Failure to comply with subpoena—contempt of court

(1) Failure to comply with a subpoena without lawful excuse is a contempt of court and the addressee may be dealt with accordingly.

(2) Despite rule 24.16(1), if a subpoena has not been served personally on the addressee, the addressee may be dealt with for contempt of court as if the addressee had been so served if it is proved that the addressee had, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

(3) Subrules (1) and (2) are without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

24.24 Documents and things in custody of Court

(1) A party who seeks production of a document or thing in the custody of the Court or of another court may inform a Registrar in writing, identifying the document or thing.

Authorised Version F2024C00519 registered 28/06/2024

(2) If the document or thing is in the custody of the Court, a Registrar must produce the document or thing:
  (a) in Court or to any person authorised to take evidence in the proceeding, as required by the party; or
  (b) as the Court directs.

(3) If the document or thing is in the custody of another court, a Registrar must:
  (a) ask the other court to send the document or thing to that Registrar; and
  (b) after receiving it, produce the document or thing:
    (i) in Court or to any person authorised to take evidence in the proceeding as required by the party; or
    (ii) as the Court directs.

Authorised Version F2024C00519 registered 28/06/2024

Part 25—Offers to settle

25.01 Offer to compromise

(1) A party (the ***offeror***) may make an offer to compromise by serving a notice, in accordance with Form 45, on another party (the ***offeree***).

(2) The notice must not be filed in the Court.

25.02 Notice to be signed

The notice must be signed by the offeror.

Note: A lawyer may do any act or thing that the party is required to do—see rule 4.02.

25.03 Offer to compromise—content

(1) The notice must state whether:
  (a) the offer is inclusive of costs; or
  (b) costs are in addition to the offer.

(2) If the offer is of a sum of money, the notice may separately specify the amount that represents:
  (a) the offer in respect to the claim; and
  (b) interest (if any).

25.04 Offer to be paid within 28 days

An offer to pay a sum of money is, unless the notice provides otherwise, taken to be an offer that the sum will be paid within 28 days after acceptance of the offer.

25.05 Timing of offer

(1) An offer may be made at any time before judgment is given.

(2) A party may make more than one offer.

(3) An offer may be limited in time for which it is open to be accepted, however the time must not be less than 14 days after the offer is made.

(4) Unless the notice provides otherwise, an offer is taken to have been made without prejudice.

25.06 No communication to Court of offer

(1) A pleading or affidavit must not contain a statement that an offer has been made.

(2) No communication about the existence or terms of an offer is to be made to the Court until:

Authorised Version F2024C00519 registered 28/06/2024

(a) the offer is accepted; or
(b) judgment is given; or
(c) an application is made under rule 25.07, 25.09 or 25.10.

(3) However, subrule (2) applies only if the offer is made without prejudice.

25.07 Withdrawal of offer

An offer may be withdrawn within 14 days after it is made only if:
(a) the Court, on an application by the offeror, gives leave; or
(b) the offer is superseded by an offer in more favourable terms to the offeree.

25.08 Acceptance of offer

(1) An offer is open to be accepted within the time stated in the notice, which must not be less than 14 days after the offer has been made.

(2) If no time for acceptance is stated in the notice, an offeree may accept the offer at any time before judgment is given.

(3) An offeree may accept the offer by serving a notice of acceptance, in accordance with Form 46 on the offeror, at any time while the offer is open.

25.09 Withdrawal of acceptance

(1) An offeree who has accepted an offer for a sum of money may withdraw the acceptance if:
(a) the sum of money is not paid within 28 days after acceptance of the offer or within the time provided by the offer; and
(b) the Court, on the application of the party who accepted the offer, gives leave.

(2) An offeree seeking the leave of the Court under paragraph (1)(b) may also seek orders:
(a) to restore the parties as nearly as may be to each party's position in the proceeding at the time of acceptance; and
(b) as to the further conduct of the proceeding.

25.10 Failure to comply with offer

If, after acceptance of an offer by an offeree, an offeror fails to comply with the offer's terms, the offeree may apply to the Court for an order:
(a) giving effect to the accepted offer; or
(b) staying or dismissing the proceeding if the applicant is in default; or
(c) striking out the respondent's defence if the respondent is in default; or
(d) that a cross-claim, not the subject of the offer, proceed.

Authorised Version F2024C00519 registered 28/06/2024

25.11 Multiple respondents

(1) Rule 25.10 does not apply if:

(a) 2 or more respondents are alleged to be jointly, or jointly and severally, liable to the applicant for a debt or damages; and

(b) rights of contribution or indemnity appear to exist between the respondents.

(2) However, rule 25.10 applies if:

(a) for an offer made by the applicant—the offer:

(i) is made to all respondents; and

(ii) is an offer to compromise the claim against all of them; or

(b) for an offer made to the applicant:

(i) the offer is to compromise the claim against all respondents; and

(ii) if the offer is made by 2 or more respondents—those respondents offer to be jointly, or jointly and severally, liable to the applicant for the whole amount of the offer.

25.12 Taxation of costs where offer accepted

If an offer does not include the offeree's costs of the proceeding and the offeree accepts the offer, the offeree may tax costs on a party and party basis against the offeror up to and including 14 days after the offer was made.

Note 1: ***Costs as between party and party*** is defined in the Dictionary.

Note 2: For taxation of costs, see Division 40.2.

25.13 Contributor parties

(1) If 2 or more parties (the ***contributor parties***) may be held liable to contribute towards an amount of debt or damages that may be recovered from the contributor parties, any of those contributor parties may, without prejudice to that contributor party's defence, make an offer to another contributor party, to contribute, to a specified extent, to the amount of the debt or damages.

(2) If an offer is made by a contributor party (the ***first contributor party***) and not accepted by another contributor party, and the first contributor party obtains a judgment against the other contributor party more favourable than the terms of the offer, the first contributor party is entitled to an order that the contributor party who did not accept the offer pay the costs incurred by the first contributor party:

(a) before 11.00 am on the second business day after the offer was served—on a party and party basis; and

(b) after the time mentioned in paragraph (a)—on an indemnity basis.

25.14 Costs where offer not accepted

(1) If an offer is made by a respondent and not accepted by an applicant, and the applicant obtains a judgment that is less favourable than the terms of the offer:

Authorised Version F2024C00519 registered 28/06/2024

Rule 25.14

(a) the applicant is not entitled to any costs after 11.00 am on the second business day after the offer was served; and

(b) the respondent is entitled to an order that the applicant pay the respondent's costs after that time on an indemnity basis.

(2) If an offer is made by a respondent and an applicant unreasonably fails to accept the offer and the applicant's proceeding is dismissed, the respondent is entitled to an order that the applicant pay the respondent's costs:

(a) before 11.00 am on the second business day after the offer was served—on a party and party basis; and

(b) after the time mentioned in paragraph (a)—on an indemnity basis.

(3) If an offer is made by an applicant and not accepted by a respondent, and the applicant obtains a judgment that is more favourable than the terms of the offer, the applicant is entitled to an order that the respondent pay the applicant's costs:

(a) before 11.00 am on the second business day after the offer was served—on a party and party basis; and

(b) after the time mentioned in paragraph (a)—on an indemnity basis.

Note 1: ***Costs on an indemnity basis*** is defined in the Dictionary.

Note 2: The Court may make an order inconsistent with these rules—see rule 1.35.

Authorised Version F2024C00519 registered 28/06/2024

Part 26—Ending proceedings early

Division 26.1—Summary judgment and stay of proceedings

26.01 Summary judgment

(1) A party may apply to the Court for an order that judgment be given against another party because:

(a) the applicant has no reasonable prospect of successfully prosecuting the proceeding or part of the proceeding; or

(b) the proceeding is frivolous or vexatious; or

(c) no reasonable cause of action is disclosed; or

(d) the proceeding is an abuse of the process of the Court; or

(e) the respondent has no reasonable prospect of successfully defending the proceeding or part of the proceeding.

(2) The application must be accompanied by an affidavit stating:

(a) the grounds of the application; and

(b) the facts and circumstances relied on to support those grounds.

(3) The application and the accompanying affidavit must be served on the party against whom the order is sought at least 14 days before the hearing of the application.

(4) If an order is made under subrule (1) dismissing part of the proceeding, the proceeding may be continued for that part of the proceeding not disposed of by the order.

(5) If an order is made under subrule (1) giving judgment for the applicant against the respondent for the whole or part of the applicant's claim, a respondent who has a cross-claim against the applicant or some other party may:

(a) continue to prosecute the cross-claim against the applicant or other party; and

(b) apply to the Court for an order staying execution on or enforcement of the judgment until the respondent's cross-claim is determined.

Note: See also section 31A of the Act.

Rules 26.02–26.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 26.2—Withdrawal and discontinuance

26.11 Withdrawal of defence etc

(1) A party may, at any time, withdraw a plea raised in the party's pleading by filing a notice of withdrawal, in accordance with Form 47.

(2) However, a party must not withdraw an admission or any other plea that benefits another party, in a defence or subsequent pleading unless:
  (a) the other party consents; or
  (b) the Court gives leave.

(3) The notice of withdrawal must:
  (a) state the extent of the withdrawal; and
  (b) if the withdrawal is by consent—be signed by each consenting party.

26.12 Discontinuance

(1) A party claiming relief may discontinue a proceeding in whole or in part by filing a notice of discontinuance, in accordance with Form 48.

(2) The party may file the notice of discontinuance:
  (a) without the leave of the Court or the other party's consent:
    (i) at any time before the return date fixed in the originating application; or
    (ii) if the proceeding is continuing on pleadings—at any time before the pleadings have closed; or
  (b) with the opposing party's consent—before judgment has been entered in the proceeding; or
  (c) with the leave of the Court—at any time.

Note 1: For when pleadings close, see rule 16.12.

Note 2: The Court may give leave subject to conditions including costs—see rule 1.33.

(3) The notice of discontinuance must:
  (a) state the extent of the discontinuance; and
  (b) if the discontinuance is by consent—be signed by each consenting party.

(4) However, a litigation representative or a representative party must not discontinue a party's claim without first obtaining the leave of the Court.

(5) An application for a winding up order under section 459P or 461(1)(a) of the *Corporations Act 2001* may be discontinued only with the leave of the Court.

(6) A notice of discontinuance filed by one party does not affect any other party to the proceeding.

(7) Unless the terms of a consent or an order of the Court provide otherwise, a party who files a notice of discontinuance under subrule (2) is liable to pay the costs of

Authorised Version F2024C00519 registered 28/06/2024

each other party to the proceeding in relation to the claim, or part of the claim, that is discontinued.

26.13 Service of notice

A party who files a notice under rule 26.11 or 26.12 must, as soon as reasonably practicable, serve a copy of the notice on each other party to the proceeding.

26.14 Effect of discontinuance

Discontinuance under this Division cannot be pleaded as a defence to a proceeding in relation to the same, or substantially the same, cause of action.

Note: The Court may permit a party to discontinue on terms inconsistent with this rule—see rule 1.35.

26.15 Stay of proceeding until costs paid

An opposing party may apply to the Court for an order that a subsequent proceeding be stayed until the costs are paid if:

(a) a party (the ***first party***) discontinues a proceeding, whether in relation to the whole, or a part, of a claim for relief; and

(b) the first party therefore becomes liable to pay the costs of an opposing party to the proceeding; and

(c) before paying those costs, the first party starts another proceeding against the opposing party on the basis of the same, or substantially the same, cause of action as the cause of action on which the discontinued proceeding was based.

Authorised Version F2024C00519 registered 28/06/2024

Part 27—Transfer of proceedings

Division 27.1—Federal Circuit and Family Court of Australia

27.01 Transfer to the Federal Circuit and Family Court of Australia

(1) The Court must not make an order under subsection 32AB(1) of the Act on its own initiative transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia unless the parties to the proceeding have been notified of the proposed transfer and have been given an opportunity to be heard in relation to the proposed transfer.

Note: Subsection 32AB(1) of the Act provides that the Court may, by order, transfer a proceeding that is pending in the Court to the Federal Circuit and Family Court of Australia. Subsection 32AB(2) of the Act provides that the Court may transfer the proceeding on the application of a party to the proceeding or on its own initiative.

(2) Before the Court makes an order under subsection 32AB(1) of the Act transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia (Division 1):

(a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and

(b) the Chief Justice of the Court must consult the Chief Justice of the Federal Circuit and Family Court of Australia (Division 1) in relation to the proposed transfer.

(3) Before the Court makes an order under subsection 32AB(1) of the Act transferring a proceeding from the Court to the Federal Circuit and Family Court of Australia (Division 2):

(a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and

(b) the Chief Justice of the Court must consult the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) in relation to the proposed transfer.

(4) A failure to comply with this rule in relation to a proposed transfer of a proceeding under subsection 32AB(1) of the Act does not affect the validity of an order made under that subsection transferring the proceeding.

27.02 Transfer from the Federal Circuit and Family Court of Australia (Division 2)

(1) The Court must not make an order under subsection 32AC(1) of the Act on its own initiative transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court unless the parties to the proceeding have been notified of the proposed transfer and have been given an opportunity to be heard in relation to the proposed transfer.

Note: Subsection 32AC(1) of the Act provides that the Court may, by order, transfer a proceeding that is pending in the Federal Circuit and Family Court of Australia

Authorised Version F2024C00519 registered 28/06/2024

(Division 2) and is not a family law or child support proceeding to the Court. Subsection 32AC(2) of the Act provides that the Court may transfer the proceeding on the application of a party to the proceeding or on its own initiative.

(2) Before the Court makes an order under subsection 32AC(1) of the Act transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court:

(a) the Court must consult the Chief Justice of the Court in relation to the proposed transfer; and

(b) the Chief Justice of the Court must consult the Chief Judge of the Federal Circuit and Family Court of Australia (Division 2) in relation to the proposed transfer.

(3) A failure to comply with this rule in relation to a proposed transfer of a proceeding under subsection 32AC(1) of the Act does not affect the validity of an order made under that subsection transferring the proceeding.

27.03 Order transferring proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court must be filed in the Federal Circuit and Family Court of Australia (Division 2)

(1) This rule applies if the Court makes an order:

(a) under subsection 32AC(1) of the Act transferring a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court; or

(b) under subsection 32AD(1) of the Act confirming the transfer of a proceeding from the Federal Circuit and Family Court of Australia (Division 2) to the Court.

(2) If the order was made on the application of a party to the proceeding, the party must file a sealed copy of the order in the Federal Circuit and Family Court of Australia (Division 2).

(3) If the order was made on the Court's own initiative, the applicant in the proceeding must file a sealed copy of the order in the Federal Circuit and Family Court of Australia (Division 2).

Rules 27.04–27.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 27.3—Cross-vesting

27.21 Transfer of proceeding from the Court

A party may apply to the Court for an order that a proceeding be transferred to another court.

Note 1: Applications may be made under the *Jurisdiction of Courts (Cross-vesting) Act 1987*.

Note 2: If the Court orders that a proceeding be transferred to another court, a Registrar will send each document filed, and any orders made, in the proceeding to the appropriate officer of the other court.

27.22 Application by Attorney-General for transfer of proceeding from the Court

If an application for transfer of a proceeding from the Court is made by the Attorney-General, or by the Attorney-General of a State or Territory, the Attorney-General does not, because of the application, become a party to the proceeding in relation to which the application is made.

27.23 Transfer of proceeding to the Court

(1) If a court makes an order transferring a proceeding to the Court, the party who applied for the order must file a copy of the order in:
  (a) the District Registry named in the order;
  (b) if no District Registry is name named in the order—the District Registry of the State or Territory where the order was made.

(2) A Registrar will attach a notice to the order, in accordance with Form 49.

(3) The party who files the order must serve a sealed copy of the order, and the notice that has been attached by the Registrar, on each party to the proceeding in the court that has made the order transferring the proceeding:
  (a) at the party's address for service; or
  (b) if the party does not have an address for service—personally.

(4) After an order is filed and the notice is attached, these Rules apply to the proceeding as if it had been started in the Court.

(5) The party who files the order must, as soon as practicable after service of the order and the notice attached to the order, and before taking any further step in the proceeding, apply to the Court for directions in relation to the further conduct of the proceeding.

Note: On receipt of the order, and at the time of attaching the notice, the Registrar will allot a serial number to the order, as if the order were an originating application filed in the Registry.

Authorised Version F2024C00519 registered 28/06/2024

Part 28—Alternative dispute resolution

Division 28.1—General

28.01 General

Parties must, and the Court will, consider options for alternative dispute resolution, including mediation, as early as is reasonably practicable. If appropriate, the Court will help implement those options.

28.02 Orders that may be sought

(1) A party may apply to the Court for an order that:

(a) the proceeding or part of the proceeding be referred to an arbitrator, mediator, or some suitable person for resolution by an ADR process; and

(b) the proceeding be adjourned or stayed; and

(c) the arbitrator, mediator, or person appointed to conduct an ADR process report to the Court on progress in the arbitration, mediation or ADR process.

(2) In this Part:

suitable person means a person who has been appointed under paragraph 28.02(1)(a).

Note 1: ***ADR process*** is defined in the Dictionary.

Note 2: The Court may refer a proceeding to an arbitration, a mediation or an ADR process of its own motion—see section 53A of the Act. The Court can only refer a proceeding to arbitration with the consent of the parties—see section 53A(1A) of the Act.

28.03 Arbitration, mediation and ADR process

If the Court orders that a proceeding, part of a proceeding or matter arising in a proceeding be referred to an arbitrator, mediator or suitable person, the arbitration, mediation or the ADR process must be carried out in accordance with this Part.

Note: The Court may make further orders including an order for the time within which the mediation must start and finish.

28.04 Court may terminate mediation or ADR process

A party may apply to the Court for an order:

(a) terminating a mediation or ADR process; or

(b) terminating the appointment of a mediator or suitable person.

Authorised Version F2024C00519 registered 28/06/2024

28.05 Parties may refer proceeding to mediation, arbitration or ADR process

(1) Nothing in this Division prevents the parties to a proceeding referring the proceeding to:

(a) an arbitrator, in accordance with an arbitration agreement for arbitration; or

(b) a mediator for mediation; or

(c) a person to conduct an ADR process.

(2) However, if the parties refer the proceeding under subrule (1), the applicant must, within 14 days of the referral, apply to the Court for directions as to the future management and conduct of the proceeding.

Rules 28.06–28.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 28.2—Arbitration

28.11 Appointment of arbitrator

(1) If the Court makes an order referring a proceeding, or part of a proceeding, to arbitration, a party may apply to the Court for any of the following orders:
  (a) nominating a person as arbitrator;
  (b) specifying the manner in which the arbitration is to be conducted;
  (c) specifying the time by which the arbitration is to be completed;
  (d) specifying how the arbitrator's fees and expenses are to be paid;
  (e) specifying how the arbitrator's report on the proceeding, part of the proceeding or any matter arising out of the proceeding is to be reported to the Court.

Note: An order referring a proceeding to an arbitrator may be made only with the consent of the parties—see section 53A of the Act.

(2) A nomination under paragraph (1)(a) must be accompanied by the arbitrator's written consent to the appointment.

28.12 Applications by interlocutory application

The following applications must be made by interlocutory application in the proceeding in which the order was made referring the proceeding to arbitration:
  (a) an application by an arbitrator under section 53AA of the Act; or
  (b) an application by a party under section 53AB(2) of the Act.

28.13 Applications for registration

(1) If a proceeding has been referred to arbitration under rule 28.02 and an award has been made, a party to the arbitration may apply to the Court for an order that the arbitrator's award be registered.

(2) The application must be made by interlocutory application in the proceeding in which the order was made referring the proceeding to arbitration.

(3) The application must be accompanied by:
  (a) a copy of the award; and
  (b) an affidavit stating:
    (i) the extent to which the 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 award or, if the person is a company, the last-known registered office of the company.

(4) If an order is made under subrule (1), the award:
  (a) has the force and effect of an order of the Court; and
  (b) accrues interest calculated in accordance with rule 39.06.

Authorised Version F2024C00519 registered 28/06/2024

(5) The application may be made without notice.

Note: ***Without notice*** is defined in the Dictionary.

28.14 Applications for order in terms of an award

(1) A party may apply to the Court for an order in the terms of the award if:
  (a) the matter has not been referred to the arbitrator by the Court; but
  (b) the matter is a matter in which the Court has original jurisdiction.

(2) A party who wants to make an application under subrule (1) must file an originating application, in accordance with Form 50.

(3) The application must be accompanied by:
  (a) a copy of the arbitration agreement; and
  (b) a copy of the award; and
  (c) an affidavit stating:
    (i) the material facts demonstrating why the Court has original jurisdiction in the matter that is the subject of the award; and
    (ii) the extent to which the award has not been complied with, at the date the application is made; and
    (iii) the usual or last-known place of residence or business of the person against whom it is sought to enforce the award or, if the person is a company, the last-known registered office of the company.

(4) The application may be made without notice.

Note: ***Without notice*** is defined in the Dictionary.

Rules 28.15–28.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 28.3—Mediation

28.21 Nomination of mediator

If an order referring a proceeding to mediation does not nominate a mediator, a Registrar will, as soon as practicable after an order for a mediation is made:

(a) nominate a Registrar or some other person as the mediator; and

(b) give the parties written notice of:

(i) the name and address of the mediator; and

(ii) the time, date and place of mediation; and

(iii) any further documents that any of the parties must give to the mediator for the purposes of the mediation.

Note: In fixing the time and date for the mediation, the Registrar will:

(a) consult with the parties; and

(b) have regard to any order of the Court fixing the time within which the mediation must be started or completed, or both.

28.22 Conduct of mediation

A mediation must be conducted in accordance with any orders made by the Court.

28.23 Report if only part of proceeding to be mediated

If part only of a proceeding is the subject of a mediation order, the mediator may, on the conclusion of the mediation, report to the Court in terms agreed between the parties.

28.24 Termination of mediation—mediator initiated

If the mediator considers that a mediation should not continue, the mediator must:

(a) terminate the mediation; and

(b) report to the Court on the outcome of the mediation.

28.25 Agreement at mediation

If the parties reach an agreement at a mediation, the parties may file consent orders in accordance with rule 39.11.

Rules 28.26–28.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 28.4—ADR process

28.31 Nomination of person to conduct ADR process

If an order referring a proceeding to an ADR process does not nominate a suitable person, a Registrar will, as soon as practicable after the order is made for an ADR process:

(a) nominate a Registrar or some other person to conduct the ADR process; and

(b) give the parties written notice of:

(i) the name and address of that person; and

(ii) the time, date and place of the ADR process; and

(iii) any further documents that any of the parties must give to the person for the purpose of the ADR process.

Note 1: ***Suitable person*** is defined in rule 28.02(2).

Note 2: In fixing the time and date for the ADR process, the Registrar will:

(a) consult with the parties; and

(b) have regard to any order of the Court fixing the time within which the ADR must be started or completed, or both.

28.32 Conduct of ADR process

An ADR process must be conducted in accordance with any orders made by the Court.

28.33 Report if only part of proceeding to be subject of ADR process

If part only of a proceeding is the subject of an ADR process order, the person conducting the ADR process may, on the conclusion of the ADR process, report to the Court in terms agreed between the parties.

28.34 Termination of ADR process

If the person conducting the ADR process considers that the ADR process should not continue, the person must, subject to any order of the Court:

(a) terminate the ADR process; and

(b) report to the Court on the outcome of the ADR process.

28.35 Agreement at ADR process

If the parties reach an agreement at an ADR process, the parties may file consent orders in accordance with rule 39.11

Rules 28.36–28.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 28.5—International arbitration

Note: **This Division contains rules that have been harmonised in accordance with the advice of the Council of Chief Justices' Rules Harmonisation Committee.**

28.41 Definitions for Division 28.5

(1) In this Division:

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, and as amended by the United Nations Commission on International Trade Law on 7 July 2006, the English text of which is set out in Schedule 2 to the International Arbitration Act.

party to an arbitral proceeding means a party to an arbitral proceeding to which the International Arbitration Act applies.

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

28.42 Application of Division

A party to an arbitral proceeding must comply with:

(a) this Division; and

(b) any other Rules that are relevant and consistent with this Division.

28.43 Application for stay of a proceeding

(1) A party to an arbitration agreement who wants an order under section 7 of the International Arbitration Act to stay the whole or part of a proceeding must file an originating application, in accordance with Form 51.

(2) The originating application must be accompanied by:

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the claim for relief is based.

28.44 Enforcing foreign award

(1) A person who wants to enforce a foreign award under section 8(3) of the International Arbitration Act must file an originating application, in accordance with Form 52.

(2) The originating application must be accompanied by:

(a) the documents mentioned in section 9 of the International Arbitration Act; and

(b) an affidavit stating:

Authorised Version F2024C00519 registered 28/06/2024

(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 the person is a company, the last-known registered office of the company.

(3) The application may be made without notice to any person.

Note: ***Without notice*** is defined in the Dictionary.

28.44A Application for referral to arbitration under article 8 of the Model Law

An application under article 8 of the Model Law to refer parties to arbitration must be accompanied by:

(a) a copy of the arbitration agreement; and

(b) an affidavit stating the material facts on which the application for relief is based.

28.45 Application for relief under Model Law

(1) A party who wants relief under article 11(3), 11(4), 13(3), 14, 16(3), 17H(3), 17I, 17J or 27 of the Model Law must file an originating application, in accordance with Form 53.

(2) The application must be accompanied by an affidavit stating the material facts on which the claim for relief is based.

28.45A Application to set aside award under Model Law

(1) An application under article 34 of the Model Law to set aside an award must be made by filing an originating application, in accordance with Form 53.

(2) The application must identify:

(a) if the applicant relies on article 34(2)(a) of the Model Law—which subparagraph of article 34(2)(a) is relied upon; and

(b) if the applicant relies on article 34(2)(b) of the Model Law—which subparagraph of article 34(2)(b) is relied upon; and

(c) in any case—brief grounds for seeking the order.

(3) The application must be accompanied by an affidavit identifying:

(a) the detailed grounds for seeking the order; and

(b) the material facts relied on; and

(c) the date on which the applicant received the award or, if a request was made under article 33 of the Model Law to the arbitral tribunal to correct the award, the date on which that request was disposed of by the arbitral tribunal.

(4) The affidavit must be accompanied by:

(a) a copy of the arbitration agreement; and

Authorised Version F2024C00519 registered 28/06/2024

(b) a copy of the award (including the reasons, if any, of the arbitral tribunal for the award).

(5) A copy of the application and affidavit must be served on any person whose interest might be affected by the setting aside of the award.

(6) An application by a party to the arbitration under article 34(4) of the Model Law must be made by interlocutory application in the proceeding started under subrule (1).

28.46 Subpoenas for Division 28.5

(1) A party to an arbitral proceeding who wants the Court to issue a subpoena under section 23(3) of the International Arbitration Act (the ***issuing party***) must file an application, in accordance with Form 54.

(2) The application must be accompanied by:
(a) a draft subpoena, in accordance with subrule (3); and
(b) an affidavit stating the following:
(i) the parties to the arbitral proceeding;
(ii) the name of the arbitrator conducting the arbitral proceeding;
(iii) the place where the arbitral proceeding is being conducted;
(iv) the nature of the arbitral proceeding;
(v) the terms of the permission given by the arbitral tribunal for the application;
(vi) the conduct money (if appropriate) to be paid to the addressee;
(vii) the witness expenses payable to the addressee.

(3) For paragraph (2)(a), the draft subpoena must be in accordance with:
(a) for a subpoena to attend for examination before an arbitral tribunal—Form 55A; or
(b) for a subpoena to produce to the arbitral tribunal the documents mentioned in the subpoena—Form 55B; or
(c) for a subpoena to attend for examination and produce documents—Form 55C.

(4) The Court may:
(a) fix an amount that represents the reasonable loss and expense the addressee will incur in complying with the subpoena; and
(b) direct that the amount be paid by the issuing party to the addressee before or after the addressee complies with the subpoena.

(5) An amount fixed under subrule (4) is in addition to any conduct money or witness expenses payable under paragraph (2)(b).

(6) The addressee must comply with the subpoena in accordance with its terms.

Authorised Version F2024C00519 registered 28/06/2024

28.47 Application under section 23A of International Arbitration Act

(1) A party to an arbitral proceeding who wants an order under section 23A(3) of the International Arbitration Act must file:

(a) if a proceeding has not been started in relation to the arbitral proceeding—an originating application, in accordance with Form 56; or

(b) if a proceeding has been started in relation to the arbitral proceeding—an interlocutory application in that proceeding.

(2) An application under subrule (1) must be accompanied by an affidavit stating the following:

(a) the person against whom the order is sought;

(b) the order sought;

(c) the ground under section 23A(1) relied on;

(d) the terms of the permission given by the arbitral tribunal for the application;

(e) the material facts relied on for the making of the order.

28.48 Application under section 23F or 23G of International Arbitration Act

(1) A party to an arbitral proceeding who wants an order under section 23F or 23G of the International Arbitration Act must file:

(a) if a proceeding has not been started in relation to the arbitral proceeding—an originating application, in accordance with Form 57;

(b) if a proceeding has been started in relation to the arbitral proceeding—an interlocutory application in that proceeding.

(2) An application under subrule (1) must be accompanied by an affidavit stating the following:

(a) the person against whom the order is sought;

(b) the order sought;

(c) the material facts relied on for the making of the order;

(d) either:

(i) if the application is made under section 23F—the terms of the order of the arbitral tribunal allowing disclosure of the information and the date the order was made; or

(ii) if the application is made under section 23G:

(A) the date the arbitral tribunal's mandate was terminated; and

(B) the terms of the request made to the arbitral tribunal for disclosure of the confidential information and the date the request was made; and

(C) the terms of the arbitral tribunal's refusal to make the order and the date the refusal was made.

Authorised Version F2024C00519 registered 28/06/2024

28.48A Enforcement of Investment Convention

An application under section 35(4) of the International Arbitration Act for leave to enforce an award to which Part IV of that Act applies 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 the person is a company, the last-known registered office of the company.

28.49 Recognition of award

(1) A party to an arbitral proceeding who wants to enforce an award under section 35(4) of the International Arbitration Act must file an originating application, in accordance with Form 58.

Note: ***Award*** is defined in section 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 the person is a company, the last-known registered office of the company.

(3) The application may be made without notice.

Note: ***Without notice*** is defined in the Dictionary.

28.50 Documents not in English language

A party to a proceeding to which this Division 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 the Court and to 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.

Rules 28.51–28.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 28.6—Referral by Court to referee

28.61 Order of referral

(1) A party may apply to the Court for an order under section 54A of the Act referring any of the following matters to one or more referees for inquiry and report:
  (a) a proceeding in the Court;
  (b) one 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 to whom a matter has been referred under section 54A of the Act must give, in a report, the referee's opinion on the matter.

(3) If the Court sets a time for a referee to give an opinion, the referee must provide the opinion within the set time.

Note: The Court may make directions about the remuneration of the referee.

28.62 Appointment of referees

The Court may appoint a person the Court considers appropriate as:
  (a) a referee; or
  (b) a senior referee.

28.63 Two or more referees

(1) The decision of the senior referee is to prevail if:
  (a) the Court appoints 2 referees; and
  (b) the 2 referees cannot agree on a decision to be made during an inquiry.

(2) If the Court appoints 3 or more referees:
  (a) the decision of the majority prevails in relation to a decision to be made during the inquiry; or
  (b) if there is no majority—the decision of the senior referee prevails.

28.64 Security for remuneration

A party may apply to the Court for an order that another party give security for a referee's remuneration.

28.65 Conduct of inquiry

(1) A party may apply to the Court, before or after an inquiry has started:
  (a) for directions about:
    (i) how the inquiry should be conducted; or
    (ii) any matter arising in the inquiry; or

Authorised Version F2024C00519 registered 28/06/2024

(b) to authorise the referee to take evidence for the purpose of a subpoena issued under Division 24.2.

(2) A referee must conduct an inquiry in accordance with any directions made by the Court.

(3) However, if the Court has not made any directions about how the inquiry should be conducted, the referee may conduct the inquiry in any way the referee thinks fit.

(4) A referee is not bound in the inquiry by the rules of evidence but may be informed in any way that the referee thinks fit.

(5) 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.

(6) A referee may administer an oath or affirmation to a witness giving evidence in an inquiry.

(7) Each party to an inquiry must, before the time fixed by the referee conducting the inquiry, give a brief statement of the findings of fact and law contended by the party to:
(a) the referee; and
(b) any other party to the inquiry.

(8) A party to an inquiry must:
(a) do all things required of the party by the referee to enable the referee to form an 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.

28.66 Report

A referee must give to the Court a written report about the matter referred to the referee that:
(a) has attached to it the statements given by the parties under rule 28.65(7); and
(b) sets out the referee's opinion on the matter; and
(c) sets out the referee's reasons for the opinion.

Note: The Court will send the report to the parties on receipt of the report.

28.67 Proceeding on report

(1) After a report has been given to the Court, a party may, on application, ask the Court to do any of the following:
(a) adopt, vary or reject the report, in the whole or in part;

Authorised Version F2024C00519 registered 28/06/2024

(b) require an explanation by way of a further report by the referee;
(c) 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;
(d) decide any matter on the evidence taken before the referee, with or without additional evidence;
(e) give judgment or make an order in relation to the proceeding or question.

(2) A party must not adduce in the Court evidence given in an inquiry.

Authorised Version F2024C00519 registered 28/06/2024

Part 29—Evidence

Division 29.1—Affidavits

29.01 When affidavit may be sworn or affirmed

An affidavit may be sworn or affirmed before or after the proceeding starts.

Note 1: Sections 21 and 23 of the *Evidence Act 1995* allow a witness in a proceeding to choose whether to take an oath or affirmation.

Note 2: Section 45 of the Act provides the persons before whom an affidavit may be sworn. See also section 186 of the *Evidence Act 1995.*

29.02 Form of affidavit

(1) An affidavit must comply with Form 59 and be made in the first person.

(2) The first visible page (being the first page, the cover page or the front cover page) must state:
  (a) the deponent's description; and
  (b) the date on which the affidavit was sworn.

Note: ***Description*** is defined in the Dictionary.

(3) An affidavit must be divided into numbered paragraphs and, to the extent practicable, each paragraph must deal with a separate subject.

(4) A document that accompanies an affidavit must be annexed to the affidavit unless the document is:
  (a) an original; or
  (b) of such dimensions that it cannot be annexed.

