



**FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA**  
**(Division 1) & (Division 2)**

Owen Dixon Commonwealth Law Courts  
305 William Street, Melbourne VIC 3000  
Telephone: (03) 8638 6690  
e-mail: [associate.chiefjusticealstergren@fcfcoa.gov.au](mailto:associate.chiefjusticealstergren@fcfcoa.gov.au)

**CHAMBERS OF THE CHIEF JUSTICE**

6 March 2024

Mr Peter Dunning KC  
President, Australian Bar Association  
32 Turbot Street  
Brisbane Qld 4000

By email: [president@austbar.asn.au](mailto:president@austbar.asn.au); [lbarr@austbar.asn.au](mailto:lbarr@austbar.asn.au); [kathleen@callinanchambers.com.au](mailto:kathleen@callinanchambers.com.au);  
[ceo@austbar.asn.au](mailto:ceo@austbar.asn.au)

Dear Mr Dunning KC

**Consultation on the Draft New General Federal Law Rules**

I write to consult you on new draft general federal law rules (**New GFL Rules**) and practice directions for the Federal Circuit and Family Court of Australia (Division 2) (**Court**).

***Background***

To coincide with the commencement of the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**FCFCOA Act**) on 1 September 2021, new rules and practice directions were introduced for family law proceedings and general federal law proceedings in the Court.

The current *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (**Current GFL Rules**) are based closely on the former *Federal Circuit Court Rules 2001* and incorporate a considerable number of the *Federal Court Rules 2011* (**FCA Rules**) through a schedule. They also provide for referral to the FCA Rules where a matter is not addressed in the Current GFL Rules.

In the lead up to 1 September 2021, significant work was undertaken to harmonise the family law rules across the Federal Circuit and Family Court of Australia (Division 1) and the Court and to implement the new courts structure. In order to ensure a proper and comprehensive review could be undertaken, the Court decided that a standalone set of rules and practice directions for general federal law proceedings would be developed post 1 September 2021.

A Working Group chaired by Deputy Chief Judge Mercuri, three senior general federal law judges and a retired judge was subsequently convened. The Working Group has also been assisted by three members of Counsel during the process.

The Working Group agreed that the New GFL Rules should broadly align with the FCA Rules where appropriate, but be altered to take into account:

- the different jurisdiction of the two courts;
- the promotion of the overarching purpose in the FCFCOA Act; and
- the Court as a high-volume jurisdiction with large numbers of unrepresented parties.

The advantages of a set of rules that align, where appropriate, with the FCA Rules are obvious:

- greater consistency for practitioners and registrars across the two courts; and
- greater jurisprudential certainty when procedural matters are resolved in court.

To achieve that consistency and jurisprudential certainty, the Working Group compared each part of the draft New GFL Rules with their equivalent in the FCA Rules. The Working Group also discussed the suitability of each FCA Rule to proceedings in the Court to determine whether the FCA version of a given rule should be adopted or whether a different rule or a different form of the rule would be more appropriate.

The result of this exercise is that the draft New GFL Rules are comprised of:

- some rules which are identical to those found in the FCA Rules;
- retention of some rules from the Current GFL Rules;
- some Current GFL Rules which have been redrafted for improved readability or to address a specific need identified by the Working Group;
- some rules based on those found in the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021* which ensure consistency across the Court; and
- some completely new rules which respond to certain proceedings in the Court that neither the Current GFL Rules nor the FCA Rules sufficiently addressed.

The New GFL Rules are intended to largely provide a single legislative source without requiring parties and practitioners to cross-reference with the FCA Rules. Having said that, the New GFL Rules do still allow for referral to the FCA Rules on the rare occasion that a matter arising in a proceeding in the Court is not addressed in the New GFL Rules.

As the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021* have already been harmonised with the *Federal Court (Bankruptcy) Rules 2016*, they have not formed part of this review.

The draft New GFL Rules are supplemented by redrafted practice directions that will give overarching guidance as to the general case management applicable to each type of proceeding (GFL Practice Directions).

The next stage of the rules review process is a consideration of any updates to court forms and other associated documents which the Working Group is currently undertaking.

### ***Consultation***

The draft New GFL Rules and practice directions have been through initial rounds of internal judicial and registrar consultation and are now presented to you as part of the consultation process with the profession and other stakeholders.

Enclosed with this correspondence is:

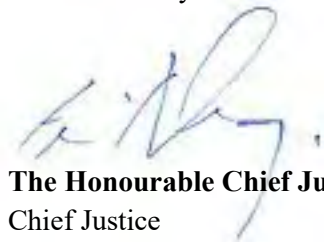
1. Draft New GFL Rules;
2. Draft GFL Practice Directions;
3. Three mapping tables which show how the Draft New GFL Rules fit with the FCA Rules and the Current GFL Rules:
  - a. [Appendix 1:] a derivation table, showing the source of each rule in the New GFL Rules;
  - b. [Appendix 2:] a destination table, showing what has happened to each rule in the Current GFL Rules; and
  - c. [Appendix 3:] a table showing how the FCA Rules map to the New GFL Rules.

Any feedback on the draft family law rules should be submitted by email to [GFLRules@fcfcoa.gov.au](mailto:GFLRules@fcfcoa.gov.au) no later than **Friday, 5 April 2024**.

I ask that you please distribute this correspondence to your members.

My thanks for your continued support.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'W. Alstergren', is positioned above the printed name of the Chief Justice.

**The Honourable Chief Justice William Alstergren AO**  
Chief Justice  
Federal Circuit and Family Court of Australia (Division 1)  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# ADMIRALTY AND MARITIME PROCEEDINGS (GENFED-ADMIRALTY)

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to all proceedings brought under the *Admiralty Act 1988* (Cth) in the Federal Circuit and Family Court of Australia (**Court**). This Practice Direction will also apply to all such proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
- (a) *Central Practice Direction—General Federal Law proceedings*, which sets out the key principles of case management procedure and is an essential guide to practice in this Court in all proceedings;
  - (b) the *Admiralty Act 1988* (Cth) (**Admiralty Act**);
  - (c) the *Admiralty Rules 1988* (**Admiralty Rules**);
  - (d) the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**Act**); and
  - (e) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (**General Federal Law Rules**).
- 1.3 The General Federal Law Rules apply to the extent that they are not inconsistent with the Admiralty Rules.

### 2. JURISDICTION

- 2.1 Under section 9 of the Admiralty Act, the Court has admiralty and maritime jurisdiction over actions *in personam*:

- (a) on a maritime claim; or
- (b) on a claim for damage done to a ship.

2.2 All applications and transfers from another Court within or purporting to invoke the admiralty and maritime jurisdiction of the Court, conferred pursuant to sections 76 and 77 of the Constitution, will be made returnable before a judge as directed by the case management judge at the relevant registry.

### **3. STARTING A PROCEEDING**

3.1 In admiralty and maritime proceedings, an applicant wishing to start a proceeding must file:

- (a) an *Originating Application—General federal law*;
- (b) either an affidavit or statement of claim; and
- (c) any other material to be relied on.

3.2 The nature of the proceeding and the likely issues for resolution should be made clear as early as possible. This will be aided by the applicant making clear in the originating application and supporting material what the case is about.

3.3 For more information on Court documents, parties should refer to the [Guide to completing and filing GFL Court documents](#).

### **4. CASE MANAGEMENT**

4.1 Parties and their lawyers should familiarise themselves with the information on case management in Part 6 of the *Central Practice Direction—General Federal Law proceedings*. The following should be noted in relation to admiralty and maritime proceedings.

First court date

4.2 The first court date is usually approximately 4 weeks from the date of filing. The case is listed before a judge. The judge expects parties on that occasion to identify the likely issues and to propose appropriate timetables for pleadings, affidavit evidence, submissions, list of objections and chronology and the fixing

of the matter for a further directions date. At the further directions date, a hearing date will be allocated before a judge.

- 4.3 The Court is likely to grant leave to interstate practitioners to appear by electronic means on the first court date if a request has been forwarded to chambers. Such a request should include an appropriate telephone number or email address and the name of the practitioner with the conduct of the matter.
- 4.4 In collision matters, the Court expects the parties to comply with the Admiralty Rules in respect of filing preliminary acts.
- 4.5 If the amount in dispute is not significant or the issues are of narrow compass, the Court may dispense with pleadings and order an agreed statement of facts and issues. The Court can determine the matter on the papers where the parties so agree.

#### Expeditious determination

- 4.6 As far as practicable, admiralty and maritime matters are case managed for expeditious hearing within 6 months by a judge.
- 4.7 The Court appreciates that there are some proceedings that are filed to preserve time in carriage of goods by sea cases and in collision cases against *in personam* parties. The Court is aware that issues of enforcement may arise in relation to foreign parties with no assets within the jurisdiction and where no security or inadequate security has been provided.
- 4.8 There may be circumstances in which it is appropriate for there to be determination of separate questions. Appeal issues may arise from the determination of the separate questions. Ordinarily, if not potentially dispositive, the matter will be transferred if there are enforcement issues. The appropriate course will depend on the nature of the issues and enforcement issue in the particular case.

## 5. INTERLOCUTORY APPLICATIONS

- 5.1 A party seeking an interlocutory order must file, via eLodgment unless otherwise permitted by the General Federal Law Rules, an *Interlocutory application* together with an accompanying affidavit.

- 5.2 All admiralty and maritime matters are subject to liberty to apply on 2 days' notice, and the parties and their lawyers must co-operate in the efficient, expeditious and cost-effective objectives of the Court in accordance with sections 190 to 192 of the Act.
- 5.3 Multiple or unnecessary interlocutory applications will be actively discouraged by appropriate costs orders.
- 5.4 With consent of the parties, the Court may order that a particular issue be determined on the papers without oral hearing.
- 5.5 The Court may make appropriate procedural orders in chambers.

## **6. TRIAL**

- 6.1 The Court will generally permit electronic evidence for overseas or interstate deponents at the cost of the parties by orders made at the directions hearing for the fixing of the trial date or in chambers. Such evidence may be given by audio or video means.
- 6.2 Without leave of the Court, cross-examination will be limited to half an hour for each witness and oral submissions will be limited to half an hour.
- 6.3 Without leave, a subpoenaed witness must be the subject of an outline of the proposed evidence, and the Court will limit oral evidence in chief to half an hour without further leave.

## **7. COSTS**

- 7.1 The Court will ordinarily fix costs at the trial. The Court will take into account *Calderbank* correspondence or compromise offers.
- 7.2 The parties should be in a position to assist the Court to fix costs by having available in short form any relevant evidence in that regard at the trial.

## **8. FURTHER INFORMATION**

- 8.1 Parties and practitioners should consult the [Court's website](#) for further information about admiralty and maritime proceedings.

The Honourable Justice William Alstergren  
Chief Judge

DRAFT





FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# ADMINISTRATIVE LAW AND HUMAN RIGHTS PROCEEDINGS (GENFED-ALHR)

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to all administrative law and human rights (**ALHR**) proceedings in the Federal Circuit and Family Court of Australia (**Court**). This Practice Direction will also apply to ALHR proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
- (a) *Central Practice Direction—General Federal Law proceedings*, which sets out the key principles of case management procedure and is an essential guide to practice in this Court in all proceedings;
  - (b) the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**Act**); and
  - (c) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (**General Federal Law Rules**), in particular:
    - (i) Part 26 which deals with proceedings under the *Administrative Decisions (Judicial Review) Act 1977* (Cth);
    - (ii) Part 27 which deals with appeals from the Administrative Appeals Tribunal; and
    - (iii) Part 28 which deals with human rights proceedings.

## 2. JURISDICTION

### *Administrative law*

2.1 In administrative law matters, the Court has jurisdiction to:

- (a) review decisions under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**). Under the ADJR Act, the Court can review a decision made by a person exercising a ‘public function’. For the grounds on which a decision can be reviewed, see the information on the [Court's website](#);
- (b) determine some appeals from the Administrative Appeals Tribunal (**AAT**). For an appeal from the AAT to be determined by the Court, it must be on a question of law about;
  - (i) a child support first review, under section 44AAA of the *Administrative Appeals Tribunal Act 1975* (Cth); or
  - (ii) a matter that is transferred to the Court from the Federal Court.

A question of law is an issue arising from a case about how the law was applied or not applied to the facts of a case, or about whether the process was legally adequate. This is different from a question of fact, such as whether something happened or will happen. If the AAT has made findings about the facts in a case, the Court does not review those findings.

- (c) determine appeals of departure prohibition orders of the Child Support Registrar. An appeal from a decision of a delegate of the Child Support Registrar to make a departure prohibition order may only be about whether the decision was properly made. The Court does not have jurisdiction to review:
  - (i) the merits of the decision to make the departure prohibition order; or
  - (ii) a decision to issue or not issue a departure authorisation certificate; and
- (d) enforce determinations of the Information Commissioner under the *Privacy Act 1988* (Cth). The Court has jurisdiction to enforce a

determination of the Information Commissioner under the *Privacy Act*, in addition to its jurisdiction under the ADJR Act. For more information on the Court's jurisdiction under the *Privacy Act*, see the [Court's website](#).

### ***Human rights***

- 2.2 In human rights matters, the Court has jurisdiction over civil matters arising under Part IIB or IIC of the *Australian Human Rights Commission Act 1986* (**AHRC Act**). Those parts deal with complaints alleging unlawful discrimination under the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Disability Discrimination Act 1992* (Cth) and the *Age Discrimination Act 2004* (Cth).
- 2.3 Pursuant to section 46PO of the AHRC Act, the Court has jurisdiction if:
- (a) an affected person makes an application in relation to a complaint of unlawful discrimination which has been terminated by the President of the Australian Human Rights Commission (the **Commission**); and
  - (b) the President has given notice of the termination.
- 2.4 An affected person may make an application other than in accordance with the above procedure only if the Court grants leave.
- 2.5 If the Court is satisfied there has been unlawful discrimination, it may provide substantive relief and interim relief in accordance with subsection 46PO(4) of the AHRC Act. There is no monetary jurisdictional limit on the Court in proceedings under the AHRC Act.

### ***Transfer***

- 2.6 The Court also has jurisdiction to hear any matter within the jurisdiction of the Federal Court of Australia which the Federal Court transfers. In accordance with rule 20.01(1) of the General Federal Law Rules, the Court may transfer a proceeding to the Federal Court at the request of a party or on its own initiative.
- 2.7 The Federal Court may transfer an appeal from the AAT to the Court on the application of a party or on the Federal Court's own initiative. The Court will then have jurisdiction in the matter even if it would not otherwise have jurisdiction. However, the Federal Court may not transfer an appeal to the Court if it involved the president or a deputy president of the AAT.

### 3. STARTING A PROCEEDING

- 3.1 The forms used in ALHR proceedings can be found under the 'Administrative Law' and 'Human Rights' sections on the [General federal law forms](#) page of the Court's website.
- 3.2 All documents should be filed electronically via [eLodgment](#) unless otherwise permitted by the General Federal Law Rules. Unless an exception applies, a filing fee must be paid when the application is filed.
- 3.3 For more information on Court documents, parties should refer to the [Guide to completing and filing GFL Court documents](#).

#### ***Administrative law – applications under the ADJR Act***

- 3.4 An application under the ADJR Act is commenced by filing an *Initiating application for an order of review under ADJR; Form 66*, together with:
  - (a) an affidavit or statement of claim or points of claim;
  - (b) a copy of the decision sought to be reviewed; and
  - (c) any statement of reasons given with the decision.
- 3.5 Applications under the ADJR Act must be filed within 28 days from notification of the decision or of the reasons for the decision (whichever is the later). If the application is out of time and an extension of time is sought, the application:
  - (a) should include that leave to proceed out of time is sought; and
  - (b) must be accompanied by an affidavit stating the facts on which the application relies, and why the application was not filed within time.

#### ***Administrative law – privacy determinations***

- 3.6 For enforcement of a determination of the Information Commissioner under the *Privacy Act*, the applicant must file:
  - (a) an *Originating Application—General federal law*;
  - (b) an affidavit, statement of claim or points of claim; and
  - (c) a copy of the Information Commissioner's determination.
- 3.7 Any written reasons of the Information Commissioner and any document that

was before the Commissioner may also be filed.

***Administrative law – appeals from child support decisions of the AAT or a departure prohibition decision***

3.8 For appeals from child support decisions of the AAT or a departure prohibition decision of the Child Support Registrar (on a question of law only),<sup>1</sup> the applicant must file:

- (a) a *Notice of appeal—Child support*;
- (b) a copy of either the AAT’s decision or the Child Support Registrar’s departure prohibition decision (as applicable);
- (c) any statement of reasons given with the decision;
- (d) a completed financial statement in accordance with the approved form; and
- (e) any further affidavits sought to be relied upon.

3.9 Appeals from the AAT must be filed within 28 days after receiving the written reasons for the decision.

***Human rights***

3.10 For human rights matters, the proceeding is commenced by filing an *Originating Application—Human rights*.

3.11 An application may be made without leave of the Court if, pursuant to rule 28.03 of the General Federal Law Rules, the originating application is 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.

3.12 For all other human rights matters, leave of the Court is required to make an application. The originating application must be accompanied by an affidavit specifying the reasons leave should be granted.

3.13 The application must be filed within 60 days from notification of the decision. If

---

<sup>1</sup> See paragraph 2.1(b) above about questions of law.

the application is out of time and an extension of time is sought:

- (a) the 'Yes' box at Part E of the application must be selected; and
- (b) the application must be accompanied by an affidavit explaining the delay and why the Court should grant an extension.

### ***Service requirements***

3.14 Applications and accompanying documents must generally be served on the relevant parties within 28 days after filing. Documents to be relied upon at the hearing must generally be served no later than 21 days before the hearing date. Exceptions to these timeframes are set out below.

3.15 In administrative law matters, the persons to be served include:

- (a) the respondent;
- (b) for child support appeals—a parent or eligible carer, the Child Support Registrar, and the AAT (within 7 days after filing the appeal);<sup>2</sup> and
- (c) for privacy determinations—each other party (proof of which must be set out in an *Affidavit of service* to be filed with the Court).

3.16 In human rights matters, the persons to be served (proof of which must be set out in an *Affidavit of service* to be filed with the Court) include:

- (a) each other party;
- (b) the person against whom orders are sought if that person is not a party (at least 7 days before the hearing date); and
- (c) the Australian Human Rights Commission (at least 5 days before the first court date).

## **4. CASE MANAGEMENT**

4.1 Parties and their lawyers should familiarise themselves with the information on case management in Part 6 of the *Central Practice Direction—General Federal Law proceedings*. The following should be noted in relation to ALHR proceedings.

---

<sup>2</sup> In addition to the filed documents, applicants in child support appeals must serve on the respondent the brochure 'Child Support Applications'.

***First court date***

4.2 ALHR proceedings will generally be listed for a case management hearing as soon as reasonably practicable after the proceedings have been issued.

4.3 Matters with which the parties or their lawyers must come ready and able to deal with at the first management hearing are:

- (a) the judge may fix a date for the final hearing of the proceeding and the parties should therefore come prepared with appropriate hearing dates from their perspective and an estimate of the length of the hearing;
- (b) the Court will expect parties subject to the Commonwealth or State model litigant policies to consider how best to conduct the proceeding so as to comply with those obligations;<sup>3</sup>
- (c) where appropriate, parties in ALHR proceedings, including on judicial review applications, may be expected by the Court to attend mediation;
- (d) whether the matter should be transferred to the Federal Court;
- (e) parties are to include in case planning the preparation of a statement of agreed facts, to be tendered pursuant to section 191 of the *Evidence Act 1995* (Cth), before filing of evidence so that oral or affidavit evidence need only deal with contested matters;
- (f) whether evidence is to be given orally or by affidavit;
- (g) whether reasons for the decision under review have been provided or are available;
- (h) use of electronic court books, authorities and relevant enactments;
- (i) if a party is unrepresented, parties should be prepared to discuss what (if any) modifications or accommodations should be made to the way the case is prepared for trial and dealt with at trial.

***Evidence and witnesses***

4.4 In most ALHR proceedings, the convenient means of giving evidence is likely to

---

<sup>3</sup> For example, if an applicant is unrepresented, consideration should be given to whether the respondent should prepare the court book, or take other such steps as are necessary to resolve the proceedings justly and efficiently.

be by affidavit, or by other convenient presentation of the material before the decision-maker or Tribunal under review.

- 4.5 To the extent that there is contested evidence that will require cross-examination, the parties and their lawyers should consider the most effective, (including cost-effective) means of leading the evidence. In this regard, parties and their lawyers should familiarise themselves with the information in Part 7 of the *Central Practice Direction—General Federal Law proceedings*.

## **5. CONSENT ORDERS IN PROCEEDINGS INVOLVING A FEDERAL TRIBUNAL**

- 5.1 If the parties propose that an order be made by consent to set aside or vary an order of a federal Tribunal, then they must:
- (a) prepare a proposed consent order that contains, within a "notes" section at the foot of the document, a succinct statement of the matters said to justify the making of the proposed consent order and giving reference to any authorities or statutory provisions relied upon;
  - (b) each sign the proposed consent order; and
  - (c) provide the proposed consent order to the Court, preferably via [eLodgment](#).
- 5.2 If the proposed consent order relates only to costs, the succinct statement and references referred to in subparagraph 5.1(a) above do not need to be included in the proposed consent order.
- 5.3 If the Court makes such a consent order, the parties must, within 7 days of the order being made, serve a copy of the order on the Tribunal.

## **6. COSTS**

- 6.1 The General Federal Law Rules on costs apply in ALHR matters. For information on costs, parties and their lawyers should refer to Part 11 of the *Central Practice Direction—General Federal Law proceedings*.

## **7. FURTHER INFORMATION**

- 7.1 For more information on how ALHR proceedings are conducted in the Court,



parties should refer to the [Court's website](#).

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024

DRAFT



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# **GENERAL FEDERAL LAW PROCEEDINGS (GENFED-CPD)**

## **Central Practice Direction**

<b>1. INTRODUCTION</b>	<b>2</b>
<b>2. OVERARCHING PURPOSE</b>	<b>3</b>
<b>3. URGENT APPLICATIONS</b>	<b>3</b>
<b>4. STARTING A PROCEEDING</b>	<b>4</b>
<b>5. RESPONDING TO A PROCEEDING</b>	<b>5</b>
<b>6. CASE MANAGEMENT</b>	<b>7</b>
<b>7. EVIDENCE AND WITNESSES</b>	<b>9</b>
<b>8. DISPUTE RESOLUTION</b>	<b>10</b>
<b>9. TRIAL</b>	<b>10</b>
<b>10. FINALISING A PROCEEDING</b>	<b>11</b>
<b>11. COSTS</b>	<b>12</b>
<b>12. ENFORCEMENT</b>	<b>13</b>
<b>13. PARTIES' CONDUCT AND COMMUNICATION WITH THE COURT</b>	<b>13</b>
<b>14. FURTHER INFORMATION</b>	<b>13</b>

## 1. INTRODUCTION

- 1.1 This Central Practice Direction applies nationally from X Date 2024 to all general federal law proceedings commenced in the Federal Circuit and Family Court of Australia (Division 2) (**Court**). This Central Practice Direction will also apply to general federal law proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Central Practice Direction does not apply to migration proceedings, family law proceedings under the *Family Law Act 1975* (Cth), or child support proceedings under the *Child Support (Assessment) Act 1989* (Cth) or the *Child Support (Registration and Collection) Act 1988* (Cth).
- 1.3 The Court's jurisdiction in general federal law proceedings includes:
- (a) administrative law, including appeals from a decision of the Administrative Appeals Tribunal (AAT) in a child support first review or from a decision of the Child Support Registrar (CSR) to issue a departure prohibition order;
  - (b) admiralty law (*in personam* matters);
  - (c) bankruptcy;
  - (d) consumer law;
  - (e) Fair Work law;
  - (f) human rights; and
  - (g) intellectual property.
- 1.4 This Central Practice Direction is to be read together with:
- (a) the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**Act**);
  - (b) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (**General Federal Law Rules**);
  - (c) the *Federal Court of Australia Act 1976* (**Federal Court Act**);
  - (d) the *Federal Court Rules 2011* (**Federal Court Rules**);
  - (e) the Court's practice area specific practice directions; and
  - (f) the Court's general practice directions.

- 1.5 Where the General Federal Law Rules are insufficient or inappropriate, the Court may apply the Federal Court Rules.

## **2. OVERARCHING PURPOSE**

- 2.1 The overarching purpose of the civil practice and procedure provisions of the Act is the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible: see section 190 of the Act and rule 1.04 of the General Federal Law Rules.
- 2.2 Parties and their lawyers have a duty to co-operate with the Court and among themselves to assist in achieving the overarching purpose. This will involve identifying the real issues in dispute early and dealing with those issues efficiently.
- 2.3 Parties are expected to make a genuine effort to narrow or resolve issues in dispute. In deciding the best way to run their case consistently with the overarching purpose, parties and their lawyers should also consider:
- (a) whether it is reasonably justified on the material available to bring an application before the Court;
  - (b) the use of dispute resolution where appropriate, both internal and external;
  - (c) the most efficient way to manage lay and expert evidence;
  - (d) making appropriate concessions; and
  - (e) making all efforts to ensure that parties are prepared for any court event.
- 2.4 The Court expects parties and their lawyers to have in mind at all times the cost of each step in the proceeding, and whether it is necessary. Parties should be aware that costs consequences may flow if they seek to reopen issues already resolved or to unreasonably agitate issues.

## **3. URGENT APPLICATIONS**

- 3.1 If a matter is urgent, the filing party should tick the 'Urgent' box when submitting the application via eLodgment and, together with the supporting material, attach a letter stating why the matter must be heard urgently.

- 3.2 Where eLodgment is not possible, the filing party should contact the Registry to advise the type of order sought, the other party to the dispute, and why the matter is urgent. The Registry will then liaise with the relevant judicial officer (depending on the practice area and type of order sought) and fix a date for the Court to hear the application.

***Orders before start of a proceeding***

- 3.3 In some circumstances, a person may seek urgent orders before a proceeding has been commenced, for example search orders and freezing orders: see Part 7 of the General Federal Law Rules.
- 3.4 A person seeking orders before a proceeding is commenced will need to give an undertaking to the Court to start a proceeding within 14 days after the application has been determined.

**4. STARTING A PROCEEDING**

- 4.1 All documents must be lodged electronically via [eLodgment](#) unless otherwise permitted by the General Federal Law Rules. For information on filing Court documents, parties should refer to the [Guide to completing and filing GFL Court documents](#).

***Originating application***

- 4.2 A proceeding is started by filing an originating application stating the relief claimed by the person applying to the Court. It must include the name and address of the applicant.
- 4.3 An applicant may make more than one claim against a respondent, even if in a different legal capacity. For more information on the rules about parties to a proceeding, see Division 9.1 of the General Federal Law Rules.
- 4.4 In certain proceedings, the applicant must also file a genuine steps statement: see rule 8.02 of the General Federal Law Rules and Part 2 of the *Civil Dispute Resolution Act 2011* (Cth).

***Accompanying document***

4.5 Unless stated in rule 8.04 of the General Federal Law Rules,<sup>1</sup> the originating application must be accompanied by:

- (a) an affidavit; or
- (b) a statement of claim or points of claim.

4.6 For information on the requirements for accompanying documents, parties should refer to the [Guide to completing and filing GFL Court documents](#).

### ***Service of originating application***

4.7 The originating application and any accompanying documents must be served on the other party as soon as practicable and at least 5 days before the first court date: see rule 8.05 and Part 10 of the General Federal Law Rules.

### ***Amending an originating application***

4.8 An applicant wanting to amend an originating application may apply to the Court for leave. If leave is granted, the amended originating application must be filed with the amendments clearly marked and endorsed with the order granting leave, including the date leave was granted: see Division 8.3 of the of the General Federal Law Rules.

## **5. RESPONDING TO A PROCEEDING**

5.1 All Court documents filed by a respondent must be lodged electronically via [eLodgment](#). For information on filing Court documents, parties should refer to the [Guide to completing and filing GFL Court documents](#).

### ***Response***

5.2 A respondent to an originating application who wants to file a response to the application must do so within 28 days after being served with the application. The response may:

- (a) indicate consent to the orders sought by the applicant;
- (b) ask the Court to dismiss or set aside the application; or

---

<sup>1</sup> For example, small claims proceedings under the *National Consumer Credit Protection Act 2009* (Cth) and certain Fair Work Division applications do not require an accompanying document with an originating application.

- (c) make a cross-claim.

The rules about responses are set out in Division 8.4 of the General Federal Law Rules.

- 5.3 If the originating application was filed with a statement of claim or points of claim, the respondent must file a defence or points of defence with the response.
- 5.4 If the originating application was filed with an affidavit and the respondent does not consent to the orders sought by the applicant, an affidavit must be filed with the response.
- 5.5 If the applicant filed a genuine steps statement, the respondent must also file a genuine steps statement within 14 days after being served with the originating application.

#### ***Cross-claim***

- 5.6 If a respondent wants to make a cross-claim against the applicant, the response must include a cross-claim stating the relief claimed and the basis on which it is claimed (including, if applicable, any provision of an Act under which relief is claimed).
- 5.7 If a respondent wants to make a cross-claim against the applicant or against any other person after the respondent has filed the response, the respondent must seek leave to file an amended response that includes the cross-claim.
- 5.8 If a respondent makes a cross-claim against a person that is not a party to the proceeding (**third party**), the respondent must serve on the third party all documents that have already been filed in the proceeding.

#### ***Amending a response or cross-claim***

- 5.9 A respondent wanting to amend a response (including to make or amend a cross-claim) must apply to the Court for leave. If leave is granted, the amended response must be filed with the amendments clearly marked and endorsed with the order granting leave, including the date leave was granted: see Division 8.6 of the General Federal Law Rules.

## 6. CASE MANAGEMENT

6.1 The key objective of case management is to reduce costs and delay so that there are:

- (a) fewer issues in contest;
- (b) in relation to those issues, no greater factual investigation than justice requires; and
- (c) as few interlocutory applications as necessary for the just and efficient disposition of matters.

### ***First court date***

6.2 The time and place of the first court date is fixed by the Court and included on the originating application. All parties to the proceeding, including parties to any cross-claim, must attend on the first court date, or may be represented by a lawyer.

6.3 The aim of the first court date is to identify issues at the earliest possible stage. At the first court date, consideration will be given to:

- (a) identifying and narrowing the issues in dispute, including in any cross-claim;
- (b) the available options for dispute resolution, including mediation;
- (c) the efficient preparation of the matter and any steps truly required, including the preparation of evidence, including any expert evidence, about any questions genuinely in dispute; and
- (d) whether the matter should be listed for trial, and if so, the appropriate date, length and method of trial.

6.4 Before the first court date, the Court expects the parties to communicate and try to agree on the above matters, keeping in mind their obligations in accordance with the Court's overarching purpose set out at Part 2 above.

6.5 If the parties reach agreement on any matter before the first court date, any proposed consent orders should be provided to the relevant judicial officer's chambers as early as possible before the hearing (preferably no later than one working day before the hearing). Even if proposed consent orders are provided to



the Court, parties should assume that their attendance is required at the first court date unless otherwise advised by the Court.

### ***Directions***

- 6.6 At the first court date and any further listing of the matter, the Court may make directions as to the management, conduct and hearing of the proceeding. For examples of directions the Court may make, see rule 5.03 of the General Federal Law Rules.

### ***Discovery and subpoenas***

- 6.7 Consistent with the overarching purpose of the civil practice and procedure provisions of the Act, discovery is not allowed unless the Court makes an order. An application for discovery should only be made if it will facilitate the just resolution of the dispute according to law as quickly, inexpensively and efficiently as possible. Therefore, any application for discovery should be limited to the issues remaining in dispute. For more information about discovery, see Part 16 of the General Federal Law Rules.
- 6.8 Parties and their lawyers should ensure that subpoenas are used only where necessary and appropriate to the proceeding, and should not be drafted using overly broad or general terms. For information about subpoenas in general federal law proceedings, see Division 18.2 of the General Federal Law Rules.

### ***Interlocutory applications***

- 6.9 Interlocutory hearings should be kept to a minimum. Most interlocutory disputes can be avoided or resolved through proper communication between the parties and their lawyers.
- 6.10 Before an interlocutory application is listed for hearing, the Court expects that the parties or their lawyers have communicated for the purpose of avoiding the need for Court intervention and to identify and narrow the issues in dispute. This will involve the applicant raising the relevant issue with the respondent with reasonable notice (except in genuine *ex parte* or confidential applications), and the respondent giving genuine consideration to the issue and responding in good faith, before the matter is raised with the Court.

- 6.11 If there is a genuine dispute that cannot be resolved between the parties, the Court will usually set a timetable for the filing and service of supporting material which may include written submissions limited in page length. The matter will be heard, wherever possible, without the need for appearances and oral argument so that the issue can be determined swiftly “on the papers”. If the matter can be addressed briefly, orally and without detailed evidence, the parties should consider that approach.
- 6.12 Court registrars may be utilised, where appropriate, to assist in case management and to facilitate a co-operative dialogue between the parties, conduct a mediation or conference, or determine interlocutory disputes within their delegations.

***Transferring a proceeding***

- 6.13 A party to a proceeding may apply to have the proceeding heard in a place other than where the proceeding was started.
- 6.14 The Court may transfer a proceeding to the Federal Court of Australia on the application of a party or on the Court’s own initiative in accordance with Part 20 of the General Federal Law Rules.

**7. EVIDENCE AND WITNESSES**

- 7.1 The parties should consider as early as possible what evidence they intend to rely on that is relevant to the issues genuinely in dispute.
- 7.2 Any evidence filed in the proceeding should be as brief but specific as possible. Parties should avoid preparing evidence that is unnecessary, lengthy or has limited relevance to the issues in dispute.
- 7.3 The number of witnesses called to give evidence should be limited to the minimum necessary to prove or disprove the issues genuinely in dispute.
- 7.4 If the need arises, the Court may appoint an expert to inquire into and report on a question arising in the proceeding. The expert should be a person agreed between the parties, where possible: see rule 17.17 of the General Federal Law Rules.

- 7.5 Parties should also be familiar with the requirements and information set out in *General Federal Law Practice Direction—Expert evidence*.

## **8. DISPUTE RESOLUTION**

- 8.1 The Court expects parties to participate meaningfully in dispute resolution and make a genuine effort to resolve issues in dispute.
- 8.2 Parties are to advise the Court of any dispute resolution attempts made prior proceedings being commenced and be in a position to make submissions to the Court as to the utility of further dispute resolution.
- 8.3 Parties are encouraged to use all appropriate dispute resolution processes, including court-appointed registrars. Options for dispute resolution, either by agreement or court order, including mediation and arbitration.
- 8.4 When attending dispute resolution, the Court expects parties to participate meaningfully, including by exchanging relevant information in advance of the dispute resolution process.
- 8.5 At any stage in the proceeding, a party may apply for an order that the Court refer the proceeding (or any part or issue in the proceeding) to mediation or, with the parties' consent, arbitration. Mediation is conducted by either a registrar or a private mediator appointed under the scheme conducted by the Law Society or independent Bar of the State or Territory in which the proceeding was commenced, or otherwise as agreed by the parties.
- 8.6 Parties are expected to consider reasonable offers of settlement at any stage of the proceeding. Failure to do so may have costs consequences.
- 8.7 The Court may refer any claim or application relating to a matter to a registrar for investigation, report and recommendation.
- 8.8 For more information about dispute resolution in general federal law proceedings, see Part 21 of the General Federal Law Rules.

## **9. TRIAL**

### ***Pre-trial case management hearing***

- 9.1 At a pre-trial hearing, the parties and the Court may deal with any outstanding matters or applications before the start of the trial, which should have been

identified in advance through discussions between the parties in efforts to agree on the most efficient trial process.

- 9.2 Prior to the hearing, the parties are expected to have considered, and be in a position to properly address the Court on, the following issues:
- (a) whether all efforts have been exhausted to resolve the disputes between the parties through appropriate dispute resolution, or whether a mediation or other dispute resolution process is warranted before trial;
  - (b) whether any pleadings and evidence are finalised; and
  - (c) how the trial will best be managed, including an accurate estimate of the hearing time, the order and timing of witnesses, and any special requirements relating to witnesses (e.g. availability, video links or interpreters).
- 9.3 Proposed consent orders should be forwarded to the judge as soon as possible before the case management hearing (preferably no later than one working day before the hearing).
- 9.4 All parties and lawyers are expected to have complied with all orders and trial directions and be ready to proceed at the commencement of the trial. There may be cost consequences for non-compliance resulting in adjournment or delay of the trial.

### ***Trial***

- 9.5 All parties and lawyers are expected to have complied with all orders and trial directions and be ready to proceed at the commencement of the trial.
- 9.6 There may be costs consequences for non-compliance resulting in the adjournment or delay of the trial.

## **10. FINALISING A PROCEEDING**

### ***Consent***

- 10.1 If the parties reach consent to finalise the proceeding, they should communicate this to the Court: see Division 23.2 of the General Federal Law Rules. They may communicate their consent by:
- (a) signing and filing with the Court a proposed order;

- (b) emailing a proposed order to the appropriate judicial officer;
- (c) handing up a proposed order at a hearing; or
- (d) at a hearing, explaining to the Court the terms on which the parties have agreed to finalise the proceeding.

10.2 The proposed order must state that it is made by consent.

10.3 An order may then be made giving effect to the proposed consent order by a judge or registrar.

### ***Discontinuance***

10.4 In accordance with Division 23.1 of the General Federal Law Rules, a party may choose not to continue with an application by filing a notice of discontinuance at any time before the first court date or, if the proceeding is continuing on pleadings, at any time before the pleadings have closed. The notice of discontinuance may be filed at a later date with permission from the Court or with the opposing party's consent if judgment has not been entered.

10.5 A party discontinuing an application or part of an application may be liable for costs.

## **11. COSTS**

11.1 The Court has the power to make orders for costs, including orders for costs against lawyers.

11.2 Parties and their lawyers are expected to take a pragmatic approach to litigation, and parties' costs should be fair, reasonable and proportionate to the importance and complexity of the issues in dispute.

11.3 When considering costs-related issues, parties and their lawyers should familiarise themselves with:

- (a) section 190 of the Act and rule 1.04 of the General Federal Law Rules dealing with the overarching purpose;
- (b) section 214 of the Act relating to costs generally; and
- (c) Part 32 of the General Federal Law Rules.

11.4 In proceedings within certain areas of law, specific statutory or other legal considerations may apply in relation to costs.<sup>2</sup>

11.5 The Court has a general discretion to depart from the fixed event-based scale. Sometimes the Court may order that a specific amount of costs be paid, in which case the judge may assess the costs by using:

- (a) the costs rules of the Federal Court of Australia; or
- (b) another method for determining the amount of costs.

## **12. ENFORCEMENT**

12.1 After the Court makes final orders in a proceeding, if any person fails to comply with those orders, a party or other interested person can take steps to enforce the judgment.

12.2 For information about the available enforcement procedures, refer to the information on the Court's [website](#).

## **13. PARTIES' CONDUCT AND COMMUNICATION WITH THE COURT**

13.1 At all times, parties are expected to communicate courteously with each other, the Court and all Court staff.

13.2 Parties should only communicate with chambers staff of a judge or registrar where it is appropriate to do so. Unless the communication is in respect to an *ex parte* application, such communication must always be open and occur with the prior knowledge or consent of all other parties to the proceeding. Simply copying in others to the communication is not enough to satisfy this requirement in such circumstances.

13.3 For information about communicating with the Court, parties and their lawyers should refer to the [Guide to communications with the Court](#).

## **14. FURTHER INFORMATION**

14.1 For more information on how general federal law proceedings are conducted in the Court, please refer to the Court's website at [www.fcfcoa.gov.au](http://www.fcfcoa.gov.au).

---

<sup>2</sup> For example, bankruptcy proceedings (see Part 13 of the *Bankruptcy Rules 2021*), Fair Work proceedings (see section 570 of the *Fair Work Act 2009*) and proceedings under the *Public Interest Disclosure Act 2013* (see section 18 of that Act).

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024

DRAFT



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# CONSUMER LAW (GENFED-CL)

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to proceedings brought under the *Competition and Consumer Act 2010* (Cth) and the *National Consumer Credit Protection Act 2009* (Cth) in the Federal Circuit and Family Court of Australia (**Court**). This Practice Direction will also apply to all such proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
- (a) *Central Practice Direction—General Federal Law proceedings*, which sets out the key principles of case management procedure and is an essential guide to practice in this Court in all proceedings; and
  - (b) the Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021 (**General Federal Law Rules**).

### 2. JURISDICTION

#### ***Competition and Consumer Act 2010***

- 2.1 The matters the Court has jurisdiction to hear and determine are listed at subsection 86(1A) of the *Competition and Consumer Act 2010*, and include claims under the Australian Consumer Law.
- 2.2 The Court has power to provide injunctive relief and award damages up to \$750,000.



### ***National Consumer Credit Protection Act 2009***

- 2.3 The Court has jurisdiction over certain consumer credit matters under the *National Consumer Credit Protection Act 2009 (NCCPA)*: see Part 29 of the General Federal Law Rules.
- 2.4 For some compensation matters, an applicant may request that an application for an order covered by subsection 199(2) of the NCCPA be dealt with as a small claim where:
- (a) the amount involved is no more than \$40,000; or
  - (b) the value of the contract under which the dispute arose is no more than \$40,000.
- 2.5 The small claims process is informal, ordinarily conducted without legal representatives,<sup>1</sup> and aims to settle disputes quickly and fairly with minimum expense to the parties. Matters are ordinarily resolved with only one hearing.
- 2.6 The normal requirement that a corporation be represented by a lawyer does not apply to small claims proceedings. Instead, the corporation may be represented by an officer or employee authorised to represent the corporation.

## **3. STARTING A PROCEEDING**

- 3.1 For claims under the *Competition and Consumer Act 2010*, an applicant wishing to start a proceeding must file:
- (a) an Originating Application—General federal law;
  - (b) either an affidavit, statement of claim or points of claim; and
  - (c) any other material to be relied on.
- 3.2 For small claims under the NCCPA, the applicant should provide sufficient detail about the claim for the Court and the respondent (the other party) to be able to understand the nature of the claim. While no particular form of legal document is required to be filed, any material supporting the claim must be filed with the claim.

---

<sup>1</sup> A party to a small claims applications may be represented by a lawyer only with the leave of the Court: see rule 29.02 of the General Federal Law Rules and subsection 199(7) of the NCCPA.

### ***Filing and serving***

- 3.3 All documents should be filed electronically via [eLodgment](#) unless otherwise permitted by the General Federal Law Rules. A filing fee must be paid when the application is filed.
- 3.4 After the application and supporting documents have been filed, they must be served on the respondent in accordance with Part 10 of the General Federal Law Rules, either:
- (a) if the respondent is an individual—by serving the documents on them in person;
  - (b) if the respondent is a corporation—by leaving the documents at the corporation’s registered office, or if there is no registered office, at the corporation’s main office or place of business.
- 3.5 For more information, refer to the [Guide to completing and filing GFL Court documents](#)

### ***Responding to an application***

- 3.6 A respondent to an application (other than a small claim) who wants to file a response must file a *Response—General federal law* together with the corresponding document pursuant to rule 8.15 of the General Federal Rules, any supporting documents and any cross-claim, within 28 days after being served with the application.
- 3.7 A respondent to a small claims application may wish to admit the claim or negotiate an agreement to avoid a legal proceeding. If the respondent wishes to contest the application, they must comply with paragraph 3.6 above.

## **4. CASE MANAGEMENT AND DISPUTE RESOLUTION**

- 4.1 Parties are strongly encouraged to try to resolve their disputes without the need for a court hearing.
- 4.2 Potential applicants should contact the respondent and engage any internal complaint handling options. Alternatively, parties should consider engaging a low-cost dispute resolution provider or a private mediator under the schemes conducted by the Law Society or independent Bar of their State or Territory.

- 4.3 For disputes that cannot be resolved and require the filing of a proceeding in the Court, parties and their representatives should familiarise themselves with the *Central Practice Direction—General Federal Law proceedings*, in particular Part 2 on the overarching purpose and Part 6 on the Court’s principles of case management.

## 5. COSTS

- 5.1 The General Federal Law Rules on costs apply in *Competition and Consumer Act 2010* matters. For information on costs, parties and their lawyers should refer to Part 11 of the *Central Practice Direction—General Federal Law proceedings*.
- 5.2 In proceedings under the *National Consumer Credit Protection Act 2009*, costs may be awarded in accordance with section 200 of that Act.

## 6. FURTHER INFORMATION

- 6.1 Parties and practitioners should consult the [Court’s website](#) for further information about consumer law proceedings.

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# EXPERT EVIDENCE

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to all general federal law proceedings in the Federal Circuit and Family Court of Australia (**Court**). This Central Practice Direction will also apply to general federal law proceedings commenced before X Date 2024, unless the Court considers it unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
  - (a) *Central Practice Direction—General Federal Law proceedings* (**Central Practice Direction**), which sets out the overarching purpose and the principles of case management; and
  - (b) Division 17.4 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021* (**General Federal Law Rules**).
- 1.3 To the extent this Central Practice Direction is inconsistent with any Act, regulation, rule, or other legislative provision (whether or not expressly listed above), the Act, regulation, rule or other legislative provision prevails.