(5) If paragraph (4)(a) or (b) applies, the document must be exhibited.

(6) Each page, including any annexure, must be clearly and consecutively numbered starting with page '1'.

(7) Each page of the affidavit (but not any annexure) must be signed by the deponent (other than a deponent who is unable to sign the affidavit because of a physical disability) and by the person before whom it is sworn.

(8) Each annexure and exhibit must be identified on its first page by a certificate entitled in the same manner as the affidavit and by the deponent's initials followed by a number (starting with '1' for the first annexure or exhibit).

(9) The annexures and exhibits must be numbered sequentially.

(10) No subsequent annexure or exhibit in any later affidavit sworn by the same deponent may duplicate the number of a previous annexure or exhibit.

Authorised Version F2024C00519 registered 28/06/2024

(11) Each exhibit to an affidavit must be signed on the first page of the exhibit by the person before whom the affidavit is sworn.

29.03 Content of affidavits

(1) An affidavit must not:
  (a) contain any scandalous material; or
  (b) contain any frivolous or vexatious material; or
  (c) be evasive or ambiguous; or
  (d) otherwise be an abuse of the process of the Court.

(2) If an affidavit contains any of the material mentioned in subrule (1), a party may apply to the Court for an order that the affidavit, or a part of the affidavit, be removed from the Court file.

29.04 Swearing or affirming affidavit by person who has disability

(1) If the deponent is illiterate, the person before whom the affidavit is sworn must certify in or below the jurat that the affidavit was read to the deponent, in the person's presence.

(2) If the deponent is blind, the person before whom the affidavit is sworn must certify in or below the jurat that the affidavit was read in the person's presence to the deponent.

(3) However, subrule (2) does not apply if the deponent:
  (a) has read the affidavit by means of a computer with a screen reader, text-to-speech software or a Braille display; and
  (b) includes in the affidavit a statement that the deponent:
    (i) is blind; and
    (ii) has read the affidavit; and
    (iii) specifies the means by which it was read.

(4) If the deponent is, because of a physical disability, incapable of signing the affidavit, the person before whom the affidavit is sworn must certify in or below the jurat that the deponent signified that the deponent swore the affidavit.

(5) If an affidavit is made by:
  (a) an illiterate deponent and does not include a certificate in accordance with subrule (1); or
  (b) a blind deponent and does not include:
    (i) a certificate in accordance with subrule (2); or
    (ii) a statement in accordance with subrule (3);

the affidavit may be used only if the party seeking to use the affidavit satisfies the Court that the affidavit was read to the deponent.

Authorised Version F2024C00519 registered 28/06/2024

29.05 Service of exhibits and annexures

Copies of any documents exhibited or annexed to an affidavit must be served with the affidavit.

29.06 Irregularity in form

An affidavit may be accepted for filing despite an irregularity in form.

29.07 Use of affidavit not filed or in irregular form

A party must apply for the leave of the Court to use an affidavit that has not been filed, or that has been filed but is irregular in form.

29.08 Serving of affidavits

A party intending to use an affidavit must serve it on each other interested party at least 3 days before the occasion for using it arises.

29.09 Cross-examination of deponent

(1) A party may give notice requiring a person making an affidavit to attend for cross-examination.

(2) The notice under subrule (1) must be given to the party filing the affidavit or proposing to use it.

(3) If a person required to attend under subrule (1) fails to do so, the person's affidavit may not be used.

Note: The Court may dispense with compliance with the Rules—see rule 1.34.

(4) If a person making an affidavit is cross-examined, the party using the affidavit may re-examine the person.

Rule 29.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 29.2—Evidence on commission taken in Australia or abroad

29.11 Order for examination of witness

(1) A party may apply to the Court for an order for:
  (a) the examination of any person on oath or affirmation before a Judge or before such person appointed by the Court as examiner at any place whether in or out of Australia; or
  (b) the sending or issue of a letter of request to the judicial authorities of another country to take, or cause to be taken, the evidence of any person.

(2) A party seeking an order under subrule (1) must lodge, with the application, a draft of the order:
  (a) for an examination; and
  (b) for the appointment of an examiner; and
  (c) for a letter of request.

Note: ***Examiner*** is defined in the Dictionary.

29.12 Letter of request

(1) On the making of an order under section 7(1)(b) or (c) of the *Foreign Evidence Act 1994* for the sending or issue of a letter of request, the party obtaining the order must lodge with a Registrar:
  (a) a form of the appropriate letter of request; and
  (b) the interrogatories (if any) and cross-interrogatories (if any) to accompany the letter of request; and
  (c) if English is not an official language of the country to whose judicial authorities the letter of request is to be sent—a translation of each of the documents mentioned in paragraphs (a) and (b) in an official language of the country appropriate to the place where the evidence is to be taken; and
  (d) an undertaking by the party obtaining the order, or the party's lawyer:
    (i) to be responsible for all expenses incurred by the Court, or by any person at the request of the Court, for the letter of request; and
    (ii) on being given notice of the amount of those expenses—to pay the amount to the Chief Executive Officer.

Note: If expenses are not paid, an order may be made under rule 29.22(4).

(2) A translation lodged under paragraph (1)(c) must be certified by the person making it to be a correct translation, and the certificate must state the person's full name and address and the person's qualifications for making the translation.

Authorised Version F2024C00519 registered 28/06/2024

29.13 Procedure for orders under section 7(1)(a) or (b) of *Foreign Evidence Act 1994*

If an order is made under section 7(1)(a) or (b) of the *Foreign Evidence Act 1994*, rules 29.14 to 29.22 apply, with any necessary changes, and subject to any directions given by the Court under section 8(1) of that Act.

29.14 Documents for examiner

The party obtaining an order for examination before an examiner under section 7(1)(a) or (b) of the *Foreign Evidence Act 1994* must give the examiner copies of the documents in the proceeding that are necessary for the examiner to know the questions to which the examination is to relate.

29.15 Appointment for examination

(1) The examiner must:
  (a) appoint a place and time for the examination; and
  (b) give notice of the place and time appointed to the party obtaining the order.

(2) The time appointed for the examination must be as soon as practicable after the order for examination is made.

(3) The party must, not later than 3 days before the time appointed, give notice of the appointment to each other party.

29.16 Conduct of examination

(1) The examiner must permit each party and any lawyer representing the party to attend the examination.

(2) The examiner must proceed in accordance with the procedure of the Court.

(3) A person examined may be cross-examined and re-examined.

(4) The examination, cross-examination and re-examination of a person must be conducted in the same manner as a trial.

(5) The examiner may put any question to a person examined before him or her about:
  (a) the meaning of any answer made by the person; or
  (b) any matter arising in the course of the examination.

(6) The examiner may adjourn the examination from time to time or from place to place.

29.17 Examination of additional persons

(1) The examiner may, with the consent in writing of each party to the proceeding, examine any person, in addition to the person named or provided for in the order for examination.

Authorised Version F2024C00519 registered 28/06/2024

(2) If the examiner examines a person under subrule (1), the examiner must attach to the person's deposition the consent of each of the parties.

29.18 Objection

If, during an examination, a person being examined objects to answering a question or producing a document or thing:

(a) the examiner must state to the parties the examiner's opinion on, but must not decide, the validity of the ground for the objection; and

(b) the following information must be set out in the deposition of the person:

(i) the question objected to;

(ii) the ground for the objection;

(iii) the opinion of the examiner;

(iv) the answer that the person gave to the question (if any); and

(c) the Court may decide the validity of the ground for the objection; and

(d) if the Court decides against the person making the objection or any party, the Court may order the person or party to pay the costs arising from the objection.

29.19 Taking of depositions

(1) The deposition of a person examined must be recorded by the examiner or some other person attending the examination.

(2) The deposition must include, as precisely as possible, a record of the statement, questions and answers of the person examined.

29.20 Authentication and filing

(1) The deposition of a person examined must be provided to the person for reading.

(2) The examiner must, if any party requests, ask the person examined to sign the person's deposition.

(3) The examiner must authenticate the deposition by the examiner's signature.

(4) The examiner must make on, or attach to, the deposition a note signed by the examiner of the time occupied in the examination and the fees received by the examiner for the examination.

(5) The examiner must send the deposition to a Registrar for filing.

(6) The examiner must send any exhibits to a Registrar.

29.21 Special report

(1) The examiner may give the Court a special report on an examination about the absence of any person from, or the conduct of any person at, the examination.

Authorised Version F2024C00519 registered 28/06/2024

(2) The Court may direct proceedings to be taken, or make any order, on the report that the Court thinks fit.

29.22 Default of witness

(1) If a person has been required by subpoena to attend before an examiner, and the person refuses to be sworn for the purpose of the examination or to answer any lawful question, or to produce any document or thing, the examiner must, at the request of any party, give to that party a certificate, signed by the examiner, of the refusal.

(2) The party who requested the certificate must file the certificate.

(3) The party who has filed the certificate may apply to the Court for an order that:
(a) the person answer the question or produce the document or thing; and
(b) the person pay the costs arising from the person's refusal.

(4) If a party, or a party's lawyer, gives an undertaking under subparagraph 29.12(1)(d)(ii) and does not, within 14 days after being sent an account for expenses incurred in relation to the request, pay to the Chief Executive Officer the amount of the expenses, the Court may without notice make an order that:
(a) the amount of the expenses be paid to the Chief Executive Officer within a specified period of time; and
(b) the proceeding be stayed, to the extent that it concerns the whole or any part of a claim for relief by the party, until the amount of the expenses is paid.

Note: ***Without notice*** is defined in the Dictionary.

29.23 Evidence of future right or claim

(1) If a person claims to be entitled to any property or office on the happening of a future event, the person may apply to the Court for an order that evidence that may be material to establishing the right or claim be taken and preserved.

(2) An application mentioned in subrule (1) must be made by filing an originating application, in accordance with Form 60.

(3) The respondent to the application is the person against whom the right is alleged or the claim is made.

(4) If the application is about any matter or thing in which the Crown may have an interest, the Attorney-General may be made a respondent.

(5) If the Attorney-General is made a respondent under subrule (4), a deposition taken in the proceeding may be admissible in other proceedings despite the Crown not being a party to the proceeding to obtain evidence for a future right or claim.

Authorised Version F2024C00519 registered 28/06/2024

(6) The Court may take the evidence in a proceeding to obtain evidence for a future right or claim or it may appoint an examiner under rule 29.11.

Authorised Version F2024C00519 registered 28/06/2024

Part 30—Hearings

Division 30.1—Separate decisions on questions

30.01 Application for separate trials

(1) A party may apply to the Court for an order that a question arising in the proceeding be heard separately from any other questions.

(2) The application must be made before a date is fixed for trial of the proceeding.

Note 1: The Court may order that a party state a case and the question for decision.

Note 2: The Court will give any directions that are necessary for the hearing of the separate question.

30.02 Disposal of proceedings after hearing separate questions

If a decision on a question substantially disposes of the proceeding or renders any further trial of the proceeding unnecessary, a party may apply to the Court for:

(a) judgment; or

(b) an order dismissing the whole or any part of the proceeding.

Rules 30.03—30.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 30.2—Consolidation

30.11 Consolidation of proceedings before trial

If several proceedings are pending in the Court and the proceedings:

(a) involve some common question of law or fact; or

(b) are the subject of claims arising out of the same transaction or series of transactions;

any party to any of the proceedings may apply to the Court for an order that the proceedings be:

(c) consolidated; or

(d) heard together; or

(e) heard immediately after one another; or

(f) stayed until after the determination of any of the other proceedings.

Rules 30.12–30.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 30.3—Trial

30.21 Absence of party at trial

(1) If a party is absent when a proceeding is called on for trial, another party may apply to the Court for an order that:
  (a) if the absent party is the applicant:
    (i) the application be dismissed; or
    (ii) the application be adjourned; or
    (iii) the trial proceed only if specified steps are taken; or
  (b) if the absent party is the respondent:
    (i) the hearing proceed generally or in relation to a particular aspect of the application; or
    (ii) the hearing be adjourned; or
    (iii) the trial proceed only if specified steps are taken.

(2) If a trial proceeds in a party's absence and during or at the conclusion of the trial an order is made, the party who was absent may apply to the Court for an order:
  (a) setting aside or varying the order; and
  (b) for the further conduct of the proceeding.

30.22 No appearance by any party

If no party appears when a proceeding is called on for trial the Court may:
  (a) adjourn the proceeding to a specific date or generally; or
  (b) order that the proceeding be dismissed.

30.23 Trial limitations

A party may apply to the Court at or before the trial for an order:
  (a) limiting the time for examining, cross-examining or re-examining a witness; or
  (b) limiting the number of witnesses (including expert witnesses) that a party may call; or
  (c) limiting the time that may be taken in making any oral submissions; or
  (d) limiting the time that may be taken by a party in presenting the party's case; or
  (e) limiting the time that may be taken by the hearing; or
  (f) limiting the number of documents that a party may tender in evidence; or
  (g) that all or any part of any submissions be in writing; or
  (h) limiting the length of any written submissions.

Note: For other directions, see rule 5.04.

Authorised Version F2024C00519 registered 28/06/2024

30.24 Death before judgment

If a party dies after the hearing of the proceeding has concluded, the Court may still proceed to give judgment, and an order be made for the entry of the judgment.

30.25 Evidence in other proceedings

A party may apply to the Court to read evidence taken in another proceeding.

Note: Evidence includes an affidavit filed in another proceeding.

30.26 Plans, photographs and models

If a party intends to tender any plan, photograph or model in a proceeding, the party must give the other parties at least 7 days before the start of the trial or hearing, an opportunity to inspect it and to agree to its admission without proof.

30.27 Consent

(1) A document is evidence of consent if it purports:
  (a) to contain the written consent of a person to act:
    (i) as litigation representative of a person under a legal incapacity; or
    (ii) as trustee; or
    (iii) as receiver; or
    (iv) in any other office on appointment of the Court; and
  (b) to be executed in accordance with subrule (2).

(2) A document is sufficiently executed for subrule (1):
  (a) if the consenting person is not a corporation—the document is signed by the consenting person and the signature is verified by another person; or
  (b) if the consenting person is a corporation—the document is executed in accordance with section 127 of the *Corporations Act 2001*.

Note: Litigation representative and person under a legal incapacity are defined in the Dictionary.

30.28 Notice to produce

(1) A party may serve on another party a notice, in accordance with Form 61, requiring the party served to produce any document or thing in the party's control:
  (a) at any trial or hearing in the proceeding; or
  (b) at any hearing before a Registrar or any examiner or other person having authority to take evidence in the proceeding.

(2) If the document or thing required to be produced under subrule (1) is not produced, the party serving the notice may lead secondary evidence of the contents or nature of the document or thing.

Authorised Version F2024C00519 registered 28/06/2024

(3) If a notice under subrule (1) specifies a date for production, and is served 5 days or more before that date, the party served with the notice must produce the document or thing in accordance with the notice, without the need for a subpoena for production.

Note: A party who fails to comply with a notice under subrule (1) may be liable to pay any costs incurred because of the failure.

30.29 Notice of intention to adduce evidence of previous representation

A notice of intention to adduce evidence of a previous representation, under section 67 of the *Evidence Act 1995*:

(a) must be in accordance with Form 62; and

(b) may have attached to it an affidavit that sets out evidence of the previous representation.

Note: The Court may dispense with compliance with the Rules—see rule 1.34.

30.30 Notice of objection to tender of hearsay evidence if maker available

A notice of objection to tender hearsay evidence if the maker is available, under section 68 of the *Evidence Act 1995*, must be in accordance with Form 63.

Note: The Court may dispense with compliance with the Rules—see rule 1.34.

30.31 Notice of intention to adduce tendency evidence

A notice of intention to adduce tendency evidence, under section 97(1) of the *Evidence Act 1995*, must be in accordance with Form 64.

Note: The Court may dispense with compliance with the Rules—see rule 1.34.

30.32 Notice of intention to adduce coincidence evidence

A notice of intention to adduce coincidence evidence, under section 98(1) of the *Evidence Act 1995*, must be in accordance with Form 65.

Note: The Court may dispense with compliance with the Rules—see rule 1.34.

30.33 Parties in lawful custody

If a party or a witness is in lawful custody, the Court may make an order:

(a) that the party or the witness be produced; and

(b) for the continuing custody of the party or the witness.

30.34 Attendance and production

(1) At any hearing of a proceeding, including the trial of the proceeding, a party may apply to the Court for an order for the attendance of any person before the Court, a Registrar, an examiner, a referee, or other person authorised to take evidence:

(a) for examination; or

Authorised Version F2024C00519 registered 28/06/2024

(b) for production by that person of any document or thing specified in the order.

(2) An order may be made under subrule (1) even if the person whose attendance is required by the order has also been required to attend by subpoena.

Rules 30.35—30.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 30.4—Assessment of damages

30.41 Order for calculation of amount of damages by Registrar

(1) An applicant may apply to the Court for an order that an amount of damages be calculated by a Registrar if:

(a) a respondent admits liability on an applicant's claim, but denies liability to the extent of the damages claimed; or

(b) the Court finds that a party is liable to pay damages.

(2) A party may apply to a Registrar who is calculating damages under subrule (1) for an order to compel the attendance of witnesses and the production of documents by subpoena.

(3) The Registrar will calculate the amount of damages and give a certificate of the amount of damages to each party.

Note: The Court may make an order under this rule if the Court is satisfied that the amount of damages is substantially a matter of calculation.

30.42 Notice of objection to calculation

A party who wants to object to a Registrar's certificate must, within 7 days after receiving the Registrar's certificate:

(a) give the Registrar a notice objecting to the certificate; and

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

Note: If the Registrar receives a notice the Registrar will provide a copy of the notice together with the Registrar's certificate to the Court and notify the parties.

30.43 Procedure if notice given

The party who has given notice under rule 30.42 must, within 21 days after giving notice, apply to the Court for an order that the Court assess the amount of damages payable.

30.44 Procedure if notice not given

If no notice has been given under rule 30.42, the party who is entitled to a judgment for the damages calculated by a Registrar may apply to the Court:

(a) for a judgment on the Registrar's certificate; and

(b) any other consequential orders.

Note 1: If no notice is received, the Registrar will give the Registrar's certificate to the Court and notify the parties that the certificate has been given to the Court.

Note 2: The party may seek to have prejudgment interest included in the award—see section 51A of the Act. The party may also apply for costs.

Rules 30.45–30.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 30.5—Accounts

30.51 Order for account to be taken

A party who has claimed an account or makes a claim that involves taking an account may apply to the Court for an order:

(a) that an account be taken; and

(b) for the manner of taking or vouching the account; and

(c) that the relevant books of account be evidence of the matters contained in them; and

(d) that any amount certified on taking the account to be due to any party be paid to the party.

30.52 Form and filing of account

An accounting party must:

(a) number each side of an account consecutively; and

(b) file an affidavit to which the account is exhibited verifying the account.

30.53 Notice of additional charge or error in account

(1) If a party seeks to charge an accounting party with an amount not mentioned in the accounting party's account, the party must give the accounting party notice of the charge.

(2) The notice must state, to the extent that the party is able, the amount the party seeks to charge and brief details about the amount.

(3) If a party claims that an item in an accounting party's account contains an error, the party must give the accounting party notice of the claim and the grounds of the claim.

30.54 Orders to deal with delay

If there is delay in the prosecution of an account, inquiry or other matter under an order, a party may apply to the Court for an order:

(a) staying or expediting the proceeding; or

(b) for the future conduct of the proceeding.

30.55 Order for account or inquiry before Registrar

(1) A party may apply to the Court for an order that a Registrar take an account or hold an inquiry under this Division.

(2) If the Court makes an order under subrule (1), a Registrar will take the account or hold the inquiry and give a certificate to each party stating:

(a) the amount due to any party; and

Authorised Version F2024C00519 registered 28/06/2024

(b) the person liable to pay the amount.

30.56 Notice of objection to certificate

A party who wants to object to a Registrar's certificate must, within 7 days after receiving the Registrar's certificate:

(a) give the Registrar a notice objecting to the certificate; and

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

Note: If the Registrar receives a notice the Registrar will provide a copy of the notice together with the Registrar's certificate to the Court and notify the parties.

30.57 Procedure if notice given

The party who has given notice under rule 30.56 must, within 21 days after giving notice, apply to the Court for an order that the Court take the account or hold the inquiry.

30.58 Procedure if notice not given

If no notice has been given under rule 30.56, the accounting party may apply to the Court:

(a) for a judgment on the Registrar's certificate; and

(b) any other consequential orders.

Note 1: If no notice is received, the Registrar will provide the Registrar's certificate to the Court and notify the parties that the certificate has been provided to the Court.

Note 2: The party might seek to have prejudgment interest included in the award—see section 51A of the Act. The party may also apply for costs.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 3—Original jurisdiction—special classes of proceedings

Part 31—Judicial review

Division 31.1—Administrative Decisions (Judicial Review) Act 1977

31.01 Application for order of review

(1) A person who wants to apply for an order under section 11(1) of the AD(JR) Act must file an originating application, in accordance with Form 66.

(2) If the grounds of the application include an allegation of fraud or bad faith, the originating application must include details of the alleged fraud or bad faith.

(3) An application under the AD(JR) Act may be joined with an application for relief of a kind mentioned in section 39B of the *Judiciary Act 1903* that arises out of, relates to or is connected with the same subject matter.

Note 1: ***AD(JR) Act*** is defined in the Dictionary.

Note 2: Division 31.2 deals with applications under section 39B of the *Judiciary Act 1903*.

31.02 Application for extension of time

(1) A person who wants to apply for an extension of time within which to lodge an application for an order of review under section 11(1)(c) of the AD(JR) Act must file an application for an extension of time, in accordance with Form 67.

(2) An application for an extension of time must be accompanied by:
  (a) an affidavit stating:
    (i) briefly but specifically, the facts on which the application relies; and
    (ii) why the application was not filed within time; and
  (b) a draft application that complies with rule 31.01.

31.03 Documents to be filed and served

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

Authorised Version F2024C00519 registered 28/06/2024

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

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

Note: ***AAT Act*** is defined in the Dictionary.

31.04 Service

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

(a) the application be served on the Attorney-General; or

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

31.05 Notice of objection to competency

(1) A respondent who objects to the competency of an application must, within 14 days after being served with the application, file a notice of objection to competency:

(a) in accordance with Form 68; and

(b) that, briefly but specifically, states the grounds of the objection.

(2) The applicant carries the burden of establishing the competency of an application.

(3) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the application.

(4) If a respondent has not filed a notice under subrule (1), and the application is dismissed by the Court as not competent, the respondent is not entitled to any costs of the application.

(5) If the Court decides that an application is not competent, the application is dismissed.

Rules 31.06–31.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 31.2—Judiciary Act 1903

31.11 Form of application

(1) A person who wants to make an application for relief under section 39B of the *Judiciary Act 1903* must file an originating application, in accordance with Form 69.

(2) An application under this rule may be joined with an application under Division 31.1 that arises out of, relates to or is connected with the same subject matter.

Note: Division 31.1 deals with applications under the AD(JR) Act.

31.12 Joinder of claims for relief

(1) A claim for relief under Division 31.1 that arises out of, relates to or is connected with the same matter as the application under this Division must be made in one application.

Note: Division 31.1 provides for applications for review under the AD(JR) Act.

(2) A claim for relief, other than an application under Division 31.1, may be joined in an application under this Division if the claim for relief:

(a) is within the jurisdiction of the Court; and

(b) arises out of, or relates to or is connected with, the same subject matter as the application.

Rules 31.13–31.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 31.3—Migration Act 1958

31.21 Definitions for Division 31.3

An expression used in this Division that is defined in the *Migration Act 1958* has the same meaning in this Division as it has in that Act.

Note: For the definition of ***lawyer*** and ***migration decision***, see section 5 of the *Migration Act 1958*. For the definition of ***tribunal decision***, see section 486D of the *Migration Act 1958*.

31.22 Application for review of migration decision

(1) A person who wants to make an application for the review of a migration decision must file an originating application, in accordance with Form 70.

Note 1: The Federal Court only has original jurisdiction in relation to migration decisions of the kind identified in section 476A of the *Migration Act 1958*.

Note 2: A lawyer may file an application only if the application includes, or is accompanied by, a certificate under section 486I of the *Migration Act 1958* signed by the lawyer.

Note 3: An application in relation to a tribunal decision must include a disclosure under section 486D of the *Migration Act 1958*.

Note 4: The application must be made within 35 days of the migration decision—see section 477A of the *Migration Act 1958*.

(2) If the grounds of the application include an allegation of fraud or bad faith, the application must include details of the alleged fraud or bad faith.

31.23 Application for extension of time

(1) A person who wants to apply for an extension of time within which to lodge an application for the review of a migration decision under section 477A(2) of the *Migration Act 1958* must file an application for extension of time, in accordance with Form 67.

(2) An application for an extension of time must be accompanied by:
  (a) an affidavit stating:
    (i) briefly but specifically, the facts on which the application relies; and
    (ii) why the application was not filed within time; and
  (b) a draft originating application that complies with rule 31.22.

Note: The notes to rule 31.22 also apply to applications for extensions of time.

31.24 Notice of objection to competency

(1) A respondent who objects to the competency of an application, must, within 14 days after being served with the application, file a notice of objection to competency:
  (a) in accordance with Form 68; and
  (b) that, briefly but specifically, states the grounds of the objection.

Authorised Version F2024C00519 registered 28/06/2024

Rule 31.24

(2) The applicant carries the burden of establishing the competency of an application.

(3) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the application.

(4) If a respondent has not filed a notice under subrule (1), and the application is dismissed by the Court as not competent, the respondent is not entitled to any costs of the application.

(5) If the Court decides that an application is not competent, the application is dismissed.

Rules 31.25–31.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 31.4—Australian Crime Commission Act 2002

31.31 Applications under section 57 of *Australian Crime Commission Act 2002*

Division 31.1 applies to an application for review of a matter arising under section 57 of the *Australian Crime Commission Act 2002*, except that:

(a) a document that is required to be served under rule 31.03(2) must be served within 1 day after filing the statement; and

(b) a notice of objection to competency under rule 31.05 must be filed within 5 days after being served with the application.

Authorised Version F2024C00519 registered 28/06/2024

Part 32—Remittals and referrals from the High Court

Division 32.1—Matters remitted from the High Court

32.01 Filing of order of remittal

If the High Court has made an order remitting a proceeding to the Court, the applicant must file the order in:

(a) the District Registry specified in the order of remittal; or

(b) if a District Registry is not specified in the order of remittal—the District Registry of the State or Territory in which the proceeding in which the order for remittal was started.

Note 1: On receipt of an order of remittal, a Registrar will allot a serial number to the order, as if the order was an originating application filed in the Registry, and attach a notice to the order.

Note 2: The notice will be in accordance with Form 71 and will state:

(a) a return date and place of hearing; and

(b) that, before taking any step in the proceeding, a party must file a notice of address for service unless the party has already filed a notice of address for service in the High Court.

32.02 Service of order and notice

(1) The applicant must serve on each party to the proceeding in the High Court a sealed copy of the order of the High Court, that has attached to it a notice completed by a Registrar, in accordance with Form 71.

(2) The applicant may serve the notice on a party at the party's address for service for the proceeding in the High Court.

32.03 Address for service

A party who has not filed a notice of address for service in the High Court must, within 7 days of being served with the documents mentioned in rule 32.02(1), file a notice of address for service.

32.04 Hearing of application to show cause

If the High Court remits an application for an order to show cause, the applicant may, without first obtaining an order to show cause, apply to the Court for:

(a) an injunction; or

(b) an order for the issue of:

(i) a writ of mandamus; or

(ii) a writ of prohibition; or

(iii) a writ of certiorari; or

(iv) any other writ.

Rules 32.05–32.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 32.2—Referral of petition under Commonwealth Electoral Act 1918

32.11 Filing of order referring petition or part of petition

(1) If the High Court has made an order referring a petition under section 354(1), or part of a petition under section 354(3), of the *Commonwealth Electoral Act 1918* to the Court, the applicant must file the order in the District Registry specified in the order.

(2) If the High Court has made an order mentioned in subrule (1) and the order does not specify a District Registry, the applicant must file the order:

(a) if the election or return that the petition seeks to invalidate relates to a Senator—in the 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—in the District Registry in the State or Territory in which the electoral division for which the member was elected or returned is located.

Note 1: On receipt of an order referring a petition, a Registrar will allot a serial number to the order as if the order was an application filed in the Registry, and attach a notice to the order.

Note 2: The notice will be in accordance with Form 72 and will:

(a) fix the return date and place for a hearing; and

(b) state that before taking any step in the proceeding, a party must file a notice of address for service, unless the party has already entered a notice of address for service in the High Court.

32.12 Service of order and notice

(1) The applicant must serve on each party to the proceeding in the High Court a sealed copy of the order of the High Court, that has attached to it a notice completed by a Registrar, in accordance with Form 72.

(2) The applicant may serve the notice on a party at the party's address for service for the proceeding in the High Court.

32.13 Address for service

A party who has not filed a notice of address for service in the High Court must, within 7 days of being served with the documents mentioned in rule 32.12(1), file a notice of address for service.

32.14 Lists of votes claimed or objected to

(1) If a petition:

(a) claims a Parliamentary seat for a person who has not been returned as a Senator or member of the House of Representatives; and

(b) claims that the person had a majority of valid votes;

Authorised Version F2024C00519 registered 28/06/2024

each party must, at least 7 days before the date of the trial of a petition, file a list of the ballot-papers or classes of ballot-papers intended to be claimed or objected to.

(2) Subrule (1) does not apply if the petition only claims a fresh count of the votes counted at the election.

(3) If a party's list includes ballot-papers that are objected to, the list must include the grounds of objection on which the party intends to rely.

32.15 Counter-charges

(1) If a petition claims a Parliamentary seat for a person who has not been returned as a Senator or member of the House of Representatives and a respondent wants to contend that the person was not duly elected, the respondent must file a statement of the ground on which the respondent intends to rely:

(a) if the respondent has filed a notice of address for service in the High Court—within 7 days after being served with the documents mentioned in rule 32.12(1); or

(b) in any other case—within 7 days after filing the respondent's notice of address for service.

(2) The statement must:

(a) be based on a ground other than that the respondent had a majority of valid votes; and

(b) comply with section 355(aa) of the *Commonwealth Electoral Act 1918* in relation to the ground relied on, as if it were a petition.

Note 1: Section 355(aa) of the *Commonwealth Electoral Act 1918* provides that a petition disputing an election or return must, subject to section 358(2) of that Act, set out the facts relied on to invalidate the election or return, with sufficient particularity to identify the specific matter or matters on which the petitioner relies as justifying the grant of relief.

Note 2: Section 358(2) of the *Commonwealth Electoral Act 1918* provides that the Court may, at any time after the filing of a petition and on any terms it thinks fit, relieve the petitioner wholly or in part from compliance with section 355(aa) of that Act.

32.16 Notice of trial

The applicant must, at least 14 days before the date fixed for the trial, advertise, in a newspaper circulating in the State, Territory or Electoral Division for which the election was held, the time, date and place of the trial.

32.17 Withdrawal of petition and substitution of another petitioner

(1) An applicant may apply to the Court for leave to withdraw a petition.

(2) The applicant must, at least 14 days before the application is filed, advertise, in a newspaper circulating in the State, Territory or Electoral Division for which the election was held, the applicant's intention to apply for leave to withdraw a petition.

Authorised Version F2024C00519 registered 28/06/2024

(3) At the hearing of the application, a person who is competent to file a petition on the same grounds as the applicant's may apply to the Court to be substituted for the applicant in the petition proceeding.

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

32.18 Death of petitioner

(1) If a sole applicant in a petition dies before the conclusion of the trial of the petition, a person who is competent to file a petition on the same grounds as those in the petition filed by the original applicant may apply to the Court to be substituted as applicant.

(2) If a person is substituted for the original applicant, the proceeding must be continued as if the person was the original applicant.

Authorised Version F2024C00519 registered 28/06/2024

Part 33—Appeals from decisions of bodies other than courts

Division 33.1—Taxation appeals

33.01 Definitions for Division 33.1

(1) In this Division:

AOD appeal means an appeal under section 14ZZ of the Taxation Administration Act to the Court against a reviewable objection decision.

Commissioner means the Commissioner, a Second Commissioner or a Deputy Commissioner, within the meaning of the Taxation Administration Act.

DPO appeal means an appeal under section 14V of the Taxation Administration Act to the Court against the making of a departure prohibition order.

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

(2) For an AOD appeal, an expression used in this Division that is defined for Part IVC of the Taxation Administration Act, or Division 359 in Schedule 1 to that Act, has the same meaning in this Division as it has in that Part or Division.

(3) For a DPO appeal, an expression used in this Division that is defined for Part IVA of the Taxation Administration Act has the same meaning in this Division as it has in that Part.

Note: For the definitions of ***objection decision***, ***reviewable objection decision***, ***taxation decision*** and ***taxation objection***, see section 14ZQ of the Taxation Administration Act. For the definition of ***departure prohibition order***, see section 14Q of the Taxation Administration Act.

33.02 Starting AOD appeals

(1) A person who wants to make an AOD appeal must file a notice of appeal, in accordance with Form 73.

(2) The notice of appeal must:
  (a) briefly state the details of the reviewable objection decision; and
  (b) state the address of the office of the Australian Taxation Office shown on the written notice of the reviewable objection decision served on the applicant under the Taxation Administration Act.

(3) The applicant must file the notice of appeal in the Registry of the Court in the State or Territory in which:
  (a) the office of the Australian Taxation Office mentioned in paragraph (2)(b) is located; or
  (b) if the applicant is an individual—the applicant ordinarily lives; or
  (c) if the applicant is a corporation—the applicant has its head office or carries on a significant part of its business.

Authorised Version F2024C00519 registered 28/06/2024

(4) The applicant must serve a sealed copy of the notice of appeal on the Commissioner at the office of the Australian Government Solicitor in the State or Territory in which the notice of appeal was filed.

(5) If the appeal relates to a private ruling, the sealed copy of the notice of appeal must be served within 6 days after filing.

Note: A Registrar will fix a place for hearing and a return date and endorse those details on the notice of appeal. The return date will be:

(a) if the appeal relates to a private ruling—not later than 21 days after the application was filed or a later date agreed by the parties; or

(b) in any other case—at least 5 weeks after the application was filed.

(6) Personal service is not required for a document to be served on the Commissioner.

33.03 Documents to be filed and served by Commissioner—matters other than private rulings

If an AOD appeal does not relate to a private ruling, the Commissioner must, within 28 days after being served with the sealed copy of the notice of appeal:

(a) file:

(i) a copy of the notice of the reviewable objection decision; and

(ii) a copy of the taxation objection; 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) either:

(A) a statement (the ***appeal statement***) that outlines the Commissioner's contentions and the facts and issues in the appeal as the Commissioner perceives them; or

(B) an affidavit (the ***appeal affidavit***) briefly stating the grounds for seeking an order at the first directions hearing dispensing with filing an appeal statement, and the facts and issues as the Commissioner perceives them; and

(b) serve on the applicant:

(i) a copy of the appeal statement or the appeal affidavit, whichever is applicable; and

(ii) a list of the other documents mentioned in paragraph (a) that the Commissioner has filed.

33.04 Documents to be filed and served by Commissioner—private rulings

If an AOD appeal relates to a private ruling, the Commissioner must, within 14 days after being served with the sealed copy of the notice of appeal:

(a) lodge:

(i) a copy of the private ruling; and

(ii) a copy of the notice of reviewable objection decision; and

(iii) a copy of the taxation objection; and

Authorised Version F2024C00519 registered 28/06/2024

(iv) 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

(v) a statement of any assumption made by the Commissioner when making the ruling that is not stated in the notice of ruling; and

(b) serve on the applicant:

(i) a list of the documents filed under subparagraphs (a)(i) to (iv); and

(ii) a copy of the statement mentioned in subparagraph (a)(v).

33.05 Starting DPO appeals

(1) A person who wants to make a DPO appeal must file a notice of appeal, in accordance with Form 74.

(2) The applicant must serve a sealed copy of the notice of appeal on the Commissioner at the office of the Australian Government Solicitor situated in the State or Territory in which the departure prohibition order was made.

(3) Personal service is not required for a document to be served on the Commissioner.

Note: A Registrar will fix a place for hearing and a return date and endorse those details on the notice of appeal. The return date will be:

(a) if the appeal relates to a private ruling—not later than 21 days after the application was filed or a later date agreed by the parties; or

(b) in any other case—at least 5 weeks after the application was filed.

33.06 Documents to be filed and served by Commissioner

The Commissioner must, within 14 days after being served with a sealed copy of the notice of appeal relating to a DPO appeal:

(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 paragraph (a).

Rules 33.07–33.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 33.2—Administrative Appeals Tribunal

33.11 Definitions for Division 33.2

In this Division:

Registrar of the Tribunal includes:

(a) a person:

(i) who has been appointed as an officer of the Tribunal under section 24PA of the AAT Act; and

(ii) to whom powers or functions have been delegated under section 10A(3) of the AAT Act; and

(b) a person who is authorised, under section 59B of the AAT Act, to be an authorised officer for the purposes of any provision of that Act or any other enactment.

Tribunal means the Administrative Appeals Tribunal.

33.12 Starting an appeal—filing and service of notice of appeal

(1) A person who wants to appeal to the Court under the AAT Act must file a notice of appeal, in accordance with Form 75.

Note: The notice of appeal must be filed within the time mentioned in section 44(2A) of the AAT Act, being not later than the 28th day after the day that a document setting out the terms of the decision is given to the person.

(2) The notice of appeal must state:

(a) the part of the decision the applicant appeals from or contends should be varied; and

(b) the precise question or questions of law to be raised on the appeal; and

(c) any findings of fact that the Court is asked to make; and

(d) the relief sought instead of the decision appealed from, or the variation of the decision that is sought; and

(e) briefly but specifically, the grounds relied on in support of the relief or variation sought.

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

(3) The applicant must file the notice of appeal in the District Registry in the State or Territory in which the Tribunal heard the matter.

(4) The applicant must serve a copy of the notice of appeal on:

(a) each other party to the proceeding; and

(b) the Registrar of the Tribunal.

Note 1: A Registrar will fix a return date and place of hearing and endorse those details on the notice of appeal.

Authorised Version F2024C00519 registered 28/06/2024

Note 2: A lawyer may file a notice of appeal starting migration litigation only if the notice of appeal includes or is accompanied by a certificate under section 486I of the *Migration Act 1958* signed by the lawyer.

Note 3: For migration litigation, ***lawyer*** has the meaning given by section 5 of the *Migration Act 1958*.

33.13 Application for extension of time to start appeal

(1) A person who wants to apply for an extension of time within which to start an appeal mentioned in section 44(2A) of the AAT Act must file an application, in accordance with Form 67.

Note: The application may be made during or after the period mentioned in section 44(2A) of the AAT Act.

(2) The application must be accompanied by the following:
(a) the decision from which the appeal is to be brought;
(b) the reasons for the decision, if published;
(c) an affidavit stating:
(i) briefly but specifically, the facts on which the application relies; and
(ii) why the appeal was not filed within time;
(d) a draft notice of appeal that complies with rule 33.12.

Note 1: A Registrar will fix a return date and place for hearing and endorse those details on the application.

Note 2: A lawyer may file an application starting migration litigation only if the application includes or is accompanied by a certificate under section 486I of the *Migration Act 1958* signed by the lawyer.

Note 3: For migration litigation, ***lawyer*** has the meaning given by section 5 of the *Migration Act 1958*.

33.14 Amendment of notice of appeal without leave—supplementary notice

The applicant may, before the return date in the proceeding, amend the notice of appeal without leave of the Court by filing a supplementary notice of appeal.

33.15 Application for leave to raise other questions of law or rely on other grounds

The applicant may apply to the Court for leave to raise, on the hearing of the appeal, a question of law that was not stated in the notice of appeal.

33.16 Respondent's address for service

A respondent to an appeal under rule 33.12 or an application under rule 33.13 must, within 14 days after being served with the notice of appeal or the application, and before taking any step in the proceeding, file an address for service.

Authorised Version F2024C00519 registered 28/06/2024

33.17 Form of application for stay of Tribunal decision

A person who wants to make an application for an order under section 44A of the AAT Act for a stay of a Tribunal decision:

(a) must file an interlocutory application; and

(b) may, in an urgent case, make the application without notice.

Note 1: ***Without notice*** is defined in the Dictionary.

Note 2: A Registrar will fix a return date and place for hearing and endorse those details on the interlocutory application.

33.18 Registrar of Tribunal to send documents

(1) The Registrar of the Tribunal must, within 21 days after being served with the notice of appeal, lodge the following with the Registry in which the notice of appeal has been filed:

(a) a copy of the decision of the Tribunal;

(b) if the Tribunal gave reasons in writing for its decision—a copy of the reasons;

(c) if a transcript or notes of proceedings before the Tribunal were taken—the transcript or the notes;

(d) a list of the documents sent to the Court under section 46(1)(a) of the AAT Act.

(2) The list of documents must state the following:

(a) the documents that were before the Tribunal;

(b) the documents (if any) in relation to which the Tribunal has made an order under section 35(3) or (4) of the AAT Act;

(c) the documents (if any) for which the Attorney-General has given a certificate under section 28(2) of the AAT Act;

(d) the documents (if any) for which the Attorney-General has given a certificate under section 36(1) of the AAT Act;

(e) whether, for each document mentioned in paragraph (d), an order was made by the Tribunal under section 36(3) of the AAT Act.

Note 1: Section 46(1)(a) of the AAT Act requires the Tribunal to send documents to the Court.

Note 2: Sections 35(3) and (4) of the AAT Act allow the Tribunal to make orders prohibiting or restricting publication or disclosure of information relating to proceedings before the Tribunal.

Note 3: Sections 28(2) and 36(1) of the AAT Act provide that the Attorney –General may issue a certificate that the disclosure of certain matters would be contrary to the public interest.

Note 4: Section 36(3) of the AAT Act provides that if the Attorney-General issues a certificate under section 36(1) of that Act, but does not specify a reason, the Tribunal must consider whether to disclose the information or matter to all or any of the parties to the proceeding.

Authorised Version F2024C00519 registered 28/06/2024

33.19 No written reasons for decision

If the Tribunal did not give reasons in writing for its decision, the applicant must:

(a) obtain from the Tribunal, in accordance with section 43(2A) of the AAT Act, a statement in writing of the reasons for its decision; and

(b) send a copy of the statement to the Registry within 10 days after receiving it.

33.20 Notice of cross-appeal

(1) The rules of this Division apply to a cross-appeal as if it were an appeal.

(2) A respondent who wants to appeal from a decision, or a part of a decision, from which the applicant has appealed, must file a notice of cross-appeal, in accordance with Form 76.

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

(3) The notice of cross-appeal must state the following:

(a) the part of the decision the respondent cross-appeals from or contends should be varied;

(b) the precise question or questions of law to be raised on the cross-appeal;

(c) any findings of fact that the Court is asked to make;

(d) the relief sought instead of the decision appealed from, or the variation of the decision that is sought;

(e) briefly but specifically, the grounds relied on in support of the relief or variation sought.

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

(4) The notice of cross-appeal must be filed within 21 days after the respondent was served with the notice of appeal.

(5) The respondent must serve a copy of the notice of cross-appeal on:

(a) each other party to the proceeding; and

(b) the Registrar of the Tribunal.

33.21 Notice of contention

If a respondent does not want to cross-appeal from a decision of the Tribunal, but contends that the decision should be affirmed on grounds other than those relied on by the Tribunal, the respondent must, within 21 days after the notice of appeal is served, file a notice of contention, in accordance with Form 77.

33.22 Directions hearing

A party may apply to the Court for the following directions:

(a) for determining what documents and matters were before the Tribunal;

(b) the giving of further evidence, under section 44(8)(b) of the AAT Act,

Authorised Version F2024C00519 registered 28/06/2024

(c) for the joining or removing of a party to the appeal;
(d) giving summary judgment;
(e) making an interlocutory order pending, or after, the determination of an appeal to the Court;
(f) making an order by consent disposing of an appeal including an order for costs;
(g) dismissing an appeal for want of prosecution;
(h) making an order that an appeal to the Court be dismissed for:
(i) failure to comply with a direction of the Court; or
(ii) failure of the appellant to attend a hearing relating to the appeal;
(i) the conduct of the appeal including:
(i) contents of the appeal book;
(ii) the use of written submissions;
(iii) limiting the time for oral argument;
(j) the conduct of the appeal without an oral hearing subject to the condition that the parties be entitled to present written submissions;
(k) the staying of a decision of the Tribunal;
(l) to refer the notice of appeal and any other necessary papers to the Chief Justice for an order on whether the appeal should be heard by a Full Court;
(m) for the place, time and mode of hearing;
(n) to determine any other matter for the purpose of preparing the appeal for hearing.

33.23 Appeal books

(1) An applicant must file:
(a) if the appeal is to a single Judge—2 appeal books; or
(b) if an appeal is to the Full Court—4 appeal books.

(2) An appeal book must comprise 3 parts, designated as Parts A, B and C.

(3) An appeal book must:
(a) have an index to Part A; and
(b) contain only the material mentioned in this Division.

(4) If material is included in an appeal book that is not mentioned in this Division, the party who includes or requests the inclusion of the material:
(a) is not entitled to any costs relating to the inclusion of the material; and
(b) must pay any costs incurred by any other party to the appeal as a result of the inclusion of the material.

(5) A lawyer representing a party who includes in an appeal book material to which subrule (4) applies is not entitled to recover from the lawyer's client any costs incurred by the inclusion of the material.

Authorised Version F2024C00519 registered 28/06/2024

33.24 Assistance from Registrar

(1) A party who requires a Registrar's assistance to settle the index to Part A of the appeal book or Part B of the appeal book must, within 7 days after the notice of appeal has been served, apply in writing to a Registrar.

(2) If there is no application by any party under subrule (1), the applicant must, within 28 days after the service of the notice of appeal, submit to a Registrar:
  (a) a draft of the index to Part A of the appeal book; and
  (b) Part B of the appeal book.

(3) A Registrar will settle the draft of the index to Part A of the appeal book and Part B of the appeal book and will tell the applicant that a Registrar has approved the index to Part A and Part B, in the settled form.

(4) The applicant must, within 14 days after being notified of a Registrar's approval, file:
  (a) Part A, including all documents, indexed and ordered according to a unique tab number; and
  (b) Part B.

33.25 Title of appeal books

The title page of each Part of the appeal books must include the following:
(a) the title of the proceeding;
(b) the names of the members constituting the Tribunal;
(c) the title of the Act under which the decision was made;
(d) the names and addresses for service of the lawyers for each party to the appeal;
(e) if a party is not represented by a lawyer—the address for service of the party.

33.26 Content of appeal books

The appeal book must comprise:
(a) Part A (the ***Core Set of Standard Items***), arranged in the following order:
  (i) the title page;
  (ii) the index to Part A;
  (iii) the originating application lodged in the Tribunal, including any requests for directions;
  (iv) the formal decision of the Tribunal and the reasons for the decision;
  (v) the notice of appeal;
  (vi) any notice of cross-appeal or notice of contention;
  (vii) any submitting notice;
  (viii) any order of the Court giving leave to appeal or an extension of time within which to file the appeal; and

Authorised Version F2024C00519 registered 28/06/2024

(b) Part B (the ***Comprehensive Reference Index***), comprising a complete index of the record of the evidence in the Tribunal, but not the evidence, whether relevant or not, arranged in the following order:
  (i) a front page, bearing the following endorsement:
  'The exhibits, affidavits, annexures and transcript mentioned in the Comprehensive Reference Index are taken to form part of the appeal book for the appeal but will not be reproduced unless required';
  (ii) a chronological list of all documents received in evidence, whether as exhibits or as annexures to affidavits, showing the date and page number of each document;
  (iii) a list of the affidavit evidence;
  (iv) a list of exhibits;
  (v) an index of the transcript of the evidence in the Tribunal;
  (vi) an index of any other relevant transcript; and
(c) Part C, being only the exhibits and evidence to which the parties refer in the parties' submissions, arranged in the same order as the Comprehensive Reference Index, together with:
  (i) the parties' submissions; and
  (ii) each party's chronology.

Note: The Court has issued a Practice Note for the assistance of parties to an appeal under this Division and their lawyers. The Court expects the parties and their lawyers to comply with the Practice Note.

33.27 Written submissions, chronology and lists of authorities

(1) Each party to an appeal must file the following documents:
  (a) an outline of the party's submissions on the appeal;
  (b) a chronology of the relevant events;
  (c) a list of authorities to which the party intends to refer;
  (d) a list of any legislation to which the party intends to refer.

(2) The documents mentioned in paragraphs (1)(a) and (b) must be filed as follows:
  (a) for an applicant—not later than 20 business days before the hearing of the appeal;
  (b) for a respondent—not later than 15 business days before the hearing of the appeal;
  (c) for an applicant making submissions in reply—not later than 10 business days before the hearing of the appeal.

(3) The party's written submissions must identify any finding that it is contended ought to be made under section 44(7) of the AAT Act.

(4) The documents mentioned in paragraphs (1)(c) and (d) must be filed as follows:
  (a) for an applicant—not later than 5 business days before the hearing of the appeal;
  (b) for a respondent—not later than 4 business days before the hearing of the appeal.

Authorised Version F2024C00519 registered 28/06/2024

Note: The Court has issued a Practice Note for the assistance of parties to an appeal under this Division and their lawyers. The Court expects the parties and their lawyers to comply with the Practice Note.

33.28 Filing of Part C documents

The applicant must, not later than 5 business days before the hearing of the appeal, file a copy of Part C of the appeal book.

33.29 Further evidence on appeal

(1) A party may apply for the Court to receive further evidence on appeal.

(2) The application must be filed at least 21 days before the hearing of the appeal and be accompanied by an affidavit stating the following:
  (a) the facts relating to the grounds of the application;
  (b) any evidence necessary to establish the grounds of the application;
  (c) the evidence that the applicant wants the Court to receive;
  (d) why the evidence was not adduced in the Tribunal.

(3) The application and the affidavit must be filed as follows:
  (a) if the appeal is to the Full Court—4 copies;
  (b) if the appeal is to a single Judge—2 copies.

(4) Any other party to the appeal who wants to adduce evidence on the application must file an affidavit at least 14 days before the hearing of the appeal.

Note: The Court may receive further evidence on an appeal for the purpose of making findings of fact under section 44(7) of the AAT Act.

33.30 Notice of objection to competency of appeal

(1) A respondent who objects to the competency of an appeal must, within 14 days after being served with a notice of appeal, file a notice of objection to competency:
  (a) in accordance with Form 68; and
  (b) that, briefly but specifically, states the grounds of the objection.

(2) The applicant carries the burden of establishing the competency of an appeal.

(3) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the appeal.

(4) If a respondent has not filed a notice under subrule (1), and the appeal is dismissed by the Court as not competent, the respondent is not entitled to any costs of the appeal.

(5) If the Court decides that an appeal is not competent, the appeal is dismissed.

Authorised Version F2024C00519 registered 28/06/2024

33.31 Discontinuance of appeal

(1) An applicant may discontinue an appeal by filing a notice of discontinuance of the appeal, in accordance with Form 78:
  (a) without the Court's leave—at any time before the hearing of the appeal; or
  (b) with the Court's leave:
    (i) at the hearing; or
    (ii) after the hearing and before a judgment is pronounced or an order made.

(2) A notice of discontinuance has the effect of an order of the Court dismissing the applicant's appeal.

(3) A notice of discontinuance filed by one applicant does not affect any other applicant in the appeal.

(4) An applicant who files a notice under subrule (1) must, unless the parties otherwise agree, pay the costs of each party to the appeal.

33.32 Application to dismiss appeal

(1) A respondent to an appeal may apply to the Court for an order that the appeal be dismissed for the failure by the applicant for the appeal to do any of the following:
  (a) comply with a direction of the Court;
  (b) comply with these rules;
  (c) attend a hearing relating to the appeal;
  (d) prosecute the appeal.

(2) An application under subrule (1) must be served on the applicant:
  (a) at the applicant's address for service; or
  (b) personally.

Note: The Court may make orders subject to conditions—see rule 1.33. The Court may fix a time for the doing of an act and, in default, order the appeal be dismissed.

33.33 Absence of party

(1) If a party is absent when an appeal is called on for hearing, the opposing party may apply to the Court for an order that:
  (a) if the absent party is the applicant to the appeal:
    (i) the appeal be dismissed; or
    (ii) the hearing be adjourned; or
  (b) if the absent party is the respondent to the appeal:
    (i) the hearing proceed generally or in relation to a particular claim for relief in the appeal; or
    (ii) the hearing be adjourned.

Authorised Version F2024C00519 registered 28/06/2024

Rule 33.33

(2) If an appeal is dismissed because the applicant to the appeal was absent, the applicant may apply to the Court for an order:

(a) to set aside the dismissal; and

(b) for the further conduct of the appeal.

Note: The Court can make an order on its own initiative—see rule 1.40.

Authorised Version F2024C00519 registered 28/06/2024

Division 33.3—Appeals from the Superannuation Complaints Tribunal or Australian Financial Complaints Authority

33.34 Appeals under section 46 of the *Superannuation (Resolution of Complaints) Act 1993* or section 1057 of the *Corporations Act 2001*

(1) Division 33.2 applies to an appeal under section 46 of the *Superannuation (Resolution of Complaints) Act 1993* from a determination of the Superannuation Complaints Tribunal or an appeal under section 1057 of the *Corporations Act 2001* from a determination of AFCA, except that a notice of appeal must be filed in the Registry in the State or Territory in which the applicant ordinarily resides.

(2) For the purposes of the application of Division 33.2 to an appeal from a determination of the Superannuation Complaints Tribunal or AFCA, that Division applies as if a reference to the Tribunal included the Superannuation Complaints Tribunal or AFCA (as the case may be).

Rules 33.35–33.39 left blank

Authorised Version F2024C00519 registered 28/06/2024

Rule 33.40

Division 33.4—Appeals from the National Native Title Tribunal

33.40 Appeals under section 169 of the *Native Title Act 1993*

Division 33.2 applies to an appeal under section 169 of the *Native Title Act 1993* from a decision or determination of the National Native Title Tribunal.

Authorised Version F2024C00519 registered 28/06/2024

Part 34—Other proceedings

Division 34.1—Fair Work proceedings

34.01 Definitions for Division 34.1

(1) In this Division:

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

Fair Work Inspector means a person appointed as a Fair Work Inspector under section 700 of the *Fair Work Act 2009* and includes the Fair Work Ombudsman.

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

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

rule to show cause means a rule calling on a person, or an organisation, to show cause why an order should not be made in relation to the person or organisation under section 163, 164, 164A or 167(2) of the Registered Organisations Act.

Note 1: Under section 163 of the Registered Organisations Act, a member, or an applicant for membership, of an organisation may apply to the Court for an order declaring that the whole or a part of a rule of the organisation contravenes section 142 of the Registered Organisations Act (which states general requirements for rules), or that the rules of the organisation contravene section 142 of the Registered Organisations Act in a particular way.

Note 2: Under section 164 of the Registered Organisations Act, a member of an organisation may apply to the Court for an order giving directions for the performance or observance of any of the rules of the organisation by any person who is under an obligation to perform or observe the rules.

Note 3: Under section 164A of the Registered Organisations Act, a member of an organisation may apply to the Court for an order directing one or more persons (who may be, or include, the person who has breached the rule or rules) to do specified things that will, in the opinion of the Court, as far as is reasonably practical, place the organisation in the position in which it would have been if the breach of the rule or rules had not occurred. The Court may make the order if satisfied that a person who was under an obligation to perform or observe the rule or rules of the organisation has acted unreasonably in breaching the rule or rules.

Note 4: Under section 167(1) of the Registered Organisations Act, a person or organisation may apply to the Court for a declaration about the entitlement of a person to be admitted as a member of the organisation or to remain a member of the organisation. Under section 167(2) of the Registered Organisations Act, the Court may make an order to give effect to a declaration made under that section.

Note 5: Section 701 of the Fair Work Act provides that the Fair Work Ombudsman is a Fair Work Inspector.

(2) Unless a contrary intention appears:

Authorised Version F2024C00519 registered 28/06/2024

(a) an expression used in rules 34.03 to 34.05A and in the Fair Work Act has the same meaning in rules 34.03 to 34.05A as it has in the Fair Work Act; and

(b) an expression used in rules 34.06 to 34.08 and in the Registered Organisations Act has the same meaning in rules 34.06 to 34.08 as it has in the Registered Organisations Act.

34.02 Application of Division 34.1 and other provisions of these Rules

Each party to the proceeding to which the Fair Work Act or the Registered Organisations Act applies must comply with:

(a) this Division; and

(b) any other of these Rules that are relevant and consistent with this Division.

34.03 Application in relation to dismissal from employment in contravention of a general protection

(1) A person who wants to make an application for an order in relation to an allegation that an employee was dismissed in contravention of a general protection mentioned in Part 3-1 of the Fair Work Act must file an originating application, in accordance with Form 79.

(2) The application must include any other claim for relief that the applicant wants to make in addition to the claim mentioned in subrule (1).

Note: Rule 34.05 provides for an application for an order in relation to a contravention of section 351(1) of the Fair Work Act.

(3) The application must be accompanied by a certificate issued by the Fair Work Commission under the Fair Work Act that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

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

(4) Subrule (3) does not apply to an application brought by a Fair Work Inspector.

34.04 Application in relation to alleged unlawful termination of employment

(1) A person who wants to make an application by an employee for an order in relation to an alleged unlawful termination of the employee's employment that occurred on or after 1 July 2009 must file an originating application, in accordance with Form 80.

(2) The application must include any other claim for relief that the applicant wants to make in addition to the claim mentioned in subrule (1).

(3) The application must be accompanied by a certificate issued by the Fair Work Commission under the Fair Work Act that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

Authorised Version F2024C00519 registered 28/06/2024

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

(4) Subrule (3) does not apply to an application brought by a Fair Work Inspector.

34.05 Application in relation to alleged discrimination

(1) A person who wants to make an application for an order in relation to an alleged contravention of section 351(1) of the Fair Work Act must file an originating application, in accordance with Form 81.

(2) The application must include any other claim for relief that the applicant wants to make in addition to the claim mentioned in subrule (1).

(3) An application in relation to alleged discrimination involving dismissal must be accompanied by a certificate issued by the Fair Work Commission under the Fair Work Act that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

Note 1: Under section 351(1) of the Fair Work Act, an employer must not take adverse action against a person who is an employee, or prospective employee, of the employer because of the person's race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin. ***Adverse action*** is defined in section 342 of the Fair Work Act.

Note 2: Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

(4) Subrule (3) does not apply to an application brought by a Fair Work Inspector.

34.05A Application in relation to alleged sexual harassment

(1) A person who wants to make an application for an order in relation to an alleged contravention of section 527D(1) of the Fair Work Act must file an originating application, in accordance with Form 81A.

Note: Section 527T(3) of the Fair Work Act sets out the specified periods in which a sexual harassment application can be made to the Court.

(2) The application must include any other claim for relief that the applicant wants to make in addition to the claim mentioned in subrule (1).

(3) The application must be accompanied by a certificate issued by the Fair Work Commission under the Fair Work Act that the Fair Work Commission is satisfied that all reasonable attempts to resolve the dispute have been, or are likely to be, unsuccessful.

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

(4) Subrule (3) does not apply to a sexual harassment court application that includes an application for an interim injunction.

34.06 Application for rule to show cause

(1) A person who wants to make application for a rule to show cause must file an originating application, in accordance with Form 82.

Authorised Version F2024C00519 registered 28/06/2024

(2) The application must be accompanied by an affidavit stating the following:

(a) for an application made under section 163 of the Registered Organisations Act:

(i) the rule, or part of the rule, of the organisation that is alleged to contravene section 142 of the Registered Organisations Act;

(ii) the ground on which the rule, or part of the rule, is alleged to contravene the section;

(iii) the facts and other reasons relied on by the applicant in support of the application;

(b) for an application made under section 164 of the Registered Organisations Act:

(i) the nature of the order sought by the applicant;

(ii) each rule of the organisation the applicant seeks to have performed or observed by a person who is under an obligation to perform or observe the rule;

(iii) the ground relied on by the applicant to establish the obligation of the person to perform or observe the rule;

(c) for an application under section 164A of the Registered Organisations Act:

(i) the nature of the order sought by the applicant;

(ii) each rule of the organisation the breach of which the application seeks to rectify;

(iii) the facts and other reasons relied on by the applicant in support of the application;

(d) for an application under section 167 of the Registered Organisations Act:

(i) the nature of the order sought by the applicant;

(ii) each rule of the organisation on which the application is based;

(iii) the facts and other reasons relied on by the applicant in support of the application.

(3) An application for a rule to show cause may be made to the Court without notice.

Note: ***Without notice*** is defined in the Dictionary.

34.07 Requirements for applications for an inquiry or ballot

(1) A person who wants to make an application under section 69(1) of the Registered Organisations Act for an inquiry into an alleged irregularity in relation to a ballot conducted under Part 2 of Chapter 3 of the Registered Organisations Act must file:

(a) an originating application, in accordance with Form 83; and

(b) an affidavit stating, briefly but specifically, the nature of the applicant's claim and the material facts on which the claim is based.

(2) A person who wants to make an application under section 94 of the Registered Organisations Act for a ballot to be held to decide whether a constituent part of an amalgamated organisation should withdraw from the organisation must file:

Authorised Version F2024C00519 registered 28/06/2024

(a) an originating application, in accordance with Form 2 of the Registered Organisations Regulations; and

(b) an affidavit stating, briefly but specifically, the nature of the applicant's claim and the material facts on which the claim is based.

Note: Under regulation 82 of the Registered Organisations Regulations, an application mentioned in subrule (2) must be in accordance with Form 2 of those Regulations.

(3) A person who wants to make an application under section 108(1) of the Registered Organisations Act for an inquiry into an alleged irregularity in relation to a ballot held under Part 3 of Chapter 3 of the Registered Organisations Act must file:

(a) an originating application, in accordance with Form 84; and

(b) an affidavit stating, briefly but specifically, the nature of the applicant's claim and the material facts on which the claim is based.

(4) A person who wants to make an application under section 109(1) of the Registered Organisations Act for an order in relation to the withdrawal of a constituent part of an amalgamated organisation from the organisation must file:

(a) an originating application, in accordance with Form 4 of the Registered Organisations Regulations; and.

(b) an affidavit stating, briefly but specifically, the nature of the applicant's claim and the material facts on which the claim is based.

Note: Under regulation 107 of the Registered Organisations Regulations, an application mentioned in subrule (4) must be in accordance with Form 4 of those Regulations.

(5) A person who wants to make an application under section 200 of the Registered Organisations Act for an inquiry in relation to an election conducted for an office in an organisation, or branch of an organisation, must file:

(a) an originating application, in accordance with Form 85; and

(b) an affidavit stating, briefly but specifically, the nature of the applicant's claim and the material facts on which the claim is based.

Note: On the filing of an application, a Registrar will fix the return date and place for hearing and endorse those details on the application for service.

34.08 Application for interim orders

(1) A person who wants to make an application for an interim order under section 204 of the Registered Organisations Act, in relation to an inquiry concerning an election for an office in an organisation or a branch of an organisation, must file an originating application, in accordance with Form 86.

(2) A person who wants to make an application for an order under regulation 77(1) of the Registered Organisations Regulations, in relation to an inquiry about an alleged irregularity concerning a ballot conducted under Part 2 of Chapter 3 of the Registered Organisations Act, must file an originating application, in accordance with Form 87.

(3) An application under subrule (1) or (2) may be made without notice.

Note: ***Without notice*** is defined in the Dictionary.

Authorised Version F2024C00519 registered 28/06/2024

Rule 34.08

Rules 34.09–34.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.3—Intellectual property

34.21 Definitions for Division 34.3

In this Division:

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) for a proceeding under the Designs Act—the person holding the office of Registrar under that Act; and

(b) for a proceeding under the Olympic Insignia Protection Act—the person holding the office of Registrar under the Designs Act; and

(c) for a proceeding under the Patents Act—the person holding the office of Commissioner under that Act; and

(d) for a proceeding under the Trade Marks Act—the person holding the office of Registrar under that Act.

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 proceeding means:

(a) a proceeding arising in relation to infringement of:

(i) the monopoly in the design of a logo provided for by the Advance Australia Logo Protection Act; or

(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) eligible layout rights (***EL rights***) subsisting under the Circuit Layouts Act; or

(viii) plant variety rights granted under the Plant Variety Rights Act; or

(vix) plant breeder's rights under the Plant Breeder's Rights Act.

(b) an application, appeal or other proceeding under 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, whether or not joined with another claim or cause of action, unless the proceeding is one to which Division 31.1 or 31.2 applies.

Authorised Version F2024C00519 registered 28/06/2024

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

Patents Act means the *Patents Act 1990*.

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

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

Plant Variety Rights Act means the *Plant Variety Rights Act 1987*.

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

34.22 Application of Division 34.3

Each party to an intellectual property proceeding must comply with:

(a) this Division; and

(b) any other of these Rules that are relevant to, and not inconsistent with, this Division.

34.23 Appearance by Commissioner

(1) The Commissioner may file a notice of address for service, and be heard, in any intellectual property proceeding.

(2) However, the Commissioner is not a party to a proceeding 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.

34.24 Starting an appeal—filing and service of notice of appeal

(1) A party who wants to appeal from a decision of the Commissioner must, within 21 days of the date of the decision, file a notice of appeal, in accordance with Form 92.

(2) A notice of appeal must state the following:

(a) the Commissioner from whom 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.

Note: A Registrar will fix a return date and place for hearing and endorse those details on the notice of appeal. The return date will be at least 28 days after filing.

(3) The applicant must serve the notice of appeal on the Commissioner and each other party to the appeal within 5 days after filing the notice of appeal.

Authorised Version F2024C00519 registered 28/06/2024

34.25 Application for extension of time to file notice of appeal

(1) A person who wants to apply for an extension of time within which to file a notice of appeal mentioned in rule 34.24 must file an application for an extension of time, in accordance with Form 67.

(2) The application may be made during or after the period mentioned in rule 34.24.

(3) The application must be accompanied by:
  (a) an affidavit stating the following:
    (i) briefly but specifically, the facts on which the application relies; and
    (ii) why the notice of appeal was not filed within time; and
    (iii) the nature of the appeal; and
    (iv) the questions involved; and
  (b) a draft notice of appeal that complies with rule 34.24.

(4) The applicant must, at least 14 days before the day fixed for the directions hearing, serve a copy of the application and the accompanying documents on:
  (a) the Commissioner; and
  (b) each interested person.

34.26 Grounds of appeal or particulars not stated in notice of appeal

A party is not entitled to tender any evidence or make any submissions in support of:
  (a) a ground of appeal not stated in the notice of appeal; or
  (b) a ground of appeal of which particulars have not been given in the notice of appeal.

34.27 Particulars of non-patentable invention

(1) If a ground relied on in a notice of appeal from a decision of the Commissioner under the Patents Act 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 or thing, the ground must include the following particulars:
  (a) for a document—the time when, and the place where, the document is claimed to have become publicly available;
  (b) for an act or thing:
    (i) the name of the person alleged to have done the act or thing; and
    (ii) the period within which, and the place where, the act or thing is alleged to have been done publicly; and
    (iii) particulars that are sufficient to identify the act or thing; and
    (iv) if the act or thing relates to apparatus or machinery—particulars of whether the apparatus or machinery exists and, if so, where it can be inspected.

Authorised Version F2024C00519 registered 28/06/2024

(2) If the claim of the complete specification of a patent is that the invention concerned is not useful, the ground must include particulars:
  (a) of any example relied on that the invention cannot be made to work; and
  (b) specifying how it is alleged that it does not work as described;
    (i) at all; or
    (ii) as described in the specification.

34.28 Notice of cross-appeal

(1) A respondent who wants to appeal from a decision, or part of a decision, of the Commissioner, from which the applicant has appealed must file a notice of cross-appeal, in accordance with Form 93.

(2) The notice of cross-appeal must state the following:
  (a) whether the cross-appeal is from the whole or a part of the decision (including, if the cross-appeal is from a part only, details of the part);
  (b) the order or orders sought;
  (c) the grounds relied on in support of each order sought;
  (d) the particulars of each ground relied on.

(3) The notice of cross-appeal must be filed within 21 days after the respondent was served with the notice of appeal.