### 2. APPROACH TO EXPERT EVIDENCE

- 2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation.
- 2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge based on their training, study or experience: see section 79 of the

*Evidence Act 1995* (Cth).

- 2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:
- (a) to be admissible in a proceeding, any such evidence must be relevant (section 56 of the *Evidence Act*); and
  - (b) even if relevant, any such evidence may be refused to be admitted by the Court if its probative value is outweighed by other considerations, such as the evidence being unfairly prejudicial, misleading or likely to result in an undue waste of time (section 135 of the *Evidence Act*).
- 2.4 The opinion of an expert witness evidence may have little or no value unless the assumptions adopted by the expert (i.e. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.
- 2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, at all times to comply with their duties associated with the Court's overarching purpose: see section 190 of the *Federal Circuit and Family Court of Australia Act 2021* and rule 1.04 of the General Federal Law Rules.

### **3. INTERACTION WITH EXPERT WITNESSES**

- 3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.
- 3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice direction that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of

the expert who will give evidence. Indeed, the Court would generally discourage such costly duplication.

- 3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness should, at the earliest opportunity, be provided with:
- (a) a copy of this practice direction, including the Harmonised Expert Witness Code of Conduct set out at Annexure A; and
  - (b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.
- 3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

#### **4. ROLE AND DUTIES OF THE EXPERT WITNESS**

- 4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.
- 4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.
- 4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

##### ***Harmonised Expert Witness Code of Conduct***

- 4.4 Every expert witness giving evidence in this Court must read the Harmonised Expert Witness Code of Conduct (**Code**) at Annexure A and agree to be bound by it.
- 4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them.

Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

## **5. CONTENTS OF EXPERT REPORT AND RELATED MATERIAL**

5.1 The contents of an expert's report, including a Court expert's report, must conform with the requirements set out in the Code (in particular clauses 3 to 5).

5.2 In addition, the contents of such a report must also comply with rule 17.22 of the General Federal Law Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of rule 17.22 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:

- (a) acknowledge in the report that:
  - (i) the expert has read and complied with this practice direction and agrees to be bound by it; and
  - (ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;
- (b) identify in the report the questions that the expert was asked to address;
- (c) sign the report and attach or exhibit to it copies of:
  - (i) documents that record any instructions given to the expert; and
  - (ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

## **6. CASE MANAGEMENT CONSIDERATIONS**

6.1 Parties intending to rely on expert evidence are expected to consider between them and inform the Court at the earliest opportunity of their views on the

following:

- (a) whether the opinion of an expert is truly required to resolve one or more of the issues in dispute in the proceeding;
- (b) the identity, area(s) of expertise and availability of the expert witness whose opinion the parties propose to obtain; and
- (c) whether, in addition to a joint expert appointed by the Court, a party should seek leave to adduce evidence from a further expert.

6.2 Before any expert is retained, the parties should try to agree on the precise questions on which the expert will provide an opinion, as well as the relevant facts and assumptions.

6.3 If two or more parties to a proceeding are given leave to call further expert witnesses to give evidence about the same or a similar question, the Court may give directions in relation to:

- (a) the preparation by the expert witnesses of a joint statement of how their opinions on the question agree and differ;
- (b) the preparation by an expert witness of a statement of the expert's opinion on a question, or on the opinion of another expert on a question;
- (c) the order and manner in which the experts are to give evidence during the hearing; and
- (d) whether in the light of factual evidence led at the hearing, the expert witness adheres to, or wishes to modify, any opinion earlier given.

## **7. APPOINTMENT OF COURT EXPERT**

7.1 The Court may appoint an expert to enquire into and report on a question arising in the proceeding, and may give directions about experiments or tests for the purposes of such inquiry and/or report.

7.2 If possible, the expert should be a person agreed on between the parties. The parties should communicate as soon as possible after it becomes clear that the opinion of an expert will be necessary to determine a question that arises in the proceeding.

7.3 The parties are jointly liable to pay the Court expert's remuneration and



expenses. However, a party who wishes to cross-examine the expert must pay the reasonable expenses of the expert's attendance at Court.

***Further expert evidence***

- 7.4 If a Court-appointed expert has first made a report, a party may apply to the Court for leave to adduce evidence of another expert.
- 7.5 A party seeking leave to adduce further expert evidence must satisfy the Court of the question arising in the proceeding that has not been fully addressed by the expert appointed by the Court, and why the opinion of an additional expert is necessary.
- 7.6 If a party is given leave to retain an expert to give a report or give evidence, they must first give the expert a copy of this Practice Direction.

**8. FURTHER INFORMATION**

- 8.1 For further information on expert evidence, parties and their legal representatives should consult the Court's website at [www.fcfcoa.gov.au](http://www.fcfcoa.gov.au).

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024

## Annexure A

# HARMONISED EXPERT WITNESS CODE OF CONDUCT

### APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
  - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
  - (b) to give opinion evidence in proceedings or proposed proceedings.

### GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

### CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
  - (a) the name and address of the expert;
  - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
  - (c) the qualifications of the expert to prepare the report;
  - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
  - (e) the reasons for and any literature or other materials utilised in support of such opinion;
  - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
  - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

- (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
- (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
- (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
- (k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and
- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

#### **SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION**

- 4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
- 5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

#### **DUTY TO COMPLY WITH THE COURT'S DIRECTIONS**

- 6. If directed to do so by the Court, an expert witness shall:
  - (a) confer with any other expert witness;
  - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

- (c) abide in a timely way by any direction of the Court.

## **CONFERENCE OF EXPERTS**

- 7. Each expert witness shall:
  - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
  - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# FAIR WORK PROCEEDINGS (GENFED-FAIRWORK)

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to all proceedings brought under the *Fair Work Act 2009* (Cth) (**Fair Work proceedings**) in the Federal Circuit and Family Court of Australia (**Court**). This Practice Direction will also apply to Fair Work proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
- (a) *Central Practice Direction—General Federal Law proceedings*, which sets out the key principles of case management procedure and is an essential guide to practice in this Court in all proceedings;
  - (b) the *Fair Work Act 2009* (**FWA**);
  - (c) the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**Act**);
  - (d) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (**General Federal Law Rules**), in particular Part 31 which deals with Fair Work proceedings;
  - (e) the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**); and
  - (f) the *Federal Court Rules 2011* (**Federal Court Rules**).
- 1.3 Where the General Federal Law Rules are insufficient or inappropriate, the Court may apply the Federal Court Rules.

## 2. JURISDICTION

2.1 The Court has jurisdiction to hear and determine claims alleging:

- (a) unlawful termination;
- (b) dismissal in contravention of a general protection;
- (c) breach of a general protection;
- (d) sexual harassment; and
- (e) any other contravention of the FWA (including underpayment of employment entitlements).

2.2 Under the FWA, parties can ask the Court to deal with an application as a small claims matter if the claim relates to the underpayment of employment entitlements of \$100,000 or less, or is in relation to some disputes over the conversion of casual employment to full-time or part-time employment. Penalties are not available in the small claims procedure.

2.3 Other than small claims, there is no monetary jurisdictional limit on the Court in proceedings under the FWA.

2.4 The Court also has jurisdiction to hear claims under certain provisions of the *Fair Work (Registered Organisations) Act 2009* (Cth) and the *Work Health and Safety Act 2011* (Cth).

## 3. STARTING A PROCEEDING

3.1 Parties and their representatives should prepare and file the documents, set out below, that apply to the type of claim they want to make. All forms can be found under the 'Fair Work' section on the [General federal law forms](#) page of the Court's website.

3.2 All documents should be filed electronically via [eLodgment](#) unless otherwise permitted by the General Federal Law Rules. Unless an exemption applies, a filing fee must be paid when the application is filed.

3.3 For more information, refer to the Guide to completing and filing GFL Court documents.

**Small claims**

3.4 For small claims, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 5: Small claims under the Fair Work Act 2009—subrule 31.11(2)*;  
and
- (c) any other material to be relied on.

3.5 If the application relates to the conversion of casual employment, use *Form 5A: Small claims under the Fair Work Act 2009 casual conversion dispute—subrule 31.11(2)* instead of Form 5.

**Adverse action**

3.6 For a claim alleging dismissal in contravention of a general protection, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 2: Claim under the Fair Work Act 2009 alleging dismissal in contravention of a general protection*;
- (c) a certificate from the Fair Work Commission (unless an interim injunction is being sought) that all reasonable attempts to resolve the dispute have been or are likely to be unsuccessful; and
- (d) any other material to be relied on.

3.7 The applicant should, so far as practicable, ensure that the originating documents include particulars of the:

- (a) loss claimed as a result of the alleged contravention; and
- (b) basis upon which that loss is calculated.

3.8 For a claim alleging unlawful termination, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 3: Claim under the Fair Work Act 2009 alleging unlawful termination of employment*;

- (c) a certificate from the Fair Work Commission (unless an interim injunction is being sought) that all reasonable attempts to resolve the dispute have been or are likely to be unsuccessful; and
- (d) any other material to be relied on.

3.9 Applications alleging dismissal in contravention of a general protection or unlawful termination must be filed within 14 days of the Fair Work Commission issuing a certificate.

3.10 For a claim alleging breach of a general protection, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 4: Claim under the Fair Work Act 2009 alleging contravention of a general protection*; and
- (c) any other material to be relied on.

### ***Sexual harassment***

3.11 For a claim alleging sexual harassment, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 7: Claim under the Fair Work Act 2009 alleging sexual harassment*;
- (c) a certificate from the Fair Work Commission (unless an interim injunction is being sought) that all reasonable attempts to resolve the dispute have been or are likely to be unsuccessful; and
- (d) any other material to be relied on.

### ***Other matters***

3.12 For an application alleging any other contravention of the FWA, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) either an affidavit or a statement of claim or points of claim; and
- (c) any other material to be relied on.



3.13 For a claim alleging reprisal under section 337BB of the *Fair Work (Registered Organisations) Act 2009*, the applicant must file:

- (a) an *Originating Application—Fair Work Division*;
- (b) a *Form 6: Claim under the Fair Work (Registered Organisations) Act 2009 alleging reprisal*; and
- (c) any other material to be relied on.

### ***Responding to an application***

3.14 A respondent who wants to file a response must file a *Response—General federal law*, together with any supporting documents, within 28 days after being served with the application.

3.15 If the originating application was accompanied by an affidavit, statement of claim or points of claim, the respondent must also file the corresponding document pursuant to rule 8.15 of the General Federal Law Rules.

## **4. CASE MANAGEMENT AND DISPUTE RESOLUTION**

4.1 Parties are strongly encouraged to try to resolve their disputes without the need for court proceedings or a court hearing.

4.2 For disputes that cannot be resolved and require the filing of a proceeding in the Court, parties and their representatives should familiarise themselves with the *Central Practice Direction—General Federal Law proceedings*, in particular Part 2 on the overarching purpose and Part 6 on the Court's principles of case management.

## **5. SMALL CLAIMS CASE MANAGEMENT**

5.1 The small claims process aims to settle disputes quickly and fairly. Small claims matters will be listed before a Registrar in the national small claims list.

5.2 A party to a small claims application may only be represented by a lawyer with leave of the Court. If leave is granted, it may be subject to conditions to ensure that no other party is unfairly disadvantaged.

5.3 Small claims matters will be conducted online, unless the presiding registrar considers it appropriate to list the matter for an in person hearing.

- 5.4 Depending on the complexity of the matter, the matter will be listed for hearing as soon as practicable from 6 weeks after filing or otherwise listed for a directions hearing as soon as practicable from 3 weeks after filing.
- 5.5 Parties are expected to comply with all directions from small claims registrars, including directions provided by way of email in advance of the first court date.
- 5.6 Parties are expected to be prepared to proceed on the first court date, including in relation to same day mediation.

## **6. COSTS**

- 6.1 Costs in Fair Work-related matters may only be ordered in certain circumstances: see section 570 of the FWA. The Court will consider an application for costs in the event of non-compliance with the Court's directions or orders, or this Practice Direction or the *Central Practice Direction—General Federal Law proceedings*.
- 6.2 If the Court makes an order for costs, Schedule 2 to the General Federal Law Rules provides an event-based costs regime. However, there is discretion to depart from this regime, and a judge may fix the amount of costs and disbursements payable.
- 6.3 In small claims matters, if the applicant is successful the court may make an order as to costs for any filing fees paid: see section 548(10) of the FWA.

## **7. FURTHER INFORMATION**

- 7.1 For more information about Fair Working proceedings in the Court, parties and practitioners should refer to the [Court's website](#).

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# INTELLECTUAL PROPERTY PROCEEDINGS (GENFED-IP)

## General Federal Law Practice Direction

### 1. INTRODUCTION

- 1.1 This Practice Direction applies nationally from X Date 2024 to all intellectual property (**IP**) proceedings in the Federal Circuit and Family Court of Australia (**Court**). This Practice Direction will also apply to IP proceedings commenced before X Date 2024, unless the Court considers it would be unfair or impractical to do so.
- 1.2 This Practice Direction is to be read together with:
- (a) *Central Practice Direction—General Federal Law proceedings*, which sets out the key principles of case management procedure and is an essential guide to practice in this Court in all proceedings;
  - (b) the *Federal Circuit and Family Court of Australia Act 2021* (Cth) (**Act**);
  - (c) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (**General Federal Law Rules**), in particular Part 30 which deals with IP proceedings;
  - (d) the *Federal Court of Australia Act 1976* (Cth) (**Federal Court Act**); and
  - (e) the *Federal Court Rules 2011* (**Federal Court Rules**).

### 2. JURISDICTION

- 2.1 The Court has jurisdiction to hear and determine civil disputes concerning matters such as copyright, designs, trade marks and plant breeders' rights. The Court's jurisdiction in these matters is concurrent with that of the Federal Court of Australia.

- 2.2 The Court can provide declaratory and injunctive relief, and award damages or an account of profits.
- 2.3 Under section 134 of the Act, the Court has jurisdiction in respect of matters not otherwise within its jurisdiction that are associated with matters in which the jurisdiction of the Court is invoked.

***Transfer***

- 2.4 The Court also has jurisdiction to hear any matter within the jurisdiction of the Federal Court of Australia which the Federal Court of Australia transfers. In accordance with rule 20.01(1) of the General Federal Law Rules, the Court may transfer a proceeding to the Federal Court at the request of a party or of its own initiative.

**3. STARTING A PROCEEDING**

- 3.1 All documents should be filed electronically via [eLodgment](#) unless otherwise permitted by the General Federal Law Rules. For more information, refer to the [Guide to completing and filing GFL Court documents](#).
- 3.2 To the extent that Part 2 of the of the *Civil Dispute Resolution Act 2011* (Cth) applies to a potential proceeding, the applicant must take genuine steps to try to resolve the dispute before commencing proceedings in the Court: see sections 4 and 6.

***Originating application***

- 3.3 An IP proceeding is commenced by filing an *Originating Application—General Federal Law*. Other than appeals from a decision of the Registrar of Trade Marks or Designs, the application must state the principal legislation under which the proceeding is brought.
- 3.4 For appeals from a decision of the Registrar of Trade Marks or the Registrar of Designs, the applicant should use the *Notice of Appeal (Intellectual Property)—Federal Court Form 92*, adapted to identify this Court.

***Additional documents for filing***

- 3.5 The majority of IP proceedings are commenced by filing either a statement of claim or points of claim together with the originating application.

- 3.6 If Part 2 of the Civil Dispute Resolution Act 2011 applies, the applicant must also file an Applicant's Genuine Steps Statement.

#### **4. RESPONDING TO AN APPLICATION**

- 4.1 Where the originating application is accompanied by a statement of claim or points of claim, the respondent must file a defence or points of defence.
- 4.2 If a defence or points of defence is filed, the respondent is excused from also filing a *Response—General Federal Law*. Otherwise, a respondent must file a *Response—General Federal Law*.
- 4.3 Where an applicant has filed a genuine steps statement, the respondent must file a *Respondent's Genuine Steps Statement*.

#### **5. URGENT APPLICATIONS**

- 5.1 In urgent matters, relief in the nature of interlocutory injunctions, search orders (Anton Piller orders) and orders in the nature of Norwich Pharmacal relief may be sought to alleviate the effects of alleged infringements.
- 5.2 For information on urgent applications, refer to Part 3 of the *Central Practice Direction—General Federal Law proceedings* and Part 7 of the General Federal Law Rules.

#### **6. PLEADINGS**

##### ***Points of claim or concise statement***

- 6.1 An originating application must explain briefly the basis on which the orders are sought by identifying the supporting statement of claim, points of claim or affidavit, and must set out the orders sought.
- 6.2 Use of an originating application and affidavit may negate the need for pleadings but, where appropriate, a statement of claim or points of claim will be ordered, or an applicant may choose to file such a pleading. In accordance with Part 13 of the General Federal Law Rules, the pleading must:

- (a) identify in summary form the material facts on which the applicant relies, but not the evidence by which those facts are to be proved; and
  - (b) include all necessary particulars.
- 6.3 Parties should consider whether the use of a concise statement in support of an originating application should be used, instead of points of claim or a supporting affidavit. The purpose of a concise statement is to enable the applicant to bring to the attention of the respondent and the Court the key issues and key facts at the heart of the dispute and the essential relief sought from the Court. It should be prepared like a pleading summons and may be drafted in a narrative form. If a concise statement is filed with the originating application, no further originating material in support (points of claim or affidavit) is required to be filed until the Court orders.
- 6.4 The concise statement should not exceed 5 pages (including formal parts). It should be plain, concise and direct, and should summarise:
- (a) the important facts giving rise to the claim;
  - (b) the relief sought and against whom;
  - (c) the primary legal grounds (causes of action) for the relief sought; and
  - (d) the alleged harm suffered by the applicant, including, wherever possible, a conservative and realistic estimate or range of loss and damage.

***Defence and any cross-claim***

- 6.5 Together with the defence, points of defence or affidavit, a respondent may file a cross-claim: see Division 8.5 of the General Federal Law Rules.
- 6.6 In the ordinary course, orders will be made at the first case management hearing in relation to the filing of a defence or points of defence, and any cross-claim.
- 6.7 Where a concise statement is filed, the respondent may be required to file a concise statement in response, which may also be drafted in a narrative form.

## 7. CASE MANAGEMENT

- 7.1 Parties and their lawyers should familiarise themselves with the information on case management in Part 6 of the *Central Practice Direction—General Federal Law proceedings*. The following should be noted in relation to IP proceedings.
- 7.2 All IP matters filed in the Court are docketed in the National Intellectual Property List (**IP List**) and case managed by the IP List judge through its interlocutory steps, and allocated to an IP List judge for hearing. Court appearances are managed by video link or telephone link when parties or their lawyers are in different locations.
- 7.3 The conduct of proceedings on the first court date is detailed in Division 5.1 of the General Federal Law Rules. The first court date is a case management hearing unless the judge directs that a directions hearing be conducted.
- 7.4 Wherever possible, the first case management hearing or directions hearing will take place within 3 weeks after the originating application is filed.
- 7.5 The first case management hearing flexibly organises the interlocutory steps in the proceeding so that the proceeding may be conducted as effectively and efficiently as possible. The Court may give directions, order the parties to mediation, fix a date for final hearing, conduct an interim hearing or finally determine the application. The purpose of the case management hearing is to formulate ways to manage the conduct of the proceeding so as to bring it to a final hearing in a manner proportionate to the nature of the dispute, the financial position of the parties, the degree of complexity of the case, the importance of the case and the amount of money or the number of issues in dispute.
- 7.6 The parties and their lawyers must attend court and are expected to have a good knowledge of the case. At the case management hearing, the parties or their lawyers must be prepared to engage in discussion with the judge about all aspects of the proceeding, including factual and legal issues likely to require determination, procedural issues likely to arise and whether it is likely to be appropriate to make orders in relation to witness statements, expert evidence, discovery as well as cross-examination of witnesses.

- 7.7 Ordinarily, the case management hearing will be conducted in an informal manner in open court.
- 7.8 Unless otherwise ordered, once orders are made at the conclusion of the case management hearing, the parties will not be permitted to rely on additional evidence or on discovery or on written submissions, except in exceptional circumstances.

## **8. TRIAL**

- 8.1 The Court is a trial court, and it is intended that proceedings be conducted expeditiously.
- 8.2 The Court will take an active part in controlling the final hearing of an IP proceeding. Before the final hearing, the Court ordinarily makes directions that involve the parties preparing, filing and serving:
- (a) a chronology of relevant events;
  - (b) a brief outline of the case;
  - (c) contentions of fact and law; and
  - (d) a form of proposed orders.
- 8.3 Cross-examination will be controlled.
- 8.4 Where objection is taken to any affidavit material, parties are expected to privately confer in advance of the hearing with a view to discussing and resolving the objections, making appropriate amendments to the relevant affidavit material. Except in exceptional circumstances, the Court will not permit significant amounts of court time to be devoted to the hearing and determination of evidentiary objections.
- 8.5 Where time can be saved, the parties should reduce openings and final addresses to written form.
- 8.6 The judge will try to ensure that the final hearing does not take longer than 3 days.
- 8.7 If the parties agree and where the judge considers it appropriate to do so, the judge may conduct the final hearing entirely on the papers.



8.8 After the final hearing, where practicable, a decision will be given expeditiously.

## **9. COSTS**

9.1 Schedule 2 to the General Federal Law Rules provides an event-based costs regime. However, there is discretion to depart from this regime, and a judge may fix the amount of costs and disbursements payable.

9.2 If an order is made for costs to be paid in accordance with the scale of costs applied in the Federal Court of Australia, then—failing agreement—costs may be referred for assessment in accordance with the Federal Court Rules.

9.3 Rule 32.15 of the General Federal Law Rules provides that the Court may specify the maximum costs that may be recovered on a party-party basis. It is expected that the Court will use this provision in dealing with IP proceedings.

## **10. FURTHER INFORMATION**

10.1 Parties and practitioners should consult the [Court's website](#) for more information about IP proceedings.

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Re-issued: X Date 2024



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

# MIGRATION PROCEEDINGS (MIG-CPD)

## Central Practice Direction

### 1. PURPOSE

- 1.1 The purpose of this Central Practice Direction is to inform parties and the profession of aspects of the practice and procedure of the Federal Circuit and Family Court of Australia (Division 2) (**Court**) which are expected by the Court for the case management of its migration caseload.
- 1.2 The overarching purpose of the Court's civil practice and procedure is the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible.<sup>1</sup>

### 2. SCOPE

- 2.1 This Central Practice Direction applies nationally from X Date 2024 to all migration proceedings in the Court within the scope of section 476 of the *Migration Act 1958* (Cth) (**migration proceedings**).
- 2.2 This Central Practice Direction will also apply to migration proceedings commenced before X Date 2024, unless the Court considers that it would be unfair or impractical to do so.
- 2.3 This Central Practice Direction does not otherwise apply to family law or general federal law proceedings.
- 2.4 This Central Practice Direction is to be read together with:
  - (a) the *Federal Circuit and Family Court of Australia Act 2021* (Cth);

---

<sup>1</sup> Section 190 of the *Federal Circuit and Family Court of Australia Act 2021* (Cth) and rule 1.04 of the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (Cth).

- (b) the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023* (Cth) (**General Federal Law Rules**), in particular Part 29 which deals with migration proceedings;
- (c) the *Federal Court of Australia Act 1976* (Cth);
- (d) the *Federal Court Rules 2011* (Cth);
- (e) the *Migration Act 1958* (Cth) (**Act**); and
- (f) *Federal Court Migration Practice Note—Removal from Australia of Immigration Detainees who have Proceedings before the Court* (MIG-2).

### **3. COMMUNICATION WITH THE COURT**

- 3.1 At all times, parties are expected to communicate courteously with each other, the Court and all Court staff.
- 3.2 For information about communicating with the Court, parties and their lawyers should refer to the [Guide to communications with the Court](#).

### **4. COMMENCING MIGRATION PROCEEDINGS**

- 4.1 The General Federal Law Rules and [prescribed forms](#) apply to the commencement of migration proceedings.

#### ***Section 91X of the Act***

- 4.2 The Court will assign a pseudonym to litigants whose proceedings are those to which section 91X of the Act applies.
- 4.3 In proceedings that involve an applicant who may have previously had a pseudonym, but which do not involve a protection visa, it may be appropriate to continue to use the previous pseudonym. This should be brought to the Court's attention at the earliest available opportunity.
- 4.4 Where a pseudonym has previously been assigned by a court or tribunal that is the source of the proceedings, the Court will adopt the same pseudonym, where possible and appropriate. Where a pseudonym has not previously been assigned, the Migration Team should be contacted by email at [migrationteam@fedcourt.gov.au](mailto:migrationteam@fedcourt.gov.au) before lodgement of the application so that the Court can assign a new pseudonym.

- 4.5 If the applicant has a pseudonym but other factors might cause the applicant to be readily identifiable (such as unique characteristics or aspects of their claims), this should be brought to the Court’s attention including, where appropriate, by filing an interlocutory application seeking non-publication or suppression orders. Alternatively, if the parties can agree on a form of anonymisation, this can be submitted to the docket judge to assist the Court.

***Title of proceedings and names of parties***

- 4.6 In migration proceedings:

- (a) each party bringing the application should be named sequentially, beginning with the first applicant, second applicant and so on, in the same order as they were named before the tribunal or authority (or in limited cases, the delegate);
- (b) each of the other parties to the proceeding should be named sequentially, beginning with the first respondent, second respondent and so on;
- (c) the relevant tribunal or authority should be named as the last respondent;
- (d) the individual names of the president, senior member(s), member(s) or registrar(s) of the relevant tribunal or authority should not appear in the title of the proceeding and do not need to be named as parties to the proceeding.

***Attribution and certification***

- 4.7 All Court documents, including originating and amended applications and affidavits, must include the details of the person who prepared the document, irrespective of whether that person is a lawyer.
- 4.8 Lawyers in particular should note the obligations under section 486E of the Act to avoid encouraging a person to commence or continue migration litigation if the litigation has no reasonable prospect of success.
- 4.9 The obligations referred to in paragraphs 4.7 and 4.8 apply also to counsel retained on a direct access basis: see Part 12 below.

***Notifying the other party***

- 4.10 All documents filed with the Court must be served on all parties.

4.11 Specifically, the applicant must serve each respondent within 7 days of filing the application by delivering the application to them. The Registry will provide the relevant address to enable the applicant to serve the:

- (a) Department; and
- (b) relevant tribunal or authority.

4.12 A party must file a new Notice of Address for Service to notify the Court of any change of address or change of solicitor with carriage of the matter, immediately upon such a change occurring.

4.13 Any subsequent documents filed in the proceeding must also be served on each respondent to the address of the law firm contained in the Notice of Address for Service.

## **5. CENTRAL MIGRATION DOCKET**

5.1 Upon filing, migration proceedings are placed in the central migration docket for initial triage before being allocated to a judge's docket.

5.2 The initial triage process will typically consider:

- (a) the nature of the originating documents;
- (b) whether any interlocutory relief is sought;
- (c) whether there is any objection to the Court's competency in respect of the application;
- (d) whether the applicant is in immigration detention;
- (e) whether the applicant is represented;
- (f) any request for expedition or abeyance (for example, pending the outcome of a relevant appealed decision which might realistically impact the outcome of the judicial review application);
- (g) the location of the parties including by reference to the Registry in which the proceedings have been filed;
- (h) whether there are any other matters before the Court or appeals on foot in other courts that may be relevant to how the matter should be case managed;

- (i) other matters involving parties that are potentially relevant to the proceedings;
- (j) whether the matter is suitable for determination by a registrar; and
- (k) any other issues that may be of relevance to case management and the overarching purpose including the Court's workload, availability of facilities and judges, etc.

5.3 The Court expects respondents in migration proceedings to raise any matters relevant to the triage process, including those set out above, in their filed Response to better facilitate case management.

## **6. URGENT APPLICATIONS AND REQUESTS FOR EXPEDITION**

- 6.1 If a matter is urgent, the filing party should tick the 'Urgent' box when submitting the application via eLodgment and, together with the supporting affidavit, attach a letter stating why the matter must be heard urgently.
- 6.2 Any urgent originating applications should be brought promptly to the attention of the Migration Team by email to [migrationteam@fedcourt.gov.au](mailto:migrationteam@fedcourt.gov.au) for allocation to a judge.
- 6.3 Where eLodgment is not possible for an urgent application, the filing party should contact the Registry for advice on how to bring the matter to the Court's attention.
- 6.4 Any urgent interlocutory application should be brought to the attention of the docket judge who has the responsibility for hearing and case managing the proceeding at the time the interlocutory application is filed.
- 6.5 If the matter has not been assigned to a docket judge, then the filing party in an urgent interlocutory application should contact the Registry for advice on how to bring the matter to the Court's attention.
- 6.6 Any request for expedition should similarly be communicated promptly in the same manner outlined at paragraphs 6.4 or 6.5 as appropriate.

## 7. NON-REMOVAL FROM AUSTRALIA OF DETAINEES WITH LITIGATION BEFORE THE COURT

- 7.1 Federal Court *Migration Practice Note—Removal from Australia of Immigration Detainees who have Proceedings before the Court* (MIG-2) (**Federal Court Practice Note**) applies to detainees with litigation before the Court unless otherwise described below or where the Court considers that it is impractical or unwarranted to do so.
- 7.2 The Court retains full discretion to vary compliance with the Federal Court Practice Note.
- 7.3 To facilitate the efficient administration of justice, a detainee with proceedings currently before the Court should advise the Court of any arrangements being contemplated or made for their removal from Australia, irrespective of whether the proposed removal is voluntary or involuntary.
- 7.4 Detainees to whom the Federal Court Practice Note applies should not be removed from Australia, whether voluntarily or involuntarily, unless the Commonwealth and its officers, whether through the respondent Minister in a particular proceeding or otherwise, are able to demonstrate that the detainee has been:
- (a) properly informed of the contents of the Federal Court Practice Note; and
  - (b) given a reasonable, and practicable, opportunity to communicate with the Court, whether the docket Judge, the Migration List Judge or a duty Judge to whom they refer the matter, the National Migration Registrar or the Court's Migration Team, about their proposed removal and what they wish to occur in relation to the proceedings before the Court.
- 7.5 The Court will not consider that such an opportunity has been given unless the detainee has been informed that the communication should be made to one or more of such persons. Communications in this situation should **not** be made to a generic Court or Registry address.

## **8. IMMIGRATION DETENTION**

- 8.1 All matters involving a party who is in immigration detention (including community detention) (**detainee**) will be allocated for hearing as expeditiously as possible.
- 8.2 Hearings involving detainees may be conducted by remote access technology by link to the relevant detention facility or Microsoft Teams, or in person if the judge hearing the matter or the Court otherwise considers it is in the interests of the administration of justice to do so. In such a case, a judge may order the detainee to attend in Court.
- 8.3 If a detainee is represented in proceedings, the Court will not necessarily make a Microsoft Teams link available for their attendance at the hearing unless the representatives are also appearing via Microsoft Teams. If the Court facilitates the attendance of a detainee via Microsoft Teams to observe proceedings, the Court's protocols in relation to the provision of interpreters apply.

## **9. COURT BOOKS AND AUTHORITIES**

- 9.1 In every migration proceeding, the solicitor for the Minister must prepare a court book, irrespective of whether the applicant(s) is/are represented.
- 9.2 The court book must contain:
- (a) all material that was before the decision-maker who made the substantive decision that is the subject of the proceedings;
  - (b) the substantive decision and all documents relating to the applicant being notified of the decision;
  - (c) if relevant, all material that went to the decision-maker for an indication as to whether they wished to consider the exercise of a personal power;
  - (d) if the application relates to tribunal proceedings, any part of the transcript of those proceedings relied on as relevant to the hearing and determination of the application; and
  - (e) any independent country information relied on by the decision-maker which is directly relevant to the grounds raised.



- 9.3 The solicitor for the Minister must also ensure that any court book complies with the Court's standard orders, which are available on the [Court's website](#).
- 9.4 If any amendment to the application has the effect of requiring material of the kinds listed (non-exhaustively) at paragraph 9.2 to be added to the Court Book, the solicitor for the Minister should as a matter of priority either:
- (a) file a supplementary court book, together with an affidavit explaining the earlier omission; or
  - (b) annex any additional material to an affidavit, including an explanation of the earlier omission;
- depending on the size and nature of the additional material.
- 9.5 If a party wishes to draw the Court's attention to authorities, the party should ensure that any list of authorities provided to the Court:
- (a) is in electronic searchable format (preferably PDF);
  - (b) is paginated; and
  - (c) has an index with each entry bookmarked.

## **10. INTERVIEW/HEARING AUDIO AND TRANSCRIPTS**

- 10.1 Within 28 days after the Response is filed pursuant to rule 8.15 of the General Federal Law Rules, the solicitors for the Minister must notify the applicant(s) of the availability of any audio files of any interview stage or tribunal hearing and provide copies of any files the applicant(s) requests in a practical format to be readily accessed.
- 10.2 If an applicant wishes to rely the conduct of an interview or hearing, they should provide the Court with evidence of the conduct in transcript form.
- 10.3 If audio is to be heard by the Court, the party requiring the audio to be heard must provide 14 days' notice to the other party and to the Court of the relevant portions, together with specific pinpoint references to time so that the portions can be readily identified.

## 11. ADJOURNMENT APPLICATIONS

- 11.1 To ensure that matters can be prepared for hearing, heard and determined in accordance with the overarching purpose, **all parties** are expected to comply with their duty to diligently prepare matters for hearing once notified of the hearing date.
- 11.2 If a party becomes aware of an issue with the hearing date by reason of the unavailability of a party or their representative, they should immediately notify the Court. Any request for an adjournment should be made as promptly as possible, properly supported by evidence.

## 12. CONSENT ORDERS

- 12.1 If the parties propose that an order be made by consent, the effect of which is to set aside or vary an order of the decision of the Commonwealth Administrative Appeals Tribunal or any other tribunal established under a law of the Commonwealth (**Tribunal**), they must file the proposed consent order with the Court, together with a notation concisely setting out the matters said to justify the making of the proposed order and giving references to any authorities or statutory provisions relied upon. The proposed order must be signed on behalf of all parties.
- 12.2 If the proposed consent order relates only to costs, only the proposed consent order need be filed.
- 12.3 If the Court makes a consent order the parties must, within seven days of the order being made, serve a copy of the order upon the Tribunal.

## 13. DIRECT ACCESS BARRISTERS

- 13.1 The Court recognises the assistance to applicants in migration proceedings of having access to members of the independent Bar, without the need for an instructing solicitor.
- 13.2 Barristers retained on a direct access basis must provide an email address and postal address at which they can receive documents. This does not constitute an address for service but will be used by the Court and any other party to the

proceedings to provide courtesy copies of Court documents and listing information.

- 13.3 If, for any reason, a direct access barrister is no longer retained or acting for a party, the barrister must, as soon as reasonably possible, inform the Court in writing that their retainer has ceased or terminated.

#### **14. FURTHER INFORMATION**

- 14.1 An example of the standard orders in migration proceedings are available on the [Court's website](#).
- 14.2 For more information on how migration proceedings are conducted in the Court, parties and practitioners should refer to the [Court's website](#).

The Honourable Justice William Alstergren  
Chief Judge  
Federal Circuit and Family Court of Australia (Division 2)  
Date: X Month 2024



## FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

1. The three appendices in this document contain tables to accompany the draft new GFL Rules dated 29 February 2024.
2. Table 1 in Appendix 1 tracks the derivation of each rule in the new GFL Rules (*DRAFT Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024*).
3. Table 2 in Appendix 2 tracks where each rule in the current GFL Rules (*Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*) can be found in the new GFL Rules.
4. Table 3 in Appendix 3 maps the *Federal Court Rules 2011 (FCR)* to the new GFL Rules.

## **APPENDIX 1: DERIVATION OF NEW GENERAL FEDERAL LAW RULES**

In the following table, the derivation source is almost always a rule from either the FCR or the current GFL Rules (and in some cases, both). Occasionally, the rule appears in neither the FCR nor the current GFL Rules, i.e., it is a new rule or, in a small number of cases, it derives from the Family Law Rules.

A rule reference in brackets is a rule from the “other” federal law set of rules that covers similar subject matter but is not the actual source of the rule. To avoid distraction, the rules in brackets have been greyed.

GFL Rules = *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*

FCR = *Federal Court Rules 2011*

Family Law Rules = *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*

**TABLE 1: DERIVATION OF NEW GENERAL FEDERAL LAW RULES**

NEW GFL RULE	DERIVED FROM
<b>CHAPTER 1—Introductory provisions</b>	
<b>PART 1—Preliminary</b>	
<b>DIVISION 1.1—General</b>	
1.01 Name	GFL rule 1.01
1.02 Commencement	GFL rule 1.02
1.03 Authority	GFL rule 1.03
1.04 Overarching purpose	GFL rule 1.04
1.05 Application	GFL rule 1.06
<b>DIVISION 1.2—General powers of the Court</b>	
1.06 Court to have regard to nature and complexity of proceeding	FCR rule 1.31
1.07 Court may make any order it considers appropriate in the interests of justice	FCR rule 1.32
1.08 Orders may be subject to conditions	FCR rule 1.33
1.09 Court may dispense with rules	FCR rule 1.34 (GFL subrule 1.07(1))
1.10 Orders inconsistent with Rules	FCR rule 1.35 (GFL subrule 1.07(2))
1.11 Orders other than in open court	FCR rule 1.36
1.12 Application for orders about procedures	FCR rule 1.21 (GFL rule 1.08)
1.13 Fixing of time by Court	FCR rule 1.38
1.14 Extension or shortening of time fixed	FCR rule 1.39 (GFL subrules 3.05(1), (3))
1.15 Exercise of Court’s power	FCR rule 1.40
1.16 Other orders the Court may make	FCR rule 1.41
1.17 Orders may include consequences of non-compliance	FCR rule 1.42
1.18 Practice directions	Family Law Rules, rules 1.07, 1.08
<b>DIVISION 1.3—Interpretation</b>	
1.19 Definitions—the Dictionary	GFL rule 1.05 FCR, Schedule 1— Dictionary Various individual rules

NEW GFL RULE	DERIVED FROM
1.20 References to Forms	FCR rule 1.52
1.21 Calculating time	FCR rule 1.61 (GFL rule 3.04)
<b>PART 2—Registry and documents</b>	
<b>DIVISION 2.1—Registry</b>	
2.01 Use of seal of Court	GFL rule 2.12 (FCR subrule 2.01(1))
2.02 Seal or stamp of Court	GFL rule 2.13 (FCR subrule 2.01(2))
2.03 Methods of attaching the seal or stamp	GFL rule 2.14 (FCR subrule 2.01(3))
2.04 Transfer of proceeding to another place	FCR rule 2.02 GFL rule 8.01
<b>DIVISION 2.2—Documents</b>	
2.05 Formal requirements for documents	GFL rule 2.01
2.06 Forms	GFL subrules 2.04(1)-(3) (FCR rule 2.12)
2.07 Title of documents	FCR subrules 2.13(1), (2) GFL subrule 2.04(4)
2.08 Document must have distinctive number	FCR rule 2.14 GFL subrule 2.02
2.09 Document to be signed	FCR rule 2.15 (GFL rule 2.03)
2.10 Details included in document	FCR rule 2.16
2.11 Documents not in English	Family Law Rules, rule 2.17
<b>DIVISION 2.3—Lodging and filing documents</b>	
2.12 How documents may be lodged with the Court for filing	GFL rule 2.05 FCR subrule 2.21(1)
2.13 Providing a document electronically	FCR rule 2.23 GFL rule 2.08
2.14 Faxing a document	FCR rule 2.22 GFL rule 2.07
2.15 When is a document filed	FCR rule 2.25 GFL subrules 2.05(3), (4)

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
2.16 Refusal to accept document for filing	FCR rule 2.26 GFL rule 2.06
2.17 When documents will not be accepted in a registry	FCR rule 2.27
2.18 Documents accepted for filing—removal from Court file and storage	FCR rule 2.28
2.19 Documents on a Court file—removal, redaction and storage	FCR rule 2.29
<b>DIVISION 2.4—Custody and inspection of documents</b>	
2.20 Custody of documents	FCR rule 2.31 (GFL rule 2.10)
2.21 Inspection of documents	FCR rule 2.32 (GFL rule 2.11)
<b>DIVISION 2.5—Administration of money paid into Court and money paid out</b>	
2.22 Dealing with money paid into Court	FCR rule 2.42
2.23 Payment out of Litigants' Fund	FCR rule 2.43
<b>PART 3—<u>Registrars</u></b>	
<b>DIVISION 3.1—Powers of Registrars</b>	
3.01 Delegation of powers to Registrars	GFL rule 21.01 (FCR rule 3.01)
3.02 Authority to administer oaths and affirmations	FCR rule 3.02
3.03 Orders other than in open court	FCR rule 3.03
3.04 Application for orders in relation to Registrars	FCR rule 3.04
<b>DIVISION 3.2—Reviewing a Registrar's exercise of power</b>	
3.05 Application for review of a Registrar's exercise of power	GFL subrule 21.03(1) (FCR subrule 3.11(1))
3.06 Time for application for review	GFL rule 21.02, subrules 21.03(2), (3) (FCR subrule 3.11(2))
3.07 No stay of power under review	GFL subrule 21.03(4)
3.08 Procedure for review	GFL rule 21.04
<b>PART 4—Lawyers</b>	
<b>DIVISION 4.1—Legal representation</b>	
4.01 Proceeding by lawyer or in person	FCR rule 4.01 (GFL rule 9.04)
4.02 Appointment of a lawyer—during a proceeding	FCR rule 4.03

Table 1: Derivation of new GFL Rules



NEW GFL RULE	DERIVED FROM
	(GFL subrule 9.01(1))
4.03 Change of lawyer—during a proceeding	GFL rule 9.02 (FCR subrule 4.04(1), (3))
4.04 Removal of lawyer and no new lawyer appointed	GFL subrules 9.01(2)-(4) (FCR subrule 4.04(2), (3))
4.05 Withdrawal as lawyer	GFL rule 9.03 (FCR rule 4.05)
<b>DIVISION 4.2—Court referral for legal assistance</b>	
4.06 Referral for legal assistance	FCR rule 4.12 (GFL rule 12.01)
4.07 A party has no right to apply for a referral	FCR rule 4.13 (GFL rule 12.02)
4.08 Acceptance of referral and provision of legal assistance	FCR rule 4.14 (GFL rule 12.03)
4.09 Ceasing to provide legal assistance	FCR rule 4.15 (GFL rule 12.04)
<b>PART 5—Court supervision of proceedings</b>	
<b>DIVISION 5.1—First court date and directions</b>	
5.01 Parties to attend Court on first court date	FCR rule 5.01
5.02 Parties to file notice of address for service before first court date	FCR rule 5.02
5.03 Making directions	FCR rule 5.04 (GFL rule 10.01)
5.04 Application for directions—cross-claims	FCR rule 5.06
5.05 Interlocutory orders	FCR rule 5.07
5.06 Hearing and determination of matter at directions hearing	FCR rule 5.08 (GFL rule 10.01)
<b>DIVISION 5.2—Orders on default</b>	
5.07 Self-executing orders	FCR rule 5.21
5.08 When an applicant is in default	FCR rule 5.22 (GFL subrule 13.04(1))
5.09 When a respondent is in default	FCR rule 5.22 GFL subrule 13.04(2)
5.10 Orders on default—applicant	FCR subrule 5.23(1) (GFL subrule 13.05(1))
5.11 Orders on default—respondent	FCR subrule 5.23(2)

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
	(GFL subrule 13.05(2))
5.12 Court's powers in relation to contempt etc. not affected	FCR rule 5.24 GFL rule 13.07
<b>PART 6—Court supervision of parties and other persons</b>	
<b>DIVISION 6.1—Vexatious proceedings</b>	
6.01 Scandalous, vexatious or oppressive matter	FCR rule 6.01 (GFL rule 15.16)
6.02 Certificate of vexatious proceedings order	FCR rule 6.02 (GFL rule 13.14)
6.03 Application for leave to institute proceedings	FCR rule 6.03 (GFL rule 13.15)
<b>DIVISION 6.2—Use of communication and recording devices in Court</b>	
6.04 Use of communication device or recording device in place where hearing taking place	FCR rule 6.11
6.05 Contempt	FCR rule 6.12
<b>CHAPTER 2—Proceedings generally</b>	
<b>PART 7—Orders before start of a proceeding</b>	
<b>DIVISION 7.1—General</b>	
7.01 Application for order before start of proceeding	FCR subrules 7.01(1), (3)
<b>DIVISION 7.2—Freezing orders</b>	
7.02 Freezing order	FCR rule 7.32
7.03 Ancillary order	FCR rule 7.33
7.04 Order may be against person not a party to proceeding	FCR rule 7.34
7.05 Order against judgment debtor or prospective judgment debtor or third party	FCR rule 7.35
7.06 Jurisdiction	FCR rule 7.36
7.07 Service outside Australia of application for freezing order or ancillary order	FCR rule 7.37
7.08 Costs	FCR rule 7.38
<b>DIVISION 7.3—Search orders</b>	
7.09 Search order	FCR rule 7.42
7.10 Requirements for grant of search order	FCR rule 7.43
7.11 Jurisdiction	FCR rule 7.44