(4) The respondent must, within 5 days after filing the cross-appeal, serve the notice of cross-appeal on:
  (a) the Commissioner; and
  (b) the applicant; and
  (c) any other party to the cross-appeal.

34.29 Notice of contention

If a respondent does not want to cross-appeal from the Commissioner's decision, but contends that the Commissioner's decision should be affirmed on grounds other than those relied on by the Commissioner, the respondent must, within 21 days after the notice of appeal is served, file a notice of contention, in accordance with Form 77.

34.30 Provision of documents by Commissioner

Within 14 days after being served with a notice of appeal, the Commissioner must:
  (a) lodge the documents (or certified copies of the documents) necessary for the hearing that are in the Commissioner's possession, and a list of the documents; and
  (b) give each party to the appeal notice in writing of the documents filed.

Authorised Version F2024C00519 registered 28/06/2024

34.31 Evidence

(1) Material before the Commissioner for the purpose of the decision appealed from is, with the leave of the Court, admissible in evidence on the hearing of the appeal.

(2) In an appeal from a decision under the Patents Act, a party may apply at a directions hearing for an order under section 160(a) of that Act in relation to the giving of further evidence.

34.32 Application for determination of equitable remuneration

A person who wants to make an application to the Court under section 20(2) of the Circuit Layouts Act for a determination of equitable remuneration must file an originating application, in accordance with Form 94.

34.33 Applications for determination of terms of doing an act

A person who wants to make an application to the Court under section 25(4) of the Circuit Layouts Act for a determination of the terms of the doing of an act must file an originating application, in accordance with Form 95.

34.34 Infringement of EL rights—particulars

A person who wants relief for an infringement of EL rights under the Circuit Layouts Act must include particulars of the infringement:

(a) specifying the manner in which it is alleged the EL rights have been infringed; and

(b) giving at least one instance of each type of infringement alleged.

Note: ***EL rights*** is defined in rule 34.21, as eligible layout rights subsisting under the Circuit Layouts Act.

34.35 Infringement of copyright—particulars

A person who wants relief for an infringement of copyright under the Copyright Act must file an originating application that includes particulars of the infringement:

(a) specifying the manner in which the copyright is alleged to be infringed; and

(b) giving at least one instance of each type of infringement alleged.

34.36 Infringement of registered designs—particulars

A person who wants relief for infringement of a registered design under the Designs Act must file an originating application that includes particulars of the infringement:

(a) specifying the manner in which the design is alleged to be infringed; and

(b) giving at least one instance of each type of infringement alleged.

Authorised Version F2024C00519 registered 28/06/2024

34.37 Application for compulsory licence—Designs Act

A person who wants relief under section 90 of the Designs Act for an order requiring the grant of a licence must file an originating application, stating the material facts on which the applicant intends to rely, to satisfy the Court in relation to the matters mentioned in section 90(3) of that Act.

34.38 Revocation of registration or rectification of Register—Designs Act

(1) A person who wants an order under:

(a) section 93 of the Designs Act, to revoke the registration of a design; or

(b) section 120 of the Designs Act, for the rectification of the Register;

must file an originating application that includes particulars of the grounds for revocation or rectification on which the party making the application relies.

(2) A party is not entitled to tender any evidence, or make any submissions in support, of a ground for revocation or rectification not stated in the application.

34.39 Infringement of monopoly in protected design—particulars—Olympic Insignia Protection Act

A person who wants relief for an infringement of the monopoly in a protected design under the Olympic Insignia Protection Act must file an originating application that includes particulars of the infringement:

(a) specifying the manner in which the infringement of the monopoly in a protected design is alleged to be infringed; and

(b) giving at least one instance of each type of infringement alleged.

34.40 Application for rectification of Register of Olympic Designs or dispute of validity of protected design

(1) A party who:

(a) applies under section 12(6) or 12(9) of the Olympic Insignia Protection Act for the rectification of the Register of Olympic Designs; or

(b) disputes the validity of a protected design;

must include in the application or the pleading, particulars of the grounds for rectification or of invalidity on which the party relies.

(2) If a ground mentioned in subrule (1) is previous publication or user, the particulars must:

(a) state the time and place of the previous publication or user alleged; and

(b) if the ground is previous user, the particulars must include:

(i) the name of the person who is alleged to have been the previous user; and

(ii) the period during which the previous user is alleged to have continued; and

(iii) a description sufficient to identify the previous user.

Authorised Version F2024C00519 registered 28/06/2024

(3) A party is not entitled to tender any evidence in or make any submissions in support of the ground for revocation or rectification not stated in the application.

34.41 Applications under section 105(1) of Patents Act

(1) An applicant who wants an order under section 105(1) of the Patents Act must give the Commissioner a notice of intention to apply for the order, accompanied by an advertisement stating the following:

(a) the identity of the proceeding, or proposed proceeding, in which the application will be made;

(b) the particulars of the amendment sought;

(c) the applicant's address for service;

(d) that a person intending to oppose the application who is not a party to the proceeding or proposed proceeding must, within 28 days after publication of the advertisement, give written notice of that intention to:

(i) the Commissioner; and

(ii) each party to the proceeding.

(2) The Commissioner must publish the advertisement in the *Official Journal*.

(3) A person who gives notice under paragraph (1)(d) is entitled to be heard in opposition to the application, subject to any order of the Court for costs.

(4) A party who has given notice under subrule (1) may file the application within 50 days after publication of the advertisement.

(5) The applicant must serve a copy of the application, together with a copy of the patent, patent request or complete specification, whichever is applicable, showing the amendment sought, on:

(a) the Commissioner; and

(b) each party to the proceeding; and

(c) each person who has given notice under paragraph (1)(d).

(6) A party may apply to the Court for any of the following orders:

(a) that the applicant give particulars of the grounds relied on for the amendment to each party or other person who opposes the application;

(b) that a party or other person opposing the application give particulars of the grounds relied on in opposition to the amendment to the applicant;

(c) that the application be heard with the proceeding or separately and, if separately, fix the date for hearing the application;

(d) the manner in which evidence will be adduced and, for evidence by affidavit, fix the times within which the affidavits must be filed and served.

Authorised Version F2024C00519 registered 28/06/2024

34.42 Applications under section 120(1) of Patents Act

(1) An applicant who wants an order under section 120(1) of the Patents Act must serve the application and the accompanying document required by rule 8.05 at least 14 days before the return date fixed for the proceeding, on:
  (a) the respondent in the proceeding; and
  (b) if the applicant is an exclusive licensee, the patentee; and
  (c) the Commissioner.

(2) If the application relates to an innovation patent, the accompanying document must state the date on which the innovation patent was certified.

(3) The accompanying document must include particulars of the alleged infringements:
  (a) in a proceeding for infringement of a standard patent—specifying which of the claims of the complete specification of that patent are alleged to be infringed; and
  (b) giving at least one instance of each type of infringement alleged.

(4) A respondent relying on a defence under section 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 respondent asserts is void.

34.43 Applications under section 125(1) of Patents Act

An applicant who wants an order under section 125(1) of the Patents Act, must serve the application and the accompanying document required by rule 8.05 at least 14 days before the return date fixed for the proceeding, on:
  (a) the nominated person, or the patentee, whichever is applicable; and
  (b) the Commissioner.

34.44 Applications under section 128(1) of Patents Act

An applicant who wants an order under section 128(1) of the Patents Act, must serve the application and the accompanying document required by rule 8.05 at least 14 days before the return date fixed for the proceeding, on:
  (a) the person making the threat; and
  (b) the Commissioner.

34.45 Applications under Chapter 12 of Patents Act

(1) An applicant who wants an order under section 133(1), 134(1) or 138(1) of the Patents Act must serve the application and the accompanying document required by rule 8.05 at least 14 days before the return date fixed for the proceeding, on:
  (a) the patentee; and

Authorised Version F2024C00519 registered 28/06/2024

(b) each person who claims an interest in the patent as exclusive licensee or otherwise; and
(c) the Commissioner.

(2) An application and an accompanying document mentioned in this rule must comply with Chapter 12 of the *Patents Regulations 1991*.

(3) If an application under section 133(1) or 138(1) of the Patents Act relates to an innovation patent, the accompanying document required by rule 8.05 must state the date on which the innovation patent was certified.

(4) A party may apply for leave under section 137(4) of the Patents Act in the proceeding.

34.46 Dispute of validity of patent—particulars of invalidity

(1) A party who disputes the validity of a patent under the Patents Act must include in the pleading or other document in which the party disputes the validity, particulars of the grounds of invalidity on which the party relies.

(2) If a ground mentioned 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 or thing, the particulars must specify:
(a) for a document—the time when, and the place where, the document is alleged to have become publicly available; and
(b) for an act or thing:
(i) the name of the person alleged to have done the act; and
(ii) the period within 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 a ground mentioned in subrule (1) is that the invention, to the extent that is alleged in the complete specification of the patent, is not useful, and it is intended for 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 at all or as described in the specification, the particulars must:
(a) identify each claim; and
(b) state that fact; and
(c) include particulars of each such example, specifying the respect in which it is alleged that it does not work at all or as described.

(4) A party is not entitled to tender any evidence in, or make any submissions in support of, a ground for revocation or rectification not stated in the application.

Authorised Version F2024C00519 registered 28/06/2024

34.47 Infringement of PBR—particulars

(1) An originating application seeking relief for infringement of a PBR under the Plant Breeder's Rights Act must include particulars of the infringement:
  (a) specifying the manner in which the PBR is alleged to be infringed; and
  (b) giving at least one instance of each type of infringement alleged.

(2) A respondent in a proceeding mentioned in subrule (1) who relies, in a counterclaim, on a ground mentioned in section 54(2) of the Plant Breeder's Rights Act must give particulars of the facts the respondent intends to rely on for the ground.

34.48 Infringement of registered trade marks—particulars

An originating application seeking relief for infringement of a registered trade mark under the Trade Marks Act must include particulars of the infringement:
  (a) specifying the manner in which the trade mark is alleged to be infringed; and
  (b) giving at least one instance of each type of infringement alleged.

34.49 Dispute of validity of registration of trade mark—particulars of invalidity

(1) A party who disputes the validity of the registration of a registered trade mark under the Trade Marks Act must include, in 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) A party is not entitled to tender any evidence in or make any submissions in support of a ground for revocation or rectification not stated in the application.

34.50 Experimental proof as evidence

(1) If a party (the ***proponent***) proposes to tender, as evidence in a proceeding, experimental proof of a fact, the proponent must apply for orders in relation to the experimental proof, including orders 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;
  (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.

(2) Evidence of the conduct and results of the experiment is admissible in the proceeding, only:

Authorised Version F2024C00519 registered 28/06/2024

(a) if the proponent has complied with subrule (1) and any orders given under that subrule; or

(b) with the leave of the Court.

(3) If an order mentioned in paragraph (1)(e) has been made, and the opponent has not complied with the order in relation to a ground, the opponent may rely on the ground only with the leave of the Court.

Rules 34.51–34.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.4—Trans-Tasman proceedings—general

34.61 Definitions for Division 34.4

An expression used in this Division and in the Trans-Tasman Proceedings Act has the same meaning in this Division as in that Act.

Note: The following expressions are defined in section 4 of the Trans-Tasman Proceedings Act:

- audio link
- audiovisual link
- Australian court
- document
- enforcement
- entitled person
- given
- inferior Australian court
- liable person
- party
- person named
- procedural rules
- proceeding.

34.62 Proceedings under the Trans-Tasman Proceedings Act

Each party to a proceeding to which this Division applies must comply with:

(a) this Division; and

(b) any other of these Rules that are relevant to, and consistent with, this Division.

34.63 Originating application under Trans-Tasman Proceedings Act

(1) A person who wants to start a proceeding for an order under the Trans-Tasman Proceedings Act (other than under section 67 of that Act) must file an originating application, in accordance with:

(a) Form 15; and

(b) rules 8.01 and 8.03.

(2) The application must be accompanied by an affidavit that states the material facts on which the applicant relies that are necessary to give the respondent fair notice of the case to be made against the respondent at the hearing.

(3) An application under section 67 of the Trans-Tasman Proceedings Act must be made in accordance with subsection 67(5) of that Act.

34.64 Interlocutory application under Trans-Tasman Proceedings Act

A party to a proceeding that has already started who wants to apply for an order under the Trans-Tasman Proceedings Act must file:

Authorised Version F2024C00519 registered 28/06/2024

(a) an interlocutory application, in accordance with:
  (i) Form 35; and
  (ii) rule 17.01; and
(b) an accompanying affidavit.

34.65 Application for interim relief

(1) A person who wants to apply to the Court for an order for interim relief, under section 25 of the Trans-Tasman Proceedings Act, must file an originating application, in accordance with Form 96.

(2) The application must be accompanied by an affidavit stating:
  (a) if the person has started a proceeding in a New Zealand court:
    (i) that the person has started a proceeding in a New Zealand court; and
    (ii) the relief sought in the New Zealand proceeding; and
    (iii) the steps taken in the New Zealand proceeding; or
  (b) if the person intends to start a proceeding in the New Zealand court:
    (i) when the intended proceeding will be started; and
    (ii) the court in which the intended proceeding is to be started; and
    (iii) the relief to be sought in the intended proceeding; and
  (c) the interim relief sought;
  (d) why the interim relief should be given.

34.66 Application for leave to serve subpoena in New Zealand

(1) A person who wants to make an application for leave to serve a subpoena in New Zealand must file an interlocutory application, in accordance with Form 97.

(2) The application must be accompanied by:
  (a) a copy of the subpoena in relation to which leave is sought; and
  (b) an affidavit stating, briefly but specifically, the following:
    (i) the name, occupation and address of the addressee;
    (ii) whether the addressee is over 18 years old;
    (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;
    (iv) 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 the addressee;
    (v) the date by which it is intended to serve the subpoena in New Zealand;
    (vi) details of the amounts to be tendered to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;
    (vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the addressee; and

Authorised Version F2024C00519 registered 28/06/2024

(viii) if the subpoena requires a specified person to give evidence—an estimate of the time that the addressee will be required to attend, to give evidence; and

(ix) any facts or matters known to the person making the application that may be grounds for an application by the addressee to have the subpoena set aside, under section 36(2) or (3) of the Trans-Tasman Proceedings Act.

Note: Before granting leave under the Trans-Tasman Proceedings Act to serve the subpoena, the Court may require the person making the application to undertake to meet the expenses reasonably incurred by the addressee in complying with the subpoena if those expenses exceed the allowances and travelling expenses to be provided to the addressee at the time of service of the subpoena.

34.67 Form of subpoena

A subpoena to which this Division applies must be in accordance with:

(a) for a subpoena to give evidence—Form 98A; or

(b) for a subpoena to produce documents—Form 98B;

(c) for a subpoena to give evidence and produce documents—Form 98C.

34.68 Application to set aside subpoena

(1) A person who wants to make an application to set aside a subpoena served in New Zealand must file an interlocutory application in the proceeding in which the subpoena was issued.

(2) The application must be filed in the District Registry in which the order of the Court granting leave to serve the subpoena in New Zealand was made.

(3) The application must be accompanied by:

(a) a copy of the subpoena; and

(b) an affidavit stating:

(i) the material facts on which the application is based; and

(ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

34.69 Application for issue of certificate of non-compliance with subpoena

(1) A party may apply to the Court for the issue of a certificate of non-compliance with a subpoena.

(2) An application may be made:

(a) if the proceeding in which the subpoena was issued is before the Court—orally to the Court; or

(b) by filing an interlocutory application.

(3) The application must be accompanied by:

(a) a copy of the subpoena; and

(b) a copy of the order giving leave to serve the subpoena; and

Authorised Version F2024C00519 registered 28/06/2024

(c) an affidavit of service of the subpoena; and

(d) a further affidavit stating the following:

(i) whether any application was made to set aside the subpoena;

(ii) the material in support of any application in subparagraph (i);

(iii) any order that disposed of the application in subparagraph (i);

(iv) the material facts relied on for the issue of a certificate of non-compliance.

Note 1: A certificate of non-compliance with a subpoena issued under section 38 of the Trans-Tasman Proceedings Act will be in accordance with Form 99.

Note 2: A Registrar will affix the stamp of the Court to a certificate of non-compliance with a subpoena.

34.70 Documents relating to application

A person must not, without the leave of the Court, search in the Registry for, or inspect or copy a document, in an application under the Trans-Tasman Proceedings Act for leave to serve a subpoena in New Zealand.

34.71 Application to enforce compliance with order made by New Zealand court

(1) A party to a proceeding in a New Zealand court who wants to enforce an order made by a New Zealand court, under section 58(2) of the Trans-Tasman Proceedings Act, must file an originating application, in accordance with Form 100.

(2) The application must be accompanied by an affidavit stating:

(a) the order that is alleged to have been contravened; and

(b) a description of the person alleged to have contravened the order; and

(c) the circumstances of the alleged contravention.

(3) This rule does not affect the power of the Court to punish for contempt.

34.72 Notice of registration of NZ judgment

(1) An applicant must not take any step to enforce a registered NZ judgment, in the period mentioned in section 74(2) of the Trans-Tasman Proceedings Act, unless the applicant has filed an affidavit that states that notice of the registration of the NZ judgment has been given, in accordance with section 73 of the Trans-Tasman Proceedings Act and any regulations made under that Act.

(2) If a respondent against whom the registered judgment is enforceable is out of Australia, the documents mentioned in subrule (1) may be served without leave of the Court.

Note: Division 10.4 otherwise provides for service of documents outside Australia.

(3) An applicant must file an affidavit proving service of the documents in subrule (1) before any step is taken to enforce the registered judgment.

Authorised Version F2024C00519 registered 28/06/2024

34.73 Application for extension of time to give notice of registration of NZ judgment

(1) An entitled person who wants to apply for an extension of the time within which to give notice of the registration of a NZ judgment, under section 73(3) of the Trans-Tasman Proceedings Act, must file an originating application, in accordance with Form 101.

(2) An application under subrule (1) must be accompanied by an affidavit stating:
  (a) briefly but specifically, the grounds relied on in support of the application; and
  (b) the material facts relied on in support of the application; and
  (c) why notice was not given within time.

34.74 Application to set aside registration of NZ judgment

(1) A liable person who wants to set aside the registration of a NZ judgment, under section 72(1) of the Trans-Tasman Proceedings Act, must file an originating application in the proceeding in which the judgment was registered, in accordance with Form 101.

(2) An application under subrule (1) must be accompanied by an affidavit stating:
  (a) briefly but specifically, the grounds on which the registration of the judgment should be set aside; and
  (b) the material facts relied on in support of the application.

Note: An application to set aside the registration of a NZ judgment must be made within 30 working days of the Court after the day on which the liable person was served with notice of the registration, or within any shorter or longer period that the Court considers appropriate—see section 72(2) of the Trans-Tasman Proceedings Act.

34.75 Application for stay of enforcement of registered NZ judgment so that liable person can appeal judgment

(1) A liable person who wants to apply for a stay of the enforcement of a registered NZ judgment, so that a liable person can appeal the judgment, under section 76(1) of the Trans-Tasman Proceedings Act, must file an originating application, in accordance with Form 101.

(2) An application under subrule (1) must be accompanied by an affidavit stating:
  (a) the order sought; and
  (b) briefly but specifically, the grounds relied on in support of the order sought; and
  (c) the material facts relied on in support of the application.

34.76 Application for extension of time to apply for stay of enforcement of registered NZ judgment so that liable person can appeal judgment

(1) A liable person who wants to apply for an extension of the time within which to apply for the stay of enforcement of a registered NZ judgment, so that liable

Authorised Version F2024C00519 registered 28/06/2024

person can appeal the judgment, under section 76(3) of the Trans-Tasman Proceedings Act, must file an originating application, in accordance with Form 101.

(2) An application under subrule (1) must be accompanied by an affidavit stating:
(a) the order sought; and
(b) briefly but specifically, the grounds relied on in support of the application; and
(c) the material facts relied on in support of the application; and
(d) why the application was not made within time.

34.77 Application for order for use of audio link or audiovisual link

(1) A party who wants to apply for an order that evidence be taken, or submissions be made, by audio link or audiovisual link, from New Zealand must file an interlocutory application, in accordance with Form 102.

(2) Subrule (1) does not apply to a request mentioned in subparagraph 34.68(3)(b)(ii).

Rules 34.78—34.80 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.5—Trans-Tasman market proceedings

34.81 Definitions for Division 34.5

(1) In this Division:

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

(2) An expression used in this Division and in the Trans-Tasman Proceedings Act has the same meaning in this Division as in that Act.

Note: The following expressions are defined in section 4 of the Trans-Tasman Proceedings Act:

- Australian market proceeding
- Australian market proceeding judgment
- entitled person
- judgment
- money judgment
- non-money judgment
- NZ judgment
- NZ market proceeding
- NZ market proceeding judgment.

34.82 Application of Division 34.5

A party to an Australian market proceeding who files a document in a NZ market proceeding, in a registry of the Court, or makes an application under this Division, must comply with:

(a) this Division; and

(b) any other of these Rules that are relevant to, and consistent with, this Division.

34.83 Filing documents in Australian market proceeding in New Zealand

(1) A party may file a document in an Australian market proceeding in a New Zealand registry.

(2) A party who files a document under subrule (1) must, at the time of filing:

(a) obtain from the registry a receipt that gives a general description of the document filed; and

(b) specify whether the document is to be sent to the Court by post, fax or electronic communication; and

(c) pay the registry an amount to meet the costs of sending the document to the Court in the specified way.

34.84 Filing documents in a NZ market proceeding in Australia

(1) A party may file a document in a NZ market proceeding in a registry of the Court if permitted by a law of New Zealand to do so.

Authorised Version F2024C00519 registered 28/06/2024

(2) A party who files a document under subrule (1) must, at the time of filing:
  (a) specify the New Zealand registry to which the document is to be sent; and
  (b) specify whether the document is to be sent to the New Zealand registry by post, fax or electronic communication; and
  (c) pay the registry an amount for the costs of sending the document to the New Zealand registry in the specified way.

Note: A Registrar will:
  (a) 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
  (b) 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.

34.85 Federal Court sittings in New Zealand

(1) A party to an Australian market proceeding who wants to make an application that the proceeding be conducted, or continued, at a place in New Zealand must file an interlocutory application.

(2) The application must be accompanied by an affidavit stating:
  (a) the material facts on which the application is based; and
  (b) why the proceeding should be conducted, or continued, in New Zealand.

34.86 Application of rules 34.72 to 34.76

Rules 34.72, 34.73, 34.74, 34.75 and 34.76 apply to a New Zealand market proceeding judgment.

Rules 34.87–34.90 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.6—Aboriginal and Torres Strait Islander Act 2005

34.91 Definition for Division 34.6

(1) In this Division:

ATSI Act means the *Aboriginal and Torres Strait Islander Act 2005*.

(2) An expression used in this Division and in Schedule 4 to the ATSI Act has the same meaning in this Division as in that Schedule.

34.92 Form and service of election petition

(1) A person who wants to dispute the validity of any election, or the declaration of any election, under the ATSI Act must file a petition, in accordance with Form 103, and deposit with the Chief Executive Officer the sum of $100 as security for costs.

Note: Clause 4 of Schedule 4 to the ATSI Act provides for the deposit of $100 as security for costs.

(2) The petition must name the person returned at the election as the respondent.

Note 1: Clause 5 of Schedule 4 to the ATSI Act permits the Electoral Commission to file a petition.

Note 2: A Registrar will:
(a) sign and affix the stamp of the Court to the petition; and
(b) fix a return date and place for hearing and endorse those details on the petition; and
(c) give or send a sealed copy to the applicant; and
(d) send a sealed copy to:
(i) the Electoral Commission; and
(ii) the Minister.

(3) The applicant must, at least 5 days before the return date fixed for the proceeding, serve a sealed copy of the petition on the respondent.

34.93 Response to election petition

(1) If an applicant wants a declaration that a person was duly elected, but not returned, and a respondent wants to contend that the person was not duly elected, the respondent must, within 7 days after filing a notice of address for service, file in the Registry, and serve on the applicant, particulars of the grounds on which the respondent intends to rely.

(2) A statement of particulars of grounds must set out the facts in the same way in which facts relied on to invalidate an election are to be set out in a petition.

Authorised Version F2024C00519 registered 28/06/2024

34.94 Reference as to qualifications or vacancy

(1) If the Minister wants to refer a question under section 17 of Schedule 4 to the ATSI Act to the Court, the Minister must file an originating application, in accordance with Form 104.

Note: A Registrar will:
(a) sign and affix the stamp of the Court to the reference; and
(b) fix a return date and place for hearing and endorse those details on the originating application; and
(c) give or send a sealed copy to the Minister.

(2) The Minister must send a sealed copy of the reference to the Torres Strait Regional Authority as soon as practicable after filing the originating application.

(3) The Minister must, at least twice before the return dated fixed for the proceeding, publish a notice of the reference and the date of the hearing in a newspaper circulated in each Torres Strait Regional Authority ward.

Rules 34.95–34.100 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.7—Native title proceedings

34.101 Interpretation for Division 34.7

(1) In this Division:

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.

(2) In this Division:

(a) ***Native Title Registrar*** or ***NNTT*** includes a State or Territory body that is an equivalent body under section 207B of the Native Title Act; and

(b) a reference to ***a Form in the Schedule*** is a reference to a Form in the Schedule to the *Native Title (Federal Court) Regulations 1998.*

(3) An expression used in this Division and in the Native Title Act has the same meaning in this Division as it has in the Native Title Act.

Note 1: ***Applicant*** is defined in the Dictionary to include, for this Division, a person who is an applicant for section 61(2) of the Native Title Act.

Note 2: For the definitions of claimant application, Commonwealth Minister, Native Title Registrar, NNTT, non-claimant application and recognised State/Territory body, see section 253 of the Native Title Act.

34.102 Application of Division 34.7

Each party to a proceeding to which the Native Title Act applies must comply:

(a) with this Division; and

(b) with any other of these Rules that are relevant and not inconsistent with this Division.

34.103 Main application (native title and compensation)

(1) A party who wants to make a main application must file:

(a) for a claimant application—an application in accordance with Form 1 in the Schedule; or

(b) for a non–claimant application—an application in accordance with Form 2 in the Schedule; or

(c) for a revised native title determination application—an application in accordance with Form 3 in the Schedule; or

(d) for a compensation application—an application in accordance with Form 4 in the Schedule.

Authorised Version F2024C00519 registered 28/06/2024

(2) A main application in subrule (1) is an originating application for the purpose of these Rules.

(3) A main application must be accompanied by an affidavit sworn or affirmed by the applicant.

Note: The affidavit that accompanies a claimant application must include the information mentioned in section 62 of the Native Title Act.

(4) The applicant must file 2 copies of the main application and each map and other accompanying document.

34.104 Joinder of parties to main application within relevant period

If a person wants to be a party to a main application and the 3 month period mentioned in section 66(10)(c) of the Native Title Act (the ***relevant period***) has not ended, the person must file a notice, in accordance with Form 5 in the Schedule.

Note: At the end of the relevant period, a Registrar will give notice of each party joined to the application to:
(a) the applicant; and
(b) any other party to the proceeding that the Court orders must be given notice.

34.105 Joinder of parties to main application after relevant period

(1) If a person wants to be a party to a main application and the relevant period (within the meaning of rule 34.104) has ended, the person must apply by filing an interlocutory application, in accordance with Form 105.

(2) The application must be accompanied by an affidavit stating:
(a) how the person's interests may be affected by a determination in the proceeding; and
(b) why it is in the interests of justice for the Court to grant the application.

34.106 Withdrawal of a party

If a party to a main application, other than the applicant, wants to cease to be a party, the party must:
(a) at any time before the first hearing of the proceeding—give written notice to the Court, in accordance with Form 106; 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 34.106(a) ceases to be a party to the proceeding—see section 84(6) of the Native Title Act. For an application to replace an applicant, see section 66B of the Native Title Act.

Authorised Version F2024C00519 registered 28/06/2024

34.107 Form of applications other than main applications

A person who wants to make an application under the Native Title Act, other than a main application or an application under rule 34.109 or rule 34.110, must file:

(a) an originating application, in accordance with Form 107; and

(b) an affidavit sworn or affirmed by the applicant stating the facts in support of the application.

Note: At 1 August 2011, 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)

for review of a decision of the Native Title Registrar not to accept a claim for registration (under section 69(1) of the Native Title Act)

for an order to remove the details of an agreement from the Register of Indigenous Land Use Agreements (under section 69(1) of the Native Title Act)

for orders to ensure compliance with directions about the transfer of records (under section 69(1) of the Native Title Act).

34.108 Service of applications other than main applications

(1) An application mentioned in rule 34.107 must be served on:

(a) the respondent to the proceeding; and

(b) any interested person; and

(c) the Commonwealth; and

(d) each State or Territory having jurisdiction over the area to which the main application relates.

(2) If an applicant, the Commonwealth, a State or Territory served with an application under this rule, or the NNTT, thinks that another person has an interest in the application, the applicant, the Commonwealth, the State or Territory or the NNTT may, within 14 days after being served with or receiving the application, apply to the Court for an order that the application be served on, or notice be given, to that person.

(3) A person served with, or given notice of, the application may file and serve a notice of address for service, and becomes a respondent to the application on filing the notice of address for service.

(4) In this rule:

person includes a group of persons or an organisation.

34.109 Application for review of decision not to accept claim for registration

(1) If the Native Title Registrar has refused to accept a claim for registration, the applicant may, within 42 days after the date of notification of the decision, apply to the Court for a review of that decision under section 190F(1) of the Native Title Act by filing an originating application, in accordance with Form 108.

Authorised Version F2024C00519 registered 28/06/2024

(2) Each State and Territory having jurisdiction over the area to which the main application relates must be joined as a respondent to the application.

(3) The Commonwealth may be joined as a respondent to the application.

34.110 Application to remove details of agreement from Register of Indigenous Land Use Agreements

(1) A person who wants to apply to the Court for an order under section 199C(2) of the Native Title Act for the removal of details of an agreement from the Register of Indigenous Land Use Agreements must file an originating application, in accordance with Form 109.

(2) The application must be accompanied by an affidavit stating:
  (a) if the ground relied on is fraud—the date on which 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
  (c) if the ground relied on is duress—the date of the first occurrence of the act of duress.

34.111 Application for order about return of, or access to, records

An application under section 203FC(4) of the Native Title Act to ensure compliance with directions in accordance with section 203FC(3) of the Act must be filed within 42 days after:
  (a) the date on which the directions take effect; or
  (b) if the directions nominate a day for completion of compliance with the directions—that day.

34.112 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 section 94H(1) of the Native Title Act by a person conducting a mediation (the ***mediator***); or
  (b) a question of law referred to the Court under section 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, briefly but specifically; 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, that might have been drawn from them if proved at trial.

Authorised Version F2024C00519 registered 28/06/2024

Note 1: On receipt of the referral, a Registrar will fix a return date and place for a directions hearing and endorse those details on the referral.

Note 2: A Registrar will notify the mediator or the NNTT, and the parties to the mediation or NNTT proceeding of the return date and place.

34.113 Special case to be prepared—referral by mediator

For a reference under section 94H(1) of the Native Title Act, the special case must be:

(a) settled by the mediator; and

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

34.114 Special case to be prepared—referral by NNTT

For a reference under section 145(1) of the Native Title Act, the special case must be:

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

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

34.115 Party having carriage of proceeding—referral by mediator

For a reference under section 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.

34.116 Party having carriage of proceeding—referral by NNTT

For a reference under section 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.

34.117 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 be in accordance with Form 110.

(2) The referral must be accompanied by all documents that are necessary to enable the Court to consider the question raised by the referral.

(3) The referral must be settled by the mediator.

(4) The mediator must provide a copy of the referral to each of the following:

(a) a Registrar;

Authorised Version F2024C00519 registered 28/06/2024

(b) the party to whom the referral relates;
(c) the applicant to the main application;
(d) each State and Territory that has jurisdiction over the area to which the main application relates.

Note 1: On receipt of the referral, a Registrar will fix a return date and place for hearing and endorse those details on the referral.

Note 2: A Registrar will notify the person conducting the mediation and the parties mentioned in rule 34.117(4) of the return date and place.

34.118 Report about breaches of good faith requirement

(1) If a mediator wants to report to the Court 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, the report 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 any evidence of the conduct mentioned in paragraph (b); and
(d) state why the mediator considers the conduct 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 sections 94P(4) and (5) of the Native Title Act.

(2) The report must be provided to a Registrar in a sealed envelope that is marked 'Confidential'.

(3) The report must only be provided to the Court if the presiding member of the NNTT or a party to the main application seeks to rely on the report.

34.119 Definition for rules 34.120 to 34.123

In rules 34.120 to 34.123:

cultural or customary nature means of a nature relating to the culture, genealogy, customs or traditions of Aboriginal peoples or Torres Strait Islanders.

34.120 Evidentiary matters generally

(1) The rules of evidence apply, subject to this Division, to a proceeding under this Division.

(2) A party may apply to the Court for an order:
(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

Authorised Version F2024C00519 registered 28/06/2024

(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.

34.121 Orders to take account of cultural or customary concerns

A party may apply to the Court for an order to take account of the cultural or customary nature of a party or of another person by filing an interlocutory application, in accordance with Form 111.

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

Note 1: In considering whether to make an order, the Court may seek any information it considers appropriate from a party to the proceeding.

Note 2: A Registrar will~~,~~ fix a return date and place for hearing and endorse those details on the application.

Note 3: 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*.

34.122 Disclosure of evidence or information of cultural or customary nature, contrary to court order

(1) If the adducing of evidence or inspection of a document in a proceeding might disclose information or evidence of a cultural or customary nature, the disclosure of which would be contrary to a direction or order of a court or tribunal, the party who wants 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 order.

(2) Notice may be given under paragraph (1)(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.

(3) In this rule:

court or tribunal includes:

(a) the Aboriginal Land Commissioner; and

(b) 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.

Authorised Version F2024C00519 registered 28/06/2024

34.123 Evidence of cultural or customary nature

If evidence of a cultural or customary nature is to be given by way of singing, dancing, storytelling or in any way other than in the normal course of giving evidence, the party seeking 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.

34.124 Documents referring to certain material

(1) A document used in a proceeding that refers to material of a cultural or customary nature that a party claims is of a confidential or secret nature, must:

(a) have the claim endorsed on the front page of the document; and

(b) be accompanied by a document, contained in a sealed envelope, that contains a short description of the material and the reason for its confidential or secret nature.

(2) The sealed envelope must not be opened except with the leave of the Court.

Note: The Court may grant leave to open the sealed envelope on the condition that the material or part of the material not be disclosed.

34.125 Evidence given in consultation with others

A party may apply to the Court for an order that the Court receive into evidence statements from a group of witnesses, or a statement from a witness after that witness has consulted with other persons.

Note: If a statement is made by a witness after consultation with other persons, the identity of the persons may, at the order of the Court, be recorded in the transcript.

34.126 Evidence given not in normal course

A party may apply to the Court for an order that a person's evidence be given at a time other than when the evidence would usually be given.

34.127 Inspection

A party may apply to the Court for an order for the inspection of a place, and for consequential orders for the following:

(a) the provision of maps;

(b) the obtaining of permission of owners and occupiers of land;

(c) the giving of notice;

(d) particulars of travel and accommodation details;

(e) particulars of arrival and departure times;

(f) the type, number and description of motor vehicles;

(g) route description (for example the physical features of the route, including condition of road surfaces);

Authorised Version F2024C00519 registered 28/06/2024

(h) particulars of distances to be travelled and estimated times of travel and inspection;

(i) details of any third party controlling the inspection and any related costs.

34.128 Taking evidence

A party may apply to the Court for an order:

(a) that an assessor be appointed to:

(i) take evidence from a party to a proceeding at a time, date and place arranged with the party; and

(ii) decide how the evidence is to be recorded; and

(iii) to prepare a report of the evidence and give it to the Court by a specified time; and

(b) that a person be summoned to appear before the assessor to give evidence or produce documents or other things.

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.

34.129 Conflict of interest

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 section 37L(3) of the Act) in relation to the proceeding, the assessor must, as soon as practicable, 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.

34.130 Short title of proceeding

(1) Documents in a proceeding under the Native Title Act may be headed, in accordance with Form 112, using a short title of the proceeding specified by a Registrar if the document is not:

(a) an originating application; or

(b) a document to be served on a person who is not a party to the proceeding; or

(c) a final order.

(2) Despite rule 2.13, the short title need not refer to the parties to the proceeding.

34.131 Notices of appointment of agent and change to agent's address for service

(1) If a party to a proceeding appoints an agent in relation to the proceeding under section 84B(1) of the Native Title Act, the party must, within 14 days after the appointment of the agent, file a notice, in accordance with Form 113.

Authorised Version F2024C00519 registered 28/06/2024

(2) If there is a change in the agent's name, contact details or address for service, the party must, within 14 days after the change, file a notice, in accordance with Form 114.

34.132 Application for leave to be represented by person who is not a lawyer

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 lawyer must be in accordance with Form 115.

34.133 Native Title Registrar application to Court for order as to notice

The Native Title Registrar may apply to the Court under section 66(7) or 66A(3) of the Native Title Act, for orders about:

(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.

Note 1: The Court may also direct the Native Title Registrar to give additional notice.

Note 2: A Registrar will:

(a) enter the orders; and

(b) affix the stamp of the Court to the orders; and

(c) send a sealed copy to the Native Title Registrar by ordinary pre-paid post, fax or electronic communication.

34.134 Overlapping applications

If a party to an application knows 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 as soon as practicable give written notice to the Court, identifying the other application.

Note: If the Court receives notice under this rule, the Court will convene a directions hearing in both proceedings together to consider the future conduct of the proceedings.

34.135 Court may order adjournment for purpose of agreement between parties

A party may at any time apply to the Court for an order that:

(a) the proceeding be adjourned to allow the parties time to negotiate:

(i) about the proceeding; or

(ii) about matters other than native title; or

(b) an adjournment be ended, if:

(i) the NNTT has reported that negotiations are unlikely to succeed; or

(ii) it is appropriate to do so.

34.136 Agreements regarding practical outcomes of native title determination

At any time before the Court makes a final determination as to native title, a party may apply to the Court for an order that the parties confer, with the aim of

Authorised Version F2024C00519 registered 28/06/2024

reaching agreement about the practical management of any aspect of the rights and interests to be the subject of the final determination.

34.137 Appearance by NNTT

A person appearing on behalf of the NNTT at a hearing must, at least 5 days before the hearing, file 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

(d) a summary of the submissions that the person proposes to make on behalf of the NNTT.

Rules 34.138 – 34.160 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 34.8—Human rights proceedings

34.161 Definitions for Division 34.8

(1) In this Division:

Commission means the Australian Human Rights Commission.

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

proceeding means a proceeding in the Court under Division 2 of Part IIB of the Human Rights Act.

(2) An expression used in this Division and in the Human Rights Act has the same meaning in this Division as it has in the Human Rights Act.

Note: For the definitions of ***affected person***, ***alleged unlawful discrimination***, ***complaint*** and ***unlawful discrimination***, see section 3(1) of the Human Rights Act. For the definition of ***special-purpose Commissioner***, see section 46PV(3) of that Act.

34.162 Application of Division 34.8

This Division applies to a proceeding.

34.163 Starting a proceeding—application and claim

(1) A person who wants to start a proceeding under the Human Rights Act must file an originating application, in accordance with Form 116.

(2) The originating application must be accompanied by:
(a) a copy of the original complaint to the Commission; and
(b) a notice of termination of the complaint given by the President of the Commission.

(3) The originating application must include any other claim that the person has, in addition to the claim of unlawful discrimination.

Note: A Registrar will fix a date and time and place for hearing and endorse those details on the originating application.

34.164 Copy of application to be given to Commission

At least 5 days before the return date fixed for the hearing of the proceeding, the applicant must give the Commission:
(a) a stamped copy of the application; and
(b) a copy of the accompanying documents.

34.165 Address for service

A respondent must file a notice of address for service in accordance with rule 11.07.

Authorised Version F2024C00519 registered 28/06/2024

34.166 Appearance by special-purpose Commissioner

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

(a) file an address for service in accordance with rule 11.07; and

(b) serve a stamped copy of the address for service on each party to the proceeding in accordance with rule 11.08.

34.167 Conduct of proceeding by litigation representative

Rule 9.66(3) does not apply to a proceeding under this Division.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 4—Appellate jurisdiction

Part 35—Leave to appeal

Division 35.1—Oral applications for leave to appeal from interlocutory judgments of the Court

35.01 Oral application for leave to appeal

A party may apply orally for leave to appeal from an interlocutory judgment or order of the Court:

(a) at the time of the pronouncement of the judgment or the making of the order; and

(b) to the Judge who pronounced the judgment or made the order.

Rules 35.02 – 35.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 35.2—Written applications for leave to appeal

35.11 Application of Division

A party may apply to the Court under this Division for leave to appeal if:

(a) an Act gives the party a right of appeal to the Court subject to the party obtaining leave to appeal; and

(b) the party has not made an oral application for leave to appeal from an interlocutory judgment or order of the Court.

Note: Applications for leave to appeal to the Court may be heard and determined by a single Judge, unless:

(a) a Judge directs otherwise; or

(b) the application is made in an appeal already assigned to a Full Court and the Full Court considers it appropriate for it to hear and determine the application—see section 25(2) of the Act.

35.12 Form of application

(1) A person who wants to apply for leave to appeal must file an application, in accordance with Form 117.

(2) The application must be accompanied by the following:

(a) the judgment or order from which leave to appeal is brought;

(b) the reasons, if published, for the judgment or order;

(c) an affidavit stating the facts that support the application;

(d) a draft notice of appeal that complies with rules 36.01(1) and (2); and

(e) if the applicant wants to have the application considered without oral argument—a statement to that effect.

Note 1: A lawyer may file a notice of appeal starting migration litigation only if the notice includes or is accompanied by a certificate under section 486I of the *Migration Act 1958*, signed by the lawyer.

Note 2: ***File*** is defined in the Dictionary as meaning file and serve.

Note 3: For migration litigation, ***lawyer*** has the meaning given by section 5 of the *Migration Act 1958*.

35.13 Time for filing application

The application must be filed:

(a) within 14 days after the date on which the judgment was pronounced or the order was made; or

(b) on or before a date fixed for that purpose by the Court from which leave to appeal is sought.

Note: ***Judgment*** and ***order*** are defined in the Dictionary.

Authorised Version F2024C00519 registered 28/06/2024

35.14 Extension of time to seek leave to appeal

(1) A person who wants to apply for an extension of time to seek leave to appeal must file an application, in accordance with Form 118.

(2) The application may be made during or after the period mentioned in rule 35.13.

(3) The application must be accompanied by the following:
  (a) the judgment or order from which leave to appeal is sought;
  (b) the reasons for the judgment or order, if published;
  (c) an affidavit stating:
    (i) briefly but specifically, the facts on which the application relies; and
    (ii) why the application for leave to appeal was not filed within time; and
  (d) a draft notice of appeal that complies with rules 36.01(1) and (2);
  (e) a statement by the applicant of whether the applicant wants to have the application considered without oral argument.

Note 1: The Court may grant an extension of time, and hear and determine the application for leave to appeal, at the same time.

Note 2: An application under rule 35.12 or 35.14 will be heard and determined by a single Judge unless the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it appropriate to hear and determine the application.

Note 3: ***File*** is defined in the Dictionary as meaning file and serve.

35.15 Service of application

A party seeking leave to appeal, or an extension of the time within which to seek leave to appeal, must, within 2 days of filing the application, serve on each person who was a party to, or was given leave to intervene in, the proceeding in the court appealed from, each document filed under rule 35.12 or 35.14.

35.16 Method of service

An application under rule 35.12 or 35.14 and the accompanying documents must be served in one of the following ways:
  (a) by serving a signed and sealed copy of the application and documents personally on the party;
  (b) by delivering a signed and sealed copy of the application and documents to the party's address for service in the proceeding in the court sought to be appealed from.

35.17 Address for service of respondent

A respondent to an application under rule 35.12 or 35.14 must file a notice of address for service within 14 days after being served with the application and before taking a step in the proceeding.

Note: A respondent who does not want to contest the relief sought in the application for leave to appeal may file a submitting notice in accordance with rule 12.01.

Authorised Version F2024C00519 registered 28/06/2024

35.18 Certain applications may be dealt with without an oral hearing

(1) An applicant may apply to the Court for an order that an application under rule 35.12 or 35.14 be dealt with without an oral hearing.

(2) If the Court makes an order under subrule (1), each party must file the party's submissions in accordance with rule 35.19.

Note: An application under subrule (1) may be heard and determined by a single Judge—see sections 25(2) and 25(2B) of the Act.

35.19 Submissions

A party's submissions must:

(a) include the title of the proceeding; and
(b) include the name of the party who filed it; and
(c) consist of consecutively numbered paragraphs; and
(d) consist of no more than 10 pages; and
(e) if a reference is made to the transcript of proceedings in the court appealed from:
  (i) state the page and line number; and
  (ii) attach a copy of any page of the transcript referred to; and
(f) state, briefly but specifically:
  (i) if filed by the applicant—the relevant facts; and
  (ii) if filed by a respondent—the facts in dispute; and
  (iii) the claims to be argued by the party concerned; and
  (iv) the reasons relied on for the claims.

35.20 Objection to application being considered without oral hearing

A respondent who objects to an application being considered without an oral hearing must file a notice, in accordance with Form 119, stating the reasons for the objection.

Note: The Court will determine whether the application proceeds by way of oral argument.

35.21 Time for filing and serving affidavits

A respondent seeking to adduce evidence on an application under rule 35.12 or 35.14 must file any affidavits on which the respondent intends to rely within 14 days after being served with the application.

Note: A Registrar will fix a return date and place for hearing (or, if the application is to be determined on written cases, for decision) and notify the parties of the date appointed for the hearing (or decision).

Authorised Version F2024C00519 registered 28/06/2024

35.22 Directions

A party may apply to the Court, constituted by a single Judge, for directions about the management, conduct and hearing of the application.

Rules 35.23 – 35.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 35.3—Ending applications early

35.31 Withdrawing an application

(1) A party who has filed an application under rule 35.12 or 35.14 may withdraw the application, in accordance with Form 120.

(2) A notice filed under subrule (1) has the effect of an order of the Court dismissing the application.

(3) A notice filed under subrule (1) does not affect any other party who has filed an application under rule 35.12 or 35.14 in relation to the same judgment as that mentioned in the withdrawn application.

(4) A party who has filed a notice under subrule (1) must pay the costs of each other party to the application.

35.32 Dismissing application for want of prosecution

A respondent to an application under rule 35.12 may apply to the Court for an order that the application be dismissed:

(a) for an applicant's failure to comply with a direction of the Court; or
(b) for an applicant's failure to comply with these Rules; or
(c) for an applicant's failure to attend a hearing relating to the application; or
(d) for want of prosecution.

35.33 Absence of a party

(1) If a party is absent when an application under rule 35.12 or 35.14 is called on for hearing, any other party may apply to the Court for an order that:

(a) if the absent party is the applicant:
(i) the application be dismissed; or
(ii) the application be adjourned; or
(iii) the hearing proceed only if specified steps are taken; or
(b) if the absent party is the respondent:
(i) the hearing proceed generally or in relation to a particular aspect of the application; or
(ii) the hearing be adjourned; or
(iii) the hearing proceed only if specified steps are taken.

(2) If a hearing proceeds in a party's absence and during or at the conclusion of the hearing an order is made, the party who was absent may apply to the Court for an order:

(a) setting aside or varying the order; and
(b) for the further conduct of the proceeding.

Rules 35.34 – 35.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 35.4—Revocation of leave to appeal

35.41 Revocation or variation of grant of leave

(1) If the Court grants leave to appeal, a respondent may apply to the Full Court for an order:

(a) revoking the leave to appeal, wholly or in part; or

(b) imposing conditions on the leave to appeal; or

(c) varying any conditions of the leave to appeal.

(2) If the appeal is from a proceeding in the Federal Circuit and Family Court of Australia (Division 2), the respondent may seek the orders in subrule (1) from a single Judge.

Authorised Version F2024C00519 registered 28/06/2024

Part 36—Appeals

Division 36.1—Institution of appeals

36.01 Form of notice of appeal

(1) A party who wants to appeal to the Court must file a notice of appeal in accordance with:
  (a) for an appeal from the Federal Circuit and Family Court of Australia (Division 2)—Form 121; or
  (b) for an appeal from any other court—Form 122; or
  (c) for an appeal from a single Judge of the Court—Form 122.

(2) The notice of appeal must state:
  (a) whether the whole judgment or all of the orders, or only part of the judgment or some of the orders, are appealed from; and
  (b) if only part of the judgment, or some of the orders, is appealed from—the part of the judgment or the particular orders appealed from; and
  (c) briefly but specifically, the grounds relied on in support of the appeal; and
  (d) the judgment or orders the appellant wants instead of the judgment or orders appealed from.

(3) If an appeal is brought by leave of the Court:
  (a) the notice of appeal must include a statement to that effect; and
  (b) a copy of the order giving leave must be attached to the notice of appeal.

(4) The notice of appeal must include the appellant's address for service.

Note 1: A lawyer may file a notice of appeal starting migration litigation only if the notice includes or is accompanied by a certificate under section 486I of the *Migration Act 1958*, signed by the lawyer.

Note 2: For migration litigation, ***lawyer*** has the meaning given by section 5 of the *Migration Act 1958*.

Note 3: The notice of appeal will include a note that before taking any step in the proceeding the respondent must file a notice of address for service.

Note 4: The appellate jurisdiction of the Court will be exercised by the Full Court—see section 25(1) of the Act. However:
  (a) if the appeal is from a judgment of the Federal Circuit and Family Court of Australia (Division 2), the appellate jurisdiction will be exercised by a single Judge or if a Judge considers it appropriate that the appellate jurisdiction of the Court in relation to the appeal be exercised by the Full Court, the Full Court (see section 25(1AA) of the Act); or
  (b) if the appeal is from a court of summary jurisdiction, the jurisdiction is to be exercised by a single Judge or, if a Judge considers it appropriate that the appellate jurisdiction of the Court in relation to the appeal be exercised by the Full Court, the Full Court (see section 25(5) of the Act).

Note 5: A respondent may, within 14 days of being served with the notice of appeal, object to the competency of the appeal—see rule 36.72.

Authorised Version F2024C00519 registered 28/06/2024

36.02 Filing of notice of appeal

A notice of appeal must be filed:

(a) if the appeal is from a single Judge of the Court—in the District Registry in the State or Territory where the proceeding was last heard before the judgment was pronounced or the order was made; or

(b) if the appeal is from a judgment of a court of a State or Territory—in the District Registry in that State or Territory; or

(c) if the appeal is from a judgment of the Federal Circuit and Family Court of Australia (Division 2)—in the District Registry in the State or Territory where the proceeding was last heard before the judgment was pronounced or the order was made; or

(d) in any other case—in the appropriate District Registry.

Note: When the notice of appeal is filed:

(a) if it is not an appeal brought under the *Migration Act 1958*, Division 36.5 applies and a Registrar will fix a date and place for a callover or directions hearing and the date and place will be endorsed on the notice of appeal; or

(b) if it is an appeal brought under the *Migration Act 1958*, the notice of appeal will be considered by a Registrar in Chambers and directions made.

36.03 Time for filing and serving notice of appeal

An appellant must file a notice of appeal:

(a) within 28 days after:

(i) the date on which the judgment appealed from was pronounced or the order was made; or

(ii) the date on which leave to appeal was granted; or

(b) on or before a date fixed for that purpose by the court appealed from.

36.04 Service on parties and lodgments

(1) An appellant must serve a notice of appeal on each person who was a party to, or given leave to intervene in, the proceeding in the court appealed from.

Note: The Court may direct that the notice of appeal be served on any other person.

(2) If the court appealed from is a court of a State or Territory, the appellant must, within 7 days after filing the notice of appeal, lodge a copy of the notice of appeal with the office of the Registrar, Master or proper officer of the court appealed from.

36.05 Extension of time to file notice of appeal

(1) A party who wants to apply for an extension of time within which to file a notice of appeal must file an application, in accordance with Form 67.

(2) The application may be made during or after the period mentioned in rule 36.03.

(3) The application must be accompanied by the following:

(a) the judgment or orders from which the appeal is to be brought;

Authorised Version F2024C00519 registered 28/06/2024

(b) the reasons for the judgment or orders, if published;
(c) an affidavit stating:
(i) briefly but specifically, the facts on which the application relies; and
(ii) why the notice of appeal was not filed within time;
(d) a draft notice of appeal that complies with rules 36.01(1) and (2).

Note: An application under this rule will be heard by a single Judge unless:
(a) the Judge directs that the application be heard by the Full Court; or
(b) the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it appropriate to hear and determine the matter—see section 25(2) of the Act.

36.06 Method of service

A notice of appeal under rule 36.01 or an application under rule 36.05 must be served in one of the following ways:
(a) by serving a signed and sealed copy of the document personally on the party;
(b) 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.

36.07 Address for service of respondent

A respondent to an appeal under rule 36.01 or an application under rule 36.05 must file a notice of address for service within 14 days after being served with the notice of appeal or application, and before taking a step in the proceeding.

Note: A respondent who does not want to contest the relief sought in the notice of appeal may file a submitting notice in accordance with rule 12.01.

36.08 Stay of execution or proceedings under judgment appealed from

(1) An appeal does not:
(a) operate as a stay of execution or a stay of any proceedings under the judgment subject to the appeal; or
(b) invalidate any proceedings already taken.

(2) However, an appellant or interested person may apply to the Court for an order to stay the execution of the proceeding until the appeal is heard and determined.

(3) An application may be made under subrule (2) even though the court from which the appeal is brought has previously refused an application of a similar kind.

Note: ***Interested person*** is defined in the Dictionary.

36.09 Security for costs of appeal

(1) A party may apply to the Court for an order that:
(a) the appellant give security for the costs of the appeal, and for the manner, time and terms for giving the security; and
(b) the appeal be stayed until security is given; and

Authorised Version F2024C00519 registered 28/06/2024

(c) if the appellant fails to comply with the order to provide security within the time specified in the order—the appeal be stayed or dismissed.

(2) An application under subrule (1) must be accompanied by an affidavit stating the facts in support of the application.

Note: Section 56 of the Act also deals with security for costs.

36.10 Amendment to notice of appeal

An appellant may, without the Court's leave, amend a notice of appeal during the period of 28 days after filing the notice of appeal by filing a supplementary notice of appeal in accordance with rule 36.01.

36.11 Directions

(1) A party may apply to the Court, constituted by a single Judge, for directions in relation to the management, conduct and hearing of an appeal.

(2) Without limiting subrule (1), a party may apply to the Court for an order for the following:

(a) an extension of the time within which to appeal;
(b) giving leave to amend the grounds of appeal;
(c) joining or removing of a party to the appeal;
(d) security for costs;
(e) giving summary judgment;
(f) making an interlocutory order pending, or after, the determination of an appeal to the Court;
(g) making an order by consent disposing of an appeal including an order for costs;
(h) dismissing an appeal for want of prosecution;
(i) vacating a hearing date;
(j) making an order that an appeal to the Court be dismissed for:
(i) failure to comply with a direction of the Court; or
(ii) failure of the appellant to attend a hearing relating to the appeal;
(k) the conduct of the appeal including:
(i) contents of the appeal book; and
(ii) the use of written submissions; and
(iii) limiting the time for oral argument;
(l) the conduct of the appeal without an oral hearing subject to the condition that the parties be entitled to present written submissions;
(m) the staying of an order of the Full Court.

Note: This subrule sets out the powers mentioned in section 25 of the Act.

Rules 36.12 – 36.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 36.2—Cross–appeals and notices of contention

36.21 Cross-appeal

(1) A respondent who wants to appeal from part of a judgment or an order must file a notice of cross-appeal, in accordance with Form 123.

(2) The notice of cross-appeal must state:
  (a) the part of the judgment, or the order, to which the cross-appeal relates; and
  (b) briefly but specifically, the grounds relied on in support of the cross-appeal; and
  (c) the judgment or orders the respondent wants instead of that appealed from.

Note 1: For the parties who must be joined to the cross-appeal, see rule 36.31(3).

Note 2: A lawyer may file a notice of cross-appeal starting migration litigation only if the notice includes or is accompanied by a certificate under section 486I of the *Migration Act 1958*, signed by the lawyer.

Note 3: For migration litigation, ***lawyer*** has the meaning given by section 5 of the *Migration Act 1958*.

36.22 Time to file notice of cross-appeal

A respondent who wants to file a cross-appeal must file a notice of cross-appeal within 21 days after being served with a notice of appeal.

36.23 Extension of time to file notice of cross-appeal

(1) A respondent who wants to apply for an extension of time within which to file a notice of cross-appeal must file an application, in accordance with Form 67.

(2) The application may be made during or after the period mentioned in rule 36.22.

(3) The application must be accompanied by:
  (a) an affidavit stating:
    (i) briefly but specifically, the facts on which the application relies; and
    (ii) why the notice of cross-appeal was not filed within time; and
  (b) a draft notice of cross-appeal that complies with rule 36.21.

Note: An application under this rule will be heard by a single Judge, unless the application is made in a proceeding that has already been assigned to a Full Court and the Full Court considers it appropriate to hear and determine the matter.

Authorised Version F2024C00519 registered 28/06/2024

36.24 Notice of contention

If a respondent does not want to cross-appeal from any part of a judgment, but contends that the judgment should be affirmed on grounds other than those relied on by the court appealed from, the respondent must, within 21 days after the notice of appeal is served, file a notice of contention, in accordance with Form 124.

Rules 36.25 – 36.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 36.3—Parties to appeals and interveners

36.31 Parties

(1) Each party to the proceeding in the court appealed from who may be affected by the relief sought in a notice of appeal, or who might be interested in maintaining the judgment under appeal, must be joined as an appellant or respondent to the appeal.

(2) A person must not be named as an appellant without the person's consent.

(3) If the relief sought in a cross-appeal might affect a person not a party to the appeal, the person must be joined as a respondent to the cross-appeal.

(4) A person who is not a party to an appeal or a cross-appeal, but is a person mentioned in subrule (1) or (3), may apply to the Court to be joined as a party.

Note: The Court may order the addition or removal of any person as a party to the appeal.

36.32 Applications to intervene

(1) A person who was not a party to the proceeding in the court appealed from may apply to the Court for leave to intervene in an appeal.

(2) The person must satisfy the Court:
(a) that the intervener's contribution will be useful and different from the contribution of the parties to the appeal; and
(b) that the intervention would not unreasonably interfere with the ability of the parties to conduct the appeal as they wish; and
(c) of any other matter that the Court considers relevant.

Note 1: The role of the intervener is solely to assist the Court in resolving the issues raised by the parties.

Note 2: The Court may give leave to the intervener to intervene on conditions, and with the rights, privileges and liabilities (including liabilities for costs), determined by the Court.

Note 3: When giving leave, the Court may specify the form of assistance to be given by the intervener and the manner of participation of the intervener and, in particular:
(a) the matters that the intervener may raise; and
(b) whether the intervener's submissions are to be oral, in writing, or both.

Rules 36.33 – 36.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 36.4—Dealing with certain applications on the papers

36.41 Certain applications may be dealt with without an oral hearing

(1) A party may apply to the Court for an order that the following applications be dealt with without an oral hearing:

(a) an application for an extension of time within which to institute an appeal;

(b) an application to join or remove a party to an appeal;

(c) an application for leave to amend the grounds of an appeal;

(d) an application to give summary judgment;

(e) an application to dismiss an appeal for:

(i) a failure to comply with a direction of the Court; or

(ii) a failure to attend a hearing related to the appeal; or

(iii) want of prosecution;

(ea) an application to make or vary an order for costs;

(f) an application for directions;

(g) with the consent of the parties—an application to dispose of an appeal to the Court.

(2) If the Court makes an order under paragraphs (1)(a) to (ea), each party must file the party's submissions in accordance with rule 36.42.

Note: An application under subrule (1) may be heard and determined by a single Judge—see sections 25(2) and (2B) of the Act.

36.42 Submissions

A party's submissions must:

(a) include the title of the proceeding; and

(b) include the name of the party who filed it; and

(c) consist of consecutively numbered paragraphs; and

(d) consist of no more than 10 pages; and

(e) if a reference is made to the transcript of proceedings in the court appealed from:

(i) state the page and line number; and

(ii) attach a copy of any page of the transcript referred to; and

(f) state, briefly but specifically:

(i) if filed by the applicant—the relevant facts; and

(ii) if filed by a respondent—the facts in dispute; and

(iii) the claims to be argued by the party concerned; and

(iv) the reasons relied on for the claims.

Note: An application in this Division will be heard and determined by a single Judge unless:

(a) a Judge directs that the application be heard and determined by a Full Court; or

(b) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it is appropriate for it to hear and determine the application.

Authorised Version F2024C00519 registered 28/06/2024

Rule 36.43

36.43 Objection to application being considered without oral hearing

A party who objects to an application being considered without an oral hearing must file a notice, in accordance with Form 119, stating the reason for the objection.

Note: The Court will determine whether the application proceeds by way of oral argument.

Rules 36.44 – 36.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 36.5—Preparation of appeals

36.51 Appeal books

(1) An appellant must file:
  (a) if the appeal is to a single Judge—2 appeal books; or
  (b) if an appeal is to the Full Court—4 appeal books.

(2) If the Full Court for an appeal consists of more than 3 judges, the appellant must apply to a Registrar for a direction about how many appeal books must be filed.

(3) An appeal book must comprise 3 parts, designated as Parts A, B and C.

(4) An appeal book must:
  (a) have an index to Part A; and
  (b) contain only the material mentioned in this Division.

(5) If material is included in an appeal book that is not mentioned in this Division, the party who includes or requests the inclusion of the material:
  (a) is not entitled to any costs relating to the inclusion of the material; and
  (b) must pay any costs incurred by any other party to the appeal as a result of the inclusion of the material.

(6) A lawyer representing a party who includes in an appeal book material to which subrule (5) applies is not entitled to recover from the lawyer's client any costs incurred by the inclusion of the material.

36.52 Assistance from Registrar

(1) A party who requires a Registrar's assistance to settle the index to Part A of the appeal book or Part B of the appeal book must, within 7 days after the notice of appeal has been served, apply in writing to a Registrar.

(2) If there is no application by any party under subrule (1), the appellant must, within 28 days after the service of the notice of appeal, submit to a Registrar a draft of:
  (a) the index to Part A of the appeal book; and
  (b) Part B of the appeal book.

(3) A Registrar will settle the draft of the index to Part A of the appeal book and Part B of the appeal book and tell the appellant that a Registrar has approved the drafts, in the settled form.

(4) The appellant must, within 14 days after being notified of a Registrar's approval, file:
  (a) Part A, including all documents, indexed and ordered according to a unique tab number; and
  (b) Part B.

Authorised Version F2024C00519 registered 28/06/2024

Note: A party should have regard to the Practice Note for Appeals that has been issued for the assistance of parties.

36.53 Title of appeal books

The title page of each Part of the appeal books must include the following:

(a) the title of the proceeding;
(b) the court appealed from;
(c) the names and addresses for service of the lawyers for each party to the appeal;
(d) if a party is not represented by a lawyer—the address for service of the party.

36.54 Content of appeal books

The appeal book must comprise:

(a) Part A (the ***Core Set of Standard Items***), arranged in the following order:
  (i) the title page;
  (ii) the index to Part A;
  (iii) the originating application and pleadings (including any interlocutory application and any notices of motion);
  (iv) if the court appealed from was hearing an appeal from a tribunal or board:
    (A) the reasons for decisions of the tribunal or board; and
    (B) the formal decision of the tribunal or board; and
    (C) any notice of appeal to the court appealed from;
  (v) the reasons for judgment;
  (vi) the sealed orders of the court appealed from;
  (vii) the notice of appeal;
  (viii) any notice of cross-appeal or notice of contention;
  (ix) any submitting notice;
  (x) any order giving leave to appeal or an extension of time within which to appeal;
(b) Part B (the ***Comprehensive Reference Index***), comprising a complete index of the record of the evidence in the court from which the appeal is brought, but not the evidence, whether relevant or not, arranged in the following order:
  (i) a front page, bearing the following endorsement:
  'The exhibits, affidavits, annexures and transcript mentioned in the Comprehensive Reference Index are taken to form part of the appeal book for the appeal but will not be reproduced unless required';
  (ii) a chronological list of all documents received in evidence, whether as exhibits or as annexures to affidavits, showing the date of each document;
  (iii) a list of the affidavit evidence;
  (iv) a list of exhibits;

Authorised Version F2024C00519 registered 28/06/2024

(v) an index of the transcript of the evidence in the court appealed from;

(vi) an index of any other relevant transcript;

(c) Part C, being only the exhibits and evidence to which the parties refer in the parties' submissions, arranged in the same order as the Comprehensive Reference Index, together with:

(i) the parties' submissions; and

(ii) each party's chronology.

Note: The Court has issued a Practice Note for the assistance of parties to an appeal under this Division and their lawyers. The Court expects the parties and their lawyers to comply with the Practice Note.

36.55 Written submissions, chronology and lists of authorities

(1) Each party to an appeal must file the following documents:

(a) an outline of the party's submissions on the appeal;

(b) a chronology of the relevant events;

(c) a list of authorities to which the party intends to refer;

(d) a list of any legislation to which the party intends to refer.

(2) The documents mentioned in paragraphs (1)(a) and (b) must be filed as follows:

(a) for an appellant—not later than 20 business days before the hearing of the appeal;

(b) for a respondent—not later than 15 business days before the hearing of the appeal;

(c) for an appellant making submissions in reply—not later than 10 business days before the hearing of the appeal.

(3) The documents mentioned in paragraphs (1)(c) and (d) must be filed as follows:

(a) for an appellant—not later than 5 business days before the hearing of the appeal;

(b) for a respondent—not later than 4 business days before the hearing of the appeal.

Note: The Court has issued a Practice Note for the assistance of parties to an appeal and their lawyers. The Court expects the parties and their lawyers to comply with the Practice Note.

36.56 Filing of Part C documents

The appellant must, not later than 5 business days before the hearing of the appeal, file a copy of Part C of the appeal book.

36.57 Further evidence on appeal

(1) A party may apply for the Court to receive further evidence on appeal.

(2) The application must be filed at least 21 days before the hearing of the appeal and be accompanied by an affidavit stating the following:

(a) briefly but specifically, the facts on which the application relies;

Authorised Version F2024C00519 registered 28/06/2024

(b) the grounds of appeal to which the application relates;
(c) the evidence that the applicant wants the Court to receive;
(d) why the evidence was not adduced in the court appealed from.

(3) The application and the affidavit must be filed as follows:
(a) if the appeal is to the Full Court—4 copies;
(b) if the appeal is to a single Judge—2 copies.

(4) Any other party to the appeal who wants to adduce evidence on the appeal must file an affidavit at least 14 days before the hearing of the appeal.

Note: Section 27 of the Act allows the Court to receive further evidence on appeal.

Rules 36.58–36.70 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 36.6—Ending appeals

36.71 Definitions for Division 36.6

In this Division:

appeal includes a cross-appeal.

appellant includes a cross-appellant.

respondent includes a cross-respondent.

36.72 Notice of objection to competency of appeal

(1) A respondent who objects to the competency of an appeal must, within 14 days after being served with a notice of appeal, file a notice of objection to competency:
  (a) in accordance with Form 125; and
  (b) that, briefly but specifically, states the grounds of the objection.

(2) The appellant carries the burden of establishing the competency of an appeal.

(3) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the appeal.

(4) If a respondent has not filed a notice under subrule (1), and the appeal is dismissed by the Court as not competent, the respondent is not entitled to any costs of the appeal.

(5) If the Court decides that an appeal is not competent, the appeal is dismissed.

36.73 Discontinuance of appeal

(1) An appellant may discontinue an appeal by filing a notice of discontinuance of the appeal, in accordance with Form 126:
  (a) without the Court's leave—at any time before the hearing of the appeal; or
  (b) with the Court's leave:
    (i) at the hearing; or
    (ii) after the hearing and before the judgment is pronounced or the order is made.

(2) A notice of discontinuance has the effect of an order of the Court dismissing the appellant's appeal.

(3) A notice of discontinuance filed by one appellant does not affect any other appellant in the appeal.

(4) An appellant who files a notice under subrule (1) must, unless the parties otherwise agree, pay the costs of each respondent.