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
7.12 Terms of search order	FCR rule 7.45
7.13 Independent lawyers	FCR rule 7.46
7.14 Costs	FCR rule 7.47
<b>PART 8—Starting a proceeding</b>	
<b>DIVISION 8.1—Originating application</b>	
8.01 Starting a proceeding—originating application	FCR rule 8.01 (GFL rule 4.01)
8.02 Applicant’s genuine steps statement	FCR rule 8.02 GFL rule 4.07
8.03 Application to state relief claimed	FCR rule 8.03 (GFL rule 4.02)
8.04 Accompanying document for originating application	FCR rule 8.05 GFL rule 4.04
8.05 Service of originating documents	FCR rule 8.06 GFL rule 6.17 (GFL rules 6.03, 6.19)
8.06 Changing first court date	FCR rule 8.07 (GFL rule 10.02)
<b>DIVISION 8.2—Notice of constitutional matter</b>	
8.07 Notice of constitutional matter	FCR rule 8.11 (GFL rule 10.06)
8.08 Service of notice	FCR rule 8.12
<b>DIVISION 8.3—Amendment of originating application</b>	
8.09 Amendment generally	FCR subrule 8.21(1) (GFL rule 7.01)
8.10 Amendment after limitation period	FCR subrules 8.21(2), (3) (GFL subrules 7.03(1), (2))
8.11 Date on which amendment to substitute a party takes effect	FCR rule 8.22
8.12 Procedure for amending an originating application	FCR rule 8.23
8.13 Time for amending an originating application under Court order	FCR rule 8.24
8.14 Service of amended originating application	FCR rule 8.25
<b>DIVISION 8.4—Responding to an originating application</b>	
8.15 Response to originating application	GFL rules 4.03, 4.04
8.16 Respondent’s genuine steps statement	FCR rule 5.03

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
	GFL rule 4.08
<b>DIVISION 8.5—Making a cross-claim</b>	
8.17 Cross-claim by respondent when filing a response	FCR rule 15.01 (GFL rules 24.01, 24.04)
8.18 Cross-claim by respondent after filing a response	FCR rule 15.05
8.19 Statement of cross-claim or affidavit to accompany response	FCR rule 15.06
8.20 Relief sought in cross-claim	FCR rule 15.07
8.21 Service on cross-respondent	FCR rule 15.08 (GFL subrules 24.03(2)-(4))
8.22 Cross-respondent's reply to cross-claim	GFL rule 24.05
8.23 Conduct of proceeding after cross-claim is filed	FCR rule 15.10 (GFL subrules 24.06(1), (3), rule 24.07)
8.24 Separate proceeding in relation to cross-claim	FCR rule 15.11 (GFL rule 24.07)
8.25 Cross-claim for contribution or indemnity	FCR rule 15.12 (GFL rule 24.11)
8.26 Hearings in relation to cross-claims	FCR rule 15.13
8.27 Co-cross-respondents	FCR rule 15.14
<b>DIVISION 8.6—Amending a response, including a cross-claim</b>	
8.28 Amendment generally	FCR rule 15.15
8.29 Procedure for amending a response	FCR rule 8.23 FCR rule 15.17
8.30 Time for amending response under Court order	FCR rule 15.18
8.31 Service by respondent of amended response	FCR rule 15.19
<b>PART 9—Parties and proceedings</b>	
<b>DIVISION 9.1—Parties, interveners and causes of action</b>	
9.01 Multiple causes of action	FCR rule 9.01
9.02 Joinder in proceedings involving common questions etc	FCR rule 9.02
9.03 Joinder of applicants with joint entitlement	FCR rule 9.03 (GFL rule 11.01)
9.04 Joinder of persons with common liability	FCR rule 9.04
9.05 Joinder of parties by Court order	FCR rule 9.05 (GFL rules 11.02, 11.03)

NEW GFL RULE	DERIVED FROM
9.06 Application for separate trials—inconvenient joinder of causes of action or parties	FCR rule 9.06
9.07 Errors in joinder of parties	FCR rule 9.07
9.08 Removal of parties by Court order	FCR rule 9.08
9.09 Death, bankruptcy or transmission of interest	FCR rule 9.09
9.10 No joinder or substitution after death of party	FCR rule 9.10
9.11 Substitution of party	FCR rule 9.11
9.12 Interveners	FCR rule 9.12
<b>DIVISION 9.2—Partnerships</b>	
9.13 Proceeding by or against partners in partnership name	FCR rule 9.41
9.14 Disclosure of partners' names	FCR rule 9.42
9.15 Proceeding between members of partnerships	FCR rule 9.43
9.16 Denial by person served as partner	FCR rule 9.44
9.17 Response to be in partnership name	FCR rule 9.45
9.18 Entry of order	FCR rule 9.46
<b>DIVISION 9.3—Business name proceedings</b>	
9.19 Proceeding against a person who carries on a business under a business name	FCR rule 9.51
9.20 Proceeding against a business name	FCR rule 9.52
9.21 Proceeding under this Division or Division 9.2	FCR rule 9.53
9.22 Amendment of parties	FCR rule 9.54
9.23 Variation of order	FCR rule 9.55
9.24 Order for discovery—proceeding brought against a person in the person's business name	FCR rule 9.56
<b>DIVISION 9.4—Litigation guardian</b>	
9.25 Person who needs a litigation guardian	GFL rule 11.07
9.26 Proceeding by or against person who needs a litigation guardian	FCR rule 9.61 (GFL rule 11.08)
9.27 Persons who may be a litigation guardian	FCR rule 9.62 (GFL rule 11.09)
9.28 Appointment of litigation guardian by the Court	FCR rule 9.63 (GFL subrules 11.10(1))
9.29 Manager of the affairs of a party	GFL rule 11.11
9.30 Consent to be filed	FCR rule 9.64

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
	(GFL subrule 11.10(2))
9.31 Removal of litigation guardian by the Court	FCR rule 9.65 (GFL subrules 11.10(1), (3))
9.32 Conduct of proceeding	FCR rule 9.66 (GFL subrule 11.08(2))
9.33 No deemed admissions	FCR rule 9.67
9.34 Discovery and interrogatories	FCR rule 9.68
9.35 Payment into Court	FCR rule 9.69
9.36 Compromise or settlement of matter in proceeding	FCR rule 9.70
9.37 Application by litigation guardian for approval of agreement	FCR rule 9.71
9.38 Costs and expenses of litigation guardian	GFL rule 11.13
<b>PART 10—Service</b>	
<b>DIVISION 10.1—Personal service</b>	
10.01 Service on individual	FCR rule 10.01 (GFL subrule 6.07(1))
10.02 Service on corporation	FCR rule 10.02 (GFL subrules 6.08(1), (2))
10.03 Service on unincorporated association	FCR rule 10.03 (GFL subrule 6.08(1))
10.04 Service on organisation	FCR rule 10.04 (GFL subrule 6.08(1))
10.05 Service on partnership	FCR rule 10.05 (GFL rule 6.10)
10.06 Service in a proceeding brought against a person in the person's business name	FCR rule 10.06 (GFL rule 6.09)
10.07 Service on a person who needs a litigation guardian	FCR rule 10.09 GFL subrule 11.14(2)
10.08 Personal service on a person who needs a litigation guardian	FCR rule 10.10
10.09 Deemed service of originating application	FCR rule 10.11
10.10 Refusal to accept document served personally	FCR rule 10.12 (GFL subrule 6.07(2))
<b>DIVISION 10.2—Service other than by personal service</b>	
10.11 Identity of person served	FCR rule 10.21
10.12 Acceptance of service by lawyer	FCR rule 10.22
10.13 Deemed service	FCR rule 10.23

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
10.14 Substituted service	FCR rule 10.24 (GFL rules 6.14-6.16)
10.15 Service by filing	FCR rule 10.25
10.16 Service by Court	FCR rule 10.26
10.17 Service of interlocutory injunction	FCR rule 10.27
10.18 Service under agreement	FCR rule 10.28
<b>DIVISION 10.3—Ordinary service</b>	
10.19 Ordinary service	FCR rule 10.31 (GFL subrule 6.11(1))
10.20 Time of service	FCR rule 10.32 (GFL rule 6.10)
<b>DIVISION 10.4—Address for service</b>	
10.21 Address for service	FCR rule 11.01 (GFL rule 6.01)
10.22 Address for service—corporations	FCR rule 11.02
10.23 Address for service—partnership	FCR rule 11.04
10.24 Address for service—proceeding against person in person's business name	FCR rule 11.03
10.25 Receivers	FCR rule 11.05
10.26 When must notice of address for service be filed	FCR rule 11.06
10.27 How to file notice of address for service	FCR rule 11.07 (GFL rule 6.01)
10.28 Service of notice of address for service	FCR rule 11.08
10.29 Change of address for service	FCR rule 11.09 (GFL rule 6.02)
<b>DIVISION 10.5—Evidence of service</b>	
10.30 Affidavit of service	GFL rule 6.05
<b>PART 11—Submitting notices</b>	
11.01 Submitting notice	FCR rule 12.01
<b>PART 12—Jurisdiction—setting aside originating application</b>	
12.01 Setting aside originating application etc	FCR rule 13.01
<b>PART 13—Pleadings</b>	
<b>DIVISION 13.1—General</b>	
13.01 Application of Division 13.1	FCR rule 16.01A

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
13.02 Pleading to include name of person who prepared it	FCR rule 16.01
13.03 Content of pleadings—general	FCR rule 16.02
13.04 Pleading of facts	FCR rule 16.03
13.05 References to documents or spoken words	FCR rule 16.04
13.06 Conditions precedent	FCR rule 16.05
13.07 Inconsistent allegations or claims	FCR rule 16.06
13.08 Admissions, denials and deemed admissions	FCR rule 16.07
13.09 Matters that must be expressly pleaded	FCR rule 16.08
13.10 Defence of tender before start of proceeding	FCR rule 16.09
13.11 Defence claiming set off	FCR rule 16.10
13.12 Joinder of issue	FCR rule 16.11
13.13 Close of pleadings	FCR rule 16.12
13.14 Alternative accompanying documents	FCR rule 16.13
<b>DIVISION 13.2—Striking out pleadings</b>	
13.15 Application to strike out pleadings	FCR rule 16.21
<b>DIVISION 13.3—Progress of pleadings</b>	
13.16 Application of Division 13.3	FCR rule 16.31
13.17 Reply	FCR rule 16.33
<b>DIVISION 13.4—Particulars</b>	
13.18 Application of Division 13.4	FCR rule 16.41A
13.19 General	FCR rule 16.41
13.20 Fraud, misrepresentation etc	FCR rule 16.42
13.21 Conditions of mind	FCR rule 16.43
13.22 Damages and exemplary damages	FCR rule 16.44
13.23 Application for order for particulars	FCR rule 16.45
<b>DIVISION 13.5—Amendment of pleadings</b>	
13.24 Amendment without needing the leave of the Court	FCR rule 16.51 (GFL rules 7.01-7.03)
13.25 Disallowance of amendment of pleading	FCR rule 16.52
13.26 Application for leave to amend	FCR rule 16.53
13.27 Date on which amendment takes effect	FCR rule 16.54
13.28 Consequential amendment of defence	FCR rule 16.55
13.29 Consequential amendment of reply	FCR rule 16.56

Table 1: Derivation of new GFL Rules



NEW GFL RULE	DERIVED FROM
13.30 Implied joinder of issue after amendment	FCR rule 16.57
13.31 Time for amending pleading under Court order	FCR rule 16.58
13.32 Procedure for making amendment to pleading	FCR rule 8.23 FCR rule 16.59
13.33 Service of amendment	FCR rule 16.60
<b>PART 14—Interlocutory applications</b>	
14.01 Interlocutory application	FCR rule 17.01 (GFL rules 4.06, 6.19)
14.02 Reliance on correspondence or undisputed documents	FCR rule 17.02
14.03 Service on others	FCR rule 17.03
14.04 Hearing and determination of interlocutory application— absence of party	FCR rule 17.04
<b>PART 15—Security for costs</b>	
15.01 Application for an order for security for costs	FCR rule 19.01 (GFL rule 22.01)
<b>PART 16—Discovery, inspection of documents and interrogatories</b>	
<b>DIVISION 16.1—General</b>	
16.01 Declaration to allow discovery	GFL rule 14.02
16.02 Provision of documents without Court order	NEW
16.03 Withholding documents on public interest grounds	FCR rule 20.01
16.04 Privilege	FCR rule 20.02
16.05 Undertakings or orders applying to documents	FCR rule 20.03 (GFL rule 14.11)
<b>DIVISION 16.2—Discovery</b>	
16.06 Application for discovery	FCR rule 20.13
16.07 Order for discovery	FCR rule 20.14 (GFL rule 14.06)
16.08 Claim of privilege	GFL rule 14.05 FCR rule 20.19
16.09 Giving discovery	FCR rule 20.16 (GFL rule 14.03)
16.10 List of documents	FCR rule 20.17
16.11 Order for discovery for particular documents	GFL rule 14.06 FCR rule 20.21

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
<b>DIVISION 16.3—Production for inspection</b>	
16.12 Notice to produce document in pleading or affidavit	FCR rule 20.31 (GFL rule 14.10)
16.13 Order for production from party	FCR rule 20.32 GFL rule 14.07
16.14 Copying of documents produced for inspection	FCR, rule 20.34 (GFL rule 14.08)
16.15 Production to Court	FCR, rule 20.35 (GFL rules 14.04, 14.05)
<b>DIVISION 16.4—Interrogatories</b>	
16.16 Declaration to allow interrogatories	GFL Rules, rule 14.01 (FCR Part 21)
<b>PART 17—Evidence</b>	
<b>DIVISION 17.1—General</b>	
17.01 Decisions without oral hearing	GFL rule 15.02
17.02 Transcript receivable in evidence	GFL rule 15.04
<b>DIVISION 17.2—Admissions</b>	
17.03 Notice to admit facts or documents	FCR, rule 22.01 (GFL subrule 15.19(1))
17.04 Notice disputing facts or documents	FCR, rule 22.02 (GFL subrule 15.19(2))
17.05 Disputing party to pay costs if document is proved etc	FCR, rule 22.03 (GFL subrule 15.19(4))
17.06 Facts or documents taken to be admitted if not disputed	FCR, rule 22.04 (GFL subrule 15.19(2))
17.07 Deemed admission	FCR, rule 22.05
17.08 Withdrawal of admission	FCR, rule 22.06 (GFL subrule 15.19(3))
<b>DIVISION 17.3—Affidavits</b>	
17.09 When affidavit may be sworn or affirmed	FCR, rule 29.01
17.10 Form of affidavit	FCR, subrules 29.02(1)-(3), (6), (7) (GFL rules 15.12, 15.13)
17.11 Documents annexed or exhibited to an affidavit	FCR, subrules 29.02(4), (5), (8)-(11) (GFL rule 15.15)

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
17.12 Content of affidavit	FCR, rule 29.03 (GFL rule 15.16)
17.13 Affidavit of person who is illiterate or vision impaired or has a disability	GFL, rule 15.14 FCR rule 29.04
17.14 Service of exhibits and annexures	FCR rule 29.05
17.15 Irregularity in form	FCR rule 29.06
17.16 Use of affidavit without cross-examination of maker	GFL rule 15.17 (FCR rule 29.09)
<b>DIVISION 17.4—Expert evidence</b>	
17.17 Appointment of Court expert	GFL rule 15.08 (FCR subrule 23.01(1))
17.18 Court expert's remuneration and expenses	GFL rule 15.10 (FCR subrule 23.01(2))
17.19 Court expert's report	GFL rule 15.09 (FCR rule 23.02)
17.20 Further expert evidence	GFL rule 15.11
17.21 Provision of guidelines to an expert	FCR rule 23.12
17.22 Contents of an expert report	FCR rule 23.13
17.23 Application for expert report	FCR rule 23.14
17.24 Expert evidence for 2 or more parties	GFL rule 15.07 (FCR rule 23.15)
<b>PART 18—Subpoenas</b>	
<b>DIVISION 18.1—Leave to issue subpoena</b>	
18.01 Limit on number of subpoenas	GFL rule 16.04
18.02 Leave to issue subpoena	FCR subrule 24.01(2) (GFL rule 16.01)
<b>DIVISION 18.2—Subpoenas to give evidence and to produce documents</b>	
18.03 Definitions for Division 18.2	FCR rule 24.11
18.04 Issuing of subpoena	FCR rule 24.12 (GFL subrule 16.01(1))
18.05 Form of subpoena	FCR rule 24.13(1)-(7) (GFL subrules 16.01(2)–(4), 16.03(2))
18.06 Time limit for service of subpoena	FCR rule 24.13(8)

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
	(GFL rule 6.18, subrule 16.03(3))
18.07 Subpoena addressed to a corporation	FCR rule 24.13(9)
18.08 Change of date for attendance or production	FCR rule 24.14
18.09 Setting aside subpoena	FCR rule 24.15 (GFL rule 16.08)
18.10 Service	FCR rule 24.16 GFL rule 6.18 (GFL rule 16.05)
18.11 Compliance with subpoena	FCR rule 24.17 (GFL rule 16.06)
18.12 Production otherwise than on attendance	FCR rule 24.18 GFL rule 16.14
18.13 Removal, return, inspection, copying and disposal of documents and things	FCR rule 24.19
18.14 Production of documents and access by parties	GFL subrules 16.11(2), (3)
18.15 Inspection of, and dealing with, documents and things produced otherwise than on attendance	FCR rule 24.20 GFL rules 16.12, 16.13
18.16 Return of documents and things produced	FCR rule 24.21
18.17 Costs and expenses of compliance	FCR rule 24.22 (GFL rules 16.09, 16.10)
18.18 Failure to comply with subpoena—contempt of court	FCR rule 24.23 (GFL rule 16.15)
18.19 Documents and things in custody of another court	FCR rule 24.24 (GFL rule 16.02)
<b>PART 19—Offers to settle</b>	
19.01 Offer to compromise	FCR rule 25.01
19.02 Notice to be signed	FCR rule 25.02
19.03 Offer to compromise—content	FCR rule 25.03
19.04 Offer to be paid within 28 days	FCR rule 25.04
19.05 Timing of offer	FCR rule 25.05
19.06 No communication to Court of offer	FCR rule 25.06
19.07 Withdrawal of offer	FCR rule 25.07
19.08 Acceptance of offer	FCR rule 25.08
19.09 Withdrawal of acceptance	FCR rule 25.09

Table 1: Derivation of new GFL Rules

NEW GFL RULE	DERIVED FROM
19.10 Failure to comply with offer	FCR rule 25.10
19.11 Multiple respondents	FCR rule 25.11
19.12 Costs	
<b>PART 20—Transfer of proceedings</b>	
20.01 Transfer to Federal Court	GFL rule 8.02
<b>PART 21—Dispute resolution</b>	
<b>DIVISION 21.1—General</b>	
21.01 Dispute resolution processes	FCR rule 28.01
21.02 Orders that may be sought	FCR rule 28.02
21.03 Mediation and arbitration	FCR rule 28.03 (GFL subrule 23.03(1))
21.04 Attendance in person	GFL subrule 30.14(3)
21.05 Court may end mediation or arbitration	FCR rule 28.04
21.06 Application by interlocutory application	NEW
21.07 Parties may refer proceeding to conciliation, mediation, arbitration or other dispute resolution process	FCR rule 28.05
21.08 Agreement reached by dispute resolution process	GFL rule 10.04 (FCR rule 28.25)
<b>DIVISION 21.2—Mediation</b>	
21.09 Nomination of mediator	FCR rule 28.21 (FCR rule 23.04)
21.10 Court may appoint a new mediator	GFL rule 23.03
21.11 Conduct of mediation	FCR rule 28.22 (GFL rule 23.05)
21.12 Report if only part of proceeding to be mediated	FCR rule 28.23
21.13 Mediator may end mediation	FCR rule 28.24 GFL rule 23.06
<b>DIVISION 21.3—Referral of matter to officer of the Court</b>	
21.14 Court may refer matter	GFL rule 19.01 (FCR rule 28.61)
<b>PART 22—Hearings</b>	
<b>DIVISION 22.1—Separate decision on a question</b>	
22.01 Application for separate question to be heard	FCR rule 30.01 GFL rules 18.02, 18.03

NEW GFL RULE	DERIVED FROM
22.02 Disposal of proceeding after hearing separate questions	FCR rule 30.02 (GFL rule 18.05)
<b>DIVISION 22.2—Consolidation</b>	
22.03 Consolidation of proceedings before trial	FCR rule 30.11
<b>DIVISION 22.3—Absence of party</b>	
22.04 Absence of party at hearing	FCR rule 30.21 GFL rule 13.06
22.05 No appearance by any party	FCR rule 30.22
<b>DIVISION 22.4—Trial</b>	
22.06 Trial limitations	FCR rule 30.23
22.07 Death before judgment	FCR rule 30.24
22.08 Evidence in other proceedings	FCR rule 30.25
22.09 Plans, photographs and models	FCR rule 30.26
22.10 Consent	FCR rule 30.27
22.11 Notice to produce	FCR rule 30.28 (GFL rule 16.16)
22.12 Parties in lawful custody	FCR rule 30.33
22.13 Attendance and production	FCR rule 30.34
<b>PART 23—Finalising a proceeding</b>	
<b>DIVISION 23.1—Withdrawal and discontinuance</b>	
23.01 Withdrawal of defence etc	FCR rule 26.11
23.02 Discontinuance	FCR rule 26.12 (GFL rule 13.01)
23.03 Service of notice	FCR rule 26.13 (GFL subrule 13.01(4))
23.04 Effect of discontinuance	FCR rule 26.14
23.05 Costs	GFL rule 13.02 (FCR subrule 26.12(7))
23.06 Stay of proceeding until costs paid	FCR rule 26.15 (GFL subrule 13.02(3))
<b>DIVISION 23.2—Consent orders</b>	
23.07 Consent orders	FCR rule 39.11 GFL subrule 13.08(4), rule 13.09

Table 1: Derivation of new GFL Rules

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
<b>DIVISION 23.3—Summary orders</b>	
23.08 Summary judgment	FCR rule 26.01 (GFL rules 13.10, 13.11, 13.13)
23.09 Dismissal for want of prosecution	GFL rule 13.16
23.10 Stay of subsequent proceeding until costs paid	FCR rule 26.15
<b>PART 24—Orders</b>	
<b>DIVISION 24.1—Judgments and orders</b>	
24.01 Date of effect of judgment or order	FCR rule 39.01 (GFL rule 17.02)
24.02 Time for compliance with orders	FCR rule 39.02 (GFL rule 17.03)
24.03 Varying or setting aside a judgment or order before it has been entered	FCR rule 39.04 (GFL subrule 17.05(1))
24.04 Varying or setting aside a judgment or order after it has been entered	FCR rule 39.05 (GFL subrule 17.05(2))
24.05 Interest on judgment	FCR rule 39.06
24.06 Orders dealing with failure to fulfil undertakings	FCR rule 39.21
<b>DIVISION 24.2—Entry of judgments and orders</b>	
24.07 When entry is required	FCR rule 39.31 (GFL rule 17.07)
24.08 Entry of an order	GFL rule 17.08
<b>CHAPTER 3—Special classes of proceeding</b>	
<b>PART 25—Proceedings under the Migration Act</b>	
<b>DIVISION 25.1—Preliminary</b>	
25.01 Definitions for Part 25	FCR rule 31.21 (GFL rule 29.01))
25.02 Application of Part 25	GFL rule 29.02
<b>DIVISION 25.2—Matters started in the Court</b>	
25.03 Application of Division 25.2	GFL rule 29.04
25.04 Application for judicial review of migration decision	GFL rule 29.05 FCR rules 31.22 and 31.23
25.05 Response to application for judicial review of migration decision	GFL rule 29.06 FCR rule 31.24

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
<b>DIVISION 25.3—Matters remitted by the High Court</b>	
25.06 Application of Division 25.3	GFL rule 29.07
25.07 Filing of order of remittal	GFL rule 29.08 (FCR rules 32.01, 32.02)
25.08 Service of notice and order	GFL rule 29.09
<b>DIVISION 25.4—General</b>	
25.09 Stay of proceeding	GFL rule 29.10
25.10 Directions and orders	GFL rule 29.11
25.11 Varying or setting aside judgment or order	NEW
25.12 Judgment delivered orally	NEW
25.13 Writs	GFL rule 29.12
25.14 Costs	GFL rule 29.13
25.15 Death of an applicant	NEW
<b>PART 26—Judicial review under the AD(JR) Act</b>	
26.01 Application of Part 26	GFL subrule 27.01(1)
26.02 Application for order of review	GFL rule 27.02
26.03 Application for extension of time	GFL rule 27.03
26.04 Application for stay of proceeding	NEW
26.05 Documents to be filed	GFL rule 27.04
26.06 Service	GFL rule 27.05
26.07 Notice of objection to competency	GFL rule 27.06
<b>PART 27—Administrative Appeals Tribunal</b>	
27.01 Application of Part 27	GFL subrule 28.02(1).
27.02 Application for leave to raise other questions of law or rely on other grounds	FCR rule 33.15
27.03 Application for stay of Tribunal decision	FCR rule 33.17 GFL rule 28.03
27.04 No written reasons for decision	FCR rule 33.19
27.05 Notice of cross-appeal	FCR rule 33.20 (GFL rule 28.04)
27.06 Notice of contention	FCR rule 33.21 (GFL rule 28.05)
27.07 Directions hearing	FCR rule 33.22 GFL rule 28.06

Table 1: Derivation of new GFL Rules



<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
27.08 Preparation of appeal papers	GFL rule 28.07
27.09 Further evidence on appeal	FCR rule 33.29
27.10 Notice of objection to competency of appeal	FCR rule 33.30
27.11 Discontinuance of appeal	FCR rule 33.31
27.12 Application to dismiss appeal	FCR rule 33.32
27.13 Absence of party	FCR rule 33.33
<b>PART 28—Human rights proceedings: proceedings alleging unlawful discrimination</b>	
28.01 Application of Part 28	GFL subrule 26.01(1)
28.02 Interpretation	GFL rule 26.02 FCR, rule 34.161
28.03 Starting a proceeding—originating application and claim	FCR rule 34.163 GFL rule 26.03
28.04 Copy of originating application to be given to Commission	GFL rule 26.04
28.05 Form of response to application	GFL rule 26.05
28.06 Appearance by special-purpose Commissioner	GFL rule 26.06
<b>PART 29—Small claims applications under the National Consumer Credit Protection Act</b>	
29.01 Small claims proceeding—National Consumer Credit Protection Act	GFL rule 31.02
29.02 Starting a National Consumer Credit Protection Act small claims proceeding	GFL rule 31.03
29.03 Representation for corporations—National Consumer Credit Protection Act small claims proceeding	GFL rule 31.05
<b>PART 30—Intellectual property proceedings</b>	
<b>DIVISION 30.1—General</b>	
30.01 Application of Part 30	FCR rule 34.22
30.02 Appearance by Commissioner	FCR rule 34.23
30.03 Starting an appeal—filing and service of notice of appeal	FCR rule 34.24
30.04 Application for extension of time to file notice of appeal	FCR rule 34.25
30.05 Grounds of appeal or particulars not stated in notice of appeal	FCR rule 34.26
30.06 Notice of cross-appeal	FCR rule 34.28
30.07 Notice of contention	FCR rule 34.29
30.08 Provision of documents by Commissioner	FCR rule 34.30

Table 1: Derivation of new GFL Rules

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
30.09 Evidence	FCR rule 34.31
<b>DIVISION 30.2—Particular requirements</b>	
30.10 Infringement of copyright—particulars	FCR rule 34.35
30.11 Infringement of registered designs—particulars	FCR rule 34.36
30.12 Application for compulsory licence—Designs Act	FCR rule 34.37
30.13 Revocation of registration or rectification of Register—Designs Act	FCR rule 34.38
30.14 Infringement of PBR—particulars	FCR rule 34.47
30.15 Infringement of registered trade marks—particulars	FCR rule 34.48
30.16 Dispute of validity of registration of trade mark—particulars of invalidity	FCR rule 34.49
<b>PART 31—Fair Work Division</b>	
<b>DIVISION 31.1—General</b>	
31.01 Expressions used in Part 31	GFL rule 30.02
31.02 Application of Part 31	GFL subrule 30.03(1)
<b>DIVISION 31.2—Contraventions of the Fair Work Act</b>	
31.03 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)	GFL rule 30.04
31.04 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)	GFL rule 30.05
31.05 Application in relation to alleged discrimination (Fair Work Act, subsection 539(2), table item 11)	FCR rule 34.05
31.06 Application in relation to alleged sexual harassment (Fair Work Act, subsection 539(2), table item 27A)	FCR, proposed rule 34.05A
31.07 Application in relation to other alleged contraventions of the Fair Work Act general protections	GFL rule 30.06
31.08 Application in relation to other alleged contraventions of the Fair Work Act	GFL rule 30.07
<b>DIVISION 31.3—Contraventions of the Registered Organisations Act</b>	
31.09 Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)	GFL rule 30.08
<b>DIVISION 31.4—Small claims applications under the Fair Work Act</b>	
31.10 Small claims procedure	GFL rule 30.10

Table 1: Derivation of new GFL Rules

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
31.11 Starting a Fair Work Act small claims proceeding	GFL rule 30.11
31.12 Representation for corporations—Fair Work Act small claims proceeding	GFL rule 30.13
<b>DIVISION 31.5—Proceedings under the Federal Safety Commissioner Act</b>	
31.13 Applications for orders under section 81 of the Federal Safety Commissioner Act	GFL rule 30.15
<b>CHAPTER 4—Costs, enforcement and contempt</b>	
<b>PART 32—Costs</b>	
<b>DIVISION 32.1—General</b>	
32.01 Order for costs	GFL subrule 22.02(1), paragraph 22.02(2)(d)
32.02 Determining costs	FCR rule 40.02 GFL paragraphs 22.02(a)-(c)
32.03 Costs reserved	FCR rule 40.03 (GFL rule 22.04)
32.04 Costs if a proceeding is transferred	GFL rule 22.05 (FCR rule 40.05)
32.05 Order for costs against lawyer	GFL rule 22.06 (FCR rule 40.07)
<b>DIVISION 32.2—Calculation of costs</b>	
32.06 Application of Division 32.2	GFL rule 22.08
32.07 Costs and disbursements	GFL rule 22.09
32.08 Interest on outstanding costs	GFL rule 22.07 (FCR rule 39.06)
32.09 Taxation of costs	GFL rule 22.10
32.10 Expenses for attendance by witness	GFL rule 22.11
32.11 Expenses for preparation of report by expert	GFL rule 22.12
32.12 Solicitor as advocate	GFL rule 22.13
32.13 Advocacy certificate	GFL rule 22.14
32.14 Counsel as advocate	GFL rule 22.15
<b>DIVISION 32.3—Determination of maximum costs</b>	
32.15 Maximum costs in a proceeding	FCR rule 40.51 (GFL rule 22.03)

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
<b>PART 33—Enforcement</b>	
<b>DIVISION 33.1—General</b>	
33.01 Application without notice for directions	FCR rule 41.01 (GFL rule 25.02)
33.02 Condition precedent not fulfilled	FCR rule 41.02 (GFL rule 25.03)
33.03 Application for stay of judgment or order	FCR rule 41.03 (GFL rule 25.04)
33.04 Failure to comply with Court order	FCR rule 41.04 (GFL rule 25.05)
33.05 Failure to attend Court in response to subpoena or order	FCR rule 41.05 (GFL rule 25.06)
33.06 Endorsement on order	FCR rule 41.06 (GFL rule 25.07)
33.07 Service of order	FCR rule 41.07 (GFL rule 25.08)
33.08 Application where person does not comply with order	FCR rule 41.08 (GFL rule 25.09)
33.09 Substituted performance	FCR rule 41.09 (GFL rule 25.10)
33.10 Execution generally	FCR rule 41.10 (GFL rule 25.11)
33.11 Stay of execution	FCR rule 41.11 (GFL rule 25.12)
<b>DIVISION 33.2—Enforcement against partnership</b>	
33.12 Execution of order against partnership	FCR rule 41.21
33.13 Execution against individual partner	FCR rule 41.22
33.14 Application to proceeding between co-partners	FCR rule 41.23
<b>DIVISION 33.3—Enforcement against business name</b>	
33.15 Execution of order—proceeding against person in person's business name	FCR rule 41.31
<b>PART 34—Contempt</b>	
<b>DIVISION 34.1—Contempt in face or hearing of Court</b>	
34.01 Arrest for contempt	FCR rule 42.01 (GFL subrule 20.01(1))

Table 1: Derivation of new GFL Rules

<b>NEW GFL RULE</b>	<b>DERIVED FROM</b>
34.02 Charge, defence and determination	FCR rule 42.02 (GFL subrule 20.01(2))
34.03 Interim custody	FCR rule 42.03 (GFL subrules 20.01(3), (4))
<b>DIVISION 34.2—Application for contempt</b>	
34.04 Application alleging contempt	FCR rule 42.11 (GFL subrule 20.02(1))
34.05 Statement of charge	FCR rule 42.12 GFL subrule 20.02(2)
34.06 Service	FCR rule 42.13
34.07 Arrest	GFL subrule 20.02(5) FCR subrules 42.14
34.08 Charge and defence	GFL subrule 20.02(6)
34.09 Determination of contempt application	GFL subrules 20.02(7), (8)
<b>DIVISION 34.3—General</b>	
34.10 Warrant for imprisonment	FCR rule 42.21
34.11 Discharge before end of prison term	FCR rule 42.22
<b>SCHEDULE 1—Powers delegated to Registrars</b>	GFL rule 21.01
<b>SCHEDULE 2—Costs</b>	
<b>PART 1—Application of this Schedule</b>	GFL Sch 2, Part 1
<b>PART 2—Proceedings other than migration proceedings</b>	GFL Sch 2, Part 2
<b>PART 3—Migration proceedings</b>	GFL Sch 2, Part 3

## **APPENDIX 2:**

### **DESTINATION OF CURRENT GENERAL FEDERAL LAW RULES**

**Note:** The following table tracks where the rules in the current GFL Rules can be found in the new GFL Rules. Some of the rules in the current GFL Rules have no direct equivalent in the new GFL Rules.

Current GFL Rules = *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2021*

New GFL Rules = DRAFT *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024*.

**TABLE 2: DESTINATION OF CURRENT GENERAL FEDERAL LAW RULES**

CURRENT GFL RULES	NEW GFL RULES
<b>CHAPTER 1—All proceedings</b>	
<b>PART 1—Introduction</b>	
1.01 Name	1.01 Name
1.02 Commencement	1.02 Commencement
1.03 Authority	1.03 Authority
1.04 Overarching purpose	1.04 Overarching purpose
1.05 Definitions	1.19 Definitions—the Dictionary
1.06 Application	1.05 Application
1.07 Court may dispense with rules	1.09 Court may dispense with Rules 1.10 Orders inconsistent with Rules
1.08 Applications for orders about procedures	1.12 Applications for orders about procedures
<b>PART 2—Documents</b>	
<b>DIVISION 2.1—General</b>	
2.01 Requirements for documents	2.05 Formal requirements for documents
2.02 Document must have distinctive number	2.08 Document must have distinctive number
2.03 Document to be signed	2.09 Document to be signed
2.04 Forms	2.06 Forms 2.07 Title of documents
<b>DIVISION 2.2—Filing documents</b>	
2.05 How documents may be filed	2.12 How documents may be lodged with the Court for filing 2.15 When is a document filed
2.06 Registrar may refuse to accept document	2.16 Refusal to accept document for filing 2.17 When documents will not be accepted in a registry
2.07 Filing by fax	2.14 Faxing a document
2.08 Filing by electronic communication	2.13 Providing a document electronically
2.09 Other requirements for filing by electronic communication	
<b>DIVISION 2.3—Custody and inspection of documents</b>	
2.10 Custody of documents	2.20 Custody of documents
2.11 Inspection of documents	2.21 Inspection of documents
<b>DIVISION 2.4—Seal and stamp of Court</b>	
2.12 Use of seal of Court	2.01 Use of seal of Court
2.13 Stamp of Court	2.02 Seal or stamp of Court

**PART 3**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
2.14 Methods of attaching the seal or stamp	2.03 Methods of attaching the seal or stamp
<b>PART 3—Sittings, registry hours and time</b>	
<b>DIVISION 3.1—Sittings, holidays and registry hours</b>	
3.01 Sittings	—
3.02 Registry hours	—
<b>DIVISION 3.2—Time</b>	
3.03 Meaning of month	—
3.04 Calculating time	1.21 Calculating time
3.05 Extension or shortening of time fixed	1.14 Extension or shortening of time fixed
<b>PART 4—Starting proceedings</b>	
<b>DIVISION 4.1—General</b>	
4.01 Application	8.01 Starting a proceeding—originating application
4.02 Content of application	8.03 Application to state relief claimed 8.04 Accompanying document for originating application
4.03 Response to application	8.15 Response to application
4.04 Affidavit to be filed with application or response	8.04 Accompanying document for originating application
4.05 Reply in certain circumstances	8.22 Cross-respondent's reply to cross-claim
4.06 Application in a proceeding	14.01 Interlocutory application
<b>DIVISION 4.2—Rules for proceedings if Civil Dispute Resolution Act applies</b>	
4.07 Applicant's genuine steps statement	8.02 Applicant's genuine steps statement
4.08 Respondent's genuine steps statement	8.16 Respondent's genuine steps statement
<b>PART 5—Urgent applications</b>	
5.01 Urgent application	—
5.02 Form of application	—
5.03 Evidence	—
<b>PART 6—Service</b>	
<b>DIVISION 6.1—General</b>	
6.01 Address for service	10.21 Address for service 10.27 How to file notice of address for service
6.02 Change of address for service	10.29 Change of address for service
6.03 Service of documents	8.05 Service of originating documents
6.04 Court's discretion in relation to service	
6.05 Affidavit of service	10.30 Affidavit of service

Table 2: Current GFL Rules mapped to new GFL Rules



CURRENT GFL RULES	NEW GFL RULES
<b>DIVISION 6.2—Service by hand</b>	<b>DIVISION 10.1—Personal service</b>
6.06 When is service by hand required	See note on Division 10.1 and the following rules: 8.05 Service of originating documents 8.21 Service on cross-respondent 9.23 Variation of order [business name proceedings] 10.08 Personal service on a person who needs a litigation guardian 18.10 Service [of subpoena] 27.12 Application to dismiss appeal [AAT appeals] 33.07 Service of order [endorsement on order for enforcement] 34.06 Service [contempt]
6.07 Service by hand on an individual	10.01 Service on individual 10.10 Refusal to accept document served personally
6.08 Service by hand on a corporation, unincorporated association or organisation	10.02 Service on corporation 10.03 Service on unincorporated association 10.04 Service on organisation
6.09 Service of application on unregistered business	10.06 Service in a proceeding brought against a person in the person's business name
6.10 Service of application on partnership	10.05 Service on partnership
<b>DIVISION 6.3—Ordinary service</b>	
6.11 Service other than by hand	10.19 Ordinary service See also Division 10.3 more generally
6.12 When service is effected	10.20 Time of service
6.13 Special requirements for service by fax	
<b>DIVISION 6.4—Substituted service and dispensing with service</b>	
6.14 Substituted service	10.14 Substituted service
6.15 Matters to be taken into account	
6.16 Failure to comply with condition	
<b>DIVISION 6.5—Time for service</b>	
6.17 General time limit	8.05(3) Service of originating documents
6.18 Time for service of subpoena	18.10 Service [of subpoena]
6.19 Time for service of applications	8.05 Service of originating documents 14.01(3) Interlocutory application

**PART 7**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
<b>PART 7—Amendment</b>	
7.01 Power to amend	8.09 Amendment generally [originating application] 8.28 Amendment generally [response and cross-claim] 9.22 Amendment of parties Div 13.5 Amendment of pleadings
7.02 Who may be required to make an amendment	
7.03 Amendment after limitation period	8.10 Amendment after limitation period
<b>PART 8—Transfer of proceedings</b>	
8.01 Change of venue	2.04 Transfer of proceeding to another place
8.02 Transfer to Federal Court	20.01 Transfer to Federal Court
8.03 Proceeding transferred to Federal Court	—
8.04 Proceeding transferred from Federal Court	—
<b>PART 9—Lawyers</b>	
9.01 Change between acting in person and by lawyer	4.02 Appointment of a lawyer—during a proceeding 4.04 Removal of lawyer and no new lawyer appointed
9.02 Change of lawyer	4.03 Change of lawyer—during a proceeding
9.03 Withdrawal as lawyer	4.05 Withdrawal as lawyer
9.04 Corporation must be represented	4.01(2) Proceeding by lawyer or in person
<b>PART 10—How to conduct proceedings</b>	
<b>DIVISION 10.1—First court date</b>	
10.01 Directions and orders	5.03 Making directions 5.06 Hearing and determination of matter at directions hearing
10.02 Adjournment of first court date	8.06 Changing first court date
10.03 Fixing date for final hearing	—
<b>DIVISION 10.2—Dispute resolution</b>	
10.04 Agreement reached by dispute resolution	21.08 Agreement reached by dispute resolution process <sup>1</sup>
10.05 Conciliation conference	
<b>DIVISION 10.3—Notice of constitutional matter</b>	
10.06 Party to file notice of constitutional matter	8.07 Notice of constitutional matter

Table 2: Current GFL Rules mapped to new GFL Rules

**PART 11**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
<b>PART 11—Parties and litigation guardians</b>	
<b>DIVISION 11.1—Parties</b>	<i>See Division 9.1—Parties, interveners and causes of action</i>
11.01 Necessary parties	9.02 Joinder in proceedings involving common questions etc 9.03 Joinder of applicants with joint entitlement 9.04 Joinder of persons with common liability
11.02 Party may include another person as a party	9.05 Joinder of parties by Court order
11.03 Person may apply to be included	9.05 Joinder of parties by Court order
11.04 Party may apply to be removed	9.08 Removal of parties by Court order
11.05 Court may order notice to be given	
11.06 Intervention by Attorney General	9.12 Intervenors
<b>DIVISION 11.2—Litigation guardian</b>	
11.07 Person who needs a litigation guardian	9.25 Person who needs a litigation guardian
11.08 Starting, continuing, defending or inclusion in proceeding	9.26 Proceeding by or against person who needs a litigation guardian 9.32 Conduct of proceeding
11.09 Who may be a litigation guardian	9.27 Persons who may be a litigation guardian
11.10 Appointment of litigation guardian	9.28 Appointment of litigation guardian by the Court 9.31 Removal of litigation guardian by the Court
11.11 Manager of the affairs of a party	9.29 Manager of the affairs of a party
11.12 Notice of becoming litigation guardian	9.30 Consent to be filed
11.13 Costs and expenses of litigation guardian	9.38 Costs and expenses of litigation guardian
11.14 Service	10.07 Service on a person who needs a litigation guardian
<b>PART 12—Court referral for legal assistance</b>	
12.01 Referral for legal assistance	4.06 Referral for legal assistance
12.02 A party has no right to apply for a referral	4.07 A party has no right to apply for a referral
12.03 Acceptance of referral and provision of legal assistance	4.08 Acceptance of referral and provision of legal assistance
12.04 Ceasing to provide legal assistance	4.09 Ceasing to provide legal assistance
<b>PART 13—Ending a proceeding early</b>	
<b>DIVISION 13.1—Discontinuance</b>	
13.01 Discontinuance	23.02 Discontinuance 23.03 Service of notice
13.02 Costs	23.05 Costs

Table 2: Current GFL Rules mapped to new GFL Rules

29 February 2024

**PART 14**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
	23.06 Stay of proceeding until costs paid
<b>DIVISION 13.2—Order or judgment on default</b>	
13.03 Definitions for Division 13.2	See rule 1.19 Definitions—the Dictionary
13.04 When a party is in default	5.08 When an applicant is in default 5.09 When a respondent is in default
13.05 Orders on default	5.10 Orders on default—applicant 5.11 Orders on default—respondent
13.06 Default of appearance of a party	22.04 Absence of party at hearing
13.07 Court’s powers in relation to contempt etc. not affected	5.12 Court’s powers in relation to contempt etc. not affected
<b>DIVISION 13.3—Consent orders</b>	
13.08 Application for order by consent	23.07 Consent orders
13.09 Additional information	23.07 Consent orders
<b>DIVISION 13.4—Summary disposal and stay</b>	
13.10 Disposal by summary judgment	23.08 Summary judgment
13.11 Residue of proceeding	23.08 Summary judgment
13.12 Application	
13.13 Disposal by summary dismissal	23.08 Summary judgment
13.14 Certificate of vexatious proceedings order	6.02 Certificate of vexations proceedings order
13.15 Application for leave to institute proceedings	6.03 Application for leave to institute proceedings
13.16 Dormant proceedings	23.09 Dismissal for want of prosecution
<b>PART 14—Disclosure</b>	
<b>DIVISION 14.1—Answers to specific questions</b>	
14.01 Declaration to allow specific questions	16.16 Declaration to allow interrogatories
<b>DIVISION 14.2—Obligation to disclose</b>	
14.02 Declaration to allow discovery	16.01 Declaration to allow discovery 16.07(1) Order for discovery
14.03 Affidavit of documents	16.09 Giving discovery 16.10 List of documents
14.04 Production of documents to Court	16.15 Production to Court
14.05 Claim for privilege	16.08 Claim of privilege
14.06 Order for particular disclosure	16.07 Order for discovery 16.11 Order for discovery for particular documents 16.13 Order for production from party
14.07 Inspection of documents	16.13(3) Order for production from party