Authorised Version F2024C00519 registered 28/06/2024

36.74 Application to dismiss appeal

(1) A respondent may apply to the Court for an order that the appeal be dismissed for the failure by an appellant to do any of the following:
  (a) comply with a direction of the Court;
  (b) comply with these Rules;
  (c) attend a hearing relating to the appeal;
  (d) prosecute the appeal.

(2) An application under subrule (1) must be served on the appellant:
  (a) at the appellant's address for service; or
  (b) personally.

Note: The Court may make orders subject to conditions—see rule 1.33. The Court may fix a time for the doing of an act and in default order the appeal be dismissed.

36.75 Absence of party

(1) If a party is absent when an appeal is called on for hearing, the opposing party may apply to the Court for an order that:
  (a) if the absent party is the appellant:
    (i) the appeal be dismissed; or
    (ii) the hearing be adjourned; or
    (iii) the hearing proceed only if specified steps are taken; or
  (b) if the absent party is the respondent:
    (i) the hearing proceed generally or in relation to a particular claim for relief in the appeal; or
    (ii) the hearing be adjourned; or
    (iii) the hearing proceed only if specified steps are taken.

(2) If a hearing proceeds in a party's absence and during or at the conclusion of the hearing an order is made, the party who was absent may apply to the Court for an order:
  (a) setting aside or varying the order; and
  (b) for the further conduct of the hearing.

Authorised Version F2024C00519 registered 28/06/2024

Part 38—Cases stated and questions reserved

38.01 Application for case stated or question reserved

(1) The following matters must be in the form of a special case:
  (a) a case stated;
  (b) a question reserved for the consideration of the Court.

(2) A special case must:
  (a) be divided into consecutively numbered paragraphs; and
  (b) state the facts, briefly but specifically; and
  (c) attach 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 and the documents attached in the special case any inference, whether of fact or law, that might have been drawn from them if proved at a trial.

Note 1: A case stated (sometimes called a special case) is a written statement of the facts in a proceeding agreed to by the parties so that the Court to which the case is stated may decide the question in issue.

Note 2: Section 25(6) of the Act empowers the Court, constituted by a single Judge, to state a case or reserve a question for consideration by the Full Court in relation to any matter to which an appeal would lie from the single Judge to the Full Court.

Note 3: Section 26 of the Act gives courts from which appeals lie to the Court, the power to state a case or reserve a question for the consideration of the Court and empowers the Court accordingly.

Note 4: If a case is stated, or a question reserved for the Court by a court of summary jurisdiction, the case may be considered by a single Judge or the Full Court. However, if the Court stating the case or reserving the question is not a court of summary jurisdiction, the case stated or question reserved must be considered by the Full Court—see section 26(2)(b) of the Act.

38.02 Case stated to be prepared etc

Unless the Court or other authority stating the case or reserving the question otherwise directs, the special case must:
  (a) be prepared in draft by the party having the carriage of the proceeding after consultation with the other parties; and
  (b) include an address for service of each of the parties; and
  (c) be settled by the Court or other authority stating the case or reserving the question; and
  (d) be transmitted by the Court or other authority, with 4 additional copies, to the Registry at the proper place.

Note: Where a case stated has been referred to the Court, a Registrar will fix the return date and place for hearing and notify the parties of the date of that hearing.

Authorised Version F2024C00519 registered 28/06/2024

Rule 38.03

38.03 Directions

A party may apply to the Court for directions in relation to the management, conduct and hearing of the case stated or question reserved.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 5—Judgments, costs and other general provisions

Part 39—Orders

Division 39.1—Judgments and orders

39.01 Date of effect of judgment or order

A judgment or an order takes effect on the date on which the judgment is pronounced or the order is made.

39.02 Time for compliance with orders

A person ordered to do an act or thing or to pay money into Court must do so in the time specified in the order or, if no time is specified, within 14 days after the date of service of the order on the person.

39.03 Dismissal of proceedings and stay of further proceedings

(1) If the Court makes an order dismissing a proceeding or part of a proceeding, the applicant may apply to the Court:
  (a) for an order that the dismissal be without prejudice to any right of the applicant to bring fresh proceedings; or
  (b) for leave to claim the same relief in a new proceeding.

(2) If:
  (a) a proceeding has been dismissed in whole or in part; and
  (b) the Court has ordered the applicant to pay another party's (the ***second party's***) costs;

the second party may apply to the Court for an order staying any further proceedings brought by the applicant against the second party on the same or substantially the same cause of action or relief, until the costs have been paid.

39.04 Varying or setting aside a judgment or order before it has been entered

The Court may vary or set aside a judgment or order before it has been entered.

39.05 Varying or setting aside judgment or order after it has been entered

The Court may vary or set aside a judgment or order after it has been entered if:
  (a) it was made in the absence of a party; or
  (b) it was obtained by fraud; or
  (c) it is interlocutory; or
  (d) it is an injunction or for the appointment of a receiver; or
  (e) it does not reflect the intention of the Court; or

Authorised Version F2024C00519 registered 28/06/2024

(f) the party in whose favour it was made consents; or
(g) there is a clerical mistake in a judgment or order; or
(h) there is an error arising in a judgment or order from an accidental slip or omission.

39.06 Interest on judgment

The prescribed rate at which interest is payable under section 52(2)(a) of the Act is:

(a) for the period from 1 January to 30 June in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced; and
(b) for the period 1 July to 31 December in any year—the rate that is 6% above the cash rate last published by the Reserve Bank of Australia before the period commenced.

Note: Section 52(2) of the Act provides that interest is payable:
(a) at such rates as are fixed by the Rules of Court; or
(b) if the Court, in a particular case, thinks that justice so requires—at such lower rate as the Court determines.

Rules 39.07 – 39.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 39.2—Consent orders

39.11 Consent orders

(1) A Judge may make an order in accordance with the terms of a written consent of the parties by initialling or otherwise annotating the consent and placing it on the Court file.

(2) The order must state that it is made by consent.

(3) The order has the same force and validity as an order made after a hearing by the Judge.

Rules 39.12–39.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 39.3—Undertakings

39.21 Orders dealing with failure to fulfil undertakings

(1) A party may apply to the Court for an order requiring a person to do, or refrain from doing, an act or thing, including payment of a sum of money, if:

(a) the person (whether a party or not) has given the Court an undertaking to do, or refrain from doing, the act or thing; and

(b) the person has failed to fulfil the undertaking.

(2) This rule does not affect the powers of the Court to punish a person for contempt for a breach of the undertaking.

Rules 39.22–39.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 39.4—Judgments and orders—entry

39.31 When entry is required

(1) Subject to subrule (2), an order must be entered if:
  (a) the order is to be served; or
  (b) the order is to be enforced; or
  (c) an application for leave to appeal from the order has been made or an appeal from the order has been instituted; or
  (d) a step is to be taken under the order; or
  (e) the Court directs that the order be entered.

(2) An order need not be entered if, in addition to any provision as to costs, the order merely:
  (a) extends or abridges time; or
  (b) grants leave or makes a direction:
    (i) to amend a document (other than an order); or
    (ii) to file a document; or
    (iii) for an act to be done by an officer of the Court (within the meaning of section 18N of the Act); or
  (c) gives directions about the conduct of a proceeding.

39.32 Entry of an order

(1) An order may be entered by being authenticated in accordance with subrule 39.35(1).

(2) A Registrar may enter an order by authenticating the order in accordance with subrule 39.35(1) if:
  (a) the order has been settled in accordance with rule 39.33; and
  (b) the Court directs, or a party requests, that the order be entered.

(3) An order that has been authenticated in accordance with subrule 39.35(1) is taken to be entered on the 14th day after the day it was authenticated, unless the Court otherwise directs.

39.33 Lodgment of orders for entry

(1) If a party wants to have an order entered, the party may lodge with a Registrar a draft of the order.

(2) An order may be settled by the Court, or a Registrar, despite no draft of the order having been lodged under subrule (1).

(3) The Court may give directions to a Registrar who is settling an order under this rule.

Authorised Version F2024C00519 registered 28/06/2024

39.34 Order entered in Court

The Court may direct that an order be entered by the order being authenticated in Court, in accordance with rule 39.35(1), at the time the order is made.

39.35 Authentication of orders

(1) An order is authenticated by:
  (a) the Court, or a Registrar signing the order; and
  (b) the Court, a person at the direction of the Court, or a Registrar, affixing the seal of the Court or the stamp of a District Registry to the order.

(2) A Registrar is to give a copy of an authenticated order in the proceeding to a party to a proceeding, on request.

(3) A Registrar may give a copy of an authenticated order in the proceeding to any person who:
  (a) appears to have a sufficient interest in the proceeding; and
  (b) pays the prescribed fee (if any).

Authorised Version F2024C00519 registered 28/06/2024

Part 40—Costs

Division 40.1—General

40.01 Party and party costs

If an order is made that a party or person pay costs or be paid costs, without any further description of the costs, the costs are to be costs as between party and party.

Note: ***Costs as between party and party*** is defined in the Dictionary.

40.02 Other order for costs

A party or a person who is entitled to costs may apply to the Court for an order that costs:

(a) awarded in their favour be paid other than as between party and party; or

(b) be awarded in a lump sum, instead of, or in addition to, any taxed costs; or

(c) be determined otherwise than by taxation.

Note 1: The Court may order that costs be paid on an indemnity basis.

Note 2: The Court may order that the costs be determined by reference to a cost assessment scheme operating under the law of a State or Territory.

40.03 Costs reserved

If the Court reserves the question of costs, and no further order is made, costs follow the event.

40.04 Costs on interlocutory application or hearing

If no order for costs is made on an interlocutory application or hearing, the costs of the application or hearing:

(a) if an order is made in favour of any party—follow the event; or

(b) if no order is made in favour of any party—are taken to be costs in the cause of the successful party to the proceeding.

40.05 Costs in other courts

If a proceeding is transferred to the Court, a party may apply to the Court for an order that the costs of the proceeding in the other court be:

(a) taxed in accordance with Division 40.2; or

(b) awarded as a lump sum in lieu of taxation.

40.06 Costs improperly, unreasonably or negligently incurred

A party may apply to the Court for an order:

Authorised Version F2024C00519 registered 28/06/2024

(a) that any costs that have been improperly, unreasonably or negligently incurred be disallowed; or

(b) directing an inquiry whether any costs have been improperly, unreasonably or negligently incurred and providing for the costs of such inquiry.

Note 1: A taxing officer has the responsibility on any taxation to disallow any costs that have been improperly, unreasonably or negligently incurred.

Note 2: ***Taxing officer*** is defined in the Dictionary.

40.07 Liability of lawyer to their client for misconduct

(1) A party who has reasonable cause to believe that additional costs have been incurred because of the party's lawyer's misconduct, may apply to the Court for an order:

(a) that the whole or part of the costs as between the lawyer and the party be disallowed; or

(b) if the lawyer is a barrister—that the whole or part of the costs as between the barrister and the barrister's instructing lawyer be disallowed; or

(c) that the lawyer pay to the party costs that the party has been ordered to pay to another party; or

(d) that the lawyer indemnify any other party against any costs payable by that party.

(2) For this rule, a lawyer has engaged in misconduct if:

(a) a proceeding or an application is delayed, adjourned or abandoned because of the lawyer's failure:

(i) to attend or make arrangements for a proper representative to attend a hearing; or

(ii) to file a relevant document; or

(iii) to provide the Court or another party with a relevant document; or

(iv) to be prepared for a hearing; or

(v) to comply with these rules or an order of the Court; or

(b) the lawyer:

(i) incurs costs improperly or without reasonable cause; or

(ii) incurs costs that are unnecessary or wasteful; or

(iii) is guilty of undue delay.

Note 1: ***Lawyer*** is defined in the Dictionary.

Note 2: For the duty of a party's lawyer to assist the party to conduct proceedings in accordance with the overarching purpose of the Act, see section 37N(2) of the Act.

Note 3: For the power of the Court to order a lawyer to pay costs if the lawyer fails to comply with the duty under section 37N(2) of the Act, see section 37N(4) of the Act.

40.08 Reduction in costs otherwise payable

A party other than in a proceeding under the *Admiralty Act 1988* may apply to the Court for an order that any costs and disbursements payable to another party in the proceeding be reduced by an amount to be specified by the Court if:

Authorised Version F2024C00519 registered 28/06/2024

(a) the applicant has claimed a money sum or damages and has been awarded a sum of less than $100 000; or

(b) the proceeding (including a cross-claim) could more suitably have been brought in another court or tribunal.

Rules 40.09 – 40.11 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 40.2—Taxation of costs

40.12 Application of Division 40.2 and 40.3

If an order is made in favour of a party for payment of the party's costs, the costs must be taxed in accordance with this Part, unless the amount of costs is agreed between the parties to the order.

40.13 Taxation of costs awarded on an interlocutory application

If an order for costs is made on an interlocutory application, the party in whose favour the order is made must not tax those costs until the proceeding in which the order is made is finished.

Note: The Court may order that costs of an interlocutory application be taxed immediately.

40.14 Order for taxation not required

If these Rules or an order of the Court entitle a party to costs, the party may have those costs taxed without an order directing taxation.

40.15 Failure to file bill of costs

(1) If a party entitled to costs does not file a bill in accordance with this Division within a reasonable time of being entitled to do so, any party who is liable to pay those costs and is prejudiced as a result, may apply to the taxing officer:

(a) to certify the costs; or

(b) to allow a nominal or other sum by way of costs.

Note: ***Taxing officer*** is defined in the Dictionary.

(2) An application under subrule (1) must be accompanied by an affidavit stating the prejudice said to be suffered.

Note: ***Bill*** is defined in the Dictionary.

40.16 Unnecessary expense in proceeding before taxing officer

If, in a proceeding before a taxing officer, a party has engaged in conduct that puts another party to any unnecessary expense, the taxing officer may exercise the powers in rule 40.15(1).

40.17 Filing bill for taxation

A party who wants to have costs taxed must file a bill for taxation.

Note: ***Bill*** is defined in the Dictionary.

Authorised Version F2024C00519 registered 28/06/2024

40.18 Contents of bill

A bill, other than a short form bill, must be in accordance with Form 127 and must:

(a) contain particulars of:

(i) the work done by the lawyer, their staff and agents; and

(ii) the costs claimed for the work; and

(iii) disbursements incurred; and

(b) have attached to it, or be accompanied by, a copy of the receipt for each disbursement or, if not paid, a copy of the relevant accounts.

Note: When a bill is filed, a Registrar will fix a time and date for the taxing officer to make an estimate of the bill under rule 40.20 and endorse those details on the bill.

40.19 Service of a bill

A party who files a bill must serve on each party interested in the bill, at least 7 days before the date endorsed on the bill:

(a) a copy of the bill as endorsed by a Registrar; and

(b) the documents mentioned in paragraph 40.18(b).

Note: ***Party interested in the bill*** is defined in the Dictionary.

40.20 Estimate of costs

(1) Before a bill is taxed, a taxing officer is to make an estimate of the approximate total for which, if the bill were taxed, the certificate of taxation would be likely to issue.

(2) The estimate in subrule (1) is to be made in the absence of the parties and without making any determination on the individual items in the bill.

(3) The taxing officer will give notice, in writing, to each party interested in the bill, of the estimate made under subrule (1) (the ***notice of estimate***).

(4) Unless a party interested in the bill objects to the estimate in accordance with rule 40.21, the amount of the estimate is the amount for which the certificate of taxation will be issued.

Note: ***Certificate of taxation*** is defined in the Dictionary. See also rule 40.32.

40.21 Objection to estimate

(1) A party interested in the bill who wants to object to the estimate must, within 21 days after the issue of the notice of estimate:

(a) file a notice of objection, in accordance with Form 128; and

(b) pay into the Litigants' Fund an amount of $2 000 as security for the costs of any taxation of the bill.

(2) On receipt of the notice of objection and the payment in paragraph (1)(b), a Registrar may direct:

Authorised Version F2024C00519 registered 28/06/2024

(a) the parties to attend before a designated Registrar for a confidential conference to:
  (i) identify the real issues in dispute; and
  (ii) reach a resolution of the dispute; or
(b) a provisional taxation; or
(c) that the taxation of the bill proceed.

40.22 Resolution at confidential conference

If the parties achieve a resolution of the dispute at a confidential conference, a Registrar will:

(a) issue a sealed certificate of taxation for the amount agreed by the parties; and
(b) pay the monies paid into the Litigants' Fund in accordance with paragraph 40.21(1)(b) to:
  (i) a party, in accordance with any agreement between the parties; or
  (ii) if there is no agreement between the parties—to the party who objected to the estimate.

Note: For payment out of the Litigants' Fund, see rule 2.43.

40.23 Provisional taxation

(1) A taxing officer may, in the absence of the parties, provisionally tax a bill.

(2) However, the taxing officer may, before completing the provisional taxation, require the parties to file submissions identifying the issues in dispute in relation to the bill.

(3) The taxing officer will give a written notice to the parties stating the amount for which the bill is provisionally taxed and identifying the amounts provisionally taxed off the bill.

(4) A party interested in the bill may, within 21 days after the date of the written notice given by the taxing officer in accordance with subrule (3), file a notice requesting a full taxation, in accordance with Form 129.

(5) In the absence of a party filing a notice in accordance with subrule (4), the amount to which a bill was provisionally taxed will be the amount for which the certificate of taxation will be issued.

Note: ***Party interested in the bill*** is defined in the Dictionary.

40.24 Notice that bill is to be taxed

A Registrar will give notice that a bill is to be taxed if:

(a) a Registrar has directed, under paragraph 40.21(2)(c), that the taxation of the bill proceed; or
(b) a resolution is not achieved at a confidential conference; or
(c) a party has given notice requesting a full taxation under rule 40.23(4).

Authorised Version F2024C00519 registered 28/06/2024

40.25 Notice of objection

(1) If a Registrar has notified the parties interested in a bill that a taxing officer is to tax the bill, a party on whom the bill has been served and who wants to object to any item of the bill must file and serve on the parties interested in the bill a notice of objection, in accordance with Form 130, that:

(a) identifies each item or part of an item to which objection is taken; and

(b) states, briefly but specifically:

(i) why the item or part of the item should be disallowed; and

(ii) the amount by which it is contended the item should be reduced; and

(iii) any authority on which the party relies.

(2) The notice of objection must be filed and served on the parties interested in the bill not later than 14 days before the date appointed for taxing the bill.

Note: ***Party interested in the bill*** is defined in the Dictionary.

40.26 Response to notice of objection

(1) A party who files a bill, and any party who might be affected by any objection to the bill, must file and serve a notice of response, in accordance with Form 131, stating:

(a) whether each objection to an item or part of an item is admitted or opposed;

(b) for each objection that is opposed—briefly but specifically:

(i) why the item or part of the item should be allowed; and

(ii) why the objection should be dismissed; and

(iii) any authority on which the party relies.

(2) The notice of response must be filed and served on any party who has given a notice of objection or notice of response within 5 days before the date appointed for taxing the bill.

Note: ***Party interested in the bill*** is defined in the Dictionary.

40.27 Taxation

(1) If a notice of objection under rule 40.25(1) has not been filed, only the party who has filed the bill may attend the taxation.

(2) If a notice of objection has been filed, only the party who has filed the notice of objection and a party who has filed a notice of response under this Division may attend the taxation.

(3) A party is bound by the party's notice of objection or notice of response, with the effect that:

(a) no amount will be taxed off any item to which objection has not been taken in the notice of objection; and

(b) no amount will be allowed for any item to which objection has been taken in the notice of objection but not responded to in the notice of response.

Authorised Version F2024C00519 registered 28/06/2024

(4) Despite subrule (3) the taxing officer will only allow costs to which a party is entitled.

Note: ***Costs as between party and party*** and ***costs on an indemnity basis*** are defined in the Dictionary.

(5) At the taxation, a party may apply to the taxing officer for leave to make oral submissions for the purpose of explaining or clarifying an objection in the notice of objection or a response in the notice of response.

(6) The taxing officer is to tax the bill in accordance with this Part and on completion is to issue a certificate of taxation.

40.28 Powers of taxing officer

A taxing officer may, for the purpose of the taxation of costs under this Division, do any of the following:

(a) summon and examine witnesses either orally or on affidavit;
(b) administer oaths;
(c) direct or require the production of books, papers and documents;
(d) issue subpoenas;
(e) make separate or interim certificates of taxation.

Note: ***Taxing officer*** is defined in the Dictionary.

40.29 Costs to be allowed on taxation

A taxing officer is to allow costs for the work done:

(a) before 1 August 2011—in accordance with Schedule 2 to the Federal Court Rules, for the relevant period mentioned in that Schedule; and
(b) on or after 1 August 2011—in accordance with Schedule 3, for the relevant period, if any, mentioned in that Schedule.

40.30 Costs not to be allowed on taxation

A taxing officer is not to allow:

(a) barrister's fees on a hearing if the barrister:
  (i) was not present at the hearing for a substantial amount of the relevant period; or
  (ii) did not give substantial assistance in the conduct of the proceeding; and
(b) costs that in the opinion of the taxing officer have been incurred or increased:
  (i) through impropriety, unreasonableness or negligence; or
  (ii) through overcaution; or
  (iii) by agreeing:
    (A) special fees to counsel; or
    (B) special charges or expenses to witnesses or other persons; or
  (iv) by other unnecessary expense.

Authorised Version F2024C00519 registered 28/06/2024

40.31 Exercise of taxing officer's discretion

If a party wants a fee, allowance or disbursement that may be allowed in the taxing officer's discretion, the taxing officer may have regard to the following:

(a) the nature and importance of the proceeding;
(b) the amount of the claim;
(c) the damages, if any, awarded;
(d) the principle involved;
(e) the conduct and cost of the proceeding;
(f) other fees and allowances claimed by the party's lawyers;
(g) any other relevant circumstance.

40.32 Certificate of taxation

(1) A taxing officer is to issue a sealed certificate of taxation, in accordance with Form 132, that must be served, within 14 days after the date it is issued, by the party who filed the bill, on the party responsible for payment of the costs.

(2) A certificate of taxation has the force and effect of an order of the Court.

(3) The costs certified in the certificate of taxation accrue interest, calculated in accordance with rule 39.06 from the date the certificate of taxation is served.

Note 1: Section 52 of the Act empowers the Court to award interest.

Note 2: For the rate of interest, see rule 39.06.

40.33 Costs of taxation

(1) A party who files an objection under rule 40.21 must pay the costs of taxation of all parties from the date on which the taxing officer notified the parties of the estimate unless:

(a) if the party is the party who filed the bill—the costs are taxed at more than 115% of the taxing officer's estimate; or
(b) in any other case—the costs are taxed at less than 85% of the taxing officer's estimate.

(2) A party may apply to the taxing officer to be relieved of the consequences of subrule (1) if:

(a) the party had offered to compromise the costs on terms more favourable than the costs were taxed; or
(b) the conduct of any other party at the taxation added significantly to the duration or cost of the taxation.

40.34 Review by Court

(1) A party who attended a taxation may apply to the Court for a review of the taxation and any consequential orders.

Authorised Version F2024C00519 registered 28/06/2024

(2) The application must be in accordance with Form 133 and state, briefly but specifically:

(a) the items in the bill that are subject to challenge; and

(b) whether the party wants the item included, deleted or varied and, if varied, the amount of the variation.

(3) A party must not, on an application for review, raise any ground of objection, or response to an objection, not taken in the party's notice under rules 40.25(1) or 40.26(1).

Note: For the parties who may attend the taxation, see rule 40.27.

(4) The application must be filed and served on all interested parties within 28 days after the issue of the certificate of taxation.

(5) The Court may call for a written report from the taxing officer.

(6) No further evidence will be received on the review.

Note: The Court may exercise all of the powers of the taxing officer in relation to the items under review and may make any other orders, including altering the certificate of taxation or remitting an item to the same or any other taxing officer for taxation.

40.35 Stay of costs

(1) An application for a review of a taxation, does not operate to stay execution for costs that are the subject of a certificate of taxation.

(2) However, a party making an application under rule 40.34, may apply to the Court to stay execution on any costs included in a certificate of taxation until the application is heard and determined.

Rules 40.36 – 40.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 40.3—Short form bills

40.41 Short form bill on application for winding up under *Corporations Act 2001*

(1) A plaintiff who has obtained an order for the costs of the winding up of a corporation under the *Corporations Act 2001* is entitled to:
  (a) the costs mentioned in item 13 of Schedule 3 that applied on the date that the winding up application was filed; and
  (b) any disbursements properly incurred.

(2) If the application for winding up is dismissed and the plaintiff obtains an order for costs against the defendant, the plaintiff is entitled to:
  (a) the costs mentioned in item 13 of Schedule 3 that applied on the date that the winding up application was filed; and
  (b) any disbursements properly incurred.

40.42 Procedure—short form bills under *Corporations Act 2001*

(1) A plaintiff who claims costs under rule 40.41 must serve on the liquidator of the corporation, and the defendant, a bill that includes disbursements (the ***bill***), which need not include an itemised account of:
  (a) the work or services performed; or
  (b) the disbursements incurred.

(2) Unless a party interested in a bill objects to the amount claimed in the bill, in accordance with rule 40.25, a certificate of taxation will be issued for the sum of:
  (a) the amount mentioned in item 13 of Schedule 3 or, if a lesser amount is claimed in the bill, that amount; and
  (b) any disbursements properly incurred.

(3) If the liquidator, or the defendant, objects to the claim being made under rule 40.41, the liquidator, or the defendant, must, within 14 days after being served with the bill, give the plaintiff written notice of the objection.

(4) If the plaintiff receives a notice of objection, the plaintiff 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 liquidator and the defendant;
  (d) either:
    (i) an itemised account;
    (ii) or evidence that the costs incurred by the plaintiff were equal to, or more than, the amount of the bill.

Note: For the taxation of a bill, see rule 40.27.

(5) The parties, and the liquidator, must not attend on taxation of the bill unless directed to do so by the taxing officer.

Authorised Version F2024C00519 registered 28/06/2024

(6) This rule does not limit a plaintiff's right to claim taxed costs of the proceeding, under Division 40.2.

(7) However, a plaintiff who claims costs:
  (a) under this rule—has no further claim to recover any of the taxed costs of the proceeding under Division 40.2; and
  (b) under Division 40.2—has no further right to recover any of the taxed costs of the proceeding under this rule.

40.43 Short form bills for migration appeals

(1) This rule applies in relation to:
  (a) an appeal from an order made by the Federal Circuit and Family Court of Australia (Division 2) in respect of a migration decision (within the meaning of the *Migration Act 1958*); and
  (b) an application for leave to appeal from an order mentioned in paragraph (a); and
  (c) an application for an extension of time to start an appeal mentioned in paragraph (a) or to make an application mentioned in paragraph (b).

(2) If:
  (a) an appeal or application is discontinued or dismissed before hearing; and
  (b) a party is entitled to costs or obtains an order for costs;

the party is entitled, subject to subrule (4), to the costs mentioned in item 15.1 of Schedule 3.

(3) If:
  (a) an appeal or application is discontinued or dismissed after hearing; and
  (b) a party is entitled to costs or obtains an order for costs;

the party is entitled, subject to subrule (4), to the costs mentioned in item 15.2 of Schedule 3.

(4) If:
  (a) a party is entitled to an amount under subrule (2) or (3) in relation to an appeal; and
  (b) the court had, at a separate hearing, granted leave to appeal or an extension of time to start the appeal;

the party is entitled, in addition to the costs to which the party is entitled under subrule (2) or (3) (as the case may be), to the costs mentioned in item 15.3 of Schedule 3.

40.44 Procedure—short form bills for migration appeals

(1) A party (the ***claimant***) who claims costs to which the claimant is entitled under rule 40.43 must file a bill for an amount not exceeding the amount to which the claimant is entitled under that rule. The bill need not include an itemised account of:
  (a) the work or services performed; or

Authorised Version F2024C00519 registered 28/06/2024

(b) the disbursements incurred.

(2) A certificate of taxation will be issued for the amount claimed in the bill unless a party interested in the bill files a notice of objection in accordance with subrule 40.25(1) within 14 days after being served with the bill.

(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 affidavit of service of the bill on the other party;
(c) 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 40.27.

(5) The claimant and the other party must not attend on the taxation of the bill, unless directed to do so by the taxing officer.

(6) This rule does not limit a party's right to claim taxed costs of the appeal under Division 40.2.

(7) However, a party who claims costs:
(a) under this rule—has no further claim to recover any of the taxed costs of the appeal under Division 40.2; and
(b) under Division 40.2—has no further right to recover any of the taxed costs of the appeal under this rule.

Note: ***File*** is defined in the Dictionary as meaning file and serve.

Rules 40.45–40.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 40.4—Determination of maximum costs

40.51 Maximum costs in a proceeding

(1) A party may apply to the Court for an order specifying the maximum costs as between party and party that may be recovered for the proceeding.

Note: ***Costs as between party and party*** is defined in the Dictionary.

(2) An order made under subrule (1) will not include an amount that a party is ordered to pay because the party:

(a) has failed to comply with an order or with these Rules; or

(b) has sought leave to amend 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 not conducted the proceeding in a manner to facilitate a just resolution as quickly, inexpensively and efficiently as possible, and another party has been caused to incur costs as a result.

Authorised Version F2024C00519 registered 28/06/2024

Part 41—Enforcement

Division 41.1—General

41.01 Application without notice for directions

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

Note: ***Without notice*** is defined in the Dictionary.

41.02 Condition precedent not fulfilled

(1) If an order is made in favour of a party subject to the fulfilment of a condition, the party cannot enforce the order until the condition is fulfilled.

Note: The Court can make order subject to conditions—see rule 1.33.

(2) However, the party may apply to the Court for an order for the revocation of the condition or the variation of the order.

41.03 Application for stay of judgment or order

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

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

41.04 Failure to comply with Court order

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

(2) A person who undertakes to the Court to do, or not to do, an act or thing, must comply with that undertaking.

Note: If a person does not comply with an order of the Court, a Registrar may bring the person's failure, neglect or disobedience to the attention of the Court. The Court may act on its own initiative—see rule 1.40.

41.05 Failure to attend Court in response to subpoena or order

(1) This rule applies if:
  (a) the Court has issued a subpoena or made an order that a person attend Court:
    (i) to give evidence; or
    (ii) to produce any document or thing; or
    (iii) to answer a charge of contempt; or
    (iv) for any other reason; and
  (b) the person fails to attend.

Authorised Version F2024C00519 registered 28/06/2024

(1A) A party may apply to the Court for the issue of a warrant, in accordance with Form 90:

(a) for the person's arrest and detention in custody until the person is brought before the Court; and

(b) for the production of the person before the Court.

(1B) The warrant may be issued to one of the following persons:

(a) the Sheriff of the Court;

(b) a Deputy Sheriff of the Court;

(c) the Sheriff of a court of a State or Territory;

(d) a Deputy Sheriff of a court of a State or Territory;

(e) a police officer.

(2) This rule does not limit the power of the Court to punish for contempt.

(3) This rule does not apply to an order or direction of the Court requiring a party to comply with these Rules.

41.06 Endorsement on order

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

(a) for an order that requires the person to do an act or thing—the person neglects or refuses to do the act or thing within the time specified in the order; or

(b) for an order that requires the person not to do an act or thing—the person disobeys the order.

41.07 Service of order

(1) An order mentioned in rule 41.06 must be served personally on the person who is bound to do, or not to do, the act or thing:

(a) within the time mentioned in the order; or

(b) if no time is mentioned—within a time that would allow the person to comply with the order.

(2) However, if the person:

(a) was present when the judgment was pronounced or the order was made; or

(b) was notified of the terms of the order orally, by telephone or electronically;

the person is taken to have been served with the order at the time the person heard or was notified of the order.

Authorised Version F2024C00519 registered 28/06/2024

41.08 Application where person fails to comply with order

(1) If a person fails to comply with an order that the person is bound to comply with a party may apply to the Court for the following orders:
  (a) the committal of the person;
  (b) the sequestration of the person's property.

(2) If the person in default is a corporation or an organisation, a party may apply to the Court for an order:
  (a) for the committal of an officer of the corporation or organisation; or
  (b) for the sequestration of the property of the corporation or organisation.

(3) However, no application may be made for an order under paragraph (2)(a) unless the officer:
  (a) has been served with the order in accordance with rule 41.07(1), and the order carries the endorsement in rule 41.06; or
  (b) was present when the order was made or was notified of the order in accordance with rule 41.07(2).

(4) This rule applies if the Court has made:
  (a) an injunction; or
  (b) an order in the nature of an injunction; or
  (c) an order in the nature of mandamus or prohibition.

Note: Contempt is dealt with in Part 42.

41.09 Substituted performance

(1) If a person (the ***first person***) is bound, but neglects or refuses, to do an act, a party may apply to the Court for an order:
  (a) that the act be done by another person, appointed by the Court; and
  (b) that the first person pay the costs and expenses incurred by the making of the order.

(2) Subrule (1) does not limit:
  (a) the power of the Court to punish for contempt; or
  (b) any other mode of enforcement of the judgment or order available to the party.

41.10 Execution generally

(1) A party who wants to enforce a judgment or order of the Court may apply to the Court to make an order, to issue any writ, or to take any other step that can be taken in the Supreme Court of the State or Territory in which the judgment or order has been made as if the judgment or order was a judgment or order of that Supreme Court.

(2) An order made under subrule (1) authorises the Sheriff, when executing the orders of the Court, to act in the same manner as a similar officer of the Supreme

Authorised Version F2024C00519 registered 28/06/2024

Court of the State or Territory in which the order is being executed is entitled to act.

(3) A party who wants to enforce an order in more than one State or Territory may adopt the procedures and forms of process of the Supreme Court of the State or Territory in which the judgment or order has been made.

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

41.11 Stay of execution

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

Rules 41.12 – 41.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 41.2—Enforcement against partnership

41.21 Execution of order against partnership

(1) An order against a partnership may be executed:
  (a) against any property of the partnership in Australia, whether or not any partner is resident outside Australia; or
  (b) against any partner in the partnership who has filed a notice of address for service in the proceeding; or
  (c) against any person who has admitted to being, or has been found to be, a partner in the partnership; or
  (d) against any partner in the partnership who has been individually served with a copy of the originating application.

(2) However, subrule (1) does not apply to make a person mentioned in that subrule individually liable, unless the person:
  (a) has been personally served with the originating application; and
  (b) has filed a notice of address for service in the proceeding.