Table 2: Current GFL Rules mapped to new GFL Rules

**PART 15**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
14.08 Copies of documents inspected	16.14 Copying of documents produced for inspection
14.09 Documents not disclosed or produced	
14.10 Documents referred to in document or affidavit	16.12 Notice to produce document in pleading or affidavit
14.11 Use of documents	16.05 Undertakings or orders applying to documents
<b>PART 15—Evidence</b>	
<b>DIVISION 15.1—General</b>	
15.01 Court may give directions	5.03 Making directions
15.02 Decisions without oral hearing	17.01 Decisions without oral hearing
15.03 Court may call evidence	—
15.04 Transcript receivable in evidence	17.02 Transcript receivable in evidence
<b>DIVISION 15.2—Expert evidence</b>	
15.05 Definitions for Division 15.2	See rule 1.19 Definitions—the Dictionary
15.06 Duty to Court and form of expert evidence	(Note 2 to subrule 17.17(2) – see also, 17.21 Provision of guidelines to an expert)
15.07 Expert evidence for 2 or more parties	17.24 Expert evidence for 2 or more parties
15.08 Court expert	17.17 Appointment of Court expert
15.09 Report of court expert	17.19 Court expert’s report
15.10 Remuneration and expenses of court expert	17.18 Court expert’s remuneration and expenses
15.11 Further expert evidence	17.20 Further expert evidence
<b>DIVISION 15.3—Affidavits</b>	
15.12 Form of affidavit	17.10 Form of affidavit
15.13 Making an affidavit	17.10 Form of affidavit
15.14 Affidavit of illiterate or vision impaired person etc	17.13 Affidavit of person who is illiterate or vision impaired or has a disability
15.15 Documents annexed or exhibited	17.11 Documents annexed or exhibited to an affidavit 17.14 Service of exhibits and annexures
15.16 Objectionable material may be struck out	6.01 Scandalous, vexatious or oppressive matter 17.12(2) Content of affidavit
15.17 Use of affidavit without cross examination of maker	17.16 Use of affidavit without cross examination of maker
<b>DIVISION 15.4—Admissions</b>	
15.18 Admission	
15.19 Notice to admit facts or documents	17.03 Notice to admit facts or documents

Table 2: Current GFL Rules mapped to new GFL Rules

**PART 16**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
	17.04 Notice disputing facts or documents 17.05 Disputing party to pay costs if document is proved etc 17.06 Facts or documents taken to be admitted if not disputed 17.07 Deemed admission 17.08 Withdrawal of admission
<b>PART 16—Subpoenas and notices to produce</b>	
<b>DIVISION 16.1—General</b>	
16.01 Issue of subpoena	18.02 Leave to issue subpoena 18.04 Issuing of subpoena 18.05 Form of subpoena
16.02 Documents and things in possession of another court	18.19 Documents and things in custody of another court
16.03 Time limits	18.06 Time limit for service of subpoena
16.04 Limit on number of subpoenas	18.01 Limit on number of subpoenas
16.05 Service	18.10 Service
16.06 Conduct money	18.11 Compliance with subpoena
16.07 Undertaking not to require compliance with subpoena	
16.08 Setting aside subpoena	18.09 Setting aside subpoena
16.09 Order for cost of complying with subpoena	18.17 Costs and expenses of compliance
16.10 Cost of complying with subpoena if not a party	18.17 Costs and expenses of compliance
<b>DIVISION 16.2—Production of documents and access by parties</b>	
16.11 Application of Division 16.2	18.14 Production of documents and access by parties
16.12 Right to inspection of document	18.15 Inspection of, and dealing with, documents and things produced otherwise than on attendance
16.13 Objection to production or inspection or copying of document	18.15 Inspection of, and dealing with, documents and things produced otherwise than on attendance
16.14 Subpoena for production of documents or things	18.12 Production otherwise than on attendance
16.15 Failure to comply with subpoena	18.18 Failure to comply with subpoena—contempt of court
<b>DIVISION 16.3—Notices to produce</b>	
16.16 Notice to produce	22.11 Notice to produce

Table 2: Current GFL Rules mapped to new GFL Rules

CURRENT GFL RULES	NEW GFL RULES
<b>PART 17—Judgments and orders</b>	
17.01 Court may make any judgment or order	
17.02 Date of effect	24.01 Date of effect of judgment or order
17.03 Time for compliance	24.02 Time for compliance with orders
17.04 Fines	
17.05 Setting aside or varying judgments or orders	24.03 Varying or setting aside a judgment or order before it has been entered 24.04 Varying or setting aside a judgment or order after it has been entered
17.06 Undertakings	—
17.07 When must an order be entered	24.07 When entry is required
17.08 Entry of orders	24.08 Entry of an order
<b>PART 18—Separate decision on question</b>	
18.01 Definitions for Part 18	See rule 1.19 Definitions—the Dictionary
18.02 Order for decision	
18.03 Separate question	22.01 Application for separate question to be heard
18.04 Orders, directions on decision	
18.05 Disposal of proceeding	22.02 Disposal of proceeding after hearing separate questions
<b>PART 19—Referral of matter to officer of Court</b>	
19.01 Court may refer matter	21.14 Court may refer matter
<b>PART 20—Contempt</b>	
20.01 Contempt in the face or hearing of Court	34.01 Arrest for contempt 34.02 Charge, defence and determination 34.03 Interim custody
20.02 Contempt other than in the face or hearing of Court	34.04 Application alleging contempt 34.05 Statement of charge 34.06 Service 34.07 Arrest 34.08 Charge and defence 34.09 Determination of contempt application
<b>PART 21—Registrars’ powers</b>	
<b>DIVISION 21.1—Delegation of powers to Registrars</b>	
21.01 Delegation of powers to Registrars	3.01 Delegation of powers to Registrars Schedule 1—Powers delegated to Registrars
<b>DIVISION 21.2—Review of exercise of Registrars’ powers</b>	
21.02 Time for application for review	3.06(1) Time for application for review

Table 2: Current GFL Rules mapped to new GFL Rules

**PART 22**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
21.03 Application for review	3.05 Application for review of a Registrar's exercise of power 3.06(2), (3) Time for application for review 3.07 No stay of power under review
21.04 Procedure for review	3.08 Procedure for review
<b>PART 22—Costs</b>	
<b>DIVISION 22.1—Security for costs</b>	<b>PART 15</b>
22.01 Security for costs	15.01 Application for an order for security for costs
<b>DIVISION 22.2—Orders for costs</b>	
22.02 Order for costs	32.01 Order for costs 32.02 Determining costs
22.03 Determination of maximum costs	32.15 Maximum costs in a proceeding
22.04 Costs reserved	32.03 Costs reserved
22.05 Costs if proceedings transferred	32.04 Costs if a proceeding is transferred
22.06 Order for costs against lawyer	32.05 Order for costs against lawyer
22.07 Interest on outstanding costs	32.08 Interest on outstanding costs
<b>DIVISION 22.3—Costs and disbursements</b>	
22.08 Application of Division 22.3	32.06 Application of Division 32.2
22.09 Costs and disbursements	32.07 Costs and disbursements
22.10 Taxation of costs	32.09 Taxation of costs
22.11 Expenses for attendance by witness	32.10 Expenses for attendance by witness
22.12 Expenses for preparation of report by expert	32.11 Expenses for preparation of report by expert
22.13 Solicitor as advocate	32.12 Solicitor as advocate
22.14 Advocacy certificate	32.13 Advocacy certificate
22.15 Counsel as advocate	32.14 Counsel as advocate
<b>PART 23—Dispute resolution</b>	<b>PART 21</b>
<b>DIVISION 23.1—General</b>	
23.01 Proceeding referred to mediator or arbitrator	21.03 Mediation and arbitration
23.02 Adjournment of proceeding	
23.03 Court may end mediation or arbitration	21.05 Court may end mediation or arbitration 21.10 Court may appoint a new mediator
<b>DIVISION 23.2—Mediation</b>	
23.04 Nomination of mediator	21.09 Nomination of mediator
23.05 Mediation conference	21.11 Conduct of mediation

Table 2: Current GFL Rules mapped to new GFL Rules



**PART 24**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
	21.12 Report if only part of proceeding to be mediated
23.06 Mediator may end mediation	21.13 Mediator may end mediation
<b>DIVISION 23.3—Arbitration</b>	
23.07 Appointment of arbitrator	
<b>PART 24—Cross claims</b>	<b>DIVISION 8.5 – Making a cross-claim</b>
24.01 Cross claim against applicant	8.17 Cross-claim by respondent when filing a response
24.02 Cross claim after application	8.18 Cross-claim by respondent after filing a response
24.03 Cross claim against additional party	8.17(1)(b)
24.04 Cross claim to be included in response	8.17 Cross-claim by respondent when filing a response 8.18 Cross-claim by respondent after filing a response
24.05 Response to cross claim	8.22 Cross-respondent’s reply to cross-claim
24.06 Conduct of cross claim	8.23 Conduct of proceeding after cross-claim is filed
24.07 Exclusion of cross claim	
24.08 Cross claim after judgment etc	
24.09 Judgment for balance	
24.10 Stay of claim	
24.11 Cross claim for contribution or indemnity	8.25 Cross-claim for contribution or indemnity
24.12 Offer of contribution	
<b>PART 25—Enforcement</b>	
25.01 Definitions for Part 25	See rule 1.19 Definitions—the Dictionary
25.02 Application without notice for directions	33.01 Application without notice for directions
25.03 Condition precedent not fulfilled	33.02 Condition precedent not fulfilled
25.04 Application for stay of judgment or order	33.03 Application for stay of judgment or order
25.05 Failure to comply with Court order	33.04 Failure to comply with Court order
25.06 Failure to attend Court in response to subpoena or order	33.05 Failure to attend Court in response to subpoena or order
25.07 Endorsement on order	33.06 Endorsement on order
25.08 Service of order	33.07 Service of order
25.09 Application where person fails to comply with order	33.08 Application where person does not comply with order
25.10 Substituted performance	33.09 Substituted performance
25.11 Execution generally	33.10 Execution generally
25.12 Stay of execution	33.11 Stay of execution

Table 2: Current GFL Rules mapped to new GFL Rules

29 February 2024

**PART 26**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
<b>CHAPTER 2—Human rights proceedings</b>	
<b>PART 26—Proceedings alleging unlawful discrimination</b>	
26.01 Application of Chapter 2	28.01 Application of Part 28
26.02 Interpretation	28.02 Interpretation
26.03 Form of application	28.03 Starting a proceeding—originating application and claim
26.04 Copy of application to be given to Commission	28.04 Copy of originating application to be given to Commission
26.05 Form of response to application	28.05 Form of response to application
26.06 Appearance by special-purpose Commissioner	28.06 Appearance by special-purpose Commissioner
<b>CHAPTER 3—Judicial review proceedings and administrative appeals</b>	
<b>PART 27—Judicial review</b>	
27.01 Application of Part 27	26.01 Application of Part 26
27.02 Application for order of review	26.02 Application for order of review
27.03 Application for extension of time	26.03 Application for extension of time
27.04 Documents to be filed and served	26.05 Documents to be filed
27.05 Service	26.06 Service
27.06 Notice of objection to competency	26.07 Notice of objection to competency
<b>PART 28—Administrative Appeals Tribunal</b>	
28.01 Definitions for Part 28	See rule 1.19 Definitions—the Dictionary
28.02 Application of Part 28	27.01 Application of Part 27
28.03 Form of application for stay of Tribunal decision	27.03 Application for stay of Tribunal decision
28.04 Notice of cross-appeal	27.05 Notice of cross-appeal
28.05 Notice of contention	27.06 Notice of contention
28.06 Directions	27.07 Directions hearing
28.07 Preparation of appeal papers	27.08 Preparation of appeal papers
<b>PART 29—Proceedings under the Migration Act 1958</b>	
<b>DIVISION 29.1—Preliminary</b>	
29.01 Definitions for Part 29	25.01 Definitions for Part 25
29.02 Application of Part 29	25.02 Application of Part 25
29.03 Application of Chapter 1	
<b>DIVISION 29.2—Matters started in the Court</b>	
29.04 Application of Division 29.2	25.03 Application of Division 25.2
29.05 Application for judicial review of migration decision	25.04 Application for judicial review of migration decision

Table 2: Current GFL Rules mapped to new GFL Rules

29 February 2024

**PART 30**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
29.06 Response to application for judicial review of migration decision	25.05 Response to application for judicial review of migration decision
<b>DIVISION 29.3—Matters remitted by the High Court</b>	
29.07 Application of Division 29.3	25.06 Application of Division 25.3
29.08 Filing of order of remittal	25.07 Filing of order of remittal
29.09 Service of notice and order	25.08 Service of notice and order
<b>DIVISION 29.4—General</b>	
29.10 Stay of proceedings	25.09 Stay of proceeding
29.11 Directions and orders	25.10 Directions and orders
29.12 Writs	25.13 Writs
29.13 Costs	25.14 Costs
<b>CHAPTER 4—Fair Work Division</b>	
<b>PART 30—Proceedings in the Fair Work Division</b>	
<b>DIVISION 30.1—General</b>	
30.01 Definitions for Part 30	See rule 1.19 Definitions—the Dictionary
30.02 Expressions used in Part 30	31.01 Expressions used in Part 31
30.03 Application of Part 30	31.02 Application of Part 31
<b>DIVISION 30.2—Contraventions of the Fair Work Act</b>	
30.04 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)	31.03 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)
30.05 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)	31.04 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)
30.06 Application in relation to other alleged contraventions of the Fair Work Act general protections	31.07 Application in relation to other alleged contraventions of the Fair Work Act general protections
30.07 Application in relation to other alleged contraventions of the Fair Work Act	31.08 Application in relation to other alleged contraventions of the Fair Work Act
<b>DIVISION 30.3—Contraventions of the Registered Organisations Act</b>	
30.08 Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)	31.09 Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)
<b>DIVISION 30.4—Small claims</b>	
30.09 Definitions for Division 30.4	See rule 1.19 Definitions—the Dictionary
30.10 Small claims procedure	31.10 Small claims procedure
30.11 Starting proceedings	31.11 Starting a Fair Work Act small claims proceeding

Table 2: Current GFL Rules mapped to new GFL Rules

29 February 2024

**PART 31**

<b>CURRENT GFL RULES</b>	<b>NEW GFL RULES</b>
30.12 Lawyers—Fair Work Act small claims proceeding	See Note 2 to subrule 31.10(1)
30.13 Representation for corporations—Fair Work Act small claims proceeding	31.12 Representation for corporations—Fair Work Act small claims proceeding
<b>DIVISION 30.5—Dispute resolution</b>	
30.14 Mediation—Fair Work Act and Registered Organisations Act proceedings	See mediation generally (Part 21, Div 21.2)
<b>DIVISION 30.6—Proceedings under the Building and Construction Industry Act [now the Federal Safety Commissioner Act 2022]</b>	
30.15 Applications for orders etc. under the Building and Construction Industry Act	31.13 Applications for orders etc under section 81 of the Federal Safety Commissioner Act
<b>CHAPTER 5—Proceedings under the National Consumer Credit Protection Act</b>	
<b>PART 31—Small claims application under the National Consumer Credit Protection Act</b>	
31.01 Definitions for Part 31	See rule 1.19 Definitions—the Dictionary
31.02 Small claims proceeding—National Consumer Credit Protection Act	29.01 Small claims proceeding—National Consumer Credit Protection Act
31.03 Starting a National Consumer Credit Protection Act small claims proceeding	29.02 Starting a National Consumer Credit Protection Act small claims proceeding
31.04 Lawyers—National Consumer Credit Protection Act small claims proceeding	See Note 2 to rule 29.02
31.05 Representation for corporations—National Consumer Credit Protection Act small claims proceeding	29.03 Representation for corporations—National Consumer Credit Protection Act small claims proceeding
<b>Schedule 1—Federal Court Rules applied</b>	N/A
<b>Schedule 2—Costs</b>	Schedule 2—Costs

### APPENDIX 3: FEDERAL COURT RULES MAPPED TO NEW GENERAL FEDERAL LAW RULES

**Note:** The following table tracks where the rules in the FCR can be found in the new GFL Rules. Some of the rules in the FCR have no direct equivalent in the new GFL Rules. Some rules in the new GFL Rules have no direct equivalent in the FCR, but have been included (in grey) to show the continuity within a given division or a part.

FCR = *Federal Court Rules 2011*

New GFL Rules = DRAFT *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024*

**PART 1****TABLE 3: FEDERAL COURT RULES MAPPED TO NEW GENERAL FEDERAL LAW RULES**

**Note:** The table below maps the *Federal Court Rules 2011* (FCR) to the new GFL Rules. For completeness, all rules from the new GFL Rules appear in the right-hand column, but where they have no equivalent in the FCR, they are greyed out (see, for example, rules 1.02–1.04 of the new GFL Rules).

New GFL Rules = DRAFT *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024*.

FCR	NEW GFL RULE
<b>CHAPTER 1—Introductory provisions</b>	
<b>PART 1—Preliminary</b>	
<b>DIVISION 1.1—Scope</b>	<b>DIVISION 1.1—General</b>
1.01 Name of Rules	1.01 Name 1.02 Commencement 1.03 Authority 1.04 Overarching purpose
1.04 Application	1.05 Application
<b>DIVISION 1.2—Application about procedures</b>	<b>N/A</b>
1.21 Application for orders about procedures	1.12 Application for orders about procedures
<b>DIVISION 1.3—General powers of the Court</b>	<b>DIVISION 1.2—General powers of the Court</b>
1.31 Orders to have regard to nature and complexity of proceeding	1.06 Court to have regard to nature and complexity of proceeding
1.32 Court may make any order it considers appropriate in the interests of justice	1.07 Court may make any order it considers appropriate in the interests of justice
1.33 Orders may be subject to conditions	1.08 Orders may be subject to conditions
1.34 Dispensing with compliance with Rules	1.09 Court may dispense with rules
1.35 Orders inconsistent with Rules	1.10 Orders inconsistent with Rules
1.36 Orders other than in open court	1.11 Orders other than in open court
1.37 Directions to Registrars	N/A
1.38 Fixing of time by Court	1.13 Fixing of time by Court
1.39 Extension and shortening of time	1.14 Extension or shortening of time fixed
1.40 Exercise of Court’s power	1.15 Exercise of Court’s power
1.41 Other orders that may be made	1.16 Other orders the Court may make
1.42 Orders may include consequences of non-compliance	1.17 Orders may include consequences of non-compliance
	1.18 Practice Directions
<b>DIVISION 1.4—Interpretation</b>	<b>DIVISION 1.3—Interpretation</b>
1.51 Definitions—the Dictionary	1.19 Definitions—the Dictionary

**PART 2**

<b>FCR</b>	<b>NEW GFL RULE</b>
1.52 References to Forms	1.20 References to Forms
<b>DIVISION 1.5—Time</b>	<b>N/A</b>
1.61 Calculation of time	1.21 Calculating time
<b>PART 2—Registry and documents</b>	<b>PART 2—Registry and documents</b>
<b>DIVISION 2.1—Registry</b>	<b>DIVISION 2.1—Registry</b>
2.01 Use of seal and stamps of Court	2.01 Use of seal of Court 2.02 Seal or stamp of Court 2.03 Methods of attaching the seal or stamp
2.02 Transfer of proceeding to another place	2.04 Transfer of proceeding to another place
<b>DIVISION 2.2—Documents</b>	
2.11 General provisions about documents	2.05 Formal requirements for documents
2.12 Compliance with approved forms	2.06 Forms
2.13 Titles of documents	2.07 Title of documents
2.14 Subsequent documents to be endorsed with Court number	2.08 Document must have distinctive number
2.15 Signature	2.09 Document to be signed
2.16 Details at foot of each document	2.10 Details included in document
	2.11 Documents not in English
<b>DIVISION 2.3—Lodging and filing documents</b>	
2.21 How documents may be lodged with the Court	2.12 How documents may be lodged with the Court for filing
2.22 Faxing a document	2.14 Faxing a document
2.23 Sending a document by electronic communication	2.13 Providing a document electronically
2.24 Documents sent by electronic communication	
2.25 When is a document filed	2.15 When is a document filed
2.26 Refusal to accept document for filing—abuse of process or frivolous or vexatious documents	2.16 Refusal to accept document for filing
2.27 When documents will not be accepted in a Registry	2.17 When documents will not be accepted in a registry
2.28 Documents accepted for filing—removal from Court file and storage	2.18 Documents accepted for filing—removal from Court file and storage
2.29 Documents on a Court file—removal, redaction and storage	2.19 Documents on a Court file—removal, redaction and storage
<b>DIVISION 2.4—Custody and inspection of documents</b>	
2.31 Custody of documents	2.20 Custody of documents

Table 3: FCA Rules – mapped to new GFL Rules

**PART 3**

<b>FCR</b>	<b>NEW GFL RULE</b>
2.32 Inspection of documents	2.21 Inspection of documents
<b>DIVISION 2.5—Administration of money paid into Court and payment out</b>	
2.41 Establishment of Litigants' Fund	N/A
2.42 Dealing with money paid into Court	2.22 Dealing with money paid into Court
2.43 Payment out of Litigants' Fund	2.23 Payment out of Litigants' Fund
<b>PART 3—Registrars</b>	
<b>DIVISION 3.1—Powers of Registrars</b>	
3.01 Powers of the Court that may be exercised by a Registrar	3.01 Delegation of powers to Registrars
3.02 Authority to administer oaths and affirmations	3.02 Authority to administer oaths and affirmations
3.03 Orders other than in open court	3.03 Orders other than in open court
3.04 Application for orders in relation to Registrars	3.04 Application for orders in relation to Registrars
3.05 Application to a Registrar for an application to be determined by the Court	
<b>DIVISION 3.2—Reviewing a Registrar's exercise of power</b>	
3.11 Application for review of a Registrar's exercise of power	3.05 Application for review of a Registrar's exercise of power
	3.06 Time for application for review
	3.07 No stay of power under review
	3.08 Procedure for review
<b>PART 4—Lawyers</b>	<b>PART 4—Lawyers</b>
<b>DIVISION 4.1—General</b>	<b>DIVISION 4.1—Legal representation</b>
4.01 Proceeding by lawyer or in person	4.01 Proceeding by lawyer or in person
4.02 Power to act by lawyer	4.02 Appointment of a lawyer—during a proceeding
4.03 Appointment of a lawyer—notice of acting	4.03 Change of lawyer—during a proceeding
4.04 Termination of retainer by party	4.04 Removal of lawyer and no new lawyer appointed
4.05 Termination of retainer by lawyer	4.05 Withdrawal as lawyer
<b>DIVISION 4.2—Court referral for legal assistance</b>	
4.11 Definitions for Division 4.2	1.19 Definitions—the Dictionary
4.12 Referral for legal assistance	4.06 Referral for legal assistance
4.13 A party has no right to apply for a referral	4.07 A party has no right to apply for a referral
4.14 Acceptance of referral certificate and provision of legal assistance	4.08 Acceptance of referral and provision of legal assistance
4.15 Ceasing to provide legal assistance	4.09 Ceasing to provide legal assistance

Table 3: FCA Rules – mapped to new GFL Rules



**PART 5**

<b>FCR</b>	<b>NEW GFL RULE</b>
4.16 Application for Registrar's permission to cease providing legal assistance	Omitted
4.17 Cessation of referral certificate	Omitted
4.18 Disbursements	Omitted
4.19 Professional fees	Omitted
<b>PART 5—Court supervision of proceedings</b>	
<b>DIVISION 5.1—Return date and directions</b>	<b>DIVISION 5.1—First court date and directions</b>
5.01 Parties to attend Court on return date	5.01 Parties to attend Court on first court date
5.02 Parties to file notice of address for service before return date	5.02 Parties to file notice of address for service before first court date
5.03 Respondent's genuine steps statement	8.16 Respondent's genuine steps statement
5.04 Making directions	5.03 Making directions
5.05 Adjournment of directions hearing	Omitted
5.06 Application for directions—cross claims	5.04 Application for directions—cross-claims
5.07 Interlocutory orders	5.05 Interlocutory orders
5.08 Hearing and determination of matter at directions hearing	5.06 Hearing and determination of matter at directions hearing
<b>DIVISION 5.2—Orders on default</b>	
5.21 Self executing orders	5.07 Self-executing orders
5.22 When a party is in default	5.08 When an applicant is in default 5.09 When a respondent is in default
5.23 Orders on default	5.10 Orders on default—applicant 5.11 Orders on default—respondent
5.24 Contempt	5.12 Court's powers in relation to contempt etc. not affected
<b>PART 6—Court supervision of parties and other persons</b>	
<b>DIVISION 6.1—Vexatious proceedings</b>	
6.01 Scandalous, vexatious or oppressive matter	6.01 Scandalous, vexatious or oppressive matter
6.02 Certificate of vexatious proceedings order	6.02 Certificate of vexatious proceedings order
6.03 Application for leave to institute proceedings	6.03 Application for leave to institute proceedings
<b>DIVISION 6.2—Use of communication and recording devices in Court</b>	
6.11 Use of communication device or recording device in place where hearing taking place	6.04 Use of communication device or recording device in place where hearing taking place
6.12 Contempt	6.05 Contempt

**PART 7**

<b>FCR</b>	<b>NEW GFL RULE</b>
<b>CHAPTER 2—Original jurisdiction—proceedings generally</b>	<b>CHAPTER 2—All general federal law proceedings</b>
<b>PART 7—Orders before start of a proceeding</b>	
<b>DIVISION 7.1—Injunctions, preservation of property and receivers</b>	<b>DIVISION 7.1—General</b>
7.01 Order before start of proceeding	7.01 Application for order before start of proceeding
<b>DIVISION 7.2—Approval of agreement for person under a legal incapacity</b>	<b>Omitted</b>
<b>DIVISION 7.3—Preliminary discovery</b>	<b>Omitted</b>
<b>DIVISION 7.4—Freezing orders</b>	<b>DIVISION 7.2—Freezing orders</b>
7.31 Definitions for Division 7.4	1.19 Definitions—the Dictionary
7.32 Freezing order	7.02 Freezing order
7.33 Ancillary order	7.03 Ancillary order
7.34 Order may be against person not a party to proceeding	7.04 Order may be against person not a party to proceeding
7.35 Order against judgment debtor or prospective judgment debtor or third party	7.05 Order against judgment debtor or prospective judgment debtor or third party
7.36 Jurisdiction	7.06 Jurisdiction
7.37 Service outside Australia of application for freezing order or ancillary order	7.07 Service outside Australia of application for freezing order or ancillary order
7.38 Costs	7.08 Costs
<b>DIVISION 7.5—Search orders</b>	<b>DIVISION 7.3—Search orders</b>
7.41 Definitions for Division 7.5	1.19 Definitions—the Dictionary
7.42 Search order	7.09 Search order
7.43 Requirements for grant of search order	7.10 Requirements for grant of search order
7.44 Jurisdiction	7.11 Jurisdiction
7.45 Terms of search order	7.12 Terms of search order
7.46 Independent lawyers	7.13 Independent lawyers
7.47 Costs	7.14 Costs
<b>PART 8—Starting proceedings</b>	
<b>DIVISION 8.1—Originating applications</b>	
8.01 Starting proceeding—application	8.01 Starting a proceeding—originating application
8.02 Applicant’s genuine steps statement	8.02 Applicant’s genuine steps statement
8.03 Application to state relief claimed	8.03 Application to state relief claimed

**PART 9**

<b>FCR</b>	<b>NEW GFL RULE</b>
8.04 Application starting migration litigation to include certificate	25.04(6) Application for judicial review of migration decision
8.05 Accompanying document for originating application	8.04 Accompanying document for originating application
8.06 Service of originating documents	8.05 Service of originating documents
8.07 Changing return date	8.06 Changing first court date
<b>DIVISION 8.2—Notice of constitutional matter</b>	
8.11 Notice of constitutional matter	8.07 Notice of constitutional matter
8.12 Service of notice	8.08 Service of notice
<b>DIVISION 8.3—Amendments to an originating application</b>	<b>DIVISION 8.3—Amendment of originating application</b>
8.21 Amendment generally	8.09 Amendment generally 8.10 Amendment after limitation period
8.22 Date on which amendment takes effect	8.11 Date on which amendment to substitute a party takes effect
8.23 Procedure for making amendment	8.12 Procedure for amending an originating application
8.24 Time for amending an originating application under Court order	8.13 Time for amending an originating application under Court order
8.25 Service of amended originating application	8.14 Service of amended originating application
<b>PART 9—Parties and proceedings</b>	
<b>DIVISION 9.1—Parties, interveners and causes of action</b>	
9.01 Multiple causes of action	9.01 Multiple causes of action
9.02 Joinder in proceedings involving common questions etc	9.02 Joinder in proceedings involving common questions etc
9.03 Joinder of applicants with joint entitlement	9.03 Joinder of applicants with joint entitlement
9.04 Joinder of persons with common liability	9.04 Joinder of persons with common liability
9.05 Joinder of parties by Court order	9.05 Joinder of parties by Court order
9.06 Application for separate trials— inconvenient joinder of causes of action or parties	9.06 Application for separate trials— inconvenient joinder of causes of action or parties
9.07 Errors in joinder of parties	9.07 Errors in joinder of parties
9.08 Removal of parties by Court order	9.08 Removal of parties by Court order
9.09 Death, bankruptcy or transmission of interest	9.09 Death, bankruptcy or transmission of interest
9.10 No joinder or substitution after death of party	9.10 No joinder or substitution after death of party
9.11 Substitution of party	9.11 Substitution of party
9.12 Interveners	9.12 Interveners

Table 3: FCA Rules – mapped to new GFL Rules

FCR	NEW GFL RULE
<b>DIVISION 9.2—Representative proceedings</b>	<b>N/A</b>
<b>DIVISION 9.3—Grouped proceedings under Part IVA of the Act</b>	<b>N/A</b>
<b>DIVISION 9.4—Partnerships</b>	<b>DIVISION 9.2—Partnerships</b>
9.41 Proceeding by or against partners in partnership name	9.13 Proceeding by or against partners in partnership name
9.42 Disclosure of partners' names	9.14 Disclosure of partners' names
9.43 Proceeding between members of partnerships	9.15 Proceeding between members of partnerships
9.44 Denial by person served as partner	9.16 Denial by person served as partner
9.45 Defence to be in partnership name	9.17 Response to be in partnership name
9.46 Entry of order	9.18 Entry of order
<b>DIVISION 9.5—Business name proceedings</b>	<b>DIVISION 9.3—Business name proceedings</b>
9.51 Proceeding against a person who carries on a business under a business name	9.19 Proceeding against a person who carries on a business under a business name
9.52 Proceeding against a business name	9.20 Proceeding against a business name
9.53 Proceeding under this Division or Division 9.4	9.21 Proceeding under this Division or Division 9.2
9.54 Amendment of parties	9.22 Amendment of parties
9.55 Variation of order	9.23 Variation of order
9.56 Order for discovery—proceeding brought against a person in the person's business name	9.24 Order for discovery—proceeding brought against a person in the person's business name
<b>DIVISION 9.6—Persons under a legal incapacity</b>	<b>DIVISION 9.4—Litigation guardians</b>
	9.25 Person who needs a litigation guardian
9.61 Proceeding by or against person under a legal incapacity	9.26 Proceeding by or against person who needs a litigation guardian
9.62 Persons who may be a litigation representative	9.27 Persons who may be a litigation guardian
9.63 Appointment of litigation representative by the Court	9.28 Appointment of litigation guardian by the Court
	9.29 Manager of the affairs of a party
9.64 Consent to be filed	9.30 Consent to be filed
9.65 Removal of litigation representative by the Court	9.31 Removal of litigation guardian by the Court
9.66 Conduct of proceeding	9.32 Conduct of proceeding
9.67 No deemed admissions	9.33 No deemed admissions
9.68 Discovery and interrogatories	9.34 Discovery and interrogatories

**PART 10**

<b>FCR</b>	<b>NEW GFL RULE</b>
9.69 Payment into Court	9.35 Payment into Court
9.70 Compromise or settlement of matter in proceeding	9.36 Compromise or settlement of matter in proceeding
9.71 Application by litigation representative for approval of agreement	9.37 Application by litigation guardian for approval of agreement
	9.38 Costs and expenses of litigation guardian
<b>PART 10—Service</b>	
<b>DIVISION 10.1—Personal service</b>	
10.01 Service on individual	10.01 Service on individual
10.02 Service on corporation	10.02 Service on corporation
10.03 Service on unincorporated association	10.03 Service on unincorporated association
10.04 Service on organisation	10.04 Service on organisation
10.05 Service on partnership	10.05 Service on partnership
10.06 Service in a proceeding brought against a person in the person's business name	10.06 Service in a proceeding brought against a person in the person's business name
10.07 Service in a proceeding under the Patents Act 1990	N/A
10.08 Service in a proceeding under the Trade Marks Act 1995	Omitted
10.09 Service on person under a legal incapacity	10.07 Service on a person who needs a litigation guardian
10.10 Personal service on a person under a legal incapacity	10.08 Personal service on a person who needs a litigation guardian
10.11 Deemed service of originating application	10.09 Deemed service of originating application
10.12 Refusal to accept document served personally	10.10 Refusal to accept document served personally
<b>DIVISION 10.2—Service other than by personal service</b>	
10.21 Identity of person served	10.11 Identity of person served
10.22 Acceptance of service by lawyer	10.12 Acceptance of service by lawyer
10.23 Deemed service	10.13 Deemed service
10.24 Substituted service	10.14 Substituted service
10.25 Service by filing	10.15 Service by filing
10.26 Service by Court	10.16 Service by Court
10.27 Service of interlocutory injunction	10.17 Service of interlocutory injunction
10.28 Service under agreement	10.18 Service under agreement
<b>DIVISION 10.3—Ordinary service</b>	
10.31 Ordinary service	10.19 Ordinary service
10.32 Time of service	10.20 Time of service

FCR	NEW GFL RULE
<b>DIVISION 10.4—Service outside Australia</b>	<b>Omitted</b>
<b>DIVISION 10.5—Service through diplomatic channel or by transmission to foreign government</b>	<b>Omitted</b>
<b>DIVISION 10.6—Service under Hague Convention</b>	<b>Omitted</b>
<b>PART 11—Address for service</b>	<b>DIVISION 10.4—Address for service</b>
11.01 Address for service—general	10.21 Address for service
11.02 Address for service—corporations	10.22 Address for service—corporations
11.03 Address for service—proceeding against person in person’s business name	10.24 Address for service—proceeding against person in person’s business name
11.04 Address for service—partnership	10.23 Address for service—partnership
11.05 Receivers	10.25 Receivers
11.06 When must notice of address for service be filed	10.26 When must notice of address for service be filed
11.07 How to file notice of address for service	10.27 How to file notice of address for service
11.08 Service of notice of address for service	10.28 Service of notice of address for service
11.09 Change of address for service	10.29 Change of address for service
	<b>DIVISION 10.5—Affidavit of service</b>
	10.30 Affidavit of service
<b>PART 12—Submitting notices</b>	<b>PART 11—Submitting notices</b>
12.01 Submitting notice	11.01 Submitting notice
<b>PART 13—Jurisdiction—setting aside originating application</b>	<b>PART 12—Jurisdiction—setting aside originating application</b>
13.01 Setting aside originating application etc	12.01 Setting aside originating application etc
<b>PART 14—Interlocutory orders for preservation of rights and property</b>	<b>Omitted</b>
<b>PART 15—Cross claims and third party claims</b>	<b>See PART 8</b>
<b>DIVISION 15.1—Making cross claim</b>	<b>DIVISION 8.5—Making a cross claim</b>
15.01 Cross-claim by respondent	8.17 Cross-claim by respondent when filing a response 8.18 Cross-claim by respondent after filing a response
15.02 Starting cross claim	8.15 Response to originating application
15.03 Title of cross claim and subsequent documents	
15.04 Time for bringing cross claim	

Table 3: FCA Rules – mapped to new GFL Rules

<b>FCR</b>	<b>NEW GFL RULE</b>
15.05 Application for extension of time to file cross claim	
15.06 Cross-claim to be accompanied by statement of cross claim or affidavit	8.19 Statement of cross-claim or affidavit to accompany response
15.07 Cross-claim to state relief claimed	8.20 Relief sought in cross-claim
15.08 Service of notice of cross claim on cross respondent	8.21 Service on cross-respondent
15.09 Service of pleadings and documents	
15.10 Conduct of proceeding after cross claim is filed	8.23 Conduct of proceeding after cross-claim is filed
15.11 Separate proceeding in relation to cross claim	8.24 Separate proceeding in relation to cross-claim
15.12 Cross claim for contribution or indemnity	8.25 Cross-claim for contribution or indemnity
15.13 Hearings in relation to cross claims	8.26 Hearings in relation to cross-claims
15.14 Co cross respondents	8.27 Co-cross-respondents
<b>DIVISION 15.2—Amendment of cross claim</b>	<b>DIVISION 8.6—Amending a response, including a cross claim</b>
15.15 Amendment generally	8.28 Amendment generally
15.16 Date on which amendment takes effect	
15.17 Procedure for making amendment	8.29 Procedure for amending a response
15.18 Time for amending notice of cross claim under Court order	8.30 Time for amending response under Court order
15.19 Service of amended cross claim	8.31 Service by respondent of amended response
<b>PART 16—Pleadings</b>	<b>PART 13—Pleadings</b>
<b>DIVISION 16.1—General</b>	<b>DIVISION 13.1—General</b>
16.01A Application of Division 16.1	13.01 Application of Division 13.1
16.01 Pleading to include name of person who prepared it	13.02 Pleading to include name of person who prepared it
16.02 Content of pleadings—general	13.03 Content of pleadings—general
16.03 Pleading of facts	13.04 Pleading of facts
16.04 References to documents or spoken words	13.05 References to documents or spoken words
16.05 Conditions precedent	13.06 Conditions precedent
16.06 Inconsistent allegations or claims	13.07 Inconsistent allegations or claims
16.07 Admissions, denials and deemed admissions	13.08 Admissions, denials and deemed admissions
16.08 Matters that must be expressly pleaded	13.09 Matters that must be expressly pleaded
16.09 Defence of tender before start of proceeding	13.10 Defence of tender before start of proceeding

<b>FCR</b>	<b>NEW GFL RULE</b>
16.10 Defence claiming set off	13.11 Defence claiming set off
16.11 Joinder of issue	13.12 Joinder of issue
16.12 Close of pleadings	13.13 Close of pleadings
16.13 Alternative accompanying documents	13.14 Alternative accompanying documents
<b>DIVISION 16.2—Striking out pleadings</b>	<b>DIVISION 13.2—Striking out pleadings</b>
16.21 Application to strike out pleadings	13.15 Application to strike out pleadings
<b>DIVISION 16.3—Progress of pleadings</b>	<b>DIVISION 13.3—Progress of pleadings</b>
16.31 Application of Division 16.3	13.16 Application of Division 13.3
16.32 Defence to application	
16.33 Reply	13.17 Reply
<b>DIVISION 16.4—Particulars</b>	<b>DIVISION 13.4—Particulars</b>
16.41A Application of Division 16.4	13.18 Application of Division 13.4
16.41 General	13.19 General
16.42 Fraud, misrepresentation etc	13.20 Fraud, misrepresentation etc
16.43 Conditions of mind	13.21 Conditions of mind
16.44 Damages and exemplary damages	13.22 Damages and exemplary damages
16.45 Application for order for particulars	13.23 Application for order for particulars
<b>DIVISION 16.5—Amendment of pleadings</b>	<b>DIVISION 13.5—Amendment of pleadings</b>
16.51 Amendment without needing the leave of the Court	13.24 Amendment without needing the leave of the Court
16.52 Disallowance of amendment of pleading	13.25 Disallowance of amendment of pleading
16.53 Application for leave to amend	13.26 Application for leave to amend
16.54 Date on which amendment takes effect	13.27 Date on which amendment takes effect
16.55 Consequential amendment of defence	13.28 Consequential amendment of defence
16.56 Consequential amendment of reply	13.29 Consequential amendment of reply
16.57 Implied joinder of issue after amendment	13.30 Implied joinder of issue after amendment
16.58 Time for amending pleading under Court order	13.31 Time for amending pleading under Court order
16.59 Procedure for making amendment to pleading	13.32 Procedure for making amendment to pleading
16.60 Service of amendment	13.33 Service of amendment
<b>PART 17—Interlocutory applications</b>	<b>PART 14—Interlocutory applications</b>
17.01 Interlocutory application	14.01 Interlocutory application
17.02 Reliance on correspondence or undisputed documents	14.02 Reliance on correspondence or undisputed documents
17.03 Service on others	14.03 Service on others



FCR	NEW GFL RULE
17.04 Hearing and determination of interlocutory application—absence of party	14.04 Hearing and determination of interlocutory application—absence of party
<b>PART 18—Interpleader proceedings</b>	<b>N/A</b>
<b>PART 19—Security for costs</b>	<b>PART 15—Security for costs</b>
19.01 Application for an order for security for costs	15.01 Application for an order for security for costs
<b>PART 20—Discovery and inspection of documents</b>	<b>PART 16—Discovery, inspection of documents and interrogatories</b>
<b>DIVISION 20.1—General</b>	<b>DIVISION 16.1—General</b>
20.01 Withholding documents on public interest grounds	16.03 Withholding documents on public interest grounds
20.02 Privilege	16.04 Privilege
20.03 Undertakings or orders applying to documents	16.05 Undertakings or orders applying to documents
<b>DIVISION 20.2—Discovery</b>	<b>DIVISION 16.2—Discovery</b>
	16.01 Declaration to allow discovery
20.11 Discovery must be for the just resolution of the proceeding	N/A
20.12 No discovery without court order	16.02 Provision of documents without Court order
20.13 Application for discovery	16.06 Application for discovery
20.14 Standard discovery	16.07 Order for discovery
20.15 Non standard and more extensive discovery	Omitted
20.16 Giving discovery	16.09 Giving discovery
20.17 List of documents	16.10 List of documents
20.18 Copies of documents	Omitted
20.19 Claim of privilege	16.08 Claim of privilege
20.20 Supplementary discovery	Omitted
20.21 Order for particular discovery	16.11 Order for discovery for particular documents
20.22 Deponent for affidavit for discovery	Omitted
20.23 Discovery from non party	Omitted
20.24 Non party's obligation	Omitted
20.25 Non party's costs and expenses	Omitted
<b>DIVISION 20.3—Production for inspection</b>	<b>DIVISION 16.3—Production for inspection</b>
20.31 Notice to produce document in pleading or affidavit	16.12 Notice to produce document in pleading or affidavit

**PART 21**

<b>FCR</b>	<b>NEW GFL RULE</b>
20.32 Order for production from party	16.13 Order for production from party
20.33 Order for production from non party	Omitted
20.34 Copying of documents produced for inspection	16.14 Copying of documents produced for inspection
20.35 Production to Court	16.15 Production to Court
<b>PART 21—Interrogatories</b>	<b>DIVISION 16.4—Interrogatories</b>
21.01 Order for interrogatories	16.16 Declaration to allow interrogatories
21.02 When application may be made	Omitted
21.03 Answers to interrogatories	Omitted
21.04 Affidavit verifying written answers to interrogatories	Omitted
21.05 Orders dealing with insufficient answers	Omitted
21.06 Answers tendered as evidence	Omitted
21.07 Public interest	Omitted
<b>PART 22—Admissions</b>	<b>DIVISION 16.3—Admissions</b>
22.01 Notice to admit facts or documents	17.03 Notice to admit facts or documents
22.02 Notice disputing facts or documents	17.04 Notice disputing facts or documents
22.03 Disputing party to pay costs if document is proved etc	17.05 Disputing party to pay costs if document is proved etc
22.04 Facts or documents taken to be admitted if not disputed	17.06 Facts or documents taken to be admitted if not disputed
22.05 Deemed admission	17.07 Deemed admission
22.06 Withdrawal of admissions	17.08 Withdrawal of admission
22.07 Judgment on admissions	Omitted
<b>PART 23—Experts</b>	<b>DIVISION 18.4—Expert evidence</b>
<b>DIVISION 23.1—Court experts</b>	
23.01 Appointment of Court expert	17.17 Appointment of Court expert
	17.18 Court expert's remuneration and expenses
23.02 Court expert's report	17.19 Court expert's report
23.03 Court expert's report—use at trial	17.20 Further expert evidence
23.04 Other expert's reports on the question	Omitted
<b>DIVISION 23.2—Parties' expert witnesses and expert reports</b>	
23.11 Calling expert evidence at trial	Omitted
23.12 Provision of guidelines to an expert	17.21 Provision of guidelines to an expert
23.13 Contents of an expert report	17.22 Contents of an expert report
23.14 Application for expert report	17.23 Application for expert report

**PART 24**

<b>FCR</b>	<b>NEW GFL RULE</b>
23.15 Evidence of experts	17.24 Expert evidence for 2 or more parties
<b>PART 24—Subpoenas</b>	<b>PART 18—Subpoenas</b>
<b>DIVISION 24.1—Leave to issue subpoena</b>	<b>DIVISION 18.1—Leave to issue subpoena</b>
	18.01 Limit on number of subpoenas
24.01 Leave to issue subpoena	18.02 Leave to issue subpoena
<b>DIVISION 24.2—Subpoenas to give evidence and to produce documents</b>	<b>DIVISION 18.2—Subpoenas to give evidence and to produce documents</b>
24.11 Definitions for Division 24.2	18.03 Definitions for Division 18.2
24.12 Issuing of subpoena	18.04 Issuing of subpoena
24.13 Form of subpoena	18.05 Form of subpoena
	18.06 Time limit for service of subpoena
	18.07 Subpoena addressed to a corporation
24.14 Change of date for attendance or production	18.08 Change of date for attendance or production
24.15 Setting aside or other relief	18.09 Setting aside subpoena
24.16 Service	18.10 Service
24.17 Compliance with subpoena	18.11 Compliance with subpoena
24.18 Production otherwise than on attendance	18.12 Production otherwise than on attendance
24.19 Removal, return, inspection, copying and disposal of documents and things	18.13 Removal, return, inspection, copying and disposal of documents and things
	18.14 Production of documents and access by parties
24.20 Inspection of, and dealing with, documents and things produced otherwise than on attendance	18.15 Inspection of, and dealing with, documents and things produced otherwise than on attendance
24.21 Return of documents and things produced	18.16 Return of documents and things produced
24.22 Costs and expenses of compliance	18.17 Costs and expenses of compliance
24.23 Failure to comply with subpoena—contempt of court	18.18 Failure to comply with subpoena—contempt of court
24.24 Documents and things in custody of Court	18.19 Documents and things in custody of another court
<b>PART 25—Offers to settle</b>	<b>PART 19—Offers to settle</b>
25.01 Offer to compromise	19.01 Offer to compromise
25.02 Notice to be signed	19.02 Notice to be signed
25.03 Offer to compromise—content	19.03 Offer to compromise—content
25.04 Offer to be paid within 28 days	19.04 Offer to be paid within 28 days
25.05 Timing of offer	19.05 Timing of offer
25.06 No communication to Court of offer	19.06 No communication to Court of offer

<b>FCR</b>	<b>NEW GFL RULE</b>
25.07 Withdrawal of offer	19.07 Withdrawal of offer
25.08 Acceptance of offer	19.08 Acceptance of offer
25.09 Withdrawal of acceptance	19.09 Withdrawal of acceptance
25.10 Failure to comply with offer	19.10 Failure to comply with offer
25.11 Multiple respondents	19.11 Multiple respondents
25.12 Taxation of costs where offer accepted	19.12 Costs
25.13 Contributor parties	19.12 Costs
25.14 Costs where offer not accepted	19.12 Costs
<b>PART 26—Ending proceedings early</b>	<b>PART 23—Finalising a proceeding</b>
<b>DIVISION 26.1—Summary judgment and stay of proceedings</b>	<b>DIVISION 23.3—Summary orders</b>
26.01 Summary judgment	23.08 Summary judgment
	23.09 Dismissal for want of prosecution
	23.10 Stay of subsequent proceeding until costs paid
<b>DIVISION 26.2—Withdrawal and discontinuance</b>	<b>DIVISION 23.1—Withdrawal and discontinuance</b>
26.11 Withdrawal of defence etc	23.01 Withdrawal of defence etc
26.12 Discontinuance	23.02 Discontinuance
26.13 Service of notice	23.03 Service of notice
26.14 Effect of discontinuance	23.04 Effect of discontinuance
	23.05 Costs
26.15 Stay of proceeding until costs paid	23.06 Stay of proceeding until costs paid
<b>PART 27—Transfer of proceedings</b>	<b>PART 20—Transfer of proceedings</b>
	20.01 Transfer to Federal Court
<b>DIVISION 27.1—Family Court of Australia</b>	<b>N/A</b>
<b>DIVISION 27.2—Federal Circuit Court of Australia</b>	<b>N/A</b>
<b>DIVISION 27.3—Cross vesting</b>	<b>Omitted</b>
<b>PART 28—Alternative dispute resolution</b>	<b>PART 21—Dispute resolution</b>
<b>DIVISION 28.1—General</b>	<b>DIVISION 21.1—General</b>
28.01 General	21.01 Dispute resolution processes
28.02 Orders that may be sought	21.02 Orders that may be sought
28.03 Arbitration, mediation and ADR process	21.03 Mediation and arbitration
	21.04 Attendance in person

<b>FCR</b>	<b>NEW GFL RULE</b>
28.04 Court may terminate mediation or ADR process	21.05 Court may end mediation or arbitration
	21.06 Application by interlocutory application
28.05 Parties may refer proceeding to mediation, arbitration or ADR process	21.07 Parties may refer proceeding to conciliation, mediation, arbitration or other dispute resolution process
<b>DIVISION 28.2—Arbitration</b>	<b>Omitted</b>
<b>DIVISION 28.3—Mediation</b>	<b>DIVISION 21.2—Mediation</b>
28.21 Nomination of mediator	21.09 Nomination of mediator
	21.10 Court may appoint a new mediator
28.22 Conduct of mediation	21.11 Conduct of mediation
28.23 Report if only part of proceeding to be mediated	21.12 Report if only part of proceeding to be mediated
28.24 Termination of mediation—mediator initiated	21.13 Mediator may end mediation
28.25 Agreement at mediation	21.08 Agreement reached by dispute resolution process
<b>DIVISION 28.4—ADR process</b>	<b>N/A</b>
<b>DIVISION 28.5—International arbitration</b>	<b>N/A</b>
<b>DIVISION 28.6—Referral by Court to referee</b>	<b>DIVISION 21.3—Referral of matter to officer of the Court</b>
28.61 Order of referral	21.14 Court may refer matter
28.62 Appointment of referees	N/A
28.63 Two or more referees	N/A
28.64 Security for remuneration	N/A
28.65 Conduct of inquiry	N/A
28.66 Report	N/A
28.67 Proceeding on report	N/A
<b>PART 29—Evidence</b>	<b>PART 17—Evidence</b>
<b>DIVISION 29.1—Affidavits</b>	<b>DIVISION 17.3—Affidavits</b>
29.01 When affidavit may be sworn or affirmed	17.09 When affidavit may be sworn or affirmed
29.02 Form of affidavit	17.10 Form of affidavit
	17.11 Documents annexed or exhibited to an affidavit
29.03 Content of affidavits	17.12 Content of affidavits
29.04 Swearing or affirming affidavit by person who has disability	17.13 Affidavit of person who is illiterate or vision impaired or has a disability
29.05 Service of exhibits and annexures	17.14 Service of exhibits and annexures

<b>FCR</b>	<b>NEW GFL RULE</b>
29.06 Irregularity in form	17.15 Irregularity in form
29.07 Use of affidavit not filed or in irregular form	Omitted
29.08 Serving of affidavits	Omitted
29.09 Cross examination of deponent	17.16 Use of affidavit without cross-examination of maker
<b>DIVISION 29.2—Evidence on commission taken in Australia or abroad</b>	<b>N/A</b>
<b>PART 30—Hearings</b>	<b>PART 22—Hearings</b>
<b>DIVISION 30.1—Separate decisions on questions</b>	<b>DIVISION 22.1—Separate decision on a question</b>
30.01 Application for separate trials	22.01 Application for separate question to be heard
30.02 Disposal of proceedings after hearing separate questions	22.02 Disposal of proceeding after hearing separate questions
<b>DIVISION 30.2—Consolidation</b>	<b>DIVISION 22.2—Consolidation</b>
30.11 Consolidation of proceedings before trial	22.03 Consolidation of proceedings before trial
<b>DIVISION 30.3—Trial</b>	<b>DIVISION 22.4—Trial</b>
30.21 Absence of party at trial	[Division 22.3—Absence of party
30.22 No appearance by any party	22.04 Absence of party at hearing
	22.05 No appearance by any party]
30.23 Trial limitations	22.06 Trial limitations
30.24 Death before judgment	22.07 Death before judgment
30.25 Evidence in other proceedings	22.08 Evidence in other proceedings
30.26 Plans, photographs and models	22.09 Plans, photographs and models
30.27 Consent	22.10 Consent
30.28 Notice to produce	22.11 Notice to produce
30.29 Notice of intention to adduce evidence of previous representation	Omitted
30.30 Notice of objection to tender of hearsay evidence if maker available	Omitted
30.31 Notice of intention to adduce tendency evidence	Omitted
30.32 Notice of intention to adduce coincidence evidence	Omitted
30.33 Parties in lawful custody	22.12 Parties in lawful custody
30.34 Attendance and production	22.13 Attendance and production

FCR	NEW GFL RULE
<b>DIVISION 30.4—Assessment of damages</b>	<b>Omitted</b>
<b>DIVISION 30.5—Accounts</b>	<b>Omitted</b>
<b>CHAPTER 3—Original jurisdiction—special classes of proceedings</b>	<b>CHAPTER 3—Special classes of proceedings</b>
<b>PART 31—Judicial review</b>	<b>PART 26—Judicial review under the AD(JR) Act</b>
<b>DIVISION 31.1—Administrative Decisions (Judicial Review) Act 1977</b>	
	26.01 Application of Part 26
31.01 Application for order of review	26.02 Application for order of review
31.02 Application for extension of time	26.03 Application for extension of time
	26.04 Application for stay of proceeding
31.03 Documents to be filed and served	26.05 Documents to be filed
31.04 Service	26.06 Service
31.05 Notice of objection to competency	26.07 Notice of objection to competency
<b>DIVISION 31.2—Judiciary Act 1903</b>	<b>N/A</b>
<b>DIVISION 31.3—Migration Act 1958</b>	<b>PART 25—Proceedings under the Migration Act</b>
	<b>DIVISION 25.1—Preliminary</b>
31.21 Definitions for Division 31.3	25.01 Definitions for Part 25
	25.02 Application of Part 25
	<b>DIVISION 25.2—Matters started in the Court</b>
	25.03 Application of Division 25.2
31.22 Application for review of migration decision	25.04 Application for judicial review of migration decision
31.23 Application for extension of time	25.05 Response to application for judicial review of migration decision
31.24 Notice of objection to competency	
	<b>DIVISION 25.3—Matters remitted by the High Court</b>
	25.07 Application of Division 25.3
	25.08 Filing of order of remittal
	25.09 Service of notice and order
	<b>DIVISION 25.4—General</b>
	25.10 Stay of proceedings
	25.11 Directions and orders
	25.12 Withdrawal of lawyer

<b>FCR</b>	<b>NEW GFL RULE</b>
	25.13 Summary dismissal of application under Part 25
	25.14 Varying or setting aside judgment or order
	25.15 Judgment delivered orally
	25.16 Writs
	25.17 Costs
	25.18 Death of applicant
<b>DIVISION 31.4—Australian Crime Commission Act 2002</b>	<b>N/A</b>
<b>PART 32—Remittals and referrals from the High Court</b>	<b>N/A</b>
<b>PART 33—Appeals from decisions of bodies other than courts</b>	
<b>DIVISION 33.1—Taxation appeals</b>	<b>N/A</b>
<b>DIVISION 33.2—Administrative Appeals Tribunal</b>	<b>PART 27—Administrative Appeals Tribunal</b>
33.11 Definitions for Division 33.2	27.01 Application of Part 27
33.12 Starting an appeal—filing and service of notice of appeal	N/A
33.13 Application for extension of time to start appeal	N/A
33.14 Amendment of notice of appeal without leave—supplementary notice	N/A
33.15 Application for leave to raise other questions of law or rely on other grounds	27.02 Application for leave to raise other questions of law or rely on other grounds
33.16 Respondent’s address for service	N/A
33.17 Form of application for stay of Tribunal decision	27.03 Application for stay of Tribunal decision
33.18 Registrar of Tribunal to send documents	N/A
33.19 No written reasons for decision	27.04 No written reasons for decision
33.20 Notice of cross appeal	27.05 Notice of cross-appeal
33.21 Notice of contention	27.06 Notice of contention
33.22 Directions hearing	27.07 Directions hearing
33.23 Appeal books	27.08 Preparation of appeal papers
33.24 Assistance from Registrar	
33.25 Title of appeal books	
33.26 Content of appeal books	



FCR	NEW GFL RULE
33.27 Written submissions, chronology and lists of authorities	
33.28 Filing of Part C documents	
33.29 Further evidence on appeal	27.09 Further evidence on appeal
33.30 Notice of objection to competency of appeal	27.10 Notice of objection to competency of appeal
33.31 Discontinuance of appeal	27.11 Discontinuance of appeal
33.32 Application to dismiss appeal	27.12 Application to dismiss appeal
33.33 Absence of party	27.13 Absence of party
<b>DIVISION 33.3—Appeals from the Superannuation Complaints Tribunal or Australian Financial Complaints Authority</b>	<b>N/A</b>
<b>DIVISION 33.4—Appeals from the National Native Title Tribunal</b>	<b>N/A</b>
<b>PART 34—Other proceedings</b>	<b>PART 31—Fair Work Division</b>
<b>DIVISION 34.1—Fair Work proceedings</b>	<b>DIVISION 31.1—General</b>
34.01 Definitions for Division 34.1	31.01 Expressions used in Part 31
34.02 Application of Division 34.1 and other provisions of these Rules	31.02 Application of Part 31
	<b>DIVISION 31.2—Contraventions of the Fair Work Act</b>
34.03 Application in relation to dismissal from employment in contravention of a general protection	31.03 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)
34.04 Application in relation to alleged unlawful termination of employment	31.04 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)
34.05 Application in relation to alleged discrimination	31.05 Application in relation to alleged discrimination (Fair Work Act, subsection 539(2), table item 11)
<i>[PROPOSED 34.05A Application in relation to alleged sexual harassment (Fair Work Act, subsection 539(2), table item 27A)]</i>	31.06 Application in relation to alleged sexual harassment (Fair Work Act, subsection 539(2), table item 27A)
	31.07 Application in relation to other alleged contraventions of the Fair Work Act general protections
	31.08 Application in relation to other alleged contraventions of the Fair Work Act
34.06 Application for rule to show cause	N/A

Table 3: FCA Rules – mapped to new GFL Rules

FCR	NEW GFL RULE
34.07 Requirements for applications for an inquiry or ballot	N/A
34.08 Application for interim orders	N/A
	<b>DIVISION 31.3—Contraventions of the Registered Organisations Act</b>
	31.09 Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)
	<b>DIVISION 31.4—Small claims applications under the Fair Work Act</b>
	31.10 Small claims procedure
	31.11 Starting a Fair Work Act small claims proceeding
	31.12 Representation for corporations—Fair Work Act small claims proceeding
	<b>DIVISION 31.5—Proceedings under the Federal Safety Commissioner Act</b>
	31.13 Applications for orders etc. under the Federal Safety Commissioner Act
<b>DIVISION 34.3—Intellectual property</b>	<b>PART 30—Intellectual property proceedings</b>
	<b>DIVISION 30.1—General</b>
34.21 Definitions for Division 34.3	1.19 Definitions—the Dictionary
34.22 Application of Division 34.3	30.01 Application of Part 30
34.23 Appearance by Commissioner	30.02 Appearance by Commissioner
34.24 Starting an appeal—filing and service of notice of appeal	30.03 Starting an appeal—filing and service of notice of appeal
34.25 Application for extension of time to file notice of appeal	30.04 Application for extension of time to file notice of appeal
34.26 Grounds of appeal or particulars not stated in notice of appeal	30.05 Grounds of appeal or particulars not stated in notice of appeal
34.27 Particulars of non patentable invention	N/A
34.28 Notice of cross appeal	30.06 Notice of cross-appeal
34.29 Notice of contention	30.07 Notice of contention
34.30 Provision of documents by Commissioner	30.08 Provision of documents by Commissioner
34.31 Evidence	30.09 Evidence
34.32 Application for determination of equitable remuneration	N/A
34.33 Applications for determination of terms of doing an act	N/A

**PART 34**

<b>FCR</b>	<b>NEW GFL RULE</b>
	<b>DIVISION 30.2—Particular requirements</b>
34.34 Infringement of EL rights—particulars	N/A
34.35 Infringement of copyright—particulars	30.10 Infringement of copyright—particulars
34.36 Infringement of registered designs—particulars	30.11 Infringement of registered designs—particulars
34.37 Application for compulsory licence—Designs Act	30.12 Application for compulsory licence—Designs Act
34.38 Revocation of registration or rectification of Register—Designs Act	30.13 Revocation of registration or rectification of Register—Designs Act
34.39 Infringement of monopoly in protected design—particulars—Olympic Insignia Protection Act	N/A
34.40 Application for rectification of Register of Olympic Designs or dispute of validity of protected design	N/A
34.41 Applications under section 105(1) of Patents Act	N/A
34.42 Applications under section 120(1) of Patents Act	N/A
34.43 Applications under section 125(1) of Patents Act	N/A
34.44 Applications under section 128(1) of Patents Act	N/A
34.45 Applications under Chapter 12 of Patents Act	N/A
34.46 Dispute of validity of patent—particulars of invalidity	N/A
34.47 Infringement of PBR—particulars	30.14 Infringement of PBR—particulars
34.48 Infringement of registered trade marks—particulars	30.15 Infringement of registered trade marks—particulars
34.49 Dispute of validity of registration of trade mark—particulars of invalidity	30.16 Dispute of validity of registration of trade mark—particulars of invalidity
34.50 Experimental proof as evidence	Omitted

FCR	NEW GFL RULE
<b>DIVISION 34.4—Trans Tasman proceedings—general</b>	N/A
<b>DIVISION 34.5—Trans Tasman market proceedings</b>	N/A
<b>DIVISION 34.5A—Transitional arrangements for Divisions 34.4 and 34.5</b>	N/A
<b>DIVISION 34.6—Aboriginal and Torres Strait Islander Act 2005</b>	N/A
<b>DIVISION 34.7—Native title proceedings</b>	N/A
<b>DIVISION 34.8—Human rights proceedings</b>	<b>PART 28—Human rights proceedings: proceedings alleging unlawful discrimination</b>
34.161 Definitions for Division 34.8	1.19 Definitions—the Dictionary
34.162 Application of Division 34.8	28.01 Application of Part 28 28.02 Interpretation
34.163 Starting a proceeding—application and claim	28.03 Starting a proceeding—originating application and claim
34.164 Copy of application to be given to Commission	28.04 Copy of originating application to be given to Commission
34.165 Address for service	10.21 Address for service
	28.05 Form of response to application
34.166 Appearance by special purpose Commissioner	28.06 Appearance by special purpose Commissioner
34.167 Conduct of proceeding by litigation representative	
<b>CHAPTER 4—Appellate jurisdiction</b>	N/A
<b>PART 35—Leave to appeal</b>	N/A
<b>PART 36—Appeals</b>	N/A
<b>PART 38—Cases stated and questions reserved</b>	N/A
<b>CHAPTER 5—Judgments, costs and other general provisions</b>	[see Chapter 4 heading below]
<b>PART 39—Orders</b>	<b>PART 24—Finalising a proceeding</b>
<b>DIVISION 39.1—Judgments and orders</b>	<b>DIVISION 24.1—Judgments and orders</b>
39.01 Date of effect of judgment or order	24.01 Date of effect of judgment or order
39.02 Time for compliance with orders	24.02 Time for compliance with orders

<b>FCR</b>	<b>NEW GFL RULE</b>
39.03 Dismissal of proceedings and stay of further proceedings	Omitted
39.04 Varying or setting aside a judgment or order before it has been entered	24.03 Varying or setting aside a judgment or order before it has been entered
39.05 Varying or setting aside judgment or order after it has been entered	24.04 Varying or setting aside a judgment or order after it has been entered
39.06 Interest on judgment	24.05 Interest on judgment
<b>DIVISION 39.2—Consent orders</b>	<b>DIVISION 23.2—Consent orders</b>
39.11 Consent orders	23.07 Consent orders
<b>DIVISION 39.3—Undertakings</b>	<b>[no equivalent Division heading]</b>
39.21 Orders dealing with failure to fulfil undertakings	24.06 Orders dealing with failure to fulfil undertakings
<b>DIVISION 39.4—Judgments and orders—entry</b>	<b>DIVISION 24.5—Judgments and orders—entry</b>
39.31 When entry is required	24.07 When entry is required
39.32 Entry of an order	24.08 Entry of an order
39.33 Lodgment of orders for entry	Omitted
39.34 Order entered in Court	Omitted
39.35 Authentication of orders	Omitted
	<b>CHAPTER 4—Costs, enforcement and contempt</b>
<b>PART 40—Costs</b>	<b>PART 32</b>
<b>DIVISION 40.1—General</b>	<b>DIVISION 32.1—General</b>
40.01 Party and party costs	32.01 Order for costs
40.02 Other order for costs	32.02 Determining costs
40.03 Costs reserved	32.03 Costs reserved
40.04 Costs on interlocutory application or hearing	Omitted
40.05 Costs in other courts	32.04 Costs if a proceeding is transferred
40.06 Costs improperly, unreasonably or negligently incurred	Omitted
40.07 Liability of lawyer to their client for misconduct	32.05 Order for costs against lawyer
40.08 Reduction in costs otherwise payable	Omitted
<b>DIVISION 40.2—Taxation of costs</b>	<b>DIVISION 32.2—Calculation of costs</b>
40.12 Application of Division 40.2 and 40.3	32.06 Application of Division 32.2 32.07 Costs and disbursements 32.08 Interest on outstanding costs

**PART 40**

<b>FCR</b>	<b>NEW GFL RULE</b>
	32.09 Taxation of costs 32.10 Expenses for attendance by witness 32.11 Expenses for preparation of report by expert 32.12 Solicitor as advocate 32.13 Advocacy certificate 32.14 Counsel as advocate
40.13 Taxation of costs awarded on an interlocutory application	N/A
40.14 Order for taxation not required	N/A
40.15 Failure to file bill of costs	N/A
40.16 Unnecessary expense in proceeding before taxing officer	N/A
40.17 Filing bill for taxation	N/A
40.18 Contents of bill	N/A
40.19 Service of a bill	N/A
40.20 Estimate of costs	N/A
40.21 Objection to estimate	N/A
40.22 Resolution at confidential conference	N/A
40.23 Provisional taxation	N/A
40.24 Notice that bill is to be taxed	N/A
40.25 Notice of objection	N/A
40.26 Response to notice of objection	N/A
40.27 Taxation	N/A
40.28 Powers of taxing officer	N/A
40.29 Costs to be allowed on taxation	N/A
40.30 Costs not to be allowed on taxation	N/A
40.31 Exercise of taxing officer's discretion	N/A
40.32 Certificate of taxation	N/A
40.33 Costs of taxation	N/A
40.34 Review by Court	N/A
40.35 Stay of costs	N/A
<b>DIVISION 40.3—Short form bills</b>	<b>N/A</b>
<b>DIVISION 40.4—Determination of maximum costs</b>	<b>DIVISION 32.3—Determination of maximum costs</b>
40.51 Maximum costs in a proceeding	32.15 Maximum costs in a proceeding

<b>FCR</b>	<b>NEW GFL RULE</b>
<b>PART 41—Enforcement</b>	<b>PART 33—Enforcement</b>
<b>DIVISION 41.1—General</b>	<b>DIVISION 33.1—General</b>
41.01 Application without notice for directions	33.01 Application without notice for directions
41.02 Condition precedent not fulfilled	33.02 Condition precedent not fulfilled
41.03 Application for stay of judgment or order	33.03 Application for stay of judgment or order
41.04 Failure to comply with Court order	33.04 Failure to comply with Court order
41.05 Failure to attend Court in response to subpoena or order	33.05 Failure to attend Court in response to subpoena or order
41.06 Endorsement on order	33.06 Endorsement on order
41.07 Service of order	33.07 Service of order
41.08 Application where person fails to comply with order	33.08 Application where person does not comply with order
41.09 Substituted performance	33.09 Substituted performance
41.10 Execution generally	33.10 Execution generally
41.11 Stay of execution	33.11 Stay of execution
<b>DIVISION 41.2—Enforcement against partnership</b>	<b>DIVISION 33.2—Enforcement against partnership</b>
41.21 Execution of order against partnership	33.12 Execution of order against partnership
41.22 Execution against individual partner	33.13 Execution against individual partner
41.23 Application to proceedings between co-partners	33.14 Application to proceeding between co-partners
<b>DIVISION 41.3—Execution against business name</b>	<b>DIVISION 33.3—Enforcement against business name</b>
41.31 Execution of order—proceeding against person in person’s business name	33.15 Execution of order—proceeding against person in person’s business name
<b>DIVISION 41.4—Sheriff</b>	<b>Excluded</b>
<b>DIVISION 41.5—Fees</b>	<b>Excluded</b>
<b>DIVISION 41.6—Reciprocal enforcement of judgments under Foreign Judgments Act 1991</b>	<b>N/A</b>
<b>CHAPTER 6—Disciplinary</b>	<b>[No equivalent chapter heading]</b>
<b>PART 42—Contempt</b>	<b>PART 34—Contempt</b>
<b>DIVISION 42.1—Contempt in face or hearing of Court</b>	<b>DIVISION 34.1—Contempt in face or hearing of Court</b>
42.01 Arrest for contempt	34.01 Arrest for contempt
42.02 Charge, defence and determination	34.02 Charge, defence and determination
42.03 Interim custody	34.03 Interim custody

FCR	NEW GFL RULE
<b>DIVISION 42.2—Applications for contempt</b>	<b>DIVISION 34.2—Applications for contempt</b>
42.11 Procedure generally	34.04 Application alleging contempt
42.12 Statement of charge	34.05 Statement of charge
42.13 Service	34.06 Service
42.14 Arrest	34.07 Arrest
42.15 Procedure on the hearing	34.08 Charge and defence 34.09 Determination of contempt application
42.16 Application or proceeding by a Registrar	
<b>DIVISION 42.3—General</b>	<b>DIVISION 34.3—General</b>
42.21 Warrant for imprisonment	34.10 Warrant for imprisonment
42.22 Discharge before end of prison term	34.11 Discharge before end of prison term
<b>CHAPTER 7—Transitional provisions</b>	<b>N/A</b>
<b>SCHEDULE 1—Dictionary</b>	Rule 1.19 Definitions—Dictionary
<b>SCHEDULE 2—Powers of the Court that may be exercised by a Registrar</b>	<b>SCHEDULE 1—Powers delegated to Registrars</b>
<b>SCHEDULE 3—Costs allowable for work done and services performed</b>	<b>SCHEDULE 2—Costs</b>





## **Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024**

---

I, The Honourable William Alstergren, Chief Judge of the Federal Circuit and Family Court of Australia (Division 2), make the following Rules of Court.

Dated XXX

The Honourable William Alstergren

Chief Judge of the Federal Circuit and Family Court of Australia (Division 2)

---

DRAFT - EXTERNAL CONSULTATION

---

## Contents

<b>Chapter 1—Introductory provisions</b>	<b>1</b>
<b>Part 1—Preliminary</b>	<b>1</b>
<b>Division 1.1—General</b>	<b>1</b>
1.01 Name	1
1.02 Commencement	1
1.03 Authority	1
1.04 Overarching purpose	1
1.05 Application	2
<b>Division 1.2—General powers of the Court</b>	<b>3</b>
1.06 Court to have regard to nature and complexity of proceeding	3
1.07 Court may make any order it considers appropriate in the interests of justice	3
1.08 Orders may be subject to conditions	3
1.09 Court may dispense with rules	3
1.10 Orders inconsistent with Rules	3
1.11 Orders other than in open court	3
1.12 Application for orders about procedures	3
1.13 Fixing of time by Court	3
1.14 Extension or shortening of time fixed	3
1.15 Exercise of Court’s power	4
1.16 Other orders the Court may make	4
1.17 Orders may include consequences of non-compliance	4
1.18 Practice directions	4
<b>Division 1.3—Interpretation</b>	<b>5</b>
1.19 Definitions—the Dictionary	5
1.20 References to Forms	11
1.21 Calculating time	11
<b>Part 2—Registry and documents</b>	<b>12</b>
<b>Division 2.1—Registry</b>	<b>12</b>
2.01 Use of seal of Court	12
2.02 Seal or stamp of Court	12
2.03 Methods of attaching the seal or stamp	12
2.04 Transfer of proceeding to another place	12
<b>Division 2.2—Documents</b>	<b>13</b>
2.05 Formal requirements for documents	13
2.06 Forms	13
2.07 Title of documents	14
2.08 Document must have distinctive number	14
2.09 Document to be signed	14
2.10 Details included in document	14
2.11 Documents not in English	14
<b>Division 2.3—Lodging and filing documents</b>	<b>15</b>
2.12 How documents may be lodged with the Court for filing	15
2.13 Providing a document electronically	15

---

---

2.14 Faxing a document	16
2.15 When is a document filed	16
2.16 Refusal to accept document for filing	17
2.17 When documents will not be accepted in a registry	17
2.18 Documents accepted for filing—removal from Court file and storage	17
2.19 Documents on a Court file—removal, redaction and storage	18
<b>Division 2.4—Custody and inspection of documents</b>	<b>19</b>
2.20 Custody of documents	19
2.21 Inspection of documents	19
<b>Division 2.5—Administration of money paid into Court and money paid out</b>	<b>21</b>
2.22 Dealing with money paid into Court	21
2.23 Payment out of Litigants’ Fund	21
<b>Part 3—Registrars</b>	<b>22</b>
<b>Division 3.1—Powers of Registrars</b>	<b>22</b>
3.01 Delegation of powers to Registrars	22
3.02 Authority to administer oaths and affirmations	22
3.03 Orders other than in open court	22
3.04 Application for orders in relation to Registrars	22
<b>Division 3.2—Reviewing a Registrar’s exercise of power</b>	<b>23</b>
3.05 Application for review of a Registrar’s exercise of power	23
3.06 Time for application for review	23
3.07 No stay of power under review	23
3.08 Procedure for review	23
<b>Part 4—Lawyers</b>	<b>24</b>
<b>Division 4.1—Legal representation</b>	<b>24</b>
4.01 Proceeding by lawyer or in person	24
4.02 Appointment of a lawyer—during a proceeding	24
4.03 Change of lawyer—during a proceeding	24
4.04 Removal of lawyer and no new lawyer appointed	24
4.05 Withdrawal as lawyer	25
<b>Division 4.2—Court referral for legal assistance</b>	<b>26</b>
4.06 Referral for legal assistance	26
4.07 A party has no right to apply for a referral	26
4.08 Acceptance of referral and provision of legal assistance	26
4.09 Ceasing to provide legal assistance	26
<b>Part 5—Court supervision of proceedings</b>	<b>27</b>
<b>Division 5.1—First court date and directions</b>	<b>27</b>
5.01 Parties to attend Court on first court date	27
5.02 Parties to file notice of address for service before first court date	27
5.03 Making directions	27
5.04 Application for directions—cross-claims	28
5.05 Interlocutory orders	28
5.06 Hearing and determination of matter at directions hearing	28
<b>Division 5.2—Orders on default</b>	<b>29</b>
5.07 Self-executing orders	29

---

---

5.08 When an applicant is in default	29
5.09 When a respondent is in default	29
5.10 Orders on default—applicant	29
5.11 Orders on default—respondent	29
5.12 Court’s powers in relation to contempt etc not affected	30
<b>Part 6—Court supervision of parties and other persons</b>	<b>31</b>
<b>Division 6.1—Vexatious proceedings</b>	<b>31</b>
6.01 Scandalous, vexatious or oppressive matter	31
6.02 Certificate of vexatious proceedings order	31
6.03 Application for leave to institute proceedings	31
<b>Division 6.2—Use of communication and recording devices in Court</b>	<b>32</b>
6.04 Use of communication device or recording device in place where hearing taking place	32
6.05 Contempt	32
<b>Chapter 2—Proceedings generally</b>	<b>33</b>
<b>Part 7—Orders before start of a proceeding</b>	<b>33</b>
<b>Division 7.1—General</b>	<b>33</b>
7.01 Application for order before start of proceeding	33
<b>Division 7.2—Freezing orders</b>	<b>34</b>
7.02 Freezing order	34
7.03 Ancillary order	34
7.04 Order may be against person not a party to proceeding	34
7.05 Order against judgment debtor or prospective judgment debtor or third party	34
7.06 Jurisdiction	35
7.07 Service outside Australia of application for freezing order or ancillary order	35
7.08 Costs	36
<b>Division 7.3—Search orders</b>	<b>37</b>
7.09 Search order	37
7.10 Requirements for grant of search order	37
7.11 Jurisdiction	37
7.12 Terms of search order	37
7.13 Independent lawyers	38
7.14 Costs	38
<b>Part 8—Starting a proceeding</b>	<b>39</b>
<b>Division 8.1—Originating applications</b>	<b>39</b>
8.01 Starting a proceeding—originating application	39
8.02 Applicant’s genuine steps statement	39
8.03 Application to state relief claimed	39
8.04 Accompanying document for originating application	40
8.05 Service of originating documents	41
8.06 Changing first court date	41
<b>Division 8.2—Notice of constitutional matter</b>	<b>42</b>
8.07 Notice of constitutional matter	42
8.08 Service of notice	42

---

---

<b>Division 8.3—Amendment of originating application</b>	<b>43</b>
8.09 Amendment generally	43
8.10 Amendment after limitation period	43
8.11 Date on which amendment to substitute a party takes effect	43
8.12 Procedure for amending an originating application	43
8.13 Time for amending an originating application under Court order	44
8.14 Service of amended originating application	44
<b>Division 8.4—Responding to originating application</b>	<b>45</b>
8.15 Response to originating application	45
8.16 Respondent’s genuine steps statement	45
<b>Division 8.5—Making a cross-claim</b>	<b>47</b>
8.17 Cross-claim by respondent when filing a response	47
8.18 Cross-claim by respondent after filing a response	47
8.19 Statement of cross-claim or affidavit to accompany response	47
8.20 Relief sought in cross-claim	48
8.21 Service on cross-respondent	48
8.22 Cross-respondent’s reply to cross-claim	48
8.23 Conduct of proceeding after cross-claim is filed	48
8.24 Separate proceeding in relation to cross-claim	49
8.25 Cross-claim for contribution or indemnity	49
8.26 Hearings in relation to cross-claims	49
8.27 Co-cross-respondents	49
<b>Division 8.6—Amending a response, including a cross-claim</b>	<b>50</b>
8.28 Amendment generally	50
8.29 Procedure for amending a response	50
8.30 Time for amending response under Court order	51
8.31 Service by respondent of amended response	51
<b>Part 9—Parties and proceedings</b>	<b>52</b>
<b>Division 9.1—Parties, interveners and causes of action</b>	<b>52</b>
9.01 Multiple causes of action	52
9.02 Joinder in proceedings involving common questions etc	52
9.03 Joinder of applicants with joint entitlement	52
9.04 Joinder of persons with common liability	52
9.05 Joinder of parties by Court order	53
9.06 Application for separate trials—inconvenient joinder of causes of action or parties	53
9.07 Errors in joinder of parties	53
9.08 Removal of parties by Court order	53
9.09 Death, bankruptcy or transmission of interest	54
9.10 No joinder or substitution after death of party	54
9.11 Substitution of party	54
9.12 Intervenors	54
<b>Division 9.2—Partnerships</b>	<b>55</b>
9.13 Proceeding by or against partners in partnership name	55
9.14 Disclosure of partners’ names	55
9.15 Proceeding between members of partnerships	55
9.16 Denial by person served as partner	56
9.17 Response to be in partnership name	56
9.18 Entry of order	56

---

---

<b>Division 9.3—Business name proceedings</b>	<b>57</b>
9.19 Proceeding against a person who carries on a business under a business name	57
9.20 Proceeding against a business name	57
9.21 Proceeding under this Division or Division 9.2	57
9.22 Amendment of parties	58
9.23 Variation of order	58
9.24 Order for discovery—proceeding brought against a person in the person’s business name	58
<b>Division 9.4—Litigation guardians</b>	<b>60</b>
9.25 Person who needs a litigation guardian	60
9.26 Proceeding by or against person who needs a litigation guardian	60
9.27 Persons who may be a litigation guardian	60
9.28 Appointment of litigation guardian by the Court	61
9.29 Manager of the affairs of a party	61
9.30 Consent to be filed	61
9.31 Removal of litigation guardian by the Court	62
9.32 Conduct of proceeding	62
9.33 No deemed admissions	62
9.34 Discovery and interrogatories	62
9.35 Payment into Court	62
9.36 Compromise or settlement of matter in proceeding	63
9.37 Application by litigation guardian for approval of agreement	63
9.38 Costs and expenses of litigation guardian	63
<b>Part 10—Service</b>	<b>64</b>
<b>Division 10.1—Personal service</b>	<b>64</b>
10.01 Service on individual	64
10.02 Service on corporation	64
10.03 Service on unincorporated association	64
10.04 Service on organisation	64
10.05 Service on partnership	65
10.06 Service in a proceeding brought against a person in the person’s business name	65
10.07 Service on a person who needs a litigation guardian	65
10.08 Personal service on a person who needs a litigation guardian	66
10.09 Deemed service of originating application	66
10.10 Refusal to accept document served personally	66
<b>Division 10.2—Service other than by personal service</b>	<b>68</b>
10.11 Identity of person served	68
10.12 Acceptance of service by lawyer	68
10.13 Deemed service	68
10.14 Substituted service	68
10.15 Service by filing	69
10.16 Service by Court	69
10.17 Service of interlocutory injunction	69
10.18 Service under agreement	69
<b>Division 10.3—Ordinary service</b>	<b>70</b>
10.19 Ordinary service	70
10.20 Time of service	70

---

<b>Division 10.4—Address for service</b>	<b>71</b>
10.21 Address for service	71
10.22 Address for service—corporations	71
10.23 Address for service—partnership	71
10.24 Address for service—proceeding against person in person’s business name	72
10.25 Receivers	72
10.26 When must notice of address for service be filed	72
10.27 How to file notice of address for service	72
10.28 Service of notice of address for service	72
10.29 Change of address for service	72
<b>Division 10.5—Evidence of service</b>	<b>73</b>
10.30 Affidavit of service	73
<b>Part 11—Submitting notices</b>	<b>74</b>
11.01 Submitting notice	74
<b>Part 12—Jurisdiction—setting aside originating application</b>	<b>75</b>
12.01 Setting aside originating application etc	75
<b>Part 13—Pleadings</b>	<b>76</b>
<b>Division 13.1—General</b>	<b>76</b>
13.01 Application of Division 13.1	76
13.02 Pleading to include name of person who prepared it	76
13.03 Content of pleadings—general	76
13.04 Pleading of facts	77
13.05 References to documents or spoken words	77
13.06 Conditions precedent	77
13.07 Inconsistent allegations or claims	77
13.08 Admissions, denials and deemed admissions	78
13.09 Matters that must be expressly pleaded	78
13.10 Defence of tender before start of proceeding	78
13.11 Defence claiming set-off	78
13.12 Joinder of issue	78
13.13 Close of pleadings	79
13.14 Alternative accompanying documents	79
<b>Division 13.2—Striking out pleadings</b>	<b>80</b>
13.15 Application to strike out pleadings	80
<b>Division 13.3—Progress of pleadings</b>	<b>81</b>
13.16 Application of Division 13.3	81
13.17 Reply	81
<b>Division 13.4—Particulars</b>	<b>82</b>
13.18 Application of Division 13.4	82
13.19 General	82
13.20 Fraud, misrepresentation etc	82
13.21 Conditions of mind	82
13.22 Damages and exemplary damages	83
13.23 Application for order for particulars	83
<b>Division 13.5—Amendment of pleadings</b>	<b>84</b>
13.24 Amendment without needing the leave of the Court	84



---

13.25 Disallowance of amendment of pleading	84
13.26 Application for leave to amend	84
13.27 Date on which amendment takes effect	85
13.28 Consequential amendment of defence	85
13.29 Consequential amendment of reply	85
13.30 Implied joinder of issue after amendment	85
13.31 Time for amending pleading under Court order	85
13.32 Procedure for making amendment to pleading	86
13.33 Service of amendment	86
<b>Part 14—Interlocutory applications</b>	<b>87</b>
14.01 Interlocutory application	87
14.02 Reliance on correspondence or undisputed documents	87
14.03 Service on others	87
14.04 Hearing and determination of interlocutory application—absence of party	88
<b>Part 15—Security for costs</b>	<b>89</b>
15.01 Application for an order for security for costs	89
<b>Part 16—Discovery, inspection of documents and interrogatories</b>	<b>90</b>
<b>Division 16.1—General</b>	<b>90</b>
16.01 Declaration to allow discovery	90
16.02 Provision of documents without Court order	90
16.03 Withholding documents on public interest grounds	90
16.04 Privilege	90
16.05 Undertakings or orders applying to documents	90
<b>Division 16.2—Discovery</b>	<b>91</b>
16.06 Application for discovery	91
16.07 Order for discovery	91
16.08 Claim of privilege	91
16.09 Giving discovery	92
16.10 List of documents	92
16.11 Order for discovery for particular documents	92
<b>Division 16.3—Production for inspection</b>	<b>93</b>
16.12 Notice to produce document in pleading or affidavit	93
16.13 Order for production from party	93
16.14 Copying of documents produced for inspection	93
16.15 Production to Court	93
<b>Division 16.4—Interrogatories</b>	<b>95</b>
16.16 Declaration to allow interrogatories	95
<b>Part 17—Evidence</b>	<b>96</b>
<b>Division 17.1—General</b>	<b>96</b>
17.01 Decisions without oral hearing	96
17.02 Transcript receivable in evidence	96
<b>Division 17.2—Admissions</b>	<b>97</b>
17.03 Notice to admit facts or documents	97
17.04 Notice disputing facts or documents	97
17.05 Disputing party to pay costs if document is proved etc	97
17.06 Facts or documents taken to be admitted if not disputed	97

---

---

17.07 Deemed admission	97
17.08 Withdrawal of admission	97
<b>Division 17.3—Affidavits</b>	<b>98</b>
17.09 When affidavit may be sworn or affirmed	98
17.10 Form of affidavit	98
17.11 Documents annexed or exhibited to an affidavit	98
17.12 Content of affidavit	99
17.13 Affidavit of person who is illiterate or vision impaired or has a disability	99
17.14 Service of exhibits and annexures	100
17.15 Irregularity in form	100
17.16 Use of affidavit without cross-examination of maker	100
<b>Division 17.4—Expert evidence</b>	<b>101</b>
17.17 Appointment of Court expert	101
17.18 Court expert’s remuneration and expenses	101
17.19 Court expert’s report	101
17.20 Further expert evidence	101
17.21 Provision of guidelines to an expert	101
17.22 Contents of an expert report	102
17.23 Application for expert report	102
17.24 Expert evidence for 2 or more parties	102
<b>Part 18—Subpoenas</b>	<b>104</b>
<b>Division 18.1—Leave to issue subpoena</b>	<b>104</b>
18.01 Limit on number of subpoenas	104
18.02 Leave to issue subpoena	104
<b>Division 18.2—Subpoenas to give evidence and to produce documents</b>	<b>105</b>
18.03 Definitions for Division 18.2	105
18.04 Issuing of subpoena	105
18.05 Form of subpoena	105
18.06 Time limit for service of subpoena	106
18.07 Subpoena addressed to a corporation	106
18.08 Change of date for attendance or production	106
18.09 Setting aside subpoena	106
18.10 Service	106
18.11 Compliance with subpoena	107
18.12 Production otherwise than on attendance	108
18.13 Removal, return, inspection, copying and disposal of documents and things	108
18.14 Production of documents and access by parties	108
18.15 Inspection of, and dealing with, documents and things produced otherwise than on attendance	108
18.16 Return of documents and things produced	110
18.17 Costs and expenses of compliance	110
18.18 Failure to comply with subpoena—contempt of court	110
18.19 Documents and things in custody of another court	110
<b>Part 19—Offers to settle</b>	<b>112</b>
19.01 Offer to compromise	112
19.02 Notice to be signed	112
19.03 Offer to compromise—content	112