41.22 Execution against individual partner

(1) If an order is made against a partnership, and the party in whose favour the order is made wants to execute the order against a partner who is not individually liable under rule 41.21(2), the party must apply to the Court for an order against the partner.

(2) If, on the hearing of the application, the partner admits liability, judgment may be entered and an order made against the partner.

(3) If, on the hearing of the application, the partner denies liability, the applicant may apply to the Court for an order:
  (a) for the further conduct of the proceeding; and
  (b) that the proceeding continue in the partner's name and not in the partnership name.

41.23 Application to proceedings between co-partners

(1) This rule applies to:
  (a) a proceeding between a partnership carrying on business in Australia and one or more of its members; and
  (b) a proceeding between partnerships carrying on business in Australia that have one or more members in common.

(2) An order may not be executed in a proceeding to which subrule (1) applies without the leave of the Court.

(3) A party seeking leave under subrule (2) may apply to the Court:
  (a) for directions; or

Authorised Version F2024C00519 registered 28/06/2024

Rule 41.23

(b) for an order for the taking and holding of accounts and inquiries.

Rules 41.24 – 41.30 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 41.3—Execution against business name

41.31 Execution of order—proceeding against person in person's business name

(1) Any order in a proceeding against a person in the person's business name may be enforced by execution only against any property of the business carried on under the business name.

(2) However, if the business is a partnership and the order is against the partnership in the partnership name, the order may be enforced by execution in accordance with rule 41.21.

(3) For enforcing an order under subrule (1), the property of the business is all the property, and rights and interests in property, of the person, that were originally brought into, or acquired for, the business.

Rules 41.32 – 41.40 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 41.4—Sheriff

Note: The Sheriff of the Court is responsible for the service and execution of all process of the Court directed to the Sheriff—see section 18P of the Act.

41.41 Suspension of execution of process

(1) The Sheriff may suspend the execution of a process only if the party who applied for the issue of the process gives a written notice to the Sheriff, instructing the Sheriff to suspend the execution of the process.

(2) A person who has given a notice to the Sheriff under subrule (1) may withdraw the instruction by giving a written notice to the Sheriff instructing the Sheriff to execute the process.

41.42 Failure to execute process

If the Sheriff fails to execute a process according to its terms, the party who applied for the issue of the process may apply to the Court for an order directing the Sheriff to do so.

41.43 Application for orders in relation to execution of process

The Sheriff may apply to the Court with or without notice for directions about whether a process is to be executed and, if so, the way in which the execution is to be carried out.

Note: ***Without notice*** is defined in the Dictionary.

Rules 41.44 – 41.50 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 41.5—Fees

41.51 Definitions for Division 41.5

In this Division:

bill of fees means a bill of fees for the service or execution of a process of the Court.

fees includes charges and commission.

interested person, for the fees for the service or execution of a process of the Court, means:

(a) a party who lodges a process with the Sheriff for service or execution; or

(b) a lawyer who gives an undertaking to pay the fees or is otherwise liable to pay the fees; or

(c) for fees that, under a writ of execution, the Sheriff is authorised to levy on property—the owner of the property.

41.52 Security

(1) If a party lodges a process with the Sheriff for service or execution, the Sheriff may on lodgment, and from time to time:

(a) require the party who lodged the process to deposit with the Sheriff an amount of money fixed by the Sheriff as security for the whole, or part, of the fees for the service or execution of the process; or

(b) accept an undertaking by the lawyer for the party who lodged the process, to pay the whole, or a part, of the fees.

(2) If a party is required to pay a deposit under paragraph (1)(a), but objects to the amount required to be paid, the party may apply to the Court for an order fixing the amount to be paid.

(3) The Sheriff may suspend the service or execution of the process until:

(a) the party who lodged the process pays the required deposit; or

(b) the lawyer for the party who lodged the process gives an undertaking for the payment of the fees.

(4) If a deposit is paid under this rule that is more than the amount of the fees, the Sheriff must refund to the party who lodged the process, or the party's lawyer, the amount of the difference.

41.53 Liability of lawyer

If a party's lawyer lodges a process for service or execution with the Sheriff, the lawyer is liable to pay the Sheriff's fees, whether or not the lawyer has given an undertaking under rule 41.52(1)(b).

Authorised Version F2024C00519 registered 28/06/2024

41.54 Bill of fees

(1) An interested person may ask the Sheriff to be served with the bill of fees.

(2) If a bill of fees is served on an interested person, the amount of the fees is binding as between the Sheriff and the person unless the person obtains an order for taxation.

41.55 Taxation

(1) An interested person who has been served with a bill of fees may apply to the Court for an order that the fees be taxed.

(2) If the Court makes an order under subrule (1), the Sheriff is to submit the bill of fees to a taxing officer to carry out the taxation.

(3) The amount of the fees fixed by the taxing officer is, subject to alteration or review under rule 40.34, binding as between the Sheriff and the interested person.

41.56 Failure by lawyer to pay Sheriff's fees

If a party's lawyer is liable to pay an amount of the Sheriff's fees, but fails to do so within 7 days after the amount has become binding as between the Sheriff and the lawyer, the Sheriff may apply to the Court for an order that the lawyer pay the amount to the Sheriff.

Rules 41.57 – 41.60 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 41.6—Reciprocal enforcement of judgments under Foreign Judgments Act 1991

41.61 Interpretation for Division 41.6

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

41.62 Application for an order for registration of foreign judgment

(1) A party who wants to register a judgment under section 6(1) of the *Foreign Judgments Act 1991* must file an originating application, in accordance with Form 134.

(2) The originating application must be accompanied by:

(a) 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 an affidavit; and

(b) an affidavit stating the following:

(i) the full name, occupation and the usual or last-known place of residence, or of business, of the parties;

(ii) if section 6(1)(b) of the *Foreign Judgments Act 1991* is relied on—the date of the last judgment in proceedings by way of appeal;

(iii) that the judgment was given in a proceeding in which a matter for determination arose under the Commerce Act 1986 (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;

(iv) that Part 2 of the *Foreign Judgments Act 1991* applies to the judgment;

(v) that if the judgment were registered the registration would not be, or be liable to be, set aside under section 7 of the *Foreign Judgments Act 1991*;

(vi) the amount of costs of, and incidental to, the registration sought to be included in the registered judgment;

(vii) if the judgment is a money judgment—that judgment was given in a superior court of a country in relation to which Part 2 of the *Foreign Judgments Act 1991* extends, or an inferior court of such a country, being an inferior court in relation to which Part 2 of the *Foreign Judgments Act 1991* extends;

(viii) 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;

(ix) if the judgment is a non-money judgment—that the judgment is a non-money judgment of a kind prescribed under section 5(6) of the *Foreign Judgments Act 1991*.

Authorised Version F2024C00519 registered 28/06/2024

(3) The application may be without notice.

Note: ***Without notice*** is defined in the Dictionary.

41.63 Further affidavit to be filed on day of hearing

The applicant must on the day of the hearing file a further affidavit stating the following:

(a) the causes of action to which the judgment relates;

(b) that the judgment can be enforced in the country of the original court;

(c) the rate of interest (if any) payable under the law of that country on any amount payable under the judgment;

(d) if the judgment is a money judgment:

(i) that 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) that 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—that the judgment is to be registered for the equivalent amount in Australian currency, based on the rate of exchange prevailing on that day.

(e) briefly but specifically, the grounds relied on for each statement made in the affidavit.

41.64 Registration

(1) An order for the registration of a money judgment must be in accordance with Form 135.

(2) An order for the registration of a non-money judgment must be in accordance with Form 136.

41.65 Notice of registration

(1) The applicant must serve a copy of the order for registration of a judgment under rule 41.64 on the party against whom the registered judgment is enforceable.

(2) The applicant must attach to the copy of the order copies of the supporting affidavits.

(3) 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.

(4) The applicant must serve an affidavit of service before any step is taken to enforce the registered judgment.

Authorised Version F2024C00519 registered 28/06/2024

41.66 Application to set aside registration of judgment or stay enforcement of judgment

(1) A respondent may apply for an order:
  (a) setting aside the registration of the judgment; or
  (b) staying enforcement of the judgment.

(2) An application under subrule (1) must be made within 14 days after the date the respondent was served with a copy of the order for registration of the judgment.

(3) The application must:
  (a) be made by interlocutory application in the proceeding in which the judgment was registered; and
  (b) be accompanied by an affidavit stating:
    (i) the grounds on which the registration of the judgment should be set aside or stayed; and
    (ii) the material facts relied on in support of the application.

41.67 Application to set aside registered foreign judgment

(1) A party may apply for an order:
  (a) that a judgment registered under this Division be set aside; and
  (b) for directions for the hearing and determination of any issue arising on the application.

(2) On an application to have the registration of a judgment set aside, the Court may make such directions as may be necessary for the hearing and determination of any issue arising in the application.

41.68 Security for costs

A party may apply to the Court for an order that an applicant seeking to have a judgment registered under rule 41.62 give security for costs of:
  (a) the application; and
  (b) any application to set aside the registration of the judgment.

41.69 Record of registered judgments

A 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 lawyer or agent on whom a document can be served;
  (d) in relation to the party against whom the judgment is enforceable—the full name, occupation and last-known address of the party;
  (e) if the judgment is a money judgment:

Authorised Version F2024C00519 registered 28/06/2024

(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, the registration that are included in the registered judgment;

(h) the particulars of any enforcement or proceeding in relation to the registered judgment.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 6—Disciplinary

Part 42—Contempt

Division 42.1—Contempt in face or hearing of Court

42.01 Arrest for contempt

(1) If a party alleges that a person is guilty of contempt of court, committed in the face of the Court or in the hearing of the Court, the party may apply to the Court for:
  (a) an order directing the person be brought before the Court; or
  (b) the issue of a warrant, in accordance with Form 90:
    (i) for the person's arrest and detention in custody until the person is brought before the Court; and
    (ii) for the production of the person before the Court.

(2) The warrant may be issued to one of the following persons:
  (a) the Sheriff of the Court;
  (b) a Deputy Sheriff of the Court;
  (c) the Sheriff of a court of a State or Territory;
  (d) a Deputy Sheriff of a court of a State or Territory;
  (e) a police officer.

42.02 Charge, defence and determination

If a person charged with contempt is brought before the Court, the Court will:
  (a) inform the person of the contempt with which the person is charged; and
  (b) require the person to plead a defence to the charge; and
  (c) after hearing the person—determine whether the person is guilty of contempt; and
  (d) make an order for the person's discharge or punishment.

42.03 Interim custody

(1) The Court may, pending disposal of the charge, order that the person charged:
  (a) be kept in custody as specified in the order; or
  (b) be released.

(2) The order may require the person charged to give a specified amount of security for the person's appearance in person to answer the charge.

Note: The procedure in this Division can only be used if the alleged contempt has been committed in the face of the Court. This procedure will only be issued if it is necessary to deal with the conduct complained of quickly.

Rules 42.04 – 42.10 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 42.2—Applications for contempt

42.11 Procedure generally

(1) If a party alleges that a contempt has been committed by a person in connection with a proceeding in the Court, an application for punishment for the alleged contempt must be made by the party by interlocutory application in the proceeding.

(2) If it is alleged that a contempt has been committed by a person, but not in connection with a proceeding in the Court, the proceeding for punishment of the alleged contempt must be started by filing an originating application as a substantive proceeding.

42.12 Statement of charge

An application alleging that a contempt has been committed must be accompanied by:

(a) a statement of charge, in accordance with Form 137, specifying the contempt with sufficient particularity to allow the person charged to answer the charge; and

(b) the affidavits on which the person making the charge intends to rely to prove the charge.

42.13 Service

The person charged must be served personally with:

(a) the application (whether originating or interlocutory); and

(b) the statement of charge; and

(c) the affidavits on which the party making the charge intends to rely.

42.14 Arrest

(1) If an application for punishment of a contempt has been filed, or a proceeding has been started for punishment of a contempt, a party making the charge may apply to the Court for:

(a) an order that the person charged give security for the person's appearance to answer the charge; or

(b) the issue of a warrant, in accordance with Form 90:

(i) for the person's arrest and detention in custody until the person is brought before the Court; and

(ii) for the production of the person before the Court.

(2) The party making the charge under subrule (1) must satisfy the Court that the person charged is likely to abscond or otherwise withdraw from the jurisdiction of the Court.

Authorised Version F2024C00519 registered 28/06/2024

(3) If the person charged does not comply with an order to give security, the Court may issue a warrant, in accordance with Form 90, for the arrest of the person and for the person's detention in custody until the person is brought before the Court to answer the charge.

(4) A warrant referred to in this rule may be issued to one of the following persons:
   (a) the Sheriff of the Court;
   (b) a Deputy Sheriff of the Court;
   (c) the Sheriff of a court of a State or Territory;
   (d) a Deputy Sheriff of a court of a State or Territory;
   (e) a police officer.

42.15 Procedure on the hearing

(1) The person charged may apply to the Court for an order:
   (a) that the hearing of the charge proceed by way of oral evidence; or
   (b) for the cross-examination of the deponents to the affidavits to be relied on by the person making the charge.

(2) The person charged may file affidavits in answer to the charge.

(3) The person charged may:
   (a) give oral evidence; and
   (b) call witnesses to give oral evidence without first filing any affidavit sworn by the person charged or by those witnesses.

42.16 Application or proceeding by a Registrar

(1) If it is alleged that a person is guilty of contempt of the Court, a party may apply to the Court for an order directing a Registrar to make application in the proceeding, or to start a proceeding, for punishment of the contempt.

(2) Subrule (1) does not affect any right of a person to make application in the proceeding for, or to start a proceeding for, punishment of contempt.

Note: The Court can act on its own initiative—see rule 1.40.

Rules 42.17 – 42.20 left blank

Authorised Version F2024C00519 registered 28/06/2024

Division 42.3—General

42.21 Warrant for imprisonment

A warrant for the imprisonment of a person charged under this Part:

(a) must be in accordance with Form 91; and

(b) may be issued by the Judge presiding in the Court directing the arrest or detention.

42.22 Discharge before end of prison term

If a person charged is committed to prison for a term, the person may apply to the Court for an order for the person's discharge before the end of the term.

Authorised Version F2024C00519 registered 28/06/2024

Chapter 7—Transitional provisions

Note: Provisions of this Chapter will be removed after they have expired.

Part 43—Transitional provisions

Division 43.2—Transitional provisions relating to the Federal Court Legislation Amendment Rules 2024

43.11 Definitions

In this Division:

amending Rules means the *Federal Court Legislation Amendment Rules 2024*.

43.12 Application of amendments relating to service in proceedings under particular acts

Rules 10.07 and 10.08, as substituted by the amending Rules, apply in relation to documents served on or after the commencement of the amending Rules.

43.13 Application of amendments relating to service of originating applications outside Australia

Rules 10.42 and 10.43, as amended by the amending Rules, apply in relation to originating applications served on or after the commencement of the amending Rules.

43.14 Expiry of this Division

This Division is repealed at the start of the day after the end of the period of 6 months beginning on the day the amending Rules commence.

Authorised Version F2024C00519 registered 28/06/2024

Schedule 1—Dictionary

(rule 1.51)

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

Act means the *Federal Court of Australia Act 1976*.

address for service, for a person in a proceeding—see rule 11.01.

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

ADR process means an alternative dispute resolution process conducted by a suitable person.

AFCA has the meaning given by section 761A of the *Corporations Act 2001*.

appeal means an appeal brought in the appellate jurisdiction of the Court under Division 2 of Part III of the Act, but does not include an appeal under Part 33 of these Rules.

appellant means a person who has filed a notice of appeal, under Chapter 4 of these Rules.

applicant means:

(a) a party, other than a cross-claimant, claiming relief; or

(b) for Division 34.7—a person who is an applicant for section 61(2) of the *Native Title Act 1993*.

approved form means a form approved by the Chief Justice.

arbitration means arbitration conducted under an arbitration order.

arbitration order means an order mentioned in rule 28.02, referring a matter to an arbitrator.

arbitrator means an arbitrator to whom a matter is referred under an arbitration order.

Attorney-General means the Commonwealth Attorney-General.

Attorney-General's Department means the Commonwealth Attorney-General's Department.

Australia includes the external Territories.

Australian Consumer Law has the meaning given by section 4(1) of the *Consumer and Competition Act 2010*.

authenticity of a document means:

(a) if the document is an original—it was created, printed, written, signed and executed as it purports to have been; or

(b) if the document is a copy—it is a true copy.

Authorised Version F2024C00519 registered 28/06/2024

award includes a final award and an interim award.

bank means:

(a) an authorised deposit-taking institution within the meaning of the *Banking Act 1959*; or

(b) the Reserve Bank of Australia.

Bankruptcy Rules means the *Federal Court (Bankruptcy) Rules 2016*.

barrister means a person who is entitled to practise as a barrister in a federal court.

bill means a bill of costs.

business day, in a place, means any day other than:

(a) a Saturday or Sunday; or

(b) a day that is a public holiday in the place; or

(c) any other day on which the Registry in the place is closed.

business name means a name, style, title or designation under which a person carries on a business, other than a name consisting only of the name of that person and the name of any other person in association with whom the person carries on business.

certificate of taxation means a certificate issued by a taxing officer in accordance with rule 40.32.

Chief Executive Officer—see section 4 of the Act.

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

claim includes a cross-claim unless a contrary intention appears.

conduct money means a sum of money or its equivalent, sufficient to meet the reasonable expenses of a person attending Court for the purposes of complying with a subpoena or order.

constitutional writ means a writ of mandamus or a writ of prohibition.

control, if referring to a document, means possession, custody or power.

convention means a convention (other than the Hague Convention), agreement, arrangement or treaty about service abroad of judicial documents to which the Crown in right of the Commonwealth or, if applicable, in right of a State, and a foreign country are parties.

corporation means any artificial person other than an organisation.

Corporations Rules means the *Federal Court (Corporations) Rules 2000*.

costs, unless the context otherwise provides, means costs as between party and party.

Authorised Version F2024C00519 registered 28/06/2024

costs as between party and party means only the costs that have been fairly and reasonably incurred by the party in the conduct of the litigation.

costs on an indemnity basis means costs as a complete indemnity against the costs incurred by the party in the proceeding, provided that they do not include any amount shown by the party liable to pay them to have been incurred unreasonably in the interests of the party incurring them.

Court file: a document is part of the Court file of a particular proceeding if:

(a) the document:
  (i) has been accepted for filing in respect of the proceeding, in accordance with rule 2.25; or
  (ii) is a redacted copy replaced on the Court file in accordance with rule 2.29; and

(b) the document has not been the subject of an order, under rule 2.28 or 2.29, that the document be removed from the Court file.

cross–claim includes a counter-claim, cross-action, set-off and third party claim.

cross–claimant means a party claiming relief in a cross-claim.

cross-respondent means a party against whom relief is claimed in a cross-claim.

description means:

(a) for a person who is an individual—the person's name, residential or business address and occupation;

(b) for a person that is not an individual:
  (i) the person's name; and
  (ii) the address of one of the following:
    (A) the person's registered office;
    (B) the person's principal office;
    (C) the person's principal place of business.

direction means an order of the Court.

directions hearing means the first date, and any other date appointed by the Court for the management and conduct of a proceeding.

document includes:

(a) any record of information mentioned in the definition of ***document*** in Part 1 of the Dictionary to the *Evidence Act 1995*; and

(b) any other material, data or information stored or recorded by mechanical or electronic means.

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

Authorised Version F2024C00519 registered 28/06/2024

email address means an address to or from which an electronic communication may be sent, or at which an electronic communication may be received, using the internet, an intranet or other similar electronic network.

examination includes:

(a) an examination held under an order made under Division 29.2; and

(b) in proceedings under Division 1 of Part 2 of the *Foreign Evidence Act 1994*—any proceeding for the taking of evidence of a person conducted by the judicial authorities of a foreign country in relation to a letter of request issued as a result of an order made by the Court under that Part.

examiner includes a Registrar of the Court, or any other person, appointed for the purpose of an examination of a person under:

(a) these Rules; or

(b) section 7(1)(a) or (b) of the *Foreign Evidence Act 1994*.

expert means a person who has specialised knowledge based on the person's training, study or experience.

expert evidence means the evidence of an expert that is based wholly or substantially on the expert's specialised knowledge.

Note: For the admissibility of the evidence of the opinion of an expert, see section 79 of the Evidence Act.

expert report means a written report that contains the opinion of any expert on any question in issue in the proceeding based wholly or substantially on that expert's specialised knowledge, including any report in which an expert comments on the report of any other expert.

file means file and serve.

genuine steps statement—see section 5 of the Civil Dispute Resolution Act.

guardian, of a mentally disabled person or the estate of a mentally disabled person, includes a person entrusted under a law of the Commonwealth, or of a State or Territory, with the care or management of the person or the estate.

Hague Convention means the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, done at The Hague on 15 November 1965.

Note: The Convention is in Australian Treaty Series 2010 No. 23 ([2010] ATS 23) and could in 2022 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

hearing means any hearing before the Court, whether final or interlocutory.

hearing date, for an application or a proceeding, means the date fixed by a Registrar for a hearing for the application or proceeding.

High Court means the High Court of Australia.

Authorised Version F2024C00519 registered 28/06/2024

image means a picture that has been created, copied, stored or sent in electronic form.

interested person means:

(a) for a minor under a legal incapacity—the person's parent or guardian; or

(b) for a mentally disabled person under a legal incapacity—the person's guardian; or

(c) in any other case—a person affected:

(i) by an order of the Court; or

(ii) by any act or thing done by another person.

interlocutory application means an application, other than a cross-claim, in a proceeding already started.

issuing officer, for a subpoena to give evidence or produce documents—see subrule 24.11(1).

issuing party:

(a) for a subpoena to give evidence, or produce documents, mentioned in Division 24.2—see subrule 24.11(1); and

(b) for a subpoena to attend for examination or produce documents in arbitral proceedings under subsection 23(3) of the International Arbitration Act—see subrule 28.46(1).

Judge—see section 4 of the Act.

judgment—see section 4 of the Act.

lawyer has the meaning given by section 4 of the Act.

Litigants Fund means the Federal Court of Australia Litigants' Fund established under Division 2.5 of these Rules.

litigation representative means a person who has been appointed for a proceeding, as a litigation representative for a person under a legal incapacity.

mediation means mediation conducted under a mediation order.

mediation order means an order referring a matter to a mediator as mentioned in rule 28.01.

mediator means a person to whom a matter is referred under a mediation order.

mentally disabled person means a person who, because of a mental disability or illness, is not capable of managing the person's own affairs in a proceeding.

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

minor means a person under the age of 18 years.

Authorised Version F2024C00519 registered 28/06/2024

Native Title Registrar means the Native Title Registrar appointed under Part 5 of the *Native Title Act 1993*.

oath includes an affirmation.

order includes a final order, an interlocutory order, a direction and a sentence of the Court.

organisation has the meaning given by section 6 of the *Fair Work (Registered Organisations) Act 2009*.

originating application means an application starting a proceeding, including a cross-claim in the proceeding against a person who was not previously a party to the proceeding, but not a notice of appeal.

partnership name means a name under which 2 or more persons carry on business in partnership in Australia.

party means a party to a proceeding.

party interested in the bill means a party or a person in whose favour or against whom an order for costs has been made.

person under a legal incapacity means:
(a) a minor; or
(b) a mentally disabled person.

pleading means:
(a) a statement of claim; or
(aa) an alternative accompanying document referred to in rule 8.05; or
(b) a statement of cross claim; or
(c) a defence; or
(ca) a concise statement in response; or
(d) a reply; or
(da) a concise statement in reply; or
(e) any pleading after a reply;
but does not include:
(f) an originating application; or
(g) an interlocutory application
(h) a notice of any kind; or
(i) an affidavit.

principal proceeding means a proceeding in which:
(a) a respondent wants to make a cross-claim; or
(b) a cross-claim has been made under Part 15.

proceeding—see section 4 of the Act.

proper address, for a person to be served, means:
(a) the person's address for service; or

Authorised Version F2024C00519 registered 28/06/2024

(b) if the person has no address for service—the person's usual or last-known business or residential address.

proper place, for a proceeding, means:

(a) the place where the proceeding is started; or

(b) if the proceeding is transferred to another place—the other place, from the date of transfer.

proper Registry, for a proceeding, means the Registry at the proper place for the proceeding.

Register of Native Title Claims means the Register established and maintained in accordance with Part 7 of the *Native Title Act 1993*.

Note: See section 253 and Part 7 of the *Native Title Act 1993*.

Registrar means:

(a) the Chief Executive Officer, or a Registrar, District Registrar or Deputy District Registrar of the Court; and

(b) any officer from time to time authorised to perform the duties of the Chief Executive Officer, or a Registrar, District Registrar or Deputy District Registrar of the Court.

Registry means the Principal Registry or a District Registry of the Court.

respondent means:

(a) a party, other than a cross-respondent, against whom relief is claimed, and

(b) a party to an appeal brought by an appellant.

return date means the date fixed by a Registrar for the hearing of an application and endorsed on any approved form.

Sheriff means:

(a) the Sheriff of the Court appointed under section 18N of the Act; and

(b) a Deputy Sheriff appointed under that section; and

(c) any person from time to time authorised to perform the duties of the Sheriff or a Deputy Sheriff.

short form bill means a bill under Division 40.3 of these Rules or Part 13 of the Bankruptcy Rules.

stamp, for a document, means to affix the stamp of the Court or a particular Registry to the document under rule 2.01(2) or (3).

submitting notice means a notice filed in accordance with rule 12.01.

taxed costs means costs taxed in accordance with Division 40.2.

taxing officer means a Registrar.

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010*.

Authorised Version F2024C00519 registered 28/06/2024

trial includes any hearing other than an interlocutory hearing.

vexatious proceeding: see section 37AM of the Act.

vexatious proceedings order: see section 37AM of the Act.

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

Authorised Version F2024C00519 registered 28/06/2024

Schedule 2—Powers of the Court that may be exercised by a Registrar

(rule 3.01)

Part 3.1—Corporations (Aboriginal and Torres Strait Islander) Act 2006

Item	Provision	Description (for information only)
1	Section 526-1(1)	Power to order that an Aboriginal and Torres Strait Islander corporation be wound up

Authorised Version F2024C00519 registered 28/06/2024

Part 3.2—Trans-Tasman Proceedings Act 2010

Item	Provision	Description (for information only)
11	Section 36(1)	Power to set aside a subpoena in whole or in part
12	Section 36(4)	Power to determine an application without a hearing
13	Section 36(6)	Power to direct that a hearing may be held remotely
14	Section 38	Power to issue a certificate stating that the person named in a subpoena has failed to comply with the subpoena
15	Section 48	Power to grant leave for remote appearances unrelated to remote evidence
16	Section 50	Power to grant leave for remote appearances related to remote evidence
17	Section 68	Power to register NZ judgments
18	Section 76	Power to stay enforcement of registered NZ judgment

Authorised Version F2024C00519 registered 28/06/2024

Part 3.3—Federal Court of Australia Act 1976

Item	Provision	Description (for information only)
21	Section 31A(1)	Power to give summary judgment for a prosecuting party
22	Section 31A(2)	Power to give summary judgment for a defending party
23	Section 32AB(1)	Power to order the transfer of a proceeding to the Federal Circuit and Family Court of Australia (Division 2)
24	Section 32AB(7)	Power to make a necessary order pending the disposal of a proceeding by the Federal Circuit and Family Court of Australia (Division 2)
25	Sections 37AF and 37AI	Power to make an order prohibiting or restricting the publication or other disclosure of particular evidence or the name of a party or witness
26	Section 37N(3)	Power to require a party's lawyer to give the party an estimate of the likely duration of the proceeding or part of the proceeding and of the likely amount of costs the party will have to pay in connection with the proceeding or part of the proceeding
27	Section 37P(2)	Power to give directions about the practice and procedure to be followed in relation to the proceeding or any part of the proceeding
28	Section 37P(5)	Power to make such order or direction as is appropriate when a party fails to comply with a direction about the practice and procedure to be followed in relation to the proceeding or any part of the proceeding
29	Section 43	Power to award costs of or in connection with an application heard by a Registrar
30	Section 47(1)	Power to direct or allow the manner of giving of testimony in a proceeding other than the trial of a cause
31	Section 47(3)	Power to direct or allow proof by affidavit at the trial of a cause
32	Section 47(4)	Power to permit the use of an affidavit without cross-examination of the maker
33	Section 47(5)	Power to order the manner of giving of testimony at the trial of a cause
34	Section 47A(1)	Power to direct or allow testimony to be given by video link, audio link or other appropriate means
35	Section 47B(1)	Power to direct or allow a person to appear or to make a submission by video link, audio link or other appropriate means
36	Section 47D	Power to direct or allow a document to be put to a person who is appearing or being examined by video link, audio link or other appropriate means
37	Section 47E(b)	Power to allow another person to administer oath or affirmation to a remote person
38	Section 47F(1)	Power to make an order for payment of expenses incurred in connection with the giving of testimony, appearance or the making of submissions by video link, audio link or other appropriate means
39	Section 48	Power to direct a change of venue for a proceeding or part of a proceeding

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
40	Section 51(2)	Power to make an order declaring that a proceeding is not invalid by reason of an irregularity or formal defect
41	Section 52(2)	Power to fix a rate of interest that is lower than that fixed by section 52(2)
42	Section 53A(1)(b)	Power to refer proceedings, or a part of proceedings, to a mediator for mediation
43	Section 56(1)	Power to order an applicant or appellant to give security for costs
44	Section 56(2)	Power to direct the amount, the time for giving, and the manner and form of security
45	Section 56(3)	Power to reduce or increase the amount of security
46	Section 56(3)	Power to vary the time of giving or the manner and form of security
47	Section 56(4)	Power to order that a proceeding or appeal be dismissed

Authorised Version F2024C00519 registered 28/06/2024

Part 3.4—Foreign Evidence Act 1994

Item	Provision	Description (for information only)
51	Section 7(1)	Power to make an order for taking evidence abroad
52	Section 8(1)	Power to give a direction about the procedure for examination of a person outside Australia
53	Section 8(2)	Power to include, in an order mentioned in section 7(1)(c) of the Act, a request about a matter relating to taking of evidence in a foreign country

Authorised Version F2024C00519 registered 28/06/2024

Part 3.5—Foreign Judgments Act 1991

Item	Provision	Description (for information only)
61	Sections 6(3), (12), (13) and (14)	Power to order that a foreign judgment be registered
62	Section 6(5)	Power to make an order extending the time for making an application

Authorised Version F2024C00519 registered 28/06/2024

Part 3.6—Native Title Act 1993

Item	Provision	Description (for information only)
71	Section 64	Power to grant leave to amend native title determination or compensation applications
72	Sections 66 and 66A	Power to make orders as to person to whom notice must be given and how such notice must be given
73	Section 66B	Power to make order to replace an applicant
74	Section 67	Power to make order that overlapping applications be dealt with in the same proceeding
75	Section 83A	Power to request searches to be conducted
76	Section 84	Power to make orders for the joinder, dismissal, withdrawal, cessation or representation of a party
77	Section 85	Power to grant leave to a party to be represented before the Court
78	Section 86B	Power to refer applications to the National Native Title Tribunal for mediation
79	Section 86C	Power to make order for the cessation of mediation
80	Section 86F	Power to make order adjourning a proceeding
81	Section 92	Power to prohibit disclosure of evidence

Authorised Version F2024C00519 registered 28/06/2024

Part 3.7—Federal Court Rules 2011

Item	Provision	Description (for information only)
91	Rule 1.04(3)	Power to order that the Federal Court Rules as in force immediately before 1 August 2011 apply to a step in a proceeding
92	Rule 1.33	Power to make an order subject to conditions
93	Rule 1.34	Power to dispense with compliance with a requirement of the Rules
94	Rule 1.35	Power to make an order inconsistent with these Rules
95	Rule 1.38	Power to fix the time within which an act or thing is to be done
96	Rule 1.39	Power to make an order to extend or abridge a time
97	Rule 1.40	Power to exercise a power on a Registrar's own initiative or on the application of a person who has a sufficient interest in the proceeding
98	Rule 1.41	Power to give judgment or make an order even if the applicant has not made a claim for that relief
99	Rule 1.42	Power to specify in an order the consequences of non-compliance
100	Rule 2.02	Power to transfer a proceeding to another place
101	Rule 2.28	Power to make an order to remove from a court file documents accepted for filing
102	Rule 2.29	Power to make an order for redaction of a document on a court file
103	Rule 2.31	Power to approve removal of documents from a Registry
104	Rule 2.32(4)	Power to give leave to a person to inspect and copy a document in a proceeding
105	Rule 2.43	Power to order that money be paid out of a Litigants' Fund
106	Rule 4.01(2), Note 3	Power to give leave to a corporation to proceed otherwise than by a lawyer
107	Rule 4.05	Power to give leave to a lawyer to file or serve a notice of change
108	Rule 4.12	Power to refer a litigant for referral to a Pro Bono lawyer
109	Rule 5.02	Power to make an order about the time when a notice of address for service must be served
110	Rule 5.04	Power at any hearing, to make directions for the management, conduct and hearing of a proceeding
111	Rule 5.05	Power to adjourn a directions hearing from time to time
112	Rule 5.06	Power, in relation to a cross-claim, to make directions or orders for the management, conduct and hearing of the cross-claim
113	Rule 5.08	Power to hear and determine a proceeding on a directions hearing
114	Rule 5.21	Power to make self-executing orders
115	Rule 5.23	Power to make an order if a party is in default as provided in rule 5.22
116	Rule 6.01	Power to: (a) remove from the Court file a document containing matter that is