---

---

19.04 Offer to be paid within 28 days	112
19.05 Timing of offer	112
19.06 No communication to Court of offer	112
19.07 Withdrawal of offer	113
19.08 Acceptance of offer	113
19.09 Withdrawal of acceptance	113
19.10 Failure to comply with offer	113
19.11 Multiple respondents	113
19.12 Costs	114
<b>Part 20—Transfer of proceedings</b>	<b>115</b>
20.01 Transfer to Federal Court	115
<b>Part 21—Dispute resolution</b>	<b>116</b>
<b>Division 21.1—General</b>	<b>116</b>
21.01 Dispute resolution processes	116
21.02 Orders that may be sought	116
21.03 Mediation and arbitration	116
21.04 Attendance in person	116
21.05 Court may end mediation or arbitration	116
21.06 Application by interlocutory application	117
21.07 Parties may refer proceeding to conciliation, mediation, arbitration or other dispute resolution process	117
21.08 Agreement reached by dispute resolution process	117
<b>Division 21.2—Mediation</b>	<b>118</b>
21.09 Nomination of mediator	118
21.10 Court may appoint a new mediator	118
21.11 Conduct of mediation	118
21.12 Report if only part of proceeding to be mediated	118
21.13 Mediator may end mediation	118
<b>Division 21.3—Referral of matter to officer of the Court</b>	<b>119</b>
21.14 Court may refer matter	119
<b>Part 22—Hearings</b>	<b>120</b>
<b>Division 22.1—Separate decision on question</b>	<b>120</b>
22.01 Application for separate question to be heard	120
22.02 Disposal of proceeding after hearing separate questions	120
<b>Division 22.2—Consolidation</b>	<b>121</b>
22.03 Consolidation of proceedings before trial	121
<b>Division 22.3—Absence of party</b>	<b>122</b>
22.04 Absence of party at hearing	122
22.05 No appearance by any party	122
<b>Division 22.4—Trial</b>	<b>123</b>
22.06 Trial limitations	123
22.07 Death before judgment	123
22.08 Evidence in other proceedings	123
22.09 Plans, photographs and models	123
22.10 Consent	123
22.11 Notice to produce	124

---

---

22.12 Parties in lawful custody	124
22.13 Attendance and production	124
<b>Part 23—Finalising a proceeding</b>	<b>125</b>
<b>Division 23.1—Withdrawal and discontinuance</b>	<b>125</b>
23.01 Withdrawal of defence etc	125
23.02 Discontinuance	125
23.03 Service of notice	126
23.04 Effect of discontinuance	126
23.05 Costs	126
23.06 Stay of proceeding until costs paid	126
<b>Division 23.2—Consent orders</b>	<b>127</b>
23.07 Consent orders	127
<b>Division 23.3—Summary orders</b>	<b>128</b>
23.08 Summary judgment	128
23.09 Dismissal for want of prosecution	128
23.10 Stay of subsequent proceeding until costs paid	129
<b>Part 24—Orders</b>	<b>130</b>
<b>Division 24.1—Judgments and orders</b>	<b>130</b>
24.01 Date of effect of judgment or order	130
24.02 Time for compliance with orders	130
24.03 Varying or setting aside a judgment or order before it has been entered	130
24.04 Varying or setting aside a judgment or order after it has been entered	130
24.05 Interest on judgment	130
24.06 Orders dealing with failure to fulfil undertakings	131
<b>Division 24.2—Entry of judgments and orders</b>	<b>132</b>
24.07 When entry is required	132
24.08 Entry of an order	132
<b>Chapter 3—Special classes of proceedings</b>	<b>133</b>
<b>Part 25—Proceedings under the Migration Act</b>	<b>133</b>
<b>Division 25.1—Preliminary</b>	<b>133</b>
25.01 Definitions for Part 25	133
25.02 Application of Part 25	133
<b>Division 25.2—Matters started in the Court</b>	<b>134</b>
25.03 Application of Division 25.2	134
25.04 Application for judicial review of migration decision	134
25.05 Response to application for judicial review of migration decision	134
<b>Division 25.3—Matters remitted by the High Court</b>	<b>136</b>
25.06 Application of Division 25.3	136
25.07 Filing of order of remittal	136
25.08 Service of notice and order	136
<b>Division 25.4—General</b>	<b>137</b>
25.09 Stay of proceeding	137
25.10 Directions and orders	137
25.11 Varying or setting aside judgment or order	137

---

---

25.12 Judgment delivered orally	137
25.13 Writs	137
25.14 Costs	138
25.15 Death of an applicant	138
<b>Part 26—Judicial review under the AD(JR) Act</b>	<b>139</b>
26.01 Application of Part 26	139
26.02 Application for order of review	139
26.03 Application for extension of time	139
26.04 Application for stay of proceeding	139
26.05 Documents to be filed	139
26.06 Service	140
26.07 Notice of objection to competency	140
<b>Part 27—Administrative Appeals Tribunal</b>	<b>141</b>
27.01 Application of Part 27	141
27.02 Application for leave to raise other questions of law or rely on other grounds	141
27.03 Application for stay of Tribunal decision	141
27.04 No written reasons for decision	141
27.05 Notice of cross-appeal	141
27.06 Notice of contention	142
27.07 Directions hearing	142
27.08 Preparation of appeal papers	143
27.09 Further evidence on appeal	143
27.10 Notice of objection to competency of appeal	144
27.11 Discontinuance of appeal	144
27.12 Application to dismiss appeal	144
27.13 Absence of party	145
<b>Part 28—Human rights proceedings: proceedings alleging unlawful discrimination</b>	<b>146</b>
28.01 Application of Part 28	146
28.02 Interpretation	146
28.03 Starting a proceeding—originating application and claim	146
28.04 Copy of originating application to be given to Commission	146
28.05 Form of response to application	147
28.06 Appearance by special-purpose Commissioner	147
<b>Part 29—Small claims applications under the National Consumer Credit Protection Act</b>	<b>148</b>
29.01 Small claims proceeding—National Consumer Credit Protection Act	148
29.02 Starting a National Consumer Credit Protection Act small claims proceeding	148
29.03 Representation for corporations—National Consumer Credit Protection Act small claims proceeding	148
<b>Part 30—Intellectual property</b>	<b>149</b>
<b>Division 30.1—General</b>	<b>149</b>
30.01 Application of Part 30	149
30.02 Appearance by Commissioner	149
30.03 Starting an appeal—filing and service of notice of appeal	149
30.04 Application for extension of time to file notice of appeal	149

---

30.05	Grounds of appeal or particulars not stated in notice of appeal	150
30.06	Notice of cross-appeal	150
30.07	Notice of contention	150
30.08	Provision of documents by Commissioner	151
30.09	Evidence	151
<b>Division 30.2—Particular requirements</b>		<b>152</b>
30.10	Infringement of copyright—particulars	152
30.11	Infringement of registered designs—particulars	152
30.12	Application for compulsory licence—Designs Act	152
30.13	Revocation of registration or rectification of Register—Designs Act	152
30.14	Infringement of PBR—particulars	152
30.15	Infringement of registered trade marks—particulars	153
30.16	Dispute of validity of registration of trade mark—particulars of invalidity	153
<b>Part 31—Fair Work Division</b>		<b>154</b>
<b>Division 31.1—General</b>		<b>154</b>
31.01	Expressions used in Part 31	154
31.02	Application of Part 31	154
<b>Division 31.2—Contraventions of the Fair Work Act</b>		<b>155</b>
31.03	Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)	155
31.04	Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)	155
31.05	Application in relation to alleged discrimination (Fair Work Act, subsection 539(2), table item 11)	156
31.07	Application in relation to other alleged contraventions of the Fair Work Act general protections	157
31.08	Application in relation to other alleged contraventions of the Fair Work Act	157
<b>Division 31.3—Contraventions of the Registered Organisations Act</b>		<b>158</b>
31.09	Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)	158
<b>Division 31.4—Small claims applications under the Fair Work Act</b>		<b>159</b>
31.10	Small claims procedure	159
31.11	Starting a Fair Work Act small claims proceeding	159
31.12	Representation for corporations—Fair Work Act small claims proceeding	159
<b>Division 31.5—Proceedings under the Federal Safety Commissioner Act</b>		<b>160</b>
31.13	Applications for order under section 81 of the Federal Safety Commissioner Act	160
<b>Chapter 4—Costs, enforcement and contempt</b>		<b>161</b>
<b>Part 32—Costs</b>		<b>161</b>
<b>Division 32.1—General</b>		<b>161</b>
32.01	Order for costs	161
32.02	Determining costs	161
32.03	Costs reserved	161
32.04	Costs if a proceeding is transferred	161
32.05	Order for costs against lawyer	161

<b>Division 32.2—Calculation of costs</b>	<b>163</b>
32.06 Application of Division 32.2	163
32.07 Costs and disbursements	163
32.08 Interest on outstanding costs	163
32.09 Taxation of costs	163
32.10 Expenses for attendance by witness	163
32.11 Expenses for preparation of report by expert	163
32.12 Solicitor as advocate	163
32.13 Advocacy certificate	164
32.14 Counsel as advocate	164
<b>Division 32.3—Determination of maximum costs</b>	<b>165</b>
32.15 Maximum costs in a proceeding	165
<b>Part 33—Enforcement</b>	<b>166</b>
<b>Division 33.1—General</b>	<b>166</b>
33.01 Application without notice for directions	166
33.02 Condition precedent not fulfilled	166
33.03 Application for stay of judgment or order	166
33.04 Failure to comply with Court order	166
33.05 Failure to attend Court in response to subpoena or order	166
33.06 Endorsement on order	167
33.07 Service of order	167
33.08 Application where person does not comply with order	167
33.09 Substituted performance	168
33.10 Execution generally	168
33.11 Stay of execution	169
<b>Division 33.2—Enforcement against partnership</b>	<b>170</b>
33.12 Execution of order against partnership	170
33.13 Execution against individual partner	170
33.14 Application to proceeding between co-partners	170
<b>Division 33.3—Enforcement against business name</b>	<b>171</b>
33.15 Execution of order—proceeding against person in person’s business name	171
<b>Part 34—Contempt</b>	<b>172</b>
<b>Division 34.1—Contempt in face or hearing of Court</b>	<b>172</b>
34.01 Arrest for contempt	172
34.02 Charge, defence and determination	172
34.03 Interim custody	172
<b>Division 34.2—Application for contempt</b>	<b>173</b>
34.04 Application alleging contempt	173
34.05 Statement of charge	173
34.06 Service	173
34.07 Arrest	173
34.08 Charge and defence	174
34.09 Determination of contempt application	174
<b>Division 34.3—General</b>	<b>175</b>
34.10 Warrant for imprisonment	175
34.11 Discharge before end of prison term	175

---

<b>Schedule 1—Powers delegated to Registrars</b>	<b>176</b>
<b>Schedule 2—Costs</b>	<b>189</b>
<b>Part 1—Application of this Schedule</b>	<b>189</b>
1 Application of this Schedule	189
<b>Part 2—Proceedings other than migration proceedings</b>	<b>190</b>
<b>Part 3—Migration proceedings</b>	<b>191</b>
<b>Division 1—Migration proceedings that have concluded</b>	<b>191</b>
<b>Division 2—Migration proceedings that have been discontinued</b>	<b>192</b>



Rule 1.01

# Chapter 1—Introductory provisions

## Part 1—Preliminary

### Division 1.1—General

#### 1.01 Name

These Rules are the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2024*.

#### 1.02 Commencement

- (1) Each provision of these Rules specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of these Rules	NNNN	NNNN

Note: This table relates only to the provisions of these Rules as originally made. It will not be amended to deal with any later amendments of these Rules.

- (2) Any information in column 3 of the table is not part of these Rules. Information may be inserted in this column, or information in it may be edited, in any published version of these Rules.

#### 1.03 Authority

These Rules are made under Chapter 4 of the *Federal Circuit and Family Court of Australia Act 2021*.

#### 1.04 Overarching purpose

- (1) The overarching purpose of these Rules, as provided in section 190 of the Act, is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.

Note 1: The parties to a proceeding must conduct the proceeding (including negotiations for settlement of the dispute to which the proceeding relates) in a way that is consistent with the overarching purpose (see section 191 of the Act). In doing so, the parties should avoid undue delay, expense and technicality. They should consider options for dispute resolution as early as possible.

Note 2: These Rules must be interpreted and applied, and any power conferred or duty imposed by them must be exercised or carried out, in the way that best promotes the overarching purpose (see subsection 190(3) of the Act).

Note 3: The Court may dispense with compliance with the Rules or make orders inconsistent with these Rules (see rules 1.09 and 1.10).

**Rule 1.05**

---

- (2) If appropriate, the Court will help to implement dispute resolution.

**1.05 Application**

- (1) It is intended that the practice and procedure of the Court in general federal law proceedings be governed principally by these Rules.
- (2) However, if in a particular case these Rules are insufficient or inappropriate, the Court may apply the Federal Court Rules and may modify or dispense with those Rules, as necessary.

Note: These Rules have effect subject to any provision made by an Act, or by rules or regulations under an Act, with respect to the practice and procedure in particular matters (see subsection 217(2) of the Act).

- (3) These Rules apply as follows:
- (a) Chapter 1 applies to all general federal law proceedings and contains introductory provisions;
  - (b) Chapter 2 applies to general federal law proceedings generally;
  - (c) Chapter 3 applies to special classes of general federal law proceedings;
  - (d) Chapter 4 applies to all general federal law proceedings and contains rules regarding costs, enforcement and contempt.

Note: For rules relating to bankruptcy proceedings, see the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*.

- (4) These Rules do not apply to family law or child support proceedings, other than the administrative law review of certain child support decisions of the AAT and of the Child Support Registrar.

Note 1: For rules relating to family law or child support proceedings, see the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, as applied by the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*.

Note 2: For information about child support proceedings in the Court, see the Court's website at <http://www.fcfcoa.gov.au>.

Rule 1.06

---

## **Division 1.2—General powers of the Court**

### **1.06 Court to have regard to nature and complexity of proceeding**

- (1) In making any order in the proceeding, the Court may 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.

### **1.07 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 section 140 of the Act.

### **1.08 Orders may be subject to conditions**

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

### **1.09 Court may dispense with rules**

The Court may dispense with compliance with any of these Rules at any time.

### **1.10 Orders inconsistent with Rules**

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

### **1.11 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 subsection 136(3) of the Act.

### **1.12 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 the procedure is not prescribed by the Act, these Rules or by or under any other Act.

### **1.13 Fixing of time by Court**

If these Rules do not fix a time for doing an act or thing in relation to a proceeding, the Court may fix the time within which the act or thing is to be done.

### **1.14 Extension or shortening of time fixed**

- (1) The Court may extend or shorten a time fixed by these Rules or by a judgment or order of the Court.

**Rule 1.15**

---

- (2) The Court may extend the time even if the time fixed has passed.

**1.15 Exercise of Court’s power**

Unless otherwise stated in the Act or these Rules, the Court may, at any stage of a proceeding, exercise a power mentioned in these Rules in the proceeding:

- (a) on its own initiative; or
- (b) on the application of a party.

**1.16 Other orders the Court may make**

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.

**1.17 Orders may include consequences of non-compliance**

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

**1.18 Practice directions**

- (1) The Chief Judge may issue practice directions setting out procedural arrangements applicable to the conduct of proceedings in the Court.
- (2) The Court may depart from a practice direction if it considers it appropriate to do so having regard to the circumstances of the proceeding, other proceedings awaiting hearing, and available resources.

Note: Practice directions are published on the Court’s website at <http://www.fcfcga.gov.au>.

Rule 1.19

---

## Division 1.3—Interpretation

### 1.19 Definitions—the Dictionary

In these Rules.

**AAT** means the Administrative Appeals Tribunal.

**AAT Act** means the *Administrative Appeals Tribunal Act 1975*.

**Act** means the *Federal Circuit and Family Court of Australia Act 2021*.

**address for service**, for a party, means the address for service given by the party in accordance with rule 10.21.

**AD(JR) Act** means the *Administrative Decisions (Judicial Review) Act 1977*.

**ancillary order** has the meaning given by rule 7.03.

**another court**, in Division 7.2, means a court in Australia other than the Court or a court outside Australia.

**applicant** means:

- (a) unless a contrary intention appears—a party, other than a cross-claimant, claiming relief; or
- (b) for Division 7.2—a person who applies for a freezing order or ancillary order; or
- (c) for Division 7.3—a person who applies for a search order.

**approved form** means a form approved by the Chief Judge under subrule 2.06(1).

**Attorney-General** means the Commonwealth Attorney-General, unless the context otherwise provides.

**authenticate**, in relation to an order of the Court, means to sign and seal the order.

**authenticity of a document** means:

- (a) if the document is an original—it was created, and signed or executed, as it purports to have been; or
- (b) if the document is a copy—it is a true copy.

**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.

**Civil Dispute Resolution Act** means the *Civil Dispute Resolution Act 2011*.

Rule 1.19

---

**claim** includes a cross-claim and counterclaim, unless a contrary intention appears.

**Commission** means the Australian Human Rights Commission.

**Commissioner** means, in Part 30:

- (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 Trade Marks Act—the person holding the office of Registrar under that Act.

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

**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.

**control**, if referring to a document, means possession, custody or power.

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

**corporation** means any artificial person other than an organisation.

**costs**, unless the context otherwise provides, means costs as between party and party.

**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.

**Court** means the Federal Circuit and Family Court of Australia (Division 2).

**Court file**: comprises all documents relating to a particular proceeding if:

- (a) the document:
  - (i) has been accepted for filing in respect of the proceeding, in accordance with rule 2.15; or
  - (ii) is a redacted copy replaced on the Court file in accordance with rule 2.19; and
- (b) the document has not been the subject of an order, under rule 2.18 or 2.19, that the document be removed from the Court file.

**decision**, in Part 30, includes a direction or determination made by the Commissioner.

**described**, in Division 7.3, includes described generally, whether by reference to a class or otherwise.

**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;

Rule 1.19

---

- (B) the person's principal office;
- (C) the person's principal place of business.

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

***direction*** means an order of the Court.

***discontinuance***, in relation to a proceeding, includes withdrawal of all or part of an application or response.

***discovery*** means an obligation to disclose.

***enter***, in relation to an order, means to take out or authenticate the order.

***expert*** means a person who has specialised knowledge based on the person's training, study or experience.

***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.

***Fair Work Commission*** has the meaning given by section 12 of the *Fair Work Act 2009*.

***family law or child support proceeding*** has the meaning given by subsection 7(1) of the Act.

***Federal Court Rules*** means the *Federal Court Rules 2011*.

***Federal Safety Commissioner Act*** means the *Federal Safety Commissioner Act 2022*.

***file*** means file and serve.

***freezing order*** has the meaning given by rule 7.02.

***general federal law proceeding*** means a proceeding in the Court other than a family law or child support proceeding.

***genuine steps statement*** has the meaning given by section 5 of the Civil Dispute Resolution Act.

***hearing*** means any hearing before a Judge or any officer of the Court, whether final or interlocutory.

***Human Rights Act*** means the *Australian Human Rights Commission Act 1986*.

***intellectual property proceeding*** means:

- (a) a proceeding in the Court arising in relation to infringement of:
  - (i) a copyright subsisting under the Copyright Act; or
  - (ii) the monopoly in a design registered under the Designs Act; or
  - (iii) a trade mark registered under the Trade Marks Act; or
  - (iv) plant breeder's rights under the *Plant Breeder's Rights Act 1994*.

Rule 1.19

---

- (b) an application, appeal or other proceeding in the Court under the Copyright Act, the Designs Act, the Plant Breeder's 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 Part 26 applies.

**interested person** means:

- (a) for a person who needs a litigation guardian and is a minor—the person's parent or guardian;
- (b) for any other person who needs a litigation guardian—the person's guardian;
- (c) in any other case—a person who is or may be affected by an order of the Court.

**interlocutory application** means an application in a proceeding already started.

**issuing officer**, for a subpoena, means an officer empowered to issue a subpoena for the Court.

**issuing party**, for a subpoena, means the party at whose request a subpoena is issued.

**lawyer** means a legal practitioner who is entitled to practise in the Court.

**legal assistance** means any of the following:

- (a) advice in relation to a proceeding;
- (b) representation at a hearing or a dispute resolution process;
- (c) drafting or settling documents to be used in a proceeding;
- (d) representation generally in the conduct of a proceeding.

**litigation guardian** means a person appointed by the Court under rule 9.28 to manage and conduct a proceeding for another person (also known as a guardian ad litem) (see Division 9.4).

**Litigants' Fund** means the Federal Court of Australia Litigants' Fund established under Division 2.5 of the Federal Court Rules.

**Migration Act** means the *Migration Act 1958*.

**mediation** includes conciliation and any similar structured dispute resolution process.

**mediator** means a person to whom a matter is referred under a mediation order.

**minor** means a person under the age of 18 years.

**National Consumer Credit Protection Act** means the *National Consumer Credit Protection Act 2009*.

**National Credit Code** has the same meaning as in the National Consumer Credit Protection Act.

**organisation** has the meaning given by section 6 of the Registered Organisations Act.



Rule 1.19

---

**originating application** means an application starting a proceeding, including a cross-claim in a proceeding against a person who was not previously a party to the proceeding.

**partnership name** means a name under which 2 or more persons carry on business in partnership in Australia.

**party** means an applicant, respondent or other person included as a party to a proceeding.

**PBR** has the same meaning as in the PBR Act.

**person who needs a litigation guardian** has the meaning given by rule 9.25.

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

**pleading** means:

- (a) a statement of claim; or
- (b) an alternative accompanying document referred to in rule 8.04; or
- (c) a statement of cross-claim; or
- (d) a defence; or
- (e) a concise statement in response; or
- (f) a reply; or
- (g) a concise statement in reply; or
- (h) any pleading after a reply;

but does not include:

- (i) an originating application; or
- (j) an interlocutory application; or
- (k) a response in an approved form; or
- (l) a notice of any kind; or
- (m) an affidavit.

**premises**, in Division 7.3, includes a vehicle or vessel of any kind.

**principal proceeding** means a proceeding in which:

- (a) a respondent wants to make a cross-claim; or
- (b) a cross-claim has been made as part of the response under rule 8.15.

**pro bono lawyer** means a lawyer who has agreed to accept a referral under rule 4.06 to provide pro bono legal assistance.

**proper address**, for a person to be served, means:

- (a) the person's address for service; or
- (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.

Rule 1.19

---

**proper registry**, for a proceeding, means the registry at the proper place for the proceeding.

**prospective applicant** means a person who reasonably believes that the person may have a right to obtain relief against another person who is not currently a party to a proceeding in the Court.

**question**, in Division 22.1, includes a question or issue in a proceeding, whether of fact or law, or partly of fact and partly of law, and whether raised in a document, by agreement of the parties or otherwise.

**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.

**Registered Organisations Act** means the *Fair Work (Registered Organisations) Act 2009*.

**Registrar** means the Chief Executive Officer or a Registrar of the Court.

**Registrar of the Tribunal** includes a person:

- (a) who has been appointed as an officer of the Tribunal under section 24PA of the AAT Act; and
- (b) to whom powers or functions have been delegated under subsection 10A(3) of the AAT Act.

**registry** means a registry of the Court.

**respondent** means:

- (a) a party, other than a cross-respondent, against whom relief is claimed; and
- (b) for Division 7.2—a person against whom a freezing order or an ancillary order is sought or made; and
- (c) for Division 7.3—a person against whom a search order is sought or made.

**search order** has the meaning given by rule 7.09.

**sign** includes to sign electronically.

**small claims application** means:

- (a) for Part 29—an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act that is dealt with under that Part; and
- (b) for Division 31.4—an application in relation to a claim covered by section 548 of the Fair Work Act.

**small claims proceeding** means, for Part 29—a proceeding relating to a small claims application under that Part.

**taxing officer** means a Registrar.

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

**trial** includes any hearing other than an interlocutory hearing.

## Rule 1.20

---

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

***vexatious proceeding*** has the meaning given by subsection 7(1) of the Act.

***vexatious proceedings order*** has the meaning given by subsection 7(1) of the Act.

***without notice*** means without serving or advising another party or other person of an application to be made to the Court.

### 1.20 References to Forms

In these Rules, a reference to a form is a reference to the form approved under rule 2.06.

Note: Forms approved under rule 2.06 are available on the Court's website at <http://www.fcfcia.gov.au>.

### 1.21 Calculating time

- (1) The 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 within 3 days from Wednesday. Under subrule (3), the document must be served on or before the following Monday (since the registry is closed on Saturday and Sunday).

- (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.
- (6) Subsection 36(2) of the *Acts Interpretation Act 1901* does not apply to these Rules.

Rule 2.01

---

## Part 2—Registry and documents

### Division 2.1—Registry

#### 2.01 Use of seal of Court

The seal of the Court must be attached to:

- (a) Rules of Court; and
- (b) any other document the Court directs or the law requires.

Note 1: The seal must be attached to all writs, commissions and process issued from the Court (see subsection 180(1) of the Act). It may also be used to enter an order (see rule 24.08).

Note 2: The design of the seal is determined by the Minister and the seal is kept in custody as directed by the Chief Judge (see section 178 of the Act).

#### 2.02 Seal or stamp of Court

- (1) Each registry must keep in its custody a stamp designed, as nearly as practicable, to be the same as the design of the seal of the Court.
- (2) The seal or stamp of the Court must be attached to:
  - (a) all documents filed in the Court; and
  - (b) orders entered.

Note: Documents marked with the stamp are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

#### 2.03 Methods of attaching the seal or stamp

The seal or stamp of the Court may be attached to a document:

- (a) by hand; or
- (b) by electronic means.

#### 2.04 Transfer of proceeding to another place

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

Note 1: For *proper place*, see rule 1.19.

Note 2: See section 184 of the Act.

- (2) In considering an application to transfer a proceeding, the Court must have regard to:
  - (a) the convenience of the parties; and
  - (b) the limiting of expense and the cost of the proceeding; and
  - (c) whether the matter has been listed for trial; and
  - (d) any other relevant matter.

Rule 2.06

---

## Division 2.2—Documents

### 2.05 Formal requirements for documents

- (1) A document to be filed in a proceeding must accord with any approved form and the Court’s requirements.

Note 1: For *approved form*, see rule 1.19.

Note 2: The Court’s requirements for preparing and lodging documents are set out in practice directions issued by the Chief Judge.

- (2) A document (other than a form) to be filed must:
- (a) be typed in at least 12-point font size; and
  - (b) have line spacing of 1.5 lines; and
  - (c) have clear margins on all sides; and
  - (d) have each page consecutively numbered; and
  - (e) have a cover sheet in the approved form.
- (3) Paper documents must be legible and without crossing out.
- (4) Electronic documents must be lodged in an electronic format approved by a Registrar for the registry.
- (5) Strict compliance with subrules (2) to (4) is not required if:
- (a) the document:
    - (i) is readable; and
    - (ii) can be easily scanned and photocopied; or
  - (b) strict compliance would be impracticable because of the nature of the document or the manner of filing.
- (6) This rule does not apply to a document annexed to an affidavit.

Note 1: For formal requirements for affidavits, see Division 17.3.

Note 2: The Court may give directions limiting the length of documents to be filed (see section 182 of the Act).

### 2.06 Forms

- (1) The Chief Judge of the Court may approve a form for a provision of these Rules.
- (2) 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 directions issued by the Chief Judge; or
  - (b) has only those variations that the nature of the case requires.
- (3) A document prepared in the form prescribed for a similar purpose for the Federal Court may be taken to substantially comply with the appropriate form for a proceeding.

Note: The Court may dispense with compliance with the Rules and may make orders inconsistent with the Rules (see rules 1.09 and 1.10).

## Rule 2.07

---

### 2.07 Title of documents

- (1) A document to be filed in a proceeding must include a title and details sufficient to identify the proceeding.
- (2) Unless otherwise provided in these Rules, a document to be filed in a proceeding must be headed:

FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA (DIVISION 2)  
At [Registry].

### 2.08 Document must have distinctive number

A party filing a document in connection with a particular proceeding must include on the document the distinctive number of the proceeding.

Note: When an originating application is filed, a Registrar will assign a distinctive number to the document and will endorse the document with that number.

### 2.09 Document to be signed

Unless the nature of the document is such that signature is inappropriate, a document (other than an affidavit, annexure or exhibit) that a party must file must be signed by:

- (a) the party's lawyer; or
- (b) if the party does not have a lawyer—the party.

Note: *Sign* is defined in rule 1.19 to include electronic signing. For *lawyer*, see rule 1.19.

### 2.10 Details included in document

A document filed in a proceeding must contain the following information on the front page:

- (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 preparing the document;
- (c) if the party is represented by a lawyer—the telephone number and email address of the lawyer;
- (d) if the party is not represented by a lawyer—the telephone number and email address, if any, of the party;
- (e) the address for service of the party.

### 2.11 Documents not in English

If a document that must be filed with the Court is not in English, the person filing the document must also file:

- (a) a translation of the document in English; and
- (b) an affidavit, by the person who made the translation, verifying the translation and setting out the person's qualifications to make the translation.

Note: The Court may dispense with compliance with the Rules (see rule 1.09).

Rule 2.12

---

## Division 2.3—Lodging and filing documents

### 2.12 How documents may be lodged with the Court for filing

- (1) A document for filing must be lodged with the Court using the Court’s approved electronic lodgement system.
- (2) If it is not reasonably practicable to lodge a document using the Court’s approved electronic lodgement system, a document may be lodged, in descending order of preference, by:
  - (a) being emailed to a registry with a written request for the action required in relation to the document; or
  - (b) being presented to a registry when the registry is open for business; or
  - (c) being posted to a registry with a written request for the action required in relation to the document; or
  - (d) being faxed to a registry in accordance with rule 2.14.
- (3) A document in an existing proceeding that is to be lodged with the Court in accordance with paragraph (1)(a), (c) or (d) must be sent to the proper registry.
- (4) 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.

Note 1: For *proper registry*, see rule 1.19.

Note 2: The Court’s requirements in relation to preparing and lodging documents are set out in practice directions issued by the Chief Judge.

Note 3: Details of the opening times for each registry are on the Court’s website at <http://www.fcfcga.gov.au>.

### 2.13 Providing a document electronically

- (1) A document provided electronically to a registry for filing:
  - (a) must be
    - (i) lodged using the Court’s approved electronic lodgement system and in accordance with any practice directions; or
    - (ii) sent to the proper registry by email at an email address approved by a Registrar for the registry; or
    - (iii) provided as otherwise authorised by a Registrar; and
  - (b) must be in an electronic format approved by a Registrar for the registry; and
  - (c) if required to be in an approved form—so far as is practicable, must comply with subrules 2.05(2) to (4) and rules 2.06 and 2.07; and
  - (d) must be capable of being printed in the form in which it was created without any loss of content.

Note: Approved email addresses and approved electronic formats are listed on the Court website at <http://www.fcfcga.gov.au>.

## Rule 2.14

---

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

### 2.14 Faxing a document

- (1) A document faxed to a registry for filing must:
- (a) be sent to the proper registry at an approved fax number for the registry; and
  - (b) be accompanied by a cover sheet containing the information set out in the relevant practice direction.
- (2) A document faxed to a registry must not be more than 20 pages.
- (3) The sender of a document to a registry by fax must:
- (a) keep the original document and the transmission report evidencing successful transmission; and
  - (b) produce the original document or the transmission report as directed by the Court.

### 2.15 When is a document filed

- (1) A document is filed when:
- (a) the document has been lodged with the Court in accordance with rule 2.12; and
  - (b) the filing fee, if any, has been paid (or an exemption or deferral applies); and
  - (c) the document has been accepted for filing in a registry by having the seal of the Court affixed to it.

Note 1: The *Federal Court and Federal Circuit and Family Court Regulations 2022* provides that a document must not be filed in a registry of the Court unless the fee payable for the filing has been paid. The regulation also provides for an exemption or deferral of a fee, or payment of the fee on invoice, in certain circumstances.

Note 2: A document that is accepted for filing is added to the Court file. See the definition of **Court file** in rule 1.19.

Note 3: Documents marked with the stamp are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

- (2) If a document is lodged electronically or by fax, the document, if accepted by a Registrar under subrule (1), is taken to have been filed:
- (a) if the whole document is received by 4.30 pm on a day the registry is open for business—on that day; or
  - (b) in any other case—on the next day the registry is open for business.

Note: Because of the Court's computer security firewall, there may be a delay between the time a document is sent electronically and the time the document is filed.

- (3) 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 paragraph (1)(c).



## Rule 2.16

---

### 2.16 Refusal to accept document for filing

A Registrar may refuse to accept a document for filing (including a document that would, if accepted, become an originating application) if:

- (a) the Registrar is satisfied that the document, on its face or by reference to any other documents filed or lodged for filing with the document, is an abuse of process or is frivolous, scandalous or vexatious; or
- (b) the document is lodged in connection with a pending proceeding and the registry is not the proper registry and rule 2.12(4) has not been complied with; or
- (c) the document is lodged electronically and the person lodging the document has not complied with the Court's lodging procedures.

### 2.17 When documents will not be accepted in a registry

A document will not be accepted for filing if:

- (a) the document is not substantially complete; or
- (b) the document does not substantially comply with these Rules; or
- (c) the document 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 2.12(2)(a), (c) or (d) and the registry does not accept it, a Registrar will notify the sender of the document accordingly.

### 2.18 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 13.15(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 17.12(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 2.17, 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

**Rule 2.19**

---

- (b) otherwise—as directed by a Registrar.

**2.19 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 13.15(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 17.12(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:
    - (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 a Registrar.

Rule 2.20

---

**Division 2.4—Custody and inspection of documents**

**2.20 Custody of documents**

- (1) A registry has custody of:
  - (a) each document filed in the registry in a proceeding; and
  - (b) the records of the registry.
- (2) A person may remove a document from a registry if:
  - (a) it is necessary to transfer the document to another registry and a Registrar has given written permission; or
  - (b) the Court has otherwise permitted or directed the removal.
- (3) If the Court permits or directs a person to remove a document from the registry, the person must comply with any conditions on the removal imposed by the Court or Registrar.

**2.21 Inspection of documents**

- (1) A party may inspect any document in a proceeding other than:
  - (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 inspect the following documents in a proceeding in the proper registry:
  - (a) an originating application;
  - (b) a response or reply;
  - (c) a notice of address for service;
  - (d) a pleading or particulars of a pleading or similar document;
  - (e) a statement of agreed facts or an agreed statement of facts;
  - (f) an interlocutory application;
  - (g) a judgment or an order of the Court;
  - (h) a notice of appeal or cross-appeal;
  - (i) a notice of discontinuance;
  - (j) a notice of withdrawal as lawyer;
  - (k) reasons for judgment;
  - (l) a transcript of a hearing heard in open court;
  - (m) any other document as directed by the Court.
- (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 to, or restricted from publication to, the person or a class of persons of which the person is a member.

**Rule 2.21**

---

Note: For the power of the Court to make a suppression order or non-publication order, see sections 230 and 233 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 2022*.

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.

Rule 2.22

---

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

**2.22 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.

Note: The Chief Executive Officer of the Federal Court has established an account entitled ‘Federal Court of Australia Official Exempt SPM Litigants’ Fund’ under Division 2.5 of the Federal Court Rules. The Litigants’ Fund comprises the money standing, from time to time, to the credit of that account.

- (2) The Court may make 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 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.

**2.23 Payment out of Litigants’ Fund**

- (1) Money paid into Court under rule 2.22 may be paid out or applied only in accordance with an order of the Court.
- (2) However, the Registrar may pay out of the Litigants’ Fund money that has been paid in as security for 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 Registrar will give a notice to each party.

Rule 3.01

---

## Part 3—Registrars

### Division 3.1—Powers of Registrars

#### 3.01 Delegation of powers to Registrars

For subsection 254(1) of the Act, a power of the Court mentioned in an item of the table in Schedule 1 is delegated to a Registrar (an ***approved Registrar***) who is approved, or is in a class of Registrars who are approved, by the Chief Judge for the exercise of the power.

Note 1: Subsection 254(1) of the Act enables the Chief Judge to make Rules of Court delegating powers to a delegate or prescribed class of delegate. A Registrar is a delegate (see paragraph (b) of the definition of ***delegate*** in subsection 7(1) of the Act).

Note 2: For ***Registrar***, see rule 1.19.

Note 3: If a power of the Court is delegated to a Registrar under this rule:

- (a) the Registrar has, in exercising the power, the same protection and immunity as a Judge has in performing the functions of a Judge (see section 257 of the Act); and
- (b) a party, legal practitioner or witness appearing before a Registrar on the hearing of any application or matter, or on the conducting of any conference or enquiry, has the same protection and immunity as if appearing in a proceeding in the Court (see subsection 254(4) of the Act).

#### 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.

#### 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: For ***without notice***, see rule 1.19.

Rule 3.05

---

**Division 3.2—Reviewing a Registrar’s exercise of power**

**3.05 Application for review of a Registrar’s exercise of power**

- (1) A party may apply to the Court under subsection 256(1) of the Act for review of the exercise of a power of the Court by a Registrar.
- (2) The application must be in the approved form.

**3.06 Time for application for review**

- (1) The application for review of the exercise of a power by a Registrar must be made within 21 days after the day on which the power is exercised.
- (2) The applicant must serve a sealed copy of the application on each other party to the proceeding within 7 days after the application is filed.
- (3) The application must be listed for a hearing as soon as possible and, unless it is impracticable to do so, within 28 days after the date of filing.

Note 1: Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

Note 2: A person may apply for an extension of time within which to make an application for review (see rule 1.14).

**3.07 No stay of power under review**

The application for review of an exercise of power by a Registrar does not operate as a stay of the exercise of power.

**3.08 Procedure for review**

- (1) The Court must hear an application for review of an exercise of power by a Registrar as a hearing de novo.
- (2) In the review, the Court:
  - (a) must receive as evidence any affidavit or exhibit tendered before the Registrar; and
  - (b) may with leave receive further evidence; and
  - (c) may receive as evidence:
    - (i) any transcript of the proceeding before the Registrar; or
    - (ii) if there is no transcript—an affidavit about the evidence that was adduced at the first hearing, sworn or affirmed by a person who was present at the first hearing.

Rule 4.01

---

## Part 4—Lawyers

### Division 4.1—Legal representation

#### 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 be represented in the Court by a lawyer.

Note 1: For *corporation* and *lawyer*, see rule 1.19.

Note 2: A notice of address for service for a corporation must be filed by a lawyer (see rule 10.22).

Note 3: The Court may dispense with compliance with the Rules (see rule 1.09).

#### 4.02 Appointment of a lawyer—during a proceeding

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 address for service in the approved form.

Note: *File* is defined in rule 1.19 as meaning file and serve.

#### 4.03 Change of lawyer—during a proceeding

- (1) At any stage in a proceeding, a party may appoint another lawyer in place of the lawyer then acting for the party.
- (2) As soon as practicable, the newly appointed lawyer must file and serve on each other party and the party's former lawyer a notice of address for service in the approved form.
- (3) The party's former lawyer remains the lawyer on the record until the newly appointed lawyer has complied with subrule (2).

Note: Rule 10.21 contains requirements about the address for service.

#### 4.04 Removal of lawyer and no new lawyer appointed

- (1) If a party appoints a lawyer and later decides to act in person, the party must, as soon as practicable, file and serve on the lawyer and each other party a notice of acting in person.

Note: Rule 10.21 contains requirements about the address for service.

- (2) The party's former lawyer remains the lawyer on the record until the party has complied with subrule (1).
- (3) If a party does not file the documents required by subrule (1), the former lawyer may file a notice of withdrawal in accordance with rule 4.05.
- (4) Notice under this rule must contain details of an address for service, as set out in the approved form.



## Rule 4.05

---

### 4.05 Withdrawal as lawyer

- (1) A lawyer for a party may withdraw from the record in a proceeding by filing:
  - (a) a notice of withdrawal in the approved form; and
  - (b) the notice of intention to withdraw served in accordance with subrule (2).

Note: **File** is defined in rule 1.19 as meaning file and serve.

- (2) A lawyer may file a notice of withdrawal without leave of the Court only if, at least 7 days before filing the notice, the lawyer has served a notice of intention to withdraw on the party for whom the lawyer is acting.
- (3) A notice of intention to withdraw must be in the approved form.
- (4) A lawyer may serve a notice of intention to withdraw on a party by:
  - (a) emailing the notice to the email address of the party last known to the lawyer; or
  - (b) posting the notice to the residential or business address of the party last known to the lawyer.
- (5) A party whose lawyer has filed a notice under paragraph (1)(a) must file a notice of address for service within 5 days after the lawyer's notice is filed.
- (6) If a party's lawyer withdraws, the party's last known residential or business address or last known email address is the address for service until:
  - (a) the party appoints another lawyer; or
  - (b) the party files a notice of address for service.

Note: If a party's address for service changes for any reason during a proceeding, the party must file a notice of address for service (see rule 10.29).

Rule 4.06

---

**Division 4.2—Court referral for legal assistance**

**4.06 Referral for legal assistance**

- (1) The Court may refer a party to a lawyer for legal assistance by issuing a referral certificate.
- (2) In making a referral under subrule (1), the Court may take the following matters into account:
  - (a) the party's means;
  - (b) the party's capacity 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 legal assistance to be provided in accordance with the referral certificate to a pro bono lawyer.

**4.07 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 4.06.

**4.08 Acceptance of referral and provision of legal assistance**

If a lawyer accepts a referral under rule 4.06, the lawyer must provide legal assistance in accordance with the referral certificate.

**4.09 Ceasing to provide legal assistance**

If a pro bono lawyer no longer wishes to provide legal assistance, the lawyer must withdraw in accordance with rule 4.05.

Rule 5.01

## Part 5—Court supervision of proceedings

### Division 5.1—First court date and directions

#### 5.01 Parties to attend Court on first court date

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

Note 1: For *originating application*, see rule 1.19.

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

#### 5.02 Parties to file notice of address for service before first court date

A respondent who has been served with an originating application must file a notice of address for service in the approved form before the court date fixed in the originating application.

Note: For requirements about the address for service, see rule 10.21.

#### 5.03 Making directions

- (1) At any hearing, including on the first court date, the Court may make directions for the management, conduct and hearing of a proceeding.

Note: For *direction*, see rule 1.19.

- (2) A party, or the party's lawyer, must attend each 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	Dispute resolution, including mediation
2	The manner and sufficiency of service
3	Amendments to applications, responses and pleadings
4	The defining of the issues
5	The filing and service of affidavits
6	Cross-claims
7	The joinder of parties
8	The admissibility of affidavits and use of affidavits
9	Discovery and inspection of documents
10	Inspection of real or personal property
11	Admissions of fact or of documents
12	The giving of particulars
13	The giving of evidence at hearing (including taking evidence by video link or telephone or other means)

#### Rule 5.04

Item	A direction in relation to...
14	Expert evidence and court experts
15	The transfer of the proceeding
16	The place, time and manner of hearing
17	The providing and limiting of written submissions
18	The receipt of submissions by video link or telephone or other means
19	Case management
20	Costs
21	Any other matter that the Court considers appropriate.

#### 5.04 Application for directions—cross-claims

- (1) If a response makes a cross-claim, the parties to the cross-claim, or the parties' lawyers, must attend the Court on the first court date.
- (2) A party may apply to the Court for directions for the management, conduct and hearing of the cross-claim.

#### 5.05 Interlocutory orders

A party who wants to obtain an interlocutory order must make an application in accordance with rule 14.01.

Note: Part 14 deals with interlocutory applications.

#### 5.06 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
- (b) to dispose of an originating application or a cross-claim at the directions hearing.

Rule 5.07

---

## Division 5.2—Orders on default

### 5.07 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 8.04, be struck out; or
- (c) a pleading of the respondent be struck out; or
- (d) the party have judgment against the other party.

### 5.08 When an applicant is in default

For the purposes of rule 5.10, an applicant is in default if the applicant does not:

- (a) do an act required to be done, or do an act in the time required by these Rules; or
- (b) comply with an order of the Court in the proceeding; or
- (c) attend a hearing in the proceeding; or
- (d) prosecute the proceeding with due diligence.

### 5.09 When a respondent is in default

For the purposes of rule 5.11, a respondent is in default if the respondent:

- (a) has not satisfied the applicant's claim; and
- (b) does not:
  - (i) do an act required to be done, or to do an act in the time required by these Rules; or
  - (ii) comply with an order of the Court in the proceeding; or
  - (iii) attend a hearing in the proceeding; or
  - (iv) defend the proceeding with due diligence.

### 5.10 Orders on default—applicant

If an applicant is in default, the Court may:

- (a) stay or dismiss the proceeding for the whole or any part of the relief claimed by the applicant:
  - (i) immediately; or
  - (ii) on conditions specified in the order; or
- (b) order that a step in the proceeding be taken within a specified time; or
- (c) if the applicant does not take a step in the time mentioned in paragraph (b)—stay or dismiss the proceeding for the whole or any part of the relief claimed by the applicant.

### 5.11 Orders on default—respondent

If a respondent is in default, the Court may:

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

## Rule 5.12

---

- (b) if the claim against the respondent is for a debt or liquidated damages—  
give 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 8.04, or if the Court has ordered that the proceeding continue on pleadings—give 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
- (d) give judgment against the respondent for damages to be assessed, or any other order; or
- (e) direct that an order mentioned in paragraph (b), (c) or (d) is 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 1.07).

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

### **5.12 Court's powers in relation to contempt etc not affected**

This Division does not limit the power of the Court to punish for contempt or impose sanctions for failure to comply with an order.

Rule 6.01

---

## 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 section 240 of the Act must make the request in writing and include in the request:

- (a) the applicant's name and address; and
- (b) the person's interest in making the request.

Note: Section 240 of the Act allows a person to ask the Chief Executive Officer of the Court for a certificate stating whether a person named in the request is or has been the subject of a vexatious proceedings order.

- (2) The request must be lodged in the registry in which the vexatious proceedings order was made.
- (3) The certificate must state:
  - (a) the name of the person subject to the vexatious proceedings order; and
  - (b) the name of the person who applied for the vexatious proceedings order (unless publication or disclosure of the person's name is restricted); 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 242(2) of the Act for leave to institute a proceeding that is subject to a vexatious proceedings order must be made without notice to any other person.

Note 1: A person who is subject to a vexatious proceedings order may apply to the Court for leave to institute a proceeding (see subsection 242(2) of the Act).

Note 2: For the contents of the affidavit that must be filed with the application, see subsection 242(3) of the Act.

Rule 6.04

---

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

**6.04 Use of communication device or recording device in place where hearing taking place**

- (1) 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.
- (2) 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.
- (3) 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 the Rules (see rule 1.09).

**6.05 Contempt**

Rule 6.04 does not limit the powers of the Court to punish for contempt.



## Chapter 2—Proceedings generally

### Part 7—Orders before start of a proceeding

#### Division 7.1—General

##### 7.01 Application for 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, with or without notice, as if the prospective applicant had started the proceeding and the application had been made in the proceeding.
- (2) To the extent relevant, the applicable Federal Court Rules will apply in relation to the following matters:
  - (a) injunctions and preservation of property;
  - (b) approval of an agreement with a person who needs a litigation guardian;
  - (c) preliminary discovery; and
  - (d) appointment of receivers.
- (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.

## Rule 7.02

---

### Division 7.2—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.

#### 7.02 Freezing order

- (1) The Court may make an order (a **freezing order**) 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 made without notice to a respondent.
- (3) 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: For **without notice**, see rule 1.19.

#### 7.03 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 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.

#### 7.04 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.

#### 7.05 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:
    - (i) by the Court; or
    - (ii) for a judgment to which subrule (2) applies—by 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.

## Rule 7.06

---

- (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, and under that process the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.
- (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.

### 7.06 Jurisdiction

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

### 7.07 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

## Rule 7.08

---

resident in Australia) if any of the assets to which the order relates are within the jurisdiction of the Court.

Note: For service outside Australia, see subrule 1.05(2) and the Federal Court Rules, Division 10.4.

### 7.08 Costs

- (1) The Court may make any order as to costs it considers appropriate in relation to an order made under this Division.
- (2) Without limiting 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.

DRAFT

## Rule 7.09

---

### Division 7.3—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.

#### 7.09 Search order

- (1) The Court may make an order (a **search order**) in a proceeding or in anticipation of a proceeding in the Court to secure or preserve evidence that is, or may be, relevant to an issue in the proceeding or anticipated proceeding.
- (2) The search order may require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.
- (3) The Court may make a search order without notice to the respondent.

Note: For **without notice**, see rule 1.19.

#### 7.10 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 that material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the Court.

#### 7.11 Jurisdiction

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

#### 7.12 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

## Rule 7.13

---

- (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 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.

### 7.13 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*):
  - (a) to supervise the execution of the order; and
  - (b) to do any other act or thing 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.
- (3) The Court may appoint a different independent lawyer or lawyers to supervise execution of the order at other premises.
- (4) The Court may order that each independent lawyer have power to do any other act or thing in relation to the order that the Court considers appropriate.

### 7.14 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 subrule (1), an order for costs includes an order for the costs of any person affected by a search order.

## Part 8—Starting a proceeding

### Division 8.1—Originating applications

#### 8.01 Starting a proceeding—originating application

- (1) A person who wants to start a proceeding must file an originating application in the approved form.
- (2) An originating application must include:
  - (a) the applicant's name and address; and
  - (b) the applicant's address for service.
- (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 rule 1.19 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 in the proceeding must, when filing the originating application, file the applicant's genuine steps statement in the approved form.
- (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: For **Civil Dispute Resolution Act**, see rule 1.19.

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

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

**Rule 8.04**

---

<b>Item</b>	<b>Relief sought</b>	<b>Details</b>
1	Interlocutory relief	The interlocutory order sought
2	An injunction	The order sought
3	A declaration	The declaration sought
4	Damages	To the extent possible, the amount of damages claimed
5	Exemplary damages	The claim for exemplary damages

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

**8.04 Accompanying document for originating application**

- (1) An originating application must be accompanied by:
- (a) unless paragraph (b) or (c) applies:
    - (i) an affidavit; or
    - (ii) a statement of claim or points of claim; or
  - (b) if a practice direction issued by the Chief Judge requires the originating application to be accompanied by an alternative accompanying document—the alternative accompanying document; or
  - (c) if a practice direction issued by the Chief Judge permits the originating application to be accompanied by an alternative accompanying document—the alternative accompanying document, an affidavit or a statement of claim or points of claim.

**Note 1:** A practice direction issued by the Chief Judge 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 first court date and a place for hearing and will 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.

- (2) Subrule (1) does not apply to:
- (a) an application filed in accordance with rule 29.02; or
  - (b) an application filed in the Fair Work Division in accordance with rule 31.03, 31.04, 31.05, 31.06, 31.07, 31.09 or 31.11.
- (3) An affidavit referred to in subrule (1) 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 13.1.

**Note 2:** For the content of an alternative accompanying document, see rule 13.14.

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



## Rule 8.05

---

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

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

### 8.05 Service of originating documents

- (1) The applicant must serve a copy of the following personally on each respondent named in the originating application:
  - (a) the originating application; and
  - (b) each other document required to accompany the application by rule 8.04 or any other rule of the Court.

Note: Division 10.1 deals with personal service. For service outside Australia, see subrule 1.05(2) and the Federal Court Rules, Division 10.4.

- (2) The applicant must serve the documents described in subrule (1) as soon as practicable and at least 5 days before the first court date.

Note 1: The Court may extend or shorten the time for service (see rule 1.14).

Note 2: Documents should generally be served as soon as practicable after filing (which may be immediately).

- (3) A document must be served within 12 months after filing.

Note: The Court may dispense with compliance with the Rules and may make orders inconsistent with the Rules (see rules 1.09 and 1.10).

### 8.06 Changing first court date

- (1) If an originating application has not been served, the applicant may ask a Registrar to change the first court date fixed in the originating application.
- (2) The applicant may apply to change the first court date by lodging an amended originating application electronically with the Court for filing, in accordance with rule 2.12.

Note: **File** is defined in rule 1.19 as meaning file and serve.

- (3) If:
  - (a) the applicant applies to change the first court date otherwise than by lodging an amended originating application electronically with the Court for filing; and
  - (b) a Registrar changes the first court date;the applicant must change the court date endorsed on the copy of the application that is to be served.

Rule 8.07

---

## Division 8.2—Notice of constitutional matter

### 8.07 Notice of constitutional matter

- (1) A party to a proceeding who becomes aware that the proceeding involves a matter that arises under the Constitution or involves its interpretation, within the meaning of section 78B of the *Judiciary Act 1903*, must file a notice of a constitutional matter in the proper registry.
- (2) The notice may be in the form prescribed for the purpose under the Federal Court Rules and must state:
  - (a) the nature of the matter; and
  - (b) the facts showing that section 78B of the *Judiciary Act 1903* applies.

### 8.08 Service of notice

- (1) The party filing the notice must:
  - (a) serve a copy of the notice on:
    - (i) the Attorneys-General of the Commonwealth and each of the States and Territories; 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—at least 14 days before the date fixed for the hearing; or
  - (d) in any other case—within the time that the Court directs.

Note 1: For the Court's powers when a constitutional matter arises, see sections 78B(2) and (5) of the *Judiciary Act 1903*.

Note 2: Section 78B of the *Judiciary Act 1903* provides that once a court becomes aware that a proceeding involves a matter referred to in that section, the court must not proceed to determine the proceeding until it is satisfied that notice of the proceeding has been given to the Attorneys-General of the Commonwealth and of the States and Territories.

Rule 8.09

---

## Division 8.3—Amendment of originating application

### 8.09 Amendment generally

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, whether 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 1: For the Court's power to make rules about amending a document, see subsection 219(2) of the Act.

Note 2: For paragraph (b) and the avoidance of multiplicity of proceedings, see section 139 of the Act.

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

### 8.10 Amendment after limitation period

- (1) An applicant may apply to the Court for leave to amend an originating application in accordance with paragraph 8.09(c), (d) or (e) or subparagraph (g)(i) even if the application is made after the end of any relevant limitation period applying at the date the proceeding was started.
- (2) However, an applicant must not apply to amend an originating application in accordance with subparagraph 8.09(g)(ii) after the time within which any statute that limits the time within which a proceeding may be started has expired.

### 8.11 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 taken to have started for that person on the day the application is amended.

### 8.12 Procedure for amending an originating application

An applicant given leave to amend an originating application must file an amended application:

## Rule 8.13

---

- (a) with the amendment clearly marked; and
- (b) endorsed with:
  - (i) the date of the order giving leave to amend; and
  - (ii) the date of the amendment.

### **8.13 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 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 application and serving the application.

### **8.14 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 application on the parties on whom the originating application was served.

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

Rule 8.15

---

## Division 8.4—Responding to originating application

### 8.15 Response to originating application

- (1) A respondent to an originating application who seeks to do any of the following in response to the application must file a response in the approved form:
  - (a) indicate consent to an order sought by the applicant;
  - (b) ask the Court to dismiss or set aside the application;
  - (c) make a cross-claim.
- (2) A response must include the following:
  - (a) the respondent's name and address;
  - (b) the respondent's address for service.
- (3) A response making a cross-claim must state:
  - (a) the relief claimed and the basis on which the relief is 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.
- (4) If a statement of claim or points of claim are filed with the originating application, a respondent who wishes to defend the proceeding:
  - (a) must file a defence or points of defence with the response; and
  - (b) may make a cross-claim.
- (5) Subject to subrule (6), if an affidavit is filed with the originating application, a respondent:
  - (a) must file an affidavit with the response, stating the facts relied on; and
  - (b) may make a cross-claim.
- (6) An affidavit is not required if the respondent is indicating consent to the orders sought by the applicant.
- (7) A response must be filed within 28 days after service of the originating application to which it relates.

Note 1: **File** is defined in rule 1.19 as meaning file and serve.

Note 2: A response to an application under Part 25 (migration proceedings) must comply with the additional requirements of rule 25.05.

Note 3: 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.

### 8.16 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 the approved form within 14 days after the applicant's originating application is served.
- (2) The respondent's genuine steps statement must comply with section 7 of the Civil Dispute Resolution Act.

## Rule 8.16

---

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

Note 1: For *Civil Dispute Resolution Act*, see rule 1.19.

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

DRAFT

Rule 8.17

---

## Division 8.5—Making a cross-claim

### 8.17 Cross-claim by respondent when filing a response

- (1) 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 that is related to the subject of the proceeding.

- (2) To make a cross-claim, the respondent must file a response in accordance with rule 8.15.

Note 1: Rule 8.15 requires a respondent who wants to make a cross-claim to file a response within 28 days after the originating application is served.

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.

### 8.18 Cross-claim by respondent after filing a response

- (1) A respondent who wants to make a cross-claim after filing a response that does not make a cross-claim must apply to the Court for leave to file an amended response.
- (2) An application under subrule (1) must be accompanied by an affidavit stating:
  - (a) briefly but specifically, the nature of the cross-claim and its relationship to the subject matter of the proceeding; and
  - (b) why the cross-claim was not made in accordance with rule 8.15.

### 8.19 Statement of cross-claim or affidavit to accompany response

- (1) If a statement of claim or points of claim or an alternative accompanying document referred to in rule 8.04 is filed with the originating application, a cross-claimant must file a statement of cross-claim or points of cross-claim with the response.

Note: Division 13.1 provides for the content of a statement of claim.

- (2) If an affidavit is filed with the originating application, a cross-claimant must file an affidavit with the response, stating 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.
- (3) If an order has been made in the principal proceeding that the principal proceeding continue on pleadings, a cross-claimant must file a statement of cross-claim with the response.

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 13.02.

## Rule 8.20

---

### 8.20 Relief sought in cross-claim

- (1) A cross-claim claiming relief of the kind mentioned in column 2 of the 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	Damages	To the extent possible, the amount of damages claimed
5	Exemplary damages	The claim for exemplary damages

- (2) A cross-claim need not include a claim for costs.

### 8.21 Service on cross-respondent

- (1) A cross-claimant must, as soon as reasonably practicable, serve on each cross-respondent:
- (a) a copy of the response making the cross-claim; and
  - (b) any documents accompanying the response; and
  - (c) if a person is made a party to the proceeding by the making of the cross-claim—the originating application and any pleadings or documents already filed in the proceeding.
- (2) If a cross-respondent has not filed a notice of address for service, the documents referred to in subrule (1) must be served personally.
- (3) Rule 10.15 does not apply to the service of a response making a cross-claim.

Note: Rule 10.15 provides for filing to have effect as service in certain circumstances.

### 8.22 Cross-respondent's reply to cross-claim

- (1) A cross-respondent may file a reply to the response making a cross-claim in accordance with the approved form.
- (2) A reply must be filed within 14 days after the cross-respondent is served with the response and cross-claim to which the reply relates.

### 8.23 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



## Rule 8.24

---

- (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) To give 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.

### 8.24 Separate proceeding in relation to cross-claim

A cross-claim may proceed even if:

- (a) an order has been 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.

### 8.25 Cross-claim for contribution or indemnity

If a cross-claimant makes a cross-claim for contribution or indemnity 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.

### 8.26 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.

### 8.27 Co-cross-respondents

If a cross-claimant claims relief against 2 or more cross-respondents, and is allowed to require a cross-respondent to give discovery under Part 16, 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.

Rule 8.28

---

## Division 8.6—Amending a response, including a cross-claim

### 8.28 Amendment generally

- (1) A respondent may apply to the Court for leave to amend a response 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 response; 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 acting in the proceeding, whether 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 139 of the Act.

- (2) A respondent may apply to the Court for leave to amend a response 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 respondent must not apply to amend a response 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: For *cross-claim*, see rule 1.19.

Note 2: For the Court's power to make rules amending a document, see subsection 219(2) of the Act.

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

### 8.29 Procedure for amending a response

A respondent given leave to amend a response must file an amended response:

- (a) with the amendments clearly marked; and
- (b) endorsed with:
  - (i) the date of the order giving leave to amend; and
  - (ii) the date of the amendment.

## Rule 8.30

---

### 8.30 Time for amending response under Court order

An order that a respondent be permitted to amend a response ceases to have effect unless the respondent amends the response 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 respondent to amend a response, the Court may also make orders about the procedure for serving the response.

### 8.31 Service by respondent of amended response

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

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

## 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.

## Rule 9.05

---

### 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 can be heard and finally determined; or
    - (iii) who should be joined as a party 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 hearing 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.

## Rule 9.09

---

### 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 to join the person as a party or to remove 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 Intervenors

- (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 the Court may determine.
- (2) The Court may have regard to:
  - (a) whether the intervener's contribution will be useful and different from the parties' contribution to the proceeding; and
  - (b) whether the intervention might unreasonably interfere with the parties' ability to conduct the proceeding as they wish; and
  - (c) any other matter that the Court considers relevant.

Note: The Court may give leave subject to conditions (see rule 1.08).

Rule 9.13

---

## Division 9.2—Partnerships

### 9.13 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 in the partnership name against 2 or more persons who it is claimed are liable as partners.
- (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: For *partnership name*, see rule 1.19.

Note 2: For service of an originating application 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 10.23).

### 9.14 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: For *description*, see rule 1.19.

Note 2: See Part 10 in relation to service.

### 9.15 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: For enforcement proceedings involving partnerships, see Division 33.2.

## Rule 9.16

---

### 9.16 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.

### 9.17 Response to be in partnership name

- (1) Despite rule 9.16, if a proceeding has been brought against a partnership, a partner must not file a response in the partner's name.
- (2) However, the partner may file a response in the partnership name.
- (3) If, under subrule (2), 2 or more partners file a response and the responses 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.

### 9.18 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 33.12. For execution of judgment against an individual partner, see rule 33.13.



Rule 9.19

---

## Division 9.3—Business name proceedings

### 9.19 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 9.2 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: For *business name* and *description*, see rule 1.19.

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 10.24).

### 9.20 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 9.19(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.

### 9.21 Proceeding under this Division or Division 9.2

A party to a proceeding may proceed under this Division or Division 9.2 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 10.24; 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 10.24 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.

## Rule 9.22

---

### 9.22 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: For *description*, see rule 1.19.

Note 2: Amendments to originating applications are dealt with in Division 8.3, amendments to responses are dealt with in Division 8.6 and amendments to pleadings are dealt with in Division 13.5.

- (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 who needs a litigation guardian, see rule 10.07.

- (3) Nothing in this rule prevents a party from amending a document under rule 13.24 or 13.26.

### 9.23 Variation of order

- (1) Despite rule 33.15, 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 33.15 deals with enforcement against a business name.

### 9.24 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.

Rule 9.24

---

- (2) If the Court is satisfied of the matters mentioned in paragraph (1)(b), the Court may order the other person:
- (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: For *description*, see rule 1.19.

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

Note: For *conduct money*, see rule 1.19.

DRAFT

Rule 9.25

---

## Division 9.4—Litigation guardians

### 9.25 Person who needs a litigation guardian

- (1) For the purposes of these Rules, a person needs a litigation guardian in relation to a proceeding if the person:
  - (a) does not understand the nature and possible consequences of the proceeding; or
  - (b) is not capable of adequately conducting, or giving adequate instruction for the conduct of, the proceeding; or
  - (c) is the subject of an administration or guardianship or similar order made under a Commonwealth, State or Territory law.
- (2) A minor in a proceeding is taken to need a litigation guardian in relation to the proceeding.

Note: The Court may dispense with compliance with the Rules and may make orders inconsistent with the Rules (see rules 1.09 and 1.10).

### 9.26 Proceeding by or against person who needs a litigation guardian

A person who needs a litigation guardian may start or defend a proceeding only by the person's litigation guardian.

Note: For *litigation guardian*, see rule 1.19.

### 9.27 Persons who may be a litigation guardian

- (1) A person may consent to being appointed a litigation guardian unless the person is:
  - (a) a person who needs a litigation guardian;
  - (b) a person who has a different interest in the proceeding to the person who needs a litigation guardian;
  - (c) a corporation or organisation.
- (2) However, the following corporations or organisations may be a litigation guardian:
  - (a) the NSW 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 and Guardian 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.

## Rule 9.28

---

### 9.28 Appointment of litigation guardian by the Court

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

Note: *Interested person* is defined in rule 1.19.

- (2) A copy of the application must be served on the person who needs a litigation guardian.
- (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 who needs a litigation guardian and giving details of the basis for the appointment; and
  - (b) that the proposed litigation guardian:
    - (i) has consented, in writing, to the appointment; and
    - (ii) is a person who, under rule 9.27, may be appointed as a litigation guardian.

Note: For service on a person who needs a litigation guardian, see rule 10.07.

### 9.29 Manager of the affairs of a party

- (1) In this rule:

*manager of the affairs of a party* includes a person who, by or under a Commonwealth, State or Territory law:

- (a) has been appointed the administrator or guardian or similar of a person who needs a litigation guardian; or
  - (b) is authorised to conduct legal proceedings in the name of, or for, a person who needs a litigation guardian.
- (2) A person who is a manager of the affairs of a party is entitled to be the litigation guardian in any proceeding to which the authority extends.
- (3) The Attorney-General may appoint in writing a person to be a manager of the affairs of a party for the purposes of this rule, either generally or for a particular person.
- (4) A manager of the affairs of a party becomes the litigation guardian of a person who needs a litigation guardian in a proceeding if the manager of the affairs of the party files an affidavit of consent in relation to the person.

### 9.30 Consent to be filed

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

- (a) the litigation guardian's consent;
  - (b) a certificate, including a statement that the litigation guardian has no interest in the proceeding that is adverse to the interest of the person who needs a litigation guardian, signed by:

## Rule 9.31

---

- (i) if the litigation guardian is a lawyer—the litigation guardian; and
- (ii) if the litigation guardian is not a lawyer—the litigation guardian’s lawyer.

### 9.31 Removal of litigation guardian by the Court

- (1) The following persons may apply to the Court for an order that the litigation guardian be removed:
  - (a) a party to the proceeding;
  - (b) the litigation guardian;
  - (c) the person being represented if that person no longer needs a litigation guardian;
  - (d) an interested person in relation to a person who needs a litigation guardian.

Note: **Interested person**, in relation to a person who needs a litigation guardian, is defined in rule 1.19.

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

### 9.32 Conduct of proceeding

- (1) Anything in a proceeding that is required or authorised by these Rules to be done by a person who needs a litigation guardian may be done only by the person’s litigation guardian.

Note: A litigation guardian who is defending a proceeding in that capacity may bring a cross-claim as part of the response under rule 8.15.

- (2) If a litigation guardian (the **first guardian**) has been appointed for a person who needs a litigation guardian, no other litigation guardian may be appointed for the person unless the first guardian dies or is removed.

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

### 9.33 No deemed admissions

Rule 13.08 does not apply to a person who needs a litigation guardian.

Note: Rule 13.08 deals with deemed admissions.

### 9.34 Discovery and interrogatories

Part 16 applies to a person who needs a litigation guardian and the person’s litigation guardian.

Note: Part 16 deals with discovery, inspection of documents and interrogatories.

### 9.35 Payment into Court

A litigation guardian must not:

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

## Rule 9.36

---

- (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 the Rules (see rule 1.09).

### 9.36 Compromise or settlement of matter in proceeding

- (1) If a litigation guardian agrees to the compromise or settlement of any matter in dispute in a proceeding, the litigation guardian 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 did not need a litigation guardian; and
  - (b) the litigation guardian had made the agreement as the person's agent.
- (3) As a condition of approval, the Court may require that any money or other property payable for the benefit of a person who needs a litigation guardian 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 1.08).

- (4) If the Court does not approve the agreement, the agreement is not binding on the person who needs a litigation guardian.

### 9.37 Application by litigation guardian for approval of agreement

- (1) An application by a litigation guardian for approval of an agreement must be made by filing an interlocutory application.
- (2) The interlocutory application must be accompanied by:
  - (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 who needs a litigation guardian.

### 9.38 Costs and expenses of litigation guardian

The Court may make orders for the payment of the costs and expenses of a litigation guardian (including the costs of an application for the appointment of the litigation guardian):

- (a) by a party; or
- (b) from the income or assets of the person for whom the litigation guardian is appointed.

Rule 10.01

---

## Part 10—Service

### Division 10.1—Personal service

Note 1: For documents that must be served personally, see rules 8.05, 8.21, 9.23, 10.08, 18.10, 27.12, 33.07 and 34.06.

Note 2: For service outside Australia, see subrule 1.05(2) and the Federal Court Rules, Division 10.4.

#### 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 subsection 109X(1) of the *Corporations Act 2001*.

Note: Subsection 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; or
- (e) if a restructuring practitioner for the company has been appointed—leaving it at, or posting it to, the address of the restructuring practitioner 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:

- (a) at the office of the organisation shown in the records of the organisation lodged with the Fair Work Commission in accordance with section 268 of the Registered Organisations Act; and
- (b) by leaving the document with a person who:
  - (i) is apparently an adult; and



## Rule 10.05

---

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

Note: For *organisation* and *Registered Organisations Act*, see rule 1.19.

### 10.05 Service on partnership

- (1) A document that is to be served personally on a partnership must be served:
  - (a) on 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; or.
  - (c) if there is a registered office of the partnership—at that office.
- (2) A document served on a partner is taken to be served 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 on a person who needs a litigation guardian

- (1) If a person has a litigation guardian, a document that must be served personally on the person must be served on the litigation guardian.
- (2) If the person needs a litigation guardian only because of minority and does not have a litigation guardian, the document must be served:
  - (a) if the minor is at least 16 and does not otherwise need a litigation guardian:
    - (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.

## Rule 10.08

---

- (3) If the person needs a litigation guardian for a reason other than minority and does not have a litigation guardian, the document must be served:
  - (a) on the person’s guardian; or
  - (b) if the person has no guardian:
    - (i) on a person with whom the person lives; or
    - (ii) on a person who is responsible for the care of the person.
- (4) For the purposes of subparagraphs (2)(b)(ii) and (3)(b)(ii), a person in direct charge of a hospital or nursing home is taken to have the care of a person who is a patient in the hospital or nursing home.
- (5) If the person who needs a litigation guardian cannot be served in any of the ways referred to 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.
- (6) The application may be made before or after the document has been given to some other person.

### 10.08 Personal service on a person who needs a litigation guardian

- (1) In addition to rule 10.07, the following documents must be served personally on a person who needs a litigation guardian:
  - (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) for discovery; or
  - (b) to answer interrogatories; or
  - (c) to produce documents for inspection.

Note: For *litigation guardian* and *person who needs a litigation guardian*, see rule 1.19.

### 10.09 Deemed service of originating application

Unless an application has been made under rule 12.01, if a respondent files a notice of address for service or a response, 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.

### 10.10 Refusal to accept document served personally

- (1) If a person refuses to accept a document that is required to be served personally, the document is taken to have been served personally if the person serving the document:

**Rule 10.10**

---

- (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.

DRAFT

Rule 10.11

---

## Division 10.2—Service other than by personal service

### 10.11 Identity of person served

For the purpose of proving service, a statement by a person:

- (a) of the person's identity; or
- (b) 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.

### 10.12 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.

### 10.13 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 referred to 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: For *without notice*, see rule 1.19.

### 10.14 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; or
- (d) dispensing with service.

Note: For *without notice*, see rule 1.19.

## Rule 10.15

---

### 10.15 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 that the document was not delivered.

Note: **Proper address**, for a person to be served, is defined in rule 1.19.

### 10.16 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 10.19.

### 10.17 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 electronically or by fax.

### 10.18 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 referred to 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 referred to in the agreement, the document may be served in accordance with the agreement.

## Rule 10.19

---

### Division 10.3—Ordinary service

#### 10.19 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 email:
  - (i) to the email address notified in the party's notice of address for service; or
  - (ii) if the party has not provided an email address—to the party's usual or last-known email address;
- (c) 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 10.21;
- (d) by sending the document by pre-paid post addressed to the person at the person's proper address;
- (e) if the person has filed a notice authorising service by fax—by sending the document to the fax number.

Note: **Proper address**, for a person to be served, is defined in rule 1.19.

#### 10.20 Time of service

A document that is served on a person under rule 10.19 is taken to be served on the person:

- (a) if the document was sent electronically—on the next business day after the document was sent; or
- (b) if the document was sent by pre-paid post—on the seventh business day after the document was sent; or
- (c) if the document was sent by fax—on the next business day after the document was sent.

## Rule 10.21

---

### Division 10.4—Address for service

#### 10.21 Address for service

- (1) A party to a proceeding must give an address for service.
- (2) A party may give an address for service:
  - (a) by filing a relevant document that includes an address for service; or
  - (b) by filing a notice of address for service in the approved form.
- (3) The address for service must contain the following information:
  - (a) the address of a place in Australia at which, during ordinary business hours, a document may be left for the party and to which a document may be posted to the party; and
  - (b) a current email address for the party; and
  - (c) a telephone number at which the party may be contacted during normal business hours.
- (4) 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 lawyer's address.
- (5) 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.
- (6) If the party is not represented by a lawyer, 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 is to be by email.

#### 10.22 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 subrule 4.01(2)).

Note 3: The Court may dispense with compliance with the Rules (see rule 1.09).

#### 10.23 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 response in a proceeding against a partnership, see rule 9.17.

## Rule 10.24

---

### 10.24 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 at the date specified in the originating application (if any) when the cause of action arose, the person carried on business under the business name.

### 10.25 Receivers

A person who is appointed as a receiver must file a notice of address for service within 7 days after the appointment.

### 10.26 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 court date fixed in the originating application and before filing any other document in the proceeding.

### 10.27 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 the approved form.

### 10.28 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 sealed copy of the notice on each other party to the proceeding.

Note 1: The seal of the Court will be affixed to the notice of address for service (see paragraph 2.02(2)(a)).

Note 2: A document marked with the Court stamp is as valid and effectual as if sealed with the Court seal (see subsection 179(2) of the Act).

### 10.29 Change of address for service

- (1) If a party’s address for service changes during a proceeding, the party must:
  - (a) file a notice of address for service; and
  - (b) serve the notice on each other party.
- (2) The party must file the notice referred to in subrule (1) within 7 days after the change.



Rule 10.30

---

**Division 10.5—Evidence of service**

**10.30 Affidavit of service**

- (1) Evidence of service must be given by affidavit.
- (2) The party providing evidence of service may use the approved form.

DRAFT

## **Part 11—Submitting notices**

### **11.01 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 may file a submitting notice in the approved form.
- (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.
- (3) A submitting notice must be filed before the first court date.
- (4) A party who has filed a submitting notice may apply to the Court for leave to withdraw the notice.
- (5) An application under subrule (4) 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.

Rule 12.01

---

## **Part 12—Jurisdiction—setting aside originating application**

### **12.01 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 served on the respondent.
- (2) If a respondent seeks an order under paragraph (1)(b) or (c), the application must be accompanied by an affidavit stating:
  - (a) the date on which the originating application was served or purported to be served on the respondent; and
  - (b) details of the service.
- (3) A respondent applying for an order under subrule (1) must file a response and affidavit at the same time that the respondent files a notice of address for service.

Rule 13.01

---

## Part 13—Pleadings

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.

### Division 13.1—General

#### 13.01 Application of Division 13.1

- (1) This Division applies if a proceeding is started by an originating application supported by a statement of claim
- (2) Subject to rule 13.14, this Division does not apply in relation to a pleading that is an alternative accompanying document referred to in rule 8.04.

#### 13.02 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 8.04 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.

#### 13.03 Content of pleadings—general

- (1) A pleading must be as brief as the nature of the case permits.

Note: The overarching purpose of these Rules is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible (see section 190 of the Act and rule 1.04).
- (2) A pleading must:
  - (a) be divided into consecutively numbered paragraphs, each, as far as practicable, dealing with a separate matter; and
  - (b) identify the issues that the party wants the Court to resolve; and
  - (c) 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
  - (d) state the provisions of any statute relied on; and

## Rule 13.04

---

- (e) state the specific relief sought or claimed.
- (3) 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
  - (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.
- (4) A pleading may raise a point of law.
- (5) A party is not entitled to seek any additional relief to the relief that is claimed in the originating application.
- (6) A party may plead a fact or matter that has occurred or arisen since the proceeding started.

### 13.04 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.

### 13.05 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.

### 13.06 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.

### 13.07 Inconsistent allegations or claims

A party must not plead inconsistent allegations of fact or inconsistent grounds or claims except as alternatives.

## Rule 13.08

---

### 13.08 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.
- (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.

### 13.09 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.

### 13.10 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 19.

### 13.11 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.

### 13.12 Joinder of issue

- (1) If no reply to a response is filed, a joinder of issue is implied in relation to any allegation of fact in the response 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 issue 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.

## Rule 13.13

---

### **13.13 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 response 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.

### **13.14 Alternative accompanying documents**

- (1) The following provisions apply to an alternative accompanying document referred to in rule 8.04:
  - (a) paragraphs 13.02(a), (b) and (d);
  - (b) subrule 13.03(2).
- (2) The content of such an alternative accompanying document must also comply with any practice directions issued by the Chief Judge.

## **Division 13.2—Striking out pleadings**

### **13.15 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) does not 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.



Rule 13.16

---

**Division 13.3—Progress of pleadings**

**13.16 Application of Division 13.3**

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 continue on pleadings.

**13.17 Reply**

If a respondent files a response containing a cross-claim and the applicant wants to plead a matter of fact or point of law of the kind mentioned in rule 13.09, the applicant must file a reply in the approved form within 14 days after being served with the response.

DRAFT

Rule 13.18

---

## Division 13.4—Particulars

### 13.18 Application of Division 13.4

This Division does not apply in relation to a pleading that is an alternative accompanying document referred to in rule 8.04.

### 13.19 General

- (1) A party must state in a pleading, or in a document filed with the pleading, the necessary particulars of each claim, defence or other matter pleaded by the party.

Note: See rule 13.23.

- (2) Nothing in rules 13.20 to 13.23 is intended to limit subrule (1).

Note 1: The object of particulars is to limit the generality of the pleadings and:

- (a) inform an opposing party of the nature of the case the party has to meet; and
- (b) prevent an opposing party being taken by surprise at the trial; and
- (c) enable 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: If particulars are necessary, they should be contained in the pleading but may be separately stated if sought by the opposite party or ordered by the Court.

### 13.20 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.

### 13.21 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.

Rule 13.22

---

**13.22 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.

**13.23 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 a response must satisfy the Court that an order is necessary or desirable to enable the respondent to plead.

Rule 13.24

---

## Division 13.5—Amendment of pleadings

### 13.24 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 13.13.

### 13.25 Disallowance of amendment of pleading

- (1) If a party amends a pleading under rule 13.24(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 13.24(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.

### 13.26 Application for leave to amend

- (1) Unless rule 13.24 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

## Rule 13.27

---

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.

### 13.27 Date on which amendment takes effect

An amendment of a pleading that is made under rule 13.24 takes effect on the date the amendment is made.

### 13.28 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 response 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 13.24.
- (4) The respondent must file an amended response within 28 days after the respondent is served with a copy of the amended statement of claim.

### 13.29 Consequential amendment of reply

- (1) The applicant may amend the reply if:
  - (a) a respondent amends the response; and
  - (b) the applicant has filed a reply before being served with a copy of the amended response.
- (2) The amended reply must identify the response 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 13.24.
- (4) The applicant must file an amended reply within 14 days after the applicant is served with a copy of the amended response.

### 13.30 Implied joinder of issue after amendment

- (1) If a party does not amend a response or reply when entitled to do so under rule 13.28 or 13.29, the party's existing defence or reply operates as a pleading in answer to the other party's amended pleading.
- (2) Rule 13.12 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.

### 13.31 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:

## Rule 13.32

---

- (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.

### **13.32 Procedure for making amendment to pleading**

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 file an amended pleading:

- (a) with the amendments clearly marked; and
- (b) if the pleading is amended by order—endorsed with:
  - (i) the date of the order; and
  - (ii) the date of the amendment.

### **13.33 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.

Rule 14.01

---

## Part 14—Interlocutory applications

### 14.01 Interlocutory application

- (1) Unless the context otherwise requires, a party who wants to apply for an order in a proceeding that has already started must file an interlocutory application in the approved form.
- (2) The interlocutory application must:
  - (a) state, briefly but specifically, each order that is sought; and
  - (b) if appropriate, be accompanied by an affidavit.
- (3) The party filing the interlocutory application must serve the application and any accompanying affidavit on any other party at least 3 days before the date fixed for the hearing.
- (4) However, a party may make an oral application for an interlocutory order at a hearing.

Note 1: For *interlocutory application*, see rule 1.19.

Note 2: *File* is defined in rule 1.19 as meaning file and serve.

Note 3: On the filing of an interlocutory application, a Registrar will fix a date and place for hearing and will endorse those details on the interlocutory application for service.

### 14.02 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, and their authenticity 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.

### 14.03 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 a party.

Rule 14.04

---

**14.04 Hearing and determination of interlocutory application—absence of party**

The Court may hear and determine an interlocutory application 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.

**Note:** If the party making the interlocutory application is absent, the Court may dismiss the application (see rule 22.04).

DRAFT



Rule 15.01

---

## Part 15—Security for costs

### 15.01 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 does not 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.

- (4) In this rule:

***applicant*** includes a cross-claimant.

***respondent*** includes a cross-respondent.

Note: For the power of the Court to order an applicant in a proceeding to give security for the payment of costs and for other matters relating to security for costs, see section 215 of the Act.

Rule 16.01

---

## Part 16—Discovery, inspection of documents and interrogatories

### Division 16.1—General

#### 16.01 Declaration to allow discovery

The Court may make a declaration under subsection 176(2) of the Act to allow discovery.

Note 1: Discovery is not allowed in relation to a proceeding to which these Rules apply unless the Court declares that it is appropriate in the interests of the administration of justice (see subsections 176(2) and (3) of the Act).

Note 2: The overarching purpose of case management in the Court is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible. The parties and their lawyers must cooperate with the Court, and among themselves, to assist in achieving the overarching purpose (see sections 6, 190 and 191 of the Act).

#### 16.02 Provision of documents without Court order

A party may provide documents at the request of another party without a Court order for discovery.

Note: For *party*, see rule 1.19.

#### 16.03 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.

#### 16.04 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.

#### 16.05 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.

Rule 16.06

---

## Division 16.2—Discovery

Note: A party should have regard to any practice direction for discovery.

### 16.06 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 the proposed scope of the discovery.
- (3) An application may not be made until 14 days after the date by which all respondents must have filed a response.

Note: A response must be filed within 28 days after service of the originating application to which it relates (see subrule 8.15(7)).

- (4) The Court may order that discovery be given electronically.
- (5) If a party who must give discovery wants an order for the cost of discovery, 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.

### 16.07 Order for discovery

- (1) The Court may make an order for discovery:
  - (a) generally; or
  - (b) in relation to particular classes of documents; or
  - (c) in relation to particular issues; or
  - (d) by a specified date.
- (2) If the Court orders a party to give 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.
- (3) 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: For *control*, see rule 1.19.

### 16.08 Claim of privilege

- (1) If a party claims that a document is privileged from production, the Court may inspect the document to determine whether the claim is valid.

## Rule 16.09

---

- (2) 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.

### 16.09 Giving discovery

- (1) A party gives discovery by serving on all parties to the proceeding a list of documents and accompanying affidavit, in accordance with rule 16.10.
- (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: In its order, the Court will specify the time for compliance.

### 16.10 List of documents

- (1) A list of documents 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.
- (2) A person with knowledge of the relevant facts must file an affidavit verifying the list of documents.

Note: For *control*, see rule 1.19.

### 16.11 Order for discovery for particular documents

- (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) In seeking an order under subrule (1), the first party must identify the document or category of documents as precisely as possible.

Rule 16.12

---

## Division 16.3—Production for inspection

### 16.12 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 for the inspection of any document mentioned in a pleading, affidavit or list of documents filed by the second party.
- (2) Within 4 days after being served with the notice to produce, the second party must 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: For *control*, see rule 1.19.

### 16.13 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 the document be produced for inspection electronically.
- (3) The first party may inspect a document produced under an order:
  - (a) at the time and place specified in the order; or
  - (b) at a time and place agreed by the parties.

### 16.14 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 the document subject to any reasonable conditions imposed by the person producing the document.

### 16.15 Production to Court

- (1) The Court may order a party to produce to the Court a document in the party's control relating to an issue in the proceeding.

**Rule 16.15**

---

- (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.

Note: For *control*, see rule 1.19.

DRAFT

Rule 16.16

---

## Division 16.4—Interrogatories

### 16.16 Declaration to allow interrogatories

- (1) The Court may make a declaration under subsection 176(2) of the Act to allow interrogatories.

Note: Interrogatories are not allowed in relation to a proceeding unless the Court declares that it is appropriate in the interests of the administration of justice (see subsections 176(2) and (3) of the Act).

- (2) If the Court makes a declaration to allow interrogatories, the Court may make appropriate orders in relation to the administration of interrogatories, having regard to any relevant Federal Court Rules and any relevant practice directions.

Note: The overarching purpose of case management in the Court is to facilitate the just resolution of disputes according to law as quickly, inexpensively and efficiently as possible. The parties and their lawyers must cooperate with the Court, and among themselves, to assist in achieving the overarching purpose (see sections 6, 190 and 191 of the Act).

## **Part 17—Evidence**

### **Division 17.1—General**

#### **17.01 Decisions without oral hearing**

The Court may make a decision in a proceeding without an oral hearing if the parties to the proceeding consent to the making of the decision without an oral hearing.

#### **17.02 Transcript receivable in evidence**

A transcript of a proceeding prepared at the direction of the Court may be received in evidence as a true record of the proceeding except to the extent that it is shown not to be a true record.

DRAFT



Rule 17.03

---

## Division 17.2—Admissions

### 17.03 Notice to admit facts or documents

A party (the *first party*) may serve on another party (the *second party*) a notice in the approved form (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: For *authenticity of a document*, see rule 1.19.

### 17.04 Notice disputing facts or documents

Within 14 days after the notice to admit has been served, the second party may serve a notice on the first party, disputing the truth of any fact or the authenticity of any document specified in the notice to admit.

### 17.05 Disputing party to pay costs if document is proved etc

If a party serves a notice under rule 17.04 and the truth of any fact or the authenticity of any document disputed in the notice is proved, the disputing party must pay the costs of proving the truth of the fact or the authenticity of the document.

### 17.06 Facts or documents taken to be admitted if not disputed

If the second party does not serve a notice in accordance with rule 17.04, 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 the Rules (see rule 1.09).

### 17.07 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 the Rules (see rule 1.09).

### 17.08 Withdrawal of admission

A party may apply to the Court for leave to withdraw an admission made under this Part.

Rule 17.09

---

## Division 17.3—Affidavits

### 17.09 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 195 of the Act provides the persons before whom an affidavit may be sworn or affirmed. See also section 186 of the *Evidence Act 1995*.

### 17.10 Form of affidavit

(1) An affidavit must:

- (a) comply with the approved form; and
- (b) be made in the first person.

Note: An affidavit must also comply with rule 2.05.

(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 or affirmed.

Note 1: For other details that must be included on the front page of an affidavit, see rule 2.10.

Note 2: For *description*, see rule 1.19.

(3) An affidavit must be divided into numbered paragraphs and, to the extent practicable, each paragraph must deal with a separate subject.

(4) Each page, including any annexure, must be clearly and consecutively numbered starting with page '1'.

(5) Each page of the affidavit (but not any annexure) must be signed by the deponent (other than a deponent who is physically incapable of signing) and by the person before whom it is sworn or affirmed.

### 17.11 Documents annexed or exhibited to an affidavit

(1) 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.

(2) If paragraph (1)(a) or (b) applies, the document must be exhibited.

(3) Each annexure and exhibit must be identified on its first page:

- (a) by a certificate with the same title as the affidavit; and
- (b) by the deponent's initials followed by a number (starting with '1' for the first annexure or exhibit).

(4) The annexures and exhibits must be numbered sequentially.

## Rule 17.12

---

Example: For an affidavit with 10 annexures totalling 100 pages, the first page of the first annexure is page 1 and the last page of the last annexure is page 100. An annexure would be identified in the affidavit in the following way: “Annexed and marked with the letter G (pages 72–81) is a copy of the agreement for sale”.

- (5) No subsequent annexure or exhibit in any later affidavit sworn or affirmed by the same deponent may duplicate the number of a previous annexure or exhibit.
- (6) Each exhibit to an affidavit must be signed on the first page of the exhibit by the person before whom the affidavit is sworn or affirmed.

### 17.12 Content of affidavit

- (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.

### 17.13 Affidavit of person who is illiterate or vision impaired or has a disability

- (1) If the deponent is unable to read, or is physically incapable of signing the affidavit, the person before whom the affidavit is sworn or affirmed must certify in or below the jurat that:
  - (a) the affidavit was read to the deponent; and
  - (b) the deponent seemed to understand the affidavit; and
  - (c) in the case of a person physically incapable of signing—the deponent indicated that the contents were true.

Note: A jurat is a clause placed at the end of an affidavit stating the time, place and person before whom the affidavit is made.

- (2) However, subrule (1) does not apply if the deponent:
  - (a) has read the affidavit using technology for the vision impaired, such as 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 vision impaired; and
    - (ii) has read the affidavit; and
    - (iii) specifies the means by which it was read.
- (3) If the deponent does not have an adequate command of English:
  - (a) a translation of the affidavit and oath or affirmation must be read or given in writing to the person in a language that the person understands; and
  - (b) the translator must certify in or below the jurat that this has been done.

## Rule 17.14

---

**Note:** A jurat is a clause placed at the end of an affidavit stating the time, place and person before whom the affidavit is made.

- (4) If an affidavit is made by a deponent who is unable to read it or is physically incapable of signing it and the affidavit does not include a certificate in accordance with subrule (1) or (3) or a statement in accordance with subrule (2), the affidavit may be used only if the party seeking to use the affidavit satisfies the Court that:
- (a) the affidavit was read or, if appropriate, a translation was read or given in writing, to the person; and
  - (b) the person seemed to understand the affidavit; and
  - (c) in the case of a person physically incapable of signing—the person indicated that the contents were true.

### **17.14 Service of exhibits and annexures**

Copies of any documents exhibited or annexed to an affidavit must be served with the affidavit.

### **17.15 Irregularity in form**

An affidavit may be accepted for filing despite an irregularity in form.

### **17.16 Use of affidavit without cross-examination of maker**

- (1) A party may give notice requiring a person making an affidavit to attend for cross-examination.
- (2) The notice under sub-rule (1) must be given to the party filing the affidavit or proposing to use it.
- (3) The Court may:
  - (a) dispense with the attendance for cross-examination of a person making an affidavit; or
  - (b) direct that an affidavit be used without the person making the affidavit being cross-examined on the affidavit.

Rule 17.17

---

## Division 17.4—Expert evidence

### 17.17 Appointment of Court expert

- (1) The Court may:
  - (a) appoint an expert as a Court expert to inquire into and report on a question arising in the proceeding; and
  - (b) give directions about an experiment or test for the purposes of the inquiry or report; and
  - (c) give further directions, including to extend or supplement the inquiry or report.