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
		scandalous, vexatious or oppressive (b) strike such matter from the document
117	Rule 6.11	Power to grant leave for the use of a recording device or communication device in a place where a hearing is taking place
118	Rule 7.01(1)(b)	Power to make an order about property
119	Rule 7.22	Power to order discovery to ascertain description of respondent
120	Rule 7.23	Power to order a prospective respondent to make discovery to a prospective applicant
121	Rule 7.29	Power to make an order for costs and expenses
122	Rule 7.29	Power to make an order for security for costs and expenses
123	Rule 8.21	Power to order that: (a) a document be amended; or (b) a party have leave to amend a document
124	Rule 9.02	Power to give leave for 2 or more persons to be joined as applicants or respondents in a proceeding
125	Rule 9.05	Power to order that a person be added as a party to a proceeding and make an order for the filing and service of documents in the proceeding
126	Rule 9.08	Power to order that a person cease to be a party to a proceeding and make an order for the further conduct of the proceeding
127	Rule 9.09	Power to make an order for the joinder or removal of a party following the assignment, transmission or devolution of a party's interest or liability, or for the future conduct of a proceeding
128	Rule 9.10	Power to order that a proceeding be dismissed if a party is not substituted for a deceased party
129	Rule 9.10, Note	Power to make an order for the service of an order mentioned in rule 9.10
130	Rule 9.12	Power to give leave to a person to intervene in a proceeding, determine the terms and conditions on which the person is to intervene and determine the rights, privileges and liabilities of the intervener
131	Rule 9.63	Power to make an order appointing a person as a litigation representative
132	Rule 9.65(1)	Power to make an order that a litigation representative be removed
133	Rule 9.65(2)	Power to make an order that proceedings be stayed until a replacement litigation representative has been appointed
134	Rule 10.23	Power to order that a document be taken to have been served on a person on a specified date
135	Rule 10.24	Power to order substituted service
136	Rule 10.26	Power to make an order about service of a notice or other document by the Court or an officer of the Court
137	Rule 11.01	Power to make an order about a person's address for service
138	Rule 13.01	Power to make an order about an originating process

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
139	Rule 14.01	Power to make an order about property, a document or information
140	Rule 14.24	Power to fix remuneration for a receiver
141	Rule 15.13	Power to make an order in relation to a cross-claim
142	Rule 15.15	Power to make an order in relation to an amendment of a notice of cross-claim
143	Rule 16.21	Power to order that the whole or a part of a pleading be struck out
144	Rule 16.31	Power to make an order varying the times for filing and serving pleadings in a proceeding
145	Rule 16.45	Power to order a party to file and serve particulars or a statement of the nature of the party's case
146	Rule 16.52	Power to make an order disallowing an amendment of a pleading
147	Rule 16.53	Power to grant leave to amend a pleading
148	Rule 16.54	Power to order when an amendment of a document takes effect
149	Rule 16.59	Power to make an order about the procedure for amendment of a document
150	Rule 16.60	Power to make an order about the service of an amended document
151	Rule 17.01	Power to make an order about the time for service of an interlocutory application
152	Rule 17.03	Power to make an order in relation to service of an interlocutory application
153	Rule 17.04	Power to hear and dispose of an application in the absence of a party
154	Rule 19.01	Power to make an order directing the manner, time and terms for giving security for costs
155	Rule 19.01(1)(b)	Power to order that a proceeding be stayed until security is provided
156	Rule 19.01(1)(c)	Power to order that a proceeding be stayed or dismissed if security is not provided
157	Rule 20.03(2)	Power to make an order about the use of a document
158	Rule 20.13	Power to order a party to give discovery in accordance with Division 20.2
159	Rule 20.15	Power to order that non-standard or more extensive discovery be made
160	Rule 20.16	Power to make an order about the manner and time within which discovery must be given
161	Rule 20.17(3)	Power to make an order about the form and content of a list of discovered documents
162	Rule 20.21	Power to order a party to file and serve an affidavit relating to a particular document or class of documents
163	Rule 20.22(2)	Power to order who can make an affidavit for discovery
164	Rule 20.23	Power to order a person who is not a party to make discovery to a party
165	Rule 20.25	Power to make an order for security for costs or for costs and expenses of a person ordered to make discovery pursuant to rule 20.23

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
166	Rule 20.31(3)	Power to order production of document for inspection
167	Rule 20.32	Power to order a party to produce a document or thing for inspection
168	Rule 20.33	Power to order production from non-party
169	Rule 20.35	Power to: (a) order a party to produce a document to the Court; and (b) inspect a document for the purpose of deciding the validity of a claim for privilege or other objection to production
170	Rule 21.01	Power to order a party to provide written answers to interrogatories
171	Rule 21.03	Power to make orders about answers to interrogatories
172	Rule 21.03	Power to: (a) require a party to specify the party's grounds for objecting to an interrogatory; and (b) determine the sufficiency of the objection
173	Rule 21.04	Power to specify who may make an affidavit verifying a party's written answers to interrogatories
174	Rule 21.05	Power to make an order if a party fails to answer an interrogatory sufficiently
175	Rule 22.03	Power to make an order about the payment of the costs of proof of a fact
176	Rule 23.01	Power to appoint expert
177	Rule 23.15	Power to make orders about the evidence of expert witnesses
178	Rule 24.01	Power to give leave to issue a subpoena
179	Rule 24.12	Power to order an addressee, by subpoena: (a) to attend to give evidence; or (b) to produce documents; or (c) to do both of those things
180	Rule 24.15	Power to set aside a subpoena in whole or part, or grant other relief
181	Rule 24.15	Power to order that an applicant give notice of an application to set aside a subpoena
182	Rule 24.19	Power to give a direction for the removal, return, inspection, copying and disposal of a document or thing
183	Rule 24.20	Power to give leave to inspect a document or thing
184	Rule 24.22	Power to make an order dealing with payment of reasonable loss or expense incurred in complying with a subpoena
185	Rule 26.01(1)	Power to give summary judgment for a party
186	Rule 26.01(5)(b)	Power to stay enforcement of a summary judgment
187	Rule 26.11	Power to give leave to a party to withdraw an admission or other matter operating for the benefit of another party
188	Rule 26.12(2)(c)	Power to give leave to discontinue all or part of a proceeding
189	Rule 26.12(7)	Power to make an order about the payment of costs for the whole or part of a proceeding that is discontinued without leave
190	Rule 26.15	Power to stay a further proceeding until costs are paid

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
191	Rule 28.02	Power to: (a) make an order referring any proceeding or any part of a proceeding to arbitration, mediation or an alternative dispute resolution process; and (b) adjourn or stay the proceeding; and (c) order the arbitrator, mediator or person appointed to conduct the alternative dispute resolution process to report to the Court
192	Rule 28.03	Power to make orders about arbitration, mediation or other alternative dispute resolution process
193	Rule 28.04	Power to terminate a mediation or alternative dispute resolution process
194	Rule 29.06	Power to make an order about the filing of an affidavit that is irregular in form
195	Rule 29.07	Power to give leave to use an affidavit
196	Rule 29.08	Power to give a direction about the service of an affidavit
197	Rule 29.09	Power to give leave to use an affidavit if the maker of the affidavit fails to attend for cross-examination
198	Rule 30.01	Power to make an order for the decision of a question to be heard separately from another question
199	Rule 30.01, Note 1	Power to make an order for the statement of a case and the question for decision
200	Rule 30.11	Power to order that several proceedings be consolidated, tried at the same time or in a specified order, or stayed until the determination of one of the proceedings
201	Rule 30.21	Power to make an order if a party is absent when a proceeding is called on for trial
202	Rule 30.21	Power to set aside or vary an order made in the absence of a party and make an order for the further conduct of a proceeding
203	Rule 30.22	Power to adjourn a proceeding or strike out a proceeding if no party appears at trial
204	Rule 30.23	Power to make an order limiting time for or the number of witnesses that a party may call, or documents that a party may tender, or make an order as to the length and manner of submissions
205	Rule 30.24	Power to give judgment and make an order for entry of judgment after the death of a party
206	Rule 30.25	Power to give leave to a party to read evidence taken or an affidavit filed in other proceedings
207	Rule 30.28	Power to make an order about the production of a document or thing on notice
208	Rule 30.33	Power to: (a) make an order requiring the production of a party who is in lawful custody to a proceeding before the Court; and (b) make an order in relation to the continuing custody of the party
209	Rule 30.34	Power to make an order for the attendance of a person for

Authorised Version F2024C00519 registered 28/06/2024

Item	Provision	Description (for information only)
		examination, or for the attendance of the person and the production of a document or thing by the person
210	Rule 33.22	Power to make directions
211	Rule 36.09	Power to order security for costs of appeal
212	Rule 36.11	Power to give a direction for the conduct of an appeal
213	Rule 39.01	Power to order that a judgment or order take effect on a specified date
214	Rule 39.02	Power to order the time for compliance with an order
215	Rule 39.04	Power to vary or set aside a judgment or order before it has been entered
216	Rule 39.05	Power to vary or set aside a judgment or order after it has been entered
217	Rule 39.11	Power to make an order in the terms of a written consent of the parties
218	Rule 39.32	Power to direct that an order be entered
219	Rule 39.35	Power to direct that an order be entered by being authenticated in Court
220	Rule 40.02	Power to make an order about the amount of costs
221	Rule 40.03	Power to make an order about reserved costs
222	Rule 40.06	Power to make an order about disallowance of costs
223	Rule 40.07	Power to do any of the following: (a) disallow costs; (b) direct a lawyer to repay costs; (c) direct a lawyer to indemnify another party
224	Rule 40.13	Power to make an order about when costs must be taxed
225	Rule 40.51	Power to make an order specifying the maximum costs that may be recovered in a proceeding
226	Rule 41.01	Power to give a direction for the enforcement or execution of an order
227	Rule 41.10	Power to make an order, issue a writ or take another step to enforce a judgment or order

Authorised Version F2024C00519 registered 28/06/2024

Part 3.8—Fair Work Act 2009

Item	Provision	Description (for information only)
241	Section 370(a)(ii)	Power to extend the time for a general protections court application to be made

Authorised Version F2024C00519 registered 28/06/2024

Schedule 3—Costs allowable for work done and services performed

Note: See rules 40.29, 40.41, 40.42 and 40.43.

1A Application of this Schedule

1A.1 This Schedule, as amended by the *Federal Court Legislation Amendment Rules 2024*, applies to work done or services performed on or after the commencement of those Rules.

1 Attendances

1.1 Attendances by a lawyer requiring the skill of a lawyer (including attendances in conference, by telephone, on counsel, appearing in court, instructing in court and travelling), for each unit of 6 minutes a sum in all circumstances not exceeding $75:

(a) having regard to the lawyer's skill and experience; and

(b) having regard to the complexity of the matter or the difficulty or novelty of the questions involved.

1.2 Where any attendance referred to in item 1.1 is capable of performance by a law graduate or articled clerk for each unit of 6 minutes: $27.

1.3 Attendances capable of performance by a clerk or paralegal—for each unit of 6 minutes: $13.

2 Preparing documents

2.1 All documents, whether in printed form or otherwise (but excluding correspondence)—for each 100 words: $68.

2.2 Correspondence (including letters, emails, text messages and instant messaging)—up to 50 words: $27.

2.3 Correspondence (including letters, emails, text messages and instant messaging)—up to 100 words: $55.

2.4 Correspondence (including letters, emails, text messages and instant messaging)—over 100 words: in accordance with item 2.1.

2.5 Bill of costs—at the discretion of the taxing officer.

3 Reading

3.1 All documents, whether in printed form or otherwise (but excluding correspondence falling within item 3.2 or 3.3): in accordance with item 1, or at the discretion of the taxing officer, having regard to the number of pages read.

Authorised Version F2024C00519 registered 28/06/2024

3.2 Correspondence (including letters, emails, text messages and instant messaging)—up to 50 words: $21.

3.3 Correspondence (including letters, emails, text messages and instant messaging)—up to 100 words: $42.

4 Delegation and supervision

4.1 Where it is appropriate for more than one lawyer to be involved in the conduct of the matter, allowance may be made for attendances to delegate or supervise: in accordance with item 1.

5 Research

5.1 Where it is appropriate to research a legal question of some complexity that is not procedural in nature: in accordance with item 1.

6 Electronic document management

6.1 Database creation, database administration (including establishing design and agreement of protocols), database design and implementation: in accordance with item 1.2.

6.2 Document preparation and document description (including necessary redaction and duplication), in compliance with the Federal Court Practice Note dealing with the use of technology in the management of discovery and conduct of litigation: in accordance with item 1, having regard to the complexity of the issues involved.

6.3 Imaging of documents to searchable format including rendering to PDF and scanning where necessary: in accordance with item 1.3.

6.4 Publishing including:

(a) electronic exchange and discovery; and

(b) write-to CD/CD ROM/USB or other agreed media: in accordance with item 1.3.

7 Masking

7.1 Masking documents:

(a) if the taxing officer is satisfied that the masking required the skill of a lawyer—in accordance with item 1.1;

(b) otherwise—in accordance with item 1.3.

8 Collation, pagination and indexing

8.1 Collation (including collation for the purposes of copying), pagination and indexing of documents for the purposes of discovery, inspection, briefs to counsel, instruction to expert witnesses, court books, appeal books, exhibits or annexures to court documents or similar (but excluding maintaining files)—in accordance with item 1.3, or at the discretion of the taxing officer, having regard

Authorised Version F2024C00519 registered 28/06/2024

to the number of pages and the number of documents collated, paginated or indexed

9 Copying

9.1 Copying documents: at the discretion of the taxing officer.

10 Personal service

10.1 Personal service, inclusive of all attempts (where required): $137.

11 Skill care and responsibility

11.1 An additional amount may be allowed, having regard to all the circumstances of the case, including the following:

(a) the complexity of the matter;
(b) the difficulty or novelty of the questions involved in the matter;
(c) the skill, specialised knowledge and responsibility involved and the time and labour expended by the lawyer;
(d) the number and importance of the documents prepared and read, regardless of their length;
(e) the amount or value of money or property involved;
(f) research and consideration of questions of law and fact;
(g) the general care and conduct of the lawyer, having regard to the lawyer's instructions and all relevant circumstances;
(h) the time within which the work was required to be done;
(i) allowances otherwise made in accordance with this scale (including any allowances for attendances in accordance with item 1.1); and
(j) any other relevant matter.

12 Where client not charged on a time costing basis

12.1 In matters where the lawyer has not charged the client on a time costing basis, items 1 to 11 above do not apply and a fair and reasonable amount will be allowed, having regard to:

(a) the complexity of the matter;
(b) the difficulty or novelty of the questions involved;
(c) the skill, specialised knowledge and responsibility involved;
(d) the work actually done by the lawyer;
(e) the extent to which the work was reasonably necessary;
(f) the period during which the work was done;
(g) the time spent on performing the work;
(h) the quality of the work;
(i) the number and importance of the documents prepared and read, regardless of length;
(j) the amount or value of money or property involved;
(k) the terms of the costs agreement between the lawyer and client; and

Authorised Version F2024C00519 registered 28/06/2024

(l) any other relevant matter.

13 *Corporations Act 2001*—short form bills

13.1 Short form amount that may be claimed by a plaintiff on the making of a winding-up order or on the dismissal of such an application, up to and including entry and service of the order under section 470 of the *Corporations Act 2001* and the obtaining of a certificate of taxation: $4,862.

Additional costs are allowable for any adjournment in which costs have been reserved by the Court in accordance with this scale.

14 *Bankruptcy Act 1966*—short form bills

14.1 Short form amount that may be claimed by an applicant on the making of a sequestration order: $3,125.

Additional costs are allowable for any adjournment for which costs have been reserved by the Court in accordance with this scale.

14.2 Short form amount that may be claimed by an applicant on the dismissal of a petition: $2,689.

Additional costs are allowable for any adjournment for which costs have been reserved by the Court, in accordance with this scale.

15 *Migration Act 1958*—short form bills

15.1 Short form amount, including costs and disbursements, that may be claimed if an appeal or application is discontinued or dismissed before hearing: $5,278.

15.2 Short form amount, including costs and disbursements, that may be claimed if an appeal or application is discontinued or dismissed after hearing: $8,323.

15.3 Additional amount that may be claimed if a party is entitled to amount under subrule 40.43(2) or (3) in relation to an appeal and the court had, at a separate hearing, granted leave to appeal or an extension of time to start the appeal: $2,506.

16 Counsel's fees

16.1 An amount may be allowed for counsel's fees according to the circumstances of the case. That amount may be assessed by reference to the National Guide to Counsel Fees. The fees are to be claimed as a disbursement.

16.2 If a lawyer briefs another lawyer as counsel, the fees of the lawyer acting as counsel are to be assessed in accordance with item 16.1.

17 Witnesses' expenses

17.1 Any witness (other than a party or an expert retained in accordance with Practice Note CM 7) may be allowed an amount equal to:

Authorised Version F2024C00519 registered 28/06/2024

(a) if the witness is paid by way of wages, any wages actually lost by reason of the witness' attendance at court to give evidence; and

(b) if the witness is paid by way of fees, any fees actually lost by reason of the witness' attendance at court to give evidence, less a deduction in relation to discretionary overheads,

but not to exceed: $678 per day.

17.2 An expert may be allowed an amount equal to the expert's actual fees for preparing to give evidence and of attending to give evidence.

18 Disbursements

18.1 All court fees and other fees and payments may be allowed in the amounts actually incurred.

19 Fees not here provided for

19.1 An amount may be allowed for work not otherwise contemplated by this Schedule.

20 Notes

20.1 ***Lawyer*** is defined in section 4 of the *Federal Court of Australia Act 1976*.

20.2 The rates specified at item 1.1 should not exceed the rates actually charged by the lawyer to the client. Accordingly, bills of costs should set out the hourly rate (or rates) actually charged by the lawyer.

20.3 The charge for preparing documents (item 2) is inclusive of typing, printing, posting, faxing and emailing, and any other administrative task relating to the preparation or transmission of a document, by whatever means. There is to be no charge for such administrative tasks.

20.4 There is no scale item for printing documents. Accordingly, litigants should not expect to recover the cost of this task.

20.5 The word count for correspondence in items 2.2, 2.3, 3.2 and 3.3 excludes any signature block, disclaimer or similar wording.

Authorised Version F2024C00519 registered 28/06/2024

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Authorised Version F2024C00519 registered 28/06/2024

Endnote 2—Abbreviation key

ad = added or inserted

am = amended

amdt = amendment

c = clause(s)

C[x] = Compilation No. x

Ch = Chapter(s)

def = definition(s)

Dict = Dictionary

disallowed = disallowed by Parliament

Div = Division(s)

ed = editorial change

exp = expires/expired or ceases/ceased to have effect

F = Federal Register of Legislation

gaz = gazette

LA = *Legislation Act 2003*

LIA = *Legislative Instruments Act 2003*

(md) = misdescribed amendment can be given effect

(md not incorp) = misdescribed amendment cannot be given effect

mod = modified/modification

No. = Number(s)

o = order(s)

Ord = Ordinance

orig = original

par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)

pres = present

prev = previous

(prev…) = previously

Pt = Part(s)

r = regulation(s)/rule(s)

reloc = relocated

renum = renumbered

rep = repealed

rs = repealed and substituted

s = section(s)/subsection(s)

Sch = Schedule(s)

Sdiv = Subdivision(s)

SLI = Select Legislative Instrument

SR = Statutory Rules

Sub-Ch = Sub-Chapter(s)

SubPt = Subpart(s)

underlining = whole or part not commenced or to be commenced

Authorised Version F2024C00519 registered 28/06/2024

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
Federal Court Rules 2011 (SLI No. 134, 2011)	28 July 2011 (F2011L01551)	1 Aug 2011 (r 1.02)	
Federal Court Amendment Rules 2013 (No. 1) (SLI No. 65, 2013)	8 May 2013 (F2013L00749)	Sch 2: 11 June 2013 (r 2(3)) Remainder: 9 May 2013 (r 2(1), (2))	—
Federal Court Amendment (Electronic Court File Measures No. 1) Rules 2013 (SLI No. 256, 2013)	25 Nov 2013 (F2013L01970)	26 Nov 2013 (r 2)	—
Federal Court Amendment (Costs and Other Measures) Rules 2013 (SLI No. 283, 2013)	2 Jan 2014 (F2014L00001)	Sch 1 (items 6, 7): 1 Jan 2014 (r 2(3)) Remainder: 3 Jan 2014 (r 2(1), (2))	—
Federal Court (Bankruptcy) Repeal Rules 2016	24 Mar 2016 (F2016L00383)	Sch 2 and 3: 1 Apr 2016 (r 2(1) item 1)	Sch 3
Federal Court Legislation Amendment (Criminal Proceedings) Rules 2016	9 Nov 2016 (F2016L01728)	Sch 2: 10 Nov 2016 (r 2(1) item 1)	—
Federal Court Amendment (Court Administration and Other Measures) Rules 2019	1 May 2019 (F2019L00665)	2 May 2019 (r 2(1) item 1)	—
Federal Court Legislation Amendment Rules 2022	12 Jan 2023 (F2023L00033)	Sch 1: 13 Jan 2023 (r 2(1) item 1)	—
Federal Court Legislation Amendment Rules 2024	4 June 2024 (F2024L00626)	Sch 1: 5 June 2024 (s 2(1) item 1)	—

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 1	
Division 1.1	
r 1.02	rep LA s 48D
r 1.03	rep LA s 48C
r 1.04	am F2016L00383; F2016L01728; F2023L00033
Part 2	
Division 2.1	
r 2.01	am No 256, 2013; F2019L00665
Division 2.2	
r 2.11	am No 256, 2013
r 2.14	am F2019L00665
Division 2.3	
Division 2.3	am No 256, 2013
r 2.21	am No 256, 2013
r 2.22	am F2019L00665
r 2.23	am F2019L00665
r 2.24	am F2019L00665
r 2.25	am F2023L00033
r 2.28	ad No 256, 2013
r 2.29	ad No 256, 2013
Division 2.4	
r 2.31	am F2019L00665
r 2.32	am No 65, 2013; F2019L00665; F2023L00033
Division 2.5	
r 2.41	am F2019L00665
Part 3	
Part 3	am F2019L00665
Division 3.1	
r 3.01	am F2016L00383; F2016L01728; F2019L00665; F2024L00626
r 3.05	am F2019L00665
Division 3.2	
r 3.11	am F2019L00665
Part 4	
Division 4.2	
r 4.12	am F2019L00665
r 4.15	am F2019L00665

Authorised Version F2024C00519 registered 28/06/2024

Provision affected	How affected
r 4.16	am F2019L00665
Part 5	
Division 5.1	
r 5.01	am F2019L00665
r 5.03	am No 283, 2013
r 5.04	am No 65, 2013; F2019L00665
Division 5.2	
r 5.21	am F2019L00665
r 5.23	am F2019L00665
Part 6	
Division 6.1	
r 6.02	rs No 65, 2013
	am F2019L00665
r 6.03	rs No 65, 2013
Chapter 2	
Part 7	
Division 7.2	
r 7.11	am F2023L00033
Division 7.3	
r 7.23	am No 65, 2013
r 7.24	am F2023L00033
r 7.28	am No 256, 2013
Part 8	
Division 8.1	
r 8.02	am No 283, 2013
r 8.05	rs F2019L00665
r 8.06	rs F2019L00665
r 8.07	am F2019L00665
Division 8.3	
r 8.22	am F2023L00033
r 8.23	am No 256, 2013
Part 9	
Division 9.1	
r 9.02	rs F2023L00033
Division 9.6	
r 9.63	am F2023L00033
r 9.64	am No 65, 2013
Part 10	
Division 10.1	
r 10.04	am No 65, 2013; No 283, 2013

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
r 10.07	rs F2024L00626
r 10.08	rs F2024L00626
Division 10.3	
r 10.32	am F2023L00033
Division 10.4	
Division 10.4	rs F2023L00033
r 10.41	rs F2023L00033
r 10.42	rs F2023L00033
	am F2024L00626
r 10.43	rs F2023L00033
	am F2024L00626
r 10.43A	ad F2023L00033
r 10.43B	ad F2023L00033
r 10.43C	ad F2023L00033
r 10.43D	ad F2023L00033
r 10.44	rs F2023L00033
r 10.45	rs F2023L00033
r 10.46	rs F2023L00033
r 10.47	rs F2023L00033
r 10.48	rs F2023L00033
r 10.49	rs F2023L00033
Division 10.5	
r 10.51	am F2019L00665; F2023L00033
r 10.52	am F2019L00665
Division 10.6	
r 10.61	am F2019L00665; F2023L00033
r 10.64	am F2019L00665
r 10.66	am F2019L00665
r 10.67	am F2019L00665
r 10.74	am F2019L00665
r 10.76	am F2019L00665
Part 13	
r 13.01	am F2023L00033
Part 14	
Division 14.3	
r 14.25	am F2019L00665
Part 15	
Division 15.1	
r 15.02	am F2019L00665
r 15.06	am F2019L00665

Authorised Version F2024C00519 registered 28/06/2024

Provision affected	How affected
Division 15.2	
r 15.17	am F2019L00665
Part 16	
Division 16.1	
Division 16.1	am F2019L00665
r 16.01A	ad F2019L00665
r 16.01	am F2019L00665
r 16.13	ad F2019L00665
Division 16.4	
r 16.41A	ad F2019L00665
Division 16.5	
r 16.53	am F2023L00033
r 16.54	am F2023L00033
r 16.59	am No 256, 2013
Part 17	
r 17.01	am F2019L00665
Part 19	
r 19.01	am No 65, 2013
r 19.02	rep No 65, 2013
Part 20	
Division 20.2	
r 20.13	am No 65, 2013
r 20.23	am No 65, 2013
Division 20.3	
r 20.31	am No 65, 2013
r 20.32	am No 65, 2013
Part 23	
Division 23.1	
r 23.02	am No 65, 2013; F2019L00665
Division 23.2	
Division 23.2	am F2023L00033
r 23.13	am No 65, 2013
r 23.15	am No 65, 2013
Division 23.3	
Division 23.3	ad F2023L00033
r 23.21	ad F2023L00033
Part 24	
Division 24.1	
r 24.01	am F2019L00665

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Division 24.2	
r 24.17	am No 256, 2013; F2019L00665; F2023L00033
r 24.18	am F2019L00665
r 24.20	am F2019L00665
r 24.21	am F2019L00665; F2023L00033
r 24.24	am F2019L00665
Part 27	
Division 27.1	
Division 27.1	rs F2023L00033
	am F2024L00626
r 27.01	am F2019L00665
	rs F2023L00033
r 27.02	ad F2023L00033
r 27.03	ad F2023L00033
Division 27.2 heading	am No 65, 2013
	rep F2023L00033
Division 27.2	rep F2023L00033
r 27.11	am No 65, 2013
	rep F2023L00033
r 27.12	am No 65, 2013; F2019L00665
	rep F2023L00033
r 27.13	am No 65, 2013; F2019L00665
	rep F2023L00033
Division 27.3	
r 27.21	am F2019L00665
r 27.23	am F2019L00665
Part 28	
Division 28.3	
r 28.21	am F2019L00665
Division 28.4	
r 28.31	am F2019L00665
Division 28.5	
Division 28.5	am F2023L00033
r 28.43	am F2023L00033
r 28.44A	ad F2023L00033
r 28.45	am F2023L00033
r 28.45A	ad F2023L00033
r 28.46	am F2023L00033
r 28.48A	ad F2023L00033

Authorised Version F2024C00519 registered 28/06/2024

Provision affected	How affected
Part 29	
Division 29.2	
r 29.12	am F2019L00665
r 29.20	am F2019L00665
r 29.22	am F2019L00665
Part 30	
Division 30.1	
Division 30.1	am No 65, 2013
r 30.03	rep No 65, 2013
Division 30.3	
Division 30.3	am No 65, 2013
r 30.34	ad No 65, 2013
Division 30.4	
r 30.41	am F2019L00665
r 30.44	am F2019L00665
Division 30.5	
r 30.55	am F2019L00665
Chapter 3	
Part 31	
Division 31.1	
r 31.05	am No 65, 2013
Division 31.3	
r 31.24	am No 65, 2013
Part 32	
Division 32.1	
r 32.01	am F2019L00665
r 32.02	am F2019L00665
Division 32.2	
r 32.11	am F2019L00665
r 32.12	am F2019L00665
r 32.15	am No 65, 2013
Part 33	
Division 33.1	
r 33.02	am F2019L00665
r 33.05	am F2019L00665
Division 33.2	
r 33.11	am No 65, 2013; F2019L00665
r 33.12	am F2019L00665
r 33.13	am F2019L00665
r 33.17	am F2019L00665

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
r 33.18	am F2019L00665
r 33.24	am F2019L00665
r 33.26	am No 65, 2013
r 33.30	am No 65, 2013
Division 33.3	
Division 33.3 heading	am F2019L00665
r 33.34	am F2019L00665
Part 34	
Division 34.1	
r 34.01	ed C8
	am F2024L00626
r 34.03	am No 65, 2013; F2019L00665
r 34.04	am No 65, 2013; F2019L00665
r 34.05	am No 65, 2013; F2019L00665
r 34.05A	ad F2024L00626
r 34.07	am F2019L00665
Division 34.2	rep F2016L01728
r 34.11	rep F2016L01728
r 34.12	rep F2016L01728
r 34.13	rep F2016L01728
r 34.14	rep F2016L01728
r 34.15	rep F2016L01728
r 34.16	rep F2016L01728
Division 34.3	
r 34.24	am F2019L00665
r 34.42	am F2019L00665
r 34.43	am F2019L00665
r 34.44	am F2019L00665
r 34.45	am F2019L00665
Division 34.4	
Division 34.4	am No 65, 2013
r 34.63	am F2024L00626
r 34.69	am F2019L00665
Division 34.5	
Division 34.5	am F2024L00626
r 34.84	am F2019L00665
Division 34.5A	exp 11 Oct 2013 (r 34.86A(4))
	rep F2023L00033
r 34.86A	exp 11 Oct 2013 (r 34.86A(4))
	rep F2023L00033

Authorised Version F2024C00519 registered 28/06/2024

Provision affected	How affected
Division 34.6	
r 34.92	am F2019L00665
r 34.94	am F2019L00665
Division 34.7	
r 34.104	am F2019L00665
r 34.112	am F2019L00665
r 34.113	am F2019L00665
r 34.114	am F2019L00665
r 34.117	am F2019L00665
r 34.118	am F2019L00665
r 34.121	am F2019L00665
r 34.130	am F2019L00665
r 34.133	am F2019L00665
Division 34.8	
r 34.163	am F2019L00665
Chapter 4	
Part 35	
Division 35.2	
r 35.19	ed C7
r 35.21	am F2019L00665
Division 35.3	
r 35.32	am No 65, 2013; F2016L01728
Division 35.4	
r 35.41	am No 65, 2013; F2023L00033
Part 36	
Division 36.1	
r 36.01	am No 65, 2013; F2023L00033
r 36.02	am No 65, 2013; F2019L00665; F2023L00033
r 36.03	am F2019L00665
Division 36.4	
r 36.41	am F2023L00033
r 36.43	am F2023L00033
Division 36.5	
r 36.51	am F2019L00665
r 36.52	am F2019L00665
r 36.54	am No 65, 2013
Division 36.6	
r 36.72	am No 65, 2013
Part 37	rep F2016L01728
r 37.01	rep F2016L01728

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
r 37.02	rep F2016L01728
Part 38	
r 38.02	am F2019L00665
Chapter 5	
Part 39	
Division 39.4	
r 39.32	rs F2023L00033
r 39.33	am F2019L00665
r 39.35	am No 256, 2013; F2019L00665
Part 40	
Division 40.2	
r 40.18	am F2019L00665
r 40.19	am F2019L00665
r 40.21	am F2019L00665
r 40.22	am F2019L00665
r 40.24	am F2019L00665
r 40.25	am F2019L00665
Division 40.3	
r 40.43	am No 65, 2013
	rs F2019L00665
	am F2023L00033
r 40.44	am F2019L00665
Part 41	
Division 41.1	
r 41.04	am F2019L00665
r 41.05	am F2023L00033
r 41.07	am No 65, 2013
r 41.08	am No 65, 2013
r 41.10	am No 65, 2013
Division 41.6	
r 41.69	am F2019L00665
Chapter 6	
Part 42	
Division 42.1	
r 42.01	rs F2023L00033
Division 42.2	
r 42.14	am F2023L00033
r 42.16	am F2019L00665
Chapter 7	
Chapter 7	ad No 283, 2013

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Part 43	
Division 43.1	rep 3 Feb 2015 (r 43.02)
	ad F2016L01728
	rep 10 May 2017 (r 43.02)
	ad F2023L00033
	rep 13 July 2023 (r 43.04)
r 43.01	ad No 283, 2013
	rep 3 Feb 2015 (r 43.02)
	ad F2016L01728
	rep 10 May 2017 (r 43.02)
	ad F2023L00033
	rep 13 July 2023 (r 43.04)
r 43.02	ad No 283, 2013
	rep 3 Feb 2015 (r 43.02)
	ad F2016L01728
	rep 10 May 2017 (r 43.02)
	ad F2023L00033
	rep 13 July 2023 (r 43.04)
r 43.03	ad F2023L00033
	rep 13 July 2023 (r 43.04)
r 43.04	ad F2023L00033
	rep 13 July 2023 (r 43.04)
Division 43.2	
Division 43.2	ad F2024L00626
	rep 5 Dec 2024 (r 43.14)
r 43.11	ad F2024L00626
	ed C9
	rep 5 Dec 2024 (r 43.14)
r 43.12	ad F2024L00626
	rep 5 Dec 2024 (r 43.14)
r 43.13	ad F2024L00626
	rep 5 Dec 2024 (r 43.14)
r 43.14	ad F2024L00626
	rep 5 Dec 2024 (r 43.14)
Schedule 1	
Schedule 1	am No 65, 2013; No 256, 2013; F2016L00383; F2019L00665; F2023L00033
	ed C8
Schedule 2	
Schedule 2	am No 65, 2013; No 256, 2013; F2019L00665; F2023L00033; F2024L00626

Authorised Version F2024C00519 registered 28/06/2024

Endnote 4—Amendment history

Provision affected	How affected
Schedule 3	
Schedule 3.....	am No 65, 2013; No 283, 2013; F2019L00665; F2023L00033; F2024L00626

Authorised Version F2024C00519 registered 28/06/2024

Endnote 5—Editorial changes

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

Rule 43.11

Kind of editorial change

Change to typeface

Details of editorial change

Schedule 1 item 17 of the *Federal Court Legislation Amendment Rules 2024* instructs to insert Division 43.2 in the appropriate position in Part 43.

Rule 43.11 of the newly inserted Division 43.2 contains the definition of "amending Rules" which is missing bold italics on the defined term.

This compilation was editorially changed to insert bold italics on the words "amending Rules" in rule 43.11 to bring it into line with legislative drafting practice.

Authorised Version F2024C00519 registered 28/06/2024