- (2) If possible, the Court expert should be a person agreed on between the parties.

Note 1: For *expert*, see rule 1.19.

Note 2: For an expert's duty to the Court and for the form of expert evidence, an expert witness should be guided by the practice direction for expert witnesses.

Note 3: The Court may give instructions relating to the inquiry and report.

Note 4: The Court may make an order on its own initiative (see rule 1.15).

### 17.18 Court expert's remuneration and expenses

The parties are jointly liable to pay the reasonable remuneration and expenses of the Court expert for preparing a report.

### 17.19 Court expert's report

- (1) The Court expert must give the report to a Registrar together with the number of copies the Registrar directs.
- (2) The Registrar will send a copy of the report to each party.
- (3) The Court may:
  - (a) allow the examination of the Court expert; and
  - (b) give other directions as to the use of the report.
- (4) A party wishing to cross-examine the Court expert:
  - (a) must arrange for the attendance of the Court expert; and
  - (b) may issue a subpoena requiring the Court expert's attendance; and
  - (c) must pay the reasonable expenses of the Court expert's attendance.

### 17.20 Further expert evidence

If a Court expert has made a report on a question, a party may adduce evidence of another expert on the question with the leave of the Court.

### 17.21 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 direction dealing with

## Rule 17.22

---

guidelines for expert witnesses in proceedings in the Court (the *Practice Direction*).

Note: Practice directions may be obtained from the registry or downloaded from the Court's website at <http://www.fcfcga.gov.au>.

### 17.22 Contents of an expert report

- (1) An expert report, including a Court expert's 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 Direction; 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
  - (h) contain an acknowledgement that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and
  - (i) comply with the Practice Direction.
- (2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

### 17.23 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.

### 17.24 Expert evidence for 2 or more parties

- (1) This rule applies if 2 or more parties to a proceeding call expert witnesses to give opinion evidence about the same, or a similar, question.
- (2) The Court may give any direction that it thinks fit in relation to:
  - (a) the preparation by the expert witnesses (in conference or otherwise) of a joint statement of how their opinions on the question agree and differ; or
  - (b) the giving by an expert witness of an oral or written statement of:
    - (i) the expert witness's opinion on the question; or
    - (ii) the expert witness's opinion on the opinion of another expert on the question; or
    - (iii) whether in the light of factual evidence led at trial, the expert witness adheres to, or wishes to modify, any opinion earlier given; or
  - (c) the order in which the expert witnesses are to be sworn or affirmed, are to give evidence, are to be cross-examined or are to be re-examined; or

**Rule 17.24**

---

- (d) the position of witnesses in the courtroom (not necessarily in the witness box).

**Example:** The Court may direct that the expert witnesses be sworn one immediately after another, and that they give evidence after all or certain factual evidence has been led, or after each party's case is closed (subject only to hearing the evidence of expert witnesses) in relation to the question.

**Note 1:** For the Court's power to make directions about expert reports and expert evidence, see also rule 5.03 (item 14).

**Note 2:** The Court may dispense with compliance with the Rules and may make orders inconsistent with the Rules (see rules 1.09 and 1.10).

DRAFT

Rule 18.01

---

## Part 18—Subpoenas

### Division 18.1—Leave to issue subpoena

#### 18.01 Limit on number of subpoenas

Unless the Court directs otherwise, a party must not request the issue of more than 5 subpoenas in a proceeding.

#### 18.02 Leave to issue subpoena

A party may apply to the Court for leave to issue a subpoena without notice to any other party.

Note 1: For *without notice*, see rule 1.19.

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 and at 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.



Rule 18.03

---

## Division 18.2—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.

### 18.03 Definitions for Division 18.2

- (1) To the extent that a subpoena requires the addressee to attend to give evidence, it is called a *subpoena to attend to give evidence*.
- (2) 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*.

### 18.04 Issuing of subpoena

- (1) In any proceeding, the Court may, 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 documents and things in the custody of another court, see rule 18.19.

- (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.

Note: Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

- (4) A subpoena is taken to have been issued when it is sealed or otherwise authenticated in accordance with subrule (3).

### 18.05 Form of subpoena

- (1) A subpoena must be in the approved form.
- (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:

## Rule 18.06

---

- (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 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.

### **18.06 Time limit for service of subpoena**

The last date for service of a subpoena:

- (a) is:
  - (i) the date 5 clear business days before the earliest date the addressee is required to produce a document or otherwise comply with the subpoena; or
  - (ii) an earlier or later date fixed by the Court; and
- (b) must be specified in the subpoena.

### **18.07 Subpoena addressed to a corporation**

If the addressee is a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

### **18.08 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 effect as if the date or time notified were the date or time specified in the subpoena.

### **18.09 Setting aside subpoena**

- (1) On the application of a party or any person with a sufficient interest, the Court may set aside a subpoena, in whole or in part.
- (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:
  - (a) any other party; or
  - (b) any other person who has a sufficient interest.

### **18.10 Service**

- (1) A subpoena must be served:
  - (a) personally on the addressee; and

## Rule 18.11

---

(b) within 3 months after it is issued.

- (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.

### 18.11 Compliance with subpoena

- (1) An addressee need not comply with the requirements of a subpoena to attend to give evidence if conduct money has not been given to the addressee a reasonable time before the date on which attendance is required.
- (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 subrule (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 at least 1 clear business day 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.
- (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.
- (8) 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.

## Rule 18.12

---

- (9) If the issuing party wishes to tender a document produced under subrule (7), the issuing party must, at that party's expense:
  - (a) make an electronic image of any photocopy of the document; and
  - (b) lodge the electronic image with a Registrar within the time specified by a Registrar.

Note: For *conduct money*, see rule 1.19.

### 18.12 Production otherwise than on attendance

- (1) This rule applies if an addressee produces a document or thing in accordance with paragraph 18.11(4)(b).
- (2) If requested by the addressee, a Registrar must give the addressee a receipt for the document or thing.
- (3) If the addressee produces more than one document or thing and the Registrar so requests, the addressee must provide a list of the documents or things produced.
- (4) If the issuing party consents, the addressee may produce a copy, instead of the original, of any document required to be produced.
- (5) At the time of production, the addressee may tell a Registrar in writing that any document or copy of a document produced need not be returned and may be destroyed.

### 18.13 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.

### 18.14 Production of documents and access by parties

- (1) A person who inspects or copies a document under these Rules or an order must:
  - (a) use the documents only for the purpose of the proceeding; and
  - (b) not disclose the contents of the document or give a copy of it to any other person without the Court's permission.
- (2) However:
  - (a) a lawyer may disclose the contents or give a copy of the document to the lawyer's client; and
  - (b) a client may disclose the contents or give a copy of the document to the client's lawyer.

### 18.15 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 18.11.

**Rule 18.15**

---

- (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, describe, in general terms, the documents and things produced.
- (3) Subject to this rule, a person may inspect a document or thing produced only if:
  - (a) the Court has granted leave; and
  - (b) 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 who has a 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 who has 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:
  - (a) the objection; and
  - (b) 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:
  - (a) grant an application under subrule (10) subject to conditions; or
  - (b) refuse to grant the application.

## Rule 18.16

---

### 18.16 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 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 18.11(8), to be original documents; and
  - (b) are no longer required in connection with the proceeding, including on any appeal.

### 18.17 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.

### 18.18 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 subrule 18.10(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.

### 18.19 Documents and things in custody of another court

- (1) A party who seeks production of a document or thing in the custody of another court must give to a Registrar a written notice setting out:

**Rule 18.19**

---

- (a) the name and address of the court that has custody of the document or thing; and
  - (b) a description of the document or thing to be produced; and
  - (c) the date the document or thing is to be produced; and
  - (d) the reason for seeking production.
- (2) On receiving a notice under subrule (1), a Registrar may ask the other court, in writing, to send the document or thing to the filing registry by a specified date.
- (3) A party may apply to the Court for leave to inspect and copy a document produced to the Court by the other court.

Rule 19.01

---

## Part 19—Offers to settle

### 19.01 Offer to compromise

- (1) A party (the *offeror*) may make an offer to compromise by serving a notice on another party (the *offeree*).
- (2) The notice must not be filed in the Court.

### 19.02 Notice to be signed

The notice must be signed by the offeror or the offeror's lawyer.

### 19.03 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 relation to the claim; and
  - (b) interest (if any).

### 19.04 Offer to be paid within 28 days

Unless the notice provides otherwise, an offer to pay a sum of money is taken to be an offer that the sum will be paid within 28 days after the offer is accepted.

### 19.05 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, but 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.

### 19.06 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:
  - (a) the offer is accepted; or
  - (b) judgment is given; or
  - (c) an application is made under rule 19.07, 19.09 or 19.10.



## Rule 19.07

---

- (3) However, subrule (2) applies only if the offer is made without prejudice.

### 19.07 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.

### 19.08 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 on the offeror, at any time while the offer is open.

### 19.09 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.

### 19.10 Failure to comply with offer

If, after acceptance of an offer by an offeree, an offeror does not 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) directing that a cross-claim, not the subject of the offer, proceed.

### 19.11 Multiple respondents

- (1) Rule 19.10 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.

## Rule 19.12

---

- (2) However, rule 19.10 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.

### 19.12 Costs

- (1) A party who applies for costs in relation to an offer to compromise must have regard to the relevant Federal Court Rules and any relevant practice direction.
- (2) In making an order for costs in relation to an offer to compromise, the Court may have regard to the relevant Federal Court Rules.

Note 1: Part 25 of the Federal Court Rules deals with offers to settle, including costs consequences for the failure to accept an offer of compromise that bests the result that the recipient of the offer achieves.

Note 2: The Court may order that costs be paid on an indemnity basis (see paragraph 192(4)(e) of the Act).

DRAFT

## Part 20—Transfer of proceedings

### 20.01 Transfer to Federal Court

- (1) Unless the Court otherwise orders, an application under paragraph 153(2)(a) of the Act to transfer a proceeding from the Court to the Federal Court must:
  - (a) be made on or before the first court date for the proceeding; and
  - (b) be included in an application or a response in accordance with the approved form; and
  - (c) be supported by an affidavit.
- Note: Subsection 153(1) of the Act provides that the Court may, by order, transfer a proceeding that is pending in the Court and is not a family law or child support proceeding to the Federal Court. Subsection 153(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) In addition to the factors to which the Court must have regard under subsection 153(3) of the Act in deciding whether to transfer a proceeding to the Federal Court, the Court must take the following factors into account:
  - (a) whether the proceeding is likely to involve questions of general importance, such that it would be desirable for there to be a decision of the Federal Court on one or more of the points in issue;
  - (b) whether, if the proceeding is transferred, it is likely to be heard and determined at less cost and more convenience to the parties than if the proceeding were not transferred;
  - (c) whether the proceeding will be heard earlier in the Court;
  - (d) the availability of particular procedures appropriate for the class of proceeding;
  - (e) the wishes of the parties.
- (3) Before the Court makes an order under subsection 153(1) of the Act transferring a proceeding from the Court to the Federal Court:
  - (a) the Court must consult the Chief Judge of the Court in relation to the proposed transfer; and
  - (b) the Chief Judge of the Court must consult the Chief Justice of the Federal Court, or a delegate of the Chief Justice of the Federal Court, 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 153(1) of the Act does not affect the validity of an order made under that subsection transferring the proceeding.

## Part 21—Dispute resolution

### Division 21.1—General

#### 21.01 Dispute resolution processes

Parties must consider dispute resolution processes, including mediation, as early as is reasonably practicable.

Note 1: For *dispute resolution processes*, see subsection 7(1) of the Act.

Note 2: Parties may be advised to use dispute resolution processes. For the duty of the Court to advise people to use dispute resolution processes, see section 158 of the Act. For the duty of lawyers to advise parties to use dispute resolution processes, see section 159 of the Act. For the duty of designated officers of the Court to advise parties to use dispute resolution processes, see section 160 of the Act.

Note 3: See also sections 161, 169 and 170 of the Act, which contain provisions dealing with the Court's power to refer a matter for conciliation, mediation or arbitration.

#### 21.02 Orders that may be sought

A party may apply to the Court for an order that:

- (a) the proceeding, part of the proceeding or any matter arising out of the proceeding be referred to a mediator or, with the parties' consent, an arbitrator; and
- (b) the proceeding be adjourned or stayed; and
- (c) the mediator or arbitrator report to the Court on progress in the mediation or arbitration.

Note: The Court may refer a proceeding to conciliation, mediation or arbitration on its own initiative (see sections 161, 169, 170 of the Act). The Court may only refer a proceeding to arbitration with the parties' consent (see subsection 170(3) of the Act).

#### 21.03 Mediation and arbitration

If the Court orders that a proceeding, part of a proceeding or matter arising in a proceeding be referred to a mediator or arbitrator, the mediation or arbitration 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.

#### 21.04 Attendance in person

- (1) The parties must attend a mediation in person.
- (2) Each lawyer representing a party must also attend a mediation in person.

#### 21.05 Court may end mediation or arbitration

The Court may:

- (a) end a mediation or an arbitration at any time; or
- (b) terminate the appointment of a mediator or arbitrator.

Rule 21.06

---

**21.06 Application by interlocutory application**

An application by a party under section 162 of the Act must be made by interlocutory application.

Note: Section 162 deals with a party's power to apply to the Court to determine a question of law.

**21.07 Parties may refer proceeding to conciliation, mediation, arbitration or other dispute resolution process**

- (1) Nothing in this Division prevents the parties to a proceeding referring the proceeding to:
  - (a) a conciliator for conciliation; or
  - (b) a mediator for mediation; or
  - (c) an arbitrator, in accordance with an arbitration agreement, for arbitration; or
  - (d) a person to conduct another dispute resolution process.
- (2) However, if the parties refer the proceeding under subrule (1), within 14 days after the referral, the applicant must apply to the Court for directions as to the future management and conduct of the proceeding.

**21.08 Agreement reached by dispute resolution process**

If the parties to a proceeding resolve the issues between them following a dispute resolution process, the parties may:

- (a) discontinue the proceeding in accordance with rule 23.02; or
- (b) seek consent orders in accordance with rule 23.07.

Rule 21.09

---

## Division 21.2—Mediation

### 21.09 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 mediator's name and address; and
  - (ii) the time, date and place of mediation; and
  - (iii) any further documents that any of the parties must give the mediator for 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.

### 21.10 Court may appoint a new mediator

If the Court terminates the appointment of a mediator under rule 21.05, the Court may:

- (a) appoint a new mediator; and
- (b) give directions on how the mediation should continue.

### 21.11 Conduct of mediation

A mediation must be conducted in accordance with any orders made by the Court.

### 21.12 Report if only part of proceeding to be mediated

If only part of a proceeding is the subject of a mediation order, on the conclusion of the mediation, the mediator may report to the Court in terms agreed between the parties.

### 21.13 Mediator may end mediation

If the mediator considers that a mediation should not continue, the mediator must:

- (a) end the mediation; and
- (b) report to the Court on the outcome.

Rule 21.14

---

**Division 21.3—Referral of matter to officer of the Court**

**21.14 Court may refer matter**

- (1) The Court may refer to a Registrar any claim or application relating to any matter before the Court for:
  - (a) investigation; and
  - (b) report; and
  - (c) recommendation.
- (2) In a claim or application referred to a Registrar, the investigation may include:
  - (a) assessing damages; or
  - (b) taking accounts.
- (3) A Registrar to whom a claim or application is referred for investigation may:
  - (a) take evidence on oath or affirmation; and
  - (b) summon witnesses for the purpose of giving evidence or producing documents.
- (4) If the Court refers a claim or application to a Registrar under subrule (1), the Registrar and the parties must have regard to any relevant Federal Court Rules and any relevant practice directions.

## Part 22—Hearings

### Division 22.1—Separate decision on question

#### 22.01 Application for separate question to be heard

- (1) At any time in a proceeding, a party may apply to the Court for an order that a question arising in the proceeding be heard separately from any other questions.

Note 1: For *question*, see rule 1.19.

Note 2: The Court will give any directions that are necessary for the hearing of the separate question.

- (2) The application must set out the question or questions to be decided.

#### 22.02 Disposal of proceeding after hearing separate questions

If a decision on a question substantially disposes of the proceeding, a party may apply to the Court for:

- (a) judgment; or
- (b) an order dismissing the whole or any part of the proceeding.



## **Division 22.2—Consolidation**

### **22.03 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 one immediately after the other; or
- (f) stayed until after the determination of any of the other proceedings.

DRAFT

## **Division 22.3—Absence of party**

### **22.04 Absence of party at hearing**

- (1) If a party is absent from a hearing (including a first court date), the Court may:
  - (a) if the absent party is the applicant:
    - (i) dismiss the application; or
    - (ii) adjourn the application; or
    - (iii) order that the hearing proceed only if specified steps are taken; or
    - (iv) proceed with the hearing generally or in relation to any claim for relief in the proceeding; or
  - (b) if the absent party is the respondent:
    - (i) order that the hearing proceed generally or in relation to a particular aspect of the application; or
    - (ii) adjourn the hearing; or
    - (iii) order that the hearing proceed only if specified steps are taken; or
  - (c) if the absent party has made an interlocutory application or a cross-claim—dismiss the application or cross-claim.
- (2) If a hearing proceeds in a party's absence and at 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.

Note: For other circumstances in which an order may be varied or set aside, see rule 24.05.

### **22.05 No appearance by any party**

- If no party appears at a hearing (including a first Court date), the Court may:
- (a) adjourn the proceeding to a specific date or generally; or
  - (b) order that the proceeding be dismissed.

Rule 22.06

---

## Division 22.4—Trial

### 22.06 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) requiring 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 5.03.

### 22.07 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.

### 22.08 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.

### 22.09 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.

### 22.10 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 guardian of a person who needs a litigation guardian; 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):

## Rule 22.11

---

- (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: For *litigation guardian* see rule 1.19.

### 22.11 Notice to produce

- (1) A party may serve on another party a notice, 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 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.
- (3) If a notice under subrule (1) specifies a date for production and is served at least 5 days 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.

### 22.12 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.

### 22.13 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 that an identified person attend before the Court, a Registrar or other person authorised to take evidence:
  - (a) for examination; or
  - (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.

## Part 23—Finalising a proceeding

### Division 23.1—Withdrawal and discontinuance

#### 23.01 Withdrawal of defence etc

- (1) At any time, a party may withdraw a plea raised in the party's pleading by filing a notice of withdrawal of a plea.
- (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.

#### 23.02 Discontinuance

- (1) A party may discontinue a proceeding in whole or in part by filing a notice of discontinuance in the approved form.
- (2) The party may file the notice of discontinuance:
  - (a) without the Court's leave or the other party's consent:
    - (i) at any time before the first court date, as 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 13.13.

Note 2: The Court may give leave subject to conditions including costs (see rule 1.08).

- (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, the Court's leave to file a notice of discontinuance is required if:
  - (a) the proceeding is a creditor's petition; or
  - (b) a party is represented by a litigation guardian.
- (5) A notice of discontinuance filed by one party does not affect any other party to the proceeding.

## Rule 23.03

---

### 23.03 Service of notice

A party who files a notice under rule 23.01 or 23.02 must serve a copy of the notice on each other party to the proceeding as soon as reasonably practicable.

### 23.04 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 1.10).

### 23.05 Costs

- (1) If a party discontinues an application, or part of an application, another party to the proceeding may apply for costs.
- (2) A party applying for costs must make the application within 28 days after being served with the notice of discontinuance.

### 23.06 Stay of proceeding until costs paid

An opposing party may apply to the Court for an order to stay a subsequent proceeding 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; and
- (b) the Court makes an order under rule 23.05 that the first party must 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.

## **Division 23.2—Consent orders**

### **23.07 Consent orders**

- (1) The Court may make an order in the terms of the parties' consent as communicated to the Court.
- (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 Court.
- (4) At any time before making the order, the Court may require a party to provide additional information.
- (5) If a Registrar has power to make the order, the Registrar may make an order in terms of the parties' consent, unless the Registrar considers that the matter should be brought before a Judge.

DRAFT

## Division 23.3—Summary orders

### 23.08 Summary judgment

- (1) The Court may order that judgment be given against a party if the Court is satisfied that:
  - (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) 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 dismissed.
- (3) 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 143 of the Act in relation to summary judgment.

### 23.09 Dismissal for want of prosecution

- (1) If a party has not taken a step in a proceeding for 6 months, the Court may dismiss all or part of the proceeding.
- (2) The Court must not make an order under subrule (1) if:
  - (a) there is a future listing for the proceeding or part of the proceeding; or
  - (b) an interlocutory application relating to the proceeding has not been determined; or
  - (c) the Court has not given the parties to the proceeding notice under subrule (3).
- (3) At least 14 days before making an order under subrule (1), the Court must give each party to the proceeding written notice of the date and time when it will consider whether to make the order.
- (4) Notice under subrule (3) must be sent:
  - (a) to each party's address for service; and
  - (b) if a party has no address for service—to the party's last known email address or last known postal address.



Rule 23.10

---

**23.10 Stay of subsequent 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) the Court dismisses an application under subrule 23.08(1); and
- (b) the Court orders a party (the *first party*) to pay the costs of another party;  
and
- (c) before the costs are paid, the first party starts another application on the same or substantially the same grounds.

DRAFT

## Part 24—Orders

### Division 24.1—Judgments and orders

#### 24.01 Date of effect of judgment or order

A judgment or an order takes effect on the day the judgment is given or the order is made.

#### 24.02 Time for compliance with orders

If an order requires a person to do an act or thing or to pay money, the person must do so:

- (a) in the time specified in the order; or
- (b) if no time is specified—within 14 days after the order is served on the person.

#### 24.03 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.

#### 24.04 Varying or setting aside a 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;
- (b) it was obtained by fraud;
- (c) it is interlocutory;
- (d) it is an injunction;
- (e) it does not reflect the intention of the Court;
- (f) the party in whose favour it was made consents;
- (g) there is a clerical mistake in a judgment or order; and
- (h) there is an error arising in a judgment or order from an accidental slip or omission.

#### 24.05 Interest on judgment

The prescribed rate at which interest is payable under paragraph 212(3)(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 1: Subsection 212(3) of the Act provides that interest is payable on a judgment debt:

- (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.

## Rule 24.06

---

Note 2: Subsection 211(3) of the Act provides for the making of orders that include pre-judgment interest. In making such an order, the Court will have regard to the rate specified in paragraph 2.2 of the Federal Court's Interest on Judgments Practice Note.

### **24.06 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 paying 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.

Note: Unless the Court otherwise orders, an undertaking to the Court has the same force and effect as an order of the Court.

Rule 24.07

---

## **Division 24.2—Entry of judgments and orders**

### **24.07 When entry is required**

- (1) Subject to subrule (2), an order must be entered.
- (2) An order need not be entered if 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 259 of the Act); or
  - (c) gives directions about the conduct of a proceeding.

### **24.08 Entry of an order**

- (1) An order may be entered under an arrangement under section 246 of the Act.
- (2) An order may be entered under the seal of the Court signed by:
  - (a) a Judge; or
  - (b) a Registrar; or
  - (c) an officer of the Court acting with the authority of the Chief Executive Officer.
- (3) For the purposes of subrule (2), an order may be signed electronically.
- (4) An order may be entered, in accordance with subrule (1) or (2):
  - (a) in the registry; or
  - (b) in Court; or
  - (c) in Chambers.

## Chapter 3—Special classes of proceedings

### Part 25—Proceedings under the Migration Act

#### Division 25.1—Preliminary

##### 25.01 Definitions for Part 25

An expression used in this Part that is defined in the Migration Act has the same meaning in this Part as it has in that Act.

Note 1: For *Migration Act*, see rule 1.19.

Note 2: For *lawyer* and *migration decision*, see section 5 of the Migration Act.

##### 25.02 Application of Part 25

- (1) This Part applies to a proceeding for review of a migration decision made in the exercise of the Court's jurisdiction under section 476 of the Migration Act.
- (2) This Part applies to a matter, or part of a matter, remitted to the Court by the High Court under section 44 of the *Judiciary Act 1903* and in accordance with section 476B of the Migration Act.
- (3) Subrule (2) is subject to any order of the High Court in the matter.

DRAFT

Rule 25.03

---

## Division 25.2—Matters started in the Court

### 25.03 Application of Division 25.2

This Division applies to a matter started in the Court.

### 25.04 Application for judicial review of migration decision

- (1) A person who wants to apply for the review of a migration decision must file an originating application in the approved form.

Note 1: The Court has original jurisdiction only in relation to migration decisions of the kind identified in section 476 of the Migration Act. The Court may extend the time for making an application to review a migration decision (see subsection 477(2) of the Migration Act).

Note 2: See Division 8.4 in relation to a response to an application.

- (2) If the grounds of the application include an allegation of jurisdictional error, the application must identify the basis of the alleged error.
- (3) 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.
- (4) The application must be supported by an affidavit including:
- (a) a copy of the decision that is sought to be reviewed and any statement of reasons for the decision; and
  - (b) each document or other evidence the applicant seeks to rely on; and
  - (c) if an extension of time within which to make the application is sought—the evidence explaining the delay and showing why it is necessary in the interests of the administration of justice for the Court to grant an extension.

Note: The application must be made within 35 days of the migration decision (see section 477 of the Migration Act).

- (5) The originating application or amended application must include the name of the person who prepared it, irrespective of whether that person:
- (a) is a lawyer; or
  - (b) was retained for the limited purpose of preparing the document; or
  - (c) has an ongoing role in the proceeding.
- (6) A lawyer may file an originating application under this Part only if the application includes, or is accompanied by, a certificate signed by the lawyer.

Note: See section 486I of the Migration Act.

### 25.05 Response to application for judicial review of migration decision

- (1) In addition to the requirements in rule 8.15, a respondent to an application under this Part must state in the response:
- (a) whether the respondent asks the Court to make an order under rule 23.08; and
  - (b) whether the applicant is in immigration detention and, if so, the place of detention; and

**Rule 25.05**

---

- (c) whether the respondent believes the matter requires expedition and, if so, why; and
- (d) if the respondent is aware that the applicant requires an interpreter—the language of the interpreter that is required; and
- (e) if the respondent is aware of any related judicial review proceedings—details of those proceedings; and
- (f) if the respondent is aware that the applicant has already brought judicial review proceedings in respect of the same decision—details of those proceedings; and
- (g) if the respondent objects to the competency of the application—briefly but specifically state the grounds of that objection.

Note: See rule 8.15 in relation to the response to an application.

- (2) If the respondent gives notice under subrule (1)(g), the applicant carries the burden of establishing the competency of the application.
- (3) If a respondent has not included an objection to the competency of the application in their response to an application under subrule (1)(g), and the application is dismissed by the Court as not competent, the respondent is not entitled to any costs of the proceeding.
- (4) Despite subrule 8.15(7), a response to an application under this Part must be filed within 8 weeks after the application to which it relates is served.

Note: **File** is defined in rule 1.19 as meaning file and serve.

Rule 25.06

---

**Division 25.3—Matters remitted by the High Court**

**25.06 Application of Division 25.3**

This Division applies to a matter, or part of a matter, remitted to the Court by the High Court, subject to any direction of the High Court in the matter.

**25.07 Filing of order of remittal**

- (1) The applicant must file a sealed copy of the order of remittal from the High Court in the registry named in the order of remittal.

**Note:** Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

- (2) If a registry is not specified in the order, the Chief Executive Officer may direct the order to be filed in a particular registry.

**25.08 Service of notice and order**

- (1) A Registrar must affix a notice to the High Court order and allocate a serial number to the order as if the order were an originating application filed in the registry.
- (2) The notice must:
  - (a) include the first court date in the matter and the place for the hearing; and
  - (b) include a note to the effect that before taking any step in the proceeding, a party, other than the applicant, must enter an appearance in the registry unless the party has already entered an appearance in the High Court; and
  - (c) be in the form approved by the Chief Executive Officer.
- (3) A Registrar must affix the seal of the Court to a sufficient number of copies of the notice for service in accordance with subrule (4).
- (4) A Registrar must cause sealed copies of the notice, together with copies of the High Court order, to be served on each party to the proceeding in the High Court and on any other person who the Court directs should be so served.
- (5) Service may be effected by delivery to a party's address for service for the proceeding in the High Court.

**Note:** Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).



Rule 25.09

---

## Division 25.4—General

### 25.09 Stay of proceeding

The Court may, at any time, grant, discharge or vary a stay of the proceeding to which an application for judicial review of a migration decision relates.

### 25.10 Directions and orders

- (1) At any time after an application under this Part is filed, the Court may give orders or directions for the conduct of the proceeding in relation to the following:
  - (a) the matters in subrule 5.03(3);
  - (b) a stay or interlocutory order;
  - (c) an extension of time for the application;
  - (d) an amendment of the application;
  - (e) the provision of particulars, or further and better particulars, of a ground in an application or response;
  - (f) the filing of further affidavits by the applicant;
  - (g) the filing by a respondent or other person of a relevant document or other evidence;
  - (h) the filing of affidavits by a respondent.
- (2) The Court may:
  - (a) give orders or directions under subrule (1) in Chambers without a hearing; or
  - (b) require the parties to an application to attend a hearing.

### 25.11 Varying or setting aside judgment or order

A party to an application under this Part who seeks to have a judgment or order varied or set aside under rule 24.04 must file an application to vary or set aside within 21 days after the judgment or order was entered.

Note: The Court may extend or shorten a time fixed by these Rules or by a judgment or order of the Court (see rule 1.14).

### 25.12 Judgment delivered orally

If a Judge hearing an application under this Part delivers the reasons for judgment *ex tempore*, the written reasons for judgment will be published if:

- (a) the Judge considers it appropriate; or
- (b) a party so requests; or
- (c) the Court is notified that an appeal has been filed.

### 25.13 Writs

A writ issued by the Court under this Part must be served and complied with in accordance with the *High Court Rules 2004*.

## Rule 25.14

---

### **25.14 Costs**

- (1) In a concluded proceeding, the Court may order an unsuccessful party to pay the costs of a successful party in accordance with Division 1 of Part 3 of Schedule 2.
- (2) If:
  - (a) the applicant files a notice of discontinuance in a proceeding in which a respondent has sought costs in the response; and
  - (b) the applicant does not file with the notice an application as to costs;the Court may, without hearing the parties, make an order in Chambers in accordance with Division 2 of Part 3 of Schedule 2 for the respondent's costs.
- (3) This rule does not limit a party's right to apply, under Part 32, for an order as to costs of the application.

Note 1: For discontinuance, see Division 23.1 of these Rules.

Note 2: For the exercise of jurisdiction in Chambers, see section 136 of the Act.

### **25.15 Death of an applicant**

- (1) The Court may dismiss a proceeding under this Part if satisfied that:
  - (a) the applicant has died; and
  - (b) no interest or liability in the proceeding survives the applicant's death.
- (2) An order under subrule (1) may be made in Chambers without a hearing.

**DRAFT**

Rule 26.01

---

## Part 26—Judicial review under the AD(JR) Act

Note: See Part 25 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

### 26.01 Application of Part 26

This Part applies to a proceeding under the AD(JR) Act.

### 26.02 Application for order of review

- (1) A person who wants to apply for an order of review under subsection 11(1) of the AD(JR) Act must file an originating application in the approved form.
- (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.

### 26.03 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 paragraph 11(1)(c) of the AD(JR) Act must apply for an extension of time.
- (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 26.02.

### 26.04 Application for stay of proceeding

A person who wants to apply for an order under section 15A of the AD(JR) Act for the suspension of a decision or a stay of the proceeding under the decision:

- (a) must file an interlocutory application; and
- (b) may, in an urgent case, make the application without notice.

Note 1: For *without notice*, see rule 1.19.

Note 2: A Registrar will fix a date and place for hearing and will endorse those details on the interlocutory application.

### 26.05 Documents to be filed

- (1) At the time of filing an originating application or as soon as practicable after filing, an applicant must 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;
  - (b) a statement regarding the decision:
    - (i) given to the applicant under section 13 of the AD(JR) Act or section 28 of the AAT Act; or

## Rule 26.06

---

- (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 material on which those findings were based or the reasons for making the decision.
- (2) Within 5 days after filing, a copy of each document must be served on each other party.

Note: *File* is defined in rule 1.19 as meaning file and serve.

### 26.06 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.

### 26.07 Notice of objection to competency

- (1) A respondent who objects to the competency of an application must file a notice of objection to competency within 14 days after being served with the application.
- (2) The notice of objection must, briefly but specifically, state the grounds of the objection.
- (3) The applicant carries the burden of establishing the competency of an application.
- (4) A respondent may apply to the Court for the question of competency to be heard and determined before the application is heard.
- (5) If a respondent has not filed a notice under subrule (1), and the Court dismisses the application as not competent, the respondent is not entitled to any costs of the application.
- (6) If the Court decides that an application is not competent, the application is dismissed.

Rule 27.01

---

## Part 27—Administrative Appeals Tribunal

### 27.01 Application of Part 27

This Part applies to an appeal from the Tribunal transferred to the Court from the Federal Court.

Note 1: This Part does not apply to migration proceedings.

Note 2: See Part 25 in relation to jurisdiction under section 476 of the *Migration Act 1958*.

Note 3: For appeals under section 44AAA of the AAT Act, see rule 1.13 of the *Federal Circuit and Family Court of Australia (Family Law) Rules 2021*, as applied by the *Federal Circuit and Family Court of Australia (Division 2) (Family Law) Rules 2021*.

### 27.02 Application for leave to raise other questions of law or rely on other grounds

On the hearing of the appeal, the applicant may apply to the Court for leave to raise a question of law that was not stated in the notice of appeal.

### 27.03 Application for stay of Tribunal decision

A person who wants to apply 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: For *without notice*, see rule 1.19.

Note 2: A Registrar will fix a date and place for hearing and will endorse those details on the interlocutory application.

### 27.04 No written reasons for decision

If the Tribunal did not give written reasons for its decision, the applicant must:

- (a) obtain from the Tribunal a statement in writing of the reasons for its decision, in accordance with subsection 43(2A) of the AAT Act; and
- (b) send a copy of the statement to the registry within 10 days after receiving it.

### 27.05 Notice of cross-appeal

- (1) The rules of this Part 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 the approved form.

Note: The notice of cross-appeal must be filed within the time mentioned in subsection 44(2A) of the AAT Act.

- (3) The notice of cross-appeal must state the following:

## Rule 27.06

---

- (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 subsection 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;
  - (b) any other party to the cross-appeal; and
  - (c) the Registrar of the Tribunal.

### **27.06 Notice of contention**

- (1) 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 file a notice of contention.
- (2) The notice of contention must:
  - (a) be filed within 21 days after the notice of appeal is served; and
  - (b) be in the approved form.

### **27.07 Directions hearing**

- (1) The Court must give directions for the conduct of the proceeding.
- (2) Without limiting subrule (1), the Court may make directions:
  - (a) for determining what documents and matters were before the Tribunal;
  - (b) for the giving of further evidence under paragraph 44(8)(b) of the AAT Act,
  - (c) for the joining or removing of a party to the appeal;
  - (d) giving summary judgement;
  - (e) making an interlocutory order before, 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) for the conduct of the appeal, including:

## Rule 27.08

---

- (i) contents of the appeal papers;
- (ii) the use of written submissions;
- (iii) limiting the time for oral argument;
- (j) for the conduct of the appeal without an oral hearing, subject to the condition that the parties be entitled to present written submissions;
- (k) for the staying of a decision of the Tribunal;
- (l) for the place, time and manner of hearing;
- (m) to determine any other matter for the purpose of preparing the appeal for hearing.

### **27.08 Preparation of appeal papers**

- (1) The appeal papers must be prepared to the satisfaction of a Registrar.
- (2) The title page of the appeal papers must state:
  - (a) the title of the proceeding; and
  - (b) the division of the Tribunal from which the appeal is brought; and
  - (c) the names of the members constituting the Tribunal; and
  - (d) the lawyer and address for service for each party; and
  - (e) if a party is not represented by a lawyer—the address for service of the party.
- (3) After the title page, there must be an index of the documents comprising the appeal papers that states the date and page number of each document.
- (4) The appeal papers must be paginated.
- (5) The appeal papers must include all documents necessary to enable the questions of law raised by the appeal to be determined.
- (6) A copy of the appeal papers must be filed with a certificate by each party or each party's lawyer stating that the papers have been examined and are correct.
- (7) The applicant must file the number of copies required by the Registrar.

**Note:** A Registrar will accept appeal papers that are prepared in accordance with Division 33.2 of the Federal Court Rules.

### **27.09 Further evidence on appeal**

- (1) A party may apply for the Court to receive further evidence on appeal.
- (2) The application must be:
  - (a) filed at least 21 days before the hearing of the appeal; and
  - (b) be accompanied by an affidavit.
- (3) The affidavit referred to in paragraph (2)(b) must state 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;

## Rule 27.10

---

(d) why the evidence was not adduced in the Tribunal.

- (4) The applicant must file two copies of the application and the affidavit.
- (5) 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 subsection 44(7) of the AAT Act.

### **27.10 Notice of objection to competency of appeal**

- (1) A respondent who objects to the competency of an appeal must file a notice of objection to competency within 14 days after being served with a notice of appeal.
- (2) The notice of objection to competency must, briefly but specifically, state the grounds of the objection.
- (3) The applicant carries the burden of establishing the competency of an appeal.
- (4) A respondent may apply to the Court for the question of competency to be heard and determined before the hearing of the appeal.
- (5) If a respondent has not filed a notice under subrule (1), and the Court dismisses the appeal as not competent, the respondent is not entitled to any costs of the appeal.
- (6) If the Court decides that an appeal is not competent, the appeal is dismissed.

### **27.11 Discontinuance of appeal**

- (1) An applicant may discontinue an appeal by filing a notice of discontinuance of the appeal in the approved form:
  - (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 given 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) Unless the parties otherwise agree, an applicant who files a notice under subrule (1) must pay the costs of each party to the appeal.

### **27.12 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:



### Rule 27.13

---

- (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 1.08). The Court may fix a time for the doing of an act and, in default, order the appeal be dismissed.

### **27.13 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.

(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 may make an order on its own initiative (see rule 1.15).

Rule 28.01

---

## Part 28—Human rights proceedings: proceedings alleging unlawful discrimination

### 28.01 Application of Part 28

This Part applies to a proceeding alleging unlawful discrimination under Division 2 of Part IIB of the Human Rights Act.

Note: If the President of the Commission terminates a complaint alleging unlawful discrimination, an affected person may apply to the Court for an order in relation to the complaint (see section 46PO of the Human Rights Act).

### 28.02 Interpretation

An expression used in this Part and in the Human Rights Act has the same meaning in this Part as it has in the Human Rights Act.

Note 1: For *Commission* and *Human Rights Act*, see rule 1.19.

Note 2: *Affected person*; *alleged unlawful discrimination*; *complaint* and *unlawful discrimination* are defined in subsection 3(1) of the Human Rights Act.  
*Special purpose Commissioner* is defined in section 46PV of the Human Rights Act.

### 28.03 Starting a proceeding—originating application and claim

- (1) A person who wants to start a proceeding under the Human Rights Act must file an originating application in the approved form.
- (2) The 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; and
  - (c) if an extension of time within which to make the application is sought—an affidavit explaining the delay and showing why the Court should grant an extension.

Note: The application must be made within 60 days after the President of the Commission issues a notice terminating the complaint (see subsection 46PO(2) of the Human Rights Act).

- (3) The originating application must include any other claim that the person has, in addition to the claim of unlawful discrimination.

### 28.04 Copy of originating application to be given to Commission

At least 5 days before the first court date, the applicant must give the Commission:

- (a) a sealed copy of the originating application; and
- (b) a copy of the accompanying documents.

Note: Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

Rule 28.05

---

**28.05 Form of response to application**

A response to an application alleging unlawful discrimination must be in the approved form.

**28.06 Appearance by special-purpose Commissioner**

If the Court gives leave to a special-purpose Commissioner to assist the Court in a proceeding, the special-purpose Commissioner must:

- (a) file a notice of address for service; and
- (b) serve a sealed copy of the notice on each party to the proceeding.

Note 1: The function of the special-purpose Commissioner may only be exercised in the Court with the Court's leave (see subsection 46PV(2) of the Human Rights Act).

Note 2: Documents marked with the stamp of the Court are as valid and effectual as if sealed with the seal of the Court (see subsection 179(2) of the Act).

DRAFT

Rule 29.01

---

## **Part 29—Small claims applications under the National Consumer Credit Protection Act**

### **29.01 Small claims proceeding—National Consumer Credit Protection Act**

An applicant may request that an application for an order covered by subsection 199(2) of the National Consumer Credit Protection Act be dealt with under this Part.

Note: The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:

- (a) in an informal manner; and
  - (b) without regard to legal forms and technicalities
- (see subsection 199(5) of the National Consumer Credit Protection Act).

### **29.02 Starting a National Consumer Credit Protection Act small claims proceeding**

A person who wants to make a small claims application must file an originating application in the approved form.

Note 1: Part 8 sets out general rules about starting proceedings.

Note 2: A party to a small claims application may be represented by a lawyer only with the leave of the Court. If the Court gives a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate. A party is not taken to be represented by a lawyer if the lawyer is an employee or officer of the party (see subsections 199(7)–(9) of the National Consumer Credit Protection Act).

### **29.03 Representation for corporations—National Consumer Credit Protection Act small claims proceeding**

Despite subrule 4.01(2), an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Part if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.

Rule 30.01

---

## Part 30—Intellectual property

### Division 30.1—General

#### 30.01 Application of Part 30

This Part applies to intellectual property proceedings in the Court.

Note: For *intellectual property proceeding*, see rule 1.19.

#### 30.02 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.

#### 30.03 Starting an appeal—filing and service of notice of appeal

- (1) A party who wants to appeal from a decision of the Commissioner must file a notice of appeal within 21 days after the date of the decision.
- (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, the 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 first court date and a place for hearing and will endorse those details on the notice of appeal. The first court 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 the notice of appeal is filed.

#### 30.04 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 30.03 must file an application for an extension of time in the approved form.
- (2) The application may be made during or after the period mentioned in rule 30.03.
- (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

## Rule 30.05

---

- (iii) the nature of the appeal; and
    - (iv) the questions involved; and
  - (b) a draft notice of appeal that complies with rule 30.03.
- (4) At least 14 days before the first court date, the applicant must serve a copy of the application and the accompanying documents on:
- (a) the Commissioner; and
  - (b) each interested person.

### **30.05 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.

### **30.06 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.
- (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.

### **30.07 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 the approved form.

Rule 30.08

---

**30.08 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.

**30.09 Evidence**

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.

DRAFT

Rule 30.10

---

**Division 30.2—Particular requirements**

**30.10 Infringement of copyright—particulars**

- (1) A person who wants relief for an infringement of copyright under the Copyright Act must file an originating application.
- (2) The originating application must include particulars of the infringement that:
  - (a) specify the manner in which the copyright is alleged to be infringed; and
  - (b) give at least one instance of each type of infringement alleged.

**30.11 Infringement of registered designs—particulars**

- (1) A person who wants relief for infringement of a registered design under the Designs Act must file an originating application.
- (2) The originating application must include particulars of the infringement that:
  - (a) specify the manner in which the design is alleged to be infringed; and
  - (b) give at least one instance of each type of infringement alleged.

**30.12 Application for compulsory licence—Designs Act**

- (1) A person who applies under section 90 of the Designs Act for an order requiring the grant of a licence must file an originating application.
- (2) The originating application must state the material facts on which the applicant intends to rely, to satisfy the Court in relation to the matters mentioned in subsection 90(3) of that Act.

**30.13 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.
- (2) The originating application must include particulars of the grounds for revocation or rectification on which the party making the application relies.
- (3) 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.

**30.14 Infringement of PBR—particulars**

- (1) In a proceeding for infringement of a PBR under the PBR Act, particulars of the infringement must:
  - (a) specify the manner in which the PBR is alleged to be infringed; and
  - (b) give at least one instance of each type of infringement alleged.



**Rule 30.15**

---

- (2) A respondent in a proceeding mentioned in subrule (1) who relies, in a counterclaim, on a ground mentioned in subsection 54A(1) of the PBR Act must give particulars of the facts the respondent intends to rely on for the ground.

**30.15 Infringement of registered trade marks—particulars**

In a proceeding for infringement of a registered trade mark under the Trade Marks Act, particulars of the infringement must:

- (a) specify the manner in which the trade mark is alleged to be infringed; and  
(b) give at least one instance of each type of infringement alleged.

**30.16 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 of, or make any submissions in support of, a ground for revocation or rectification not stated in the application.

## **Part 31—Fair Work Division**

### **Division 31.1—General**

#### **31.01 Expressions used in Part 31**

Unless a contrary intention appears:

- (a) an expression used in Division 31.2 or 31.4 of these Rules and in the Fair Work Act has the same meaning in that Division as it has in the Fair Work Act; and
- (b) an expression used in Division 31.3 of these Rules and in the Registered Organisations Act has the same meaning in that Division as it has in the Registered Organisations Act; and
- (c) an expression used in Division 31.5 of these Rules and in the Federal Safety Commissioner Act has the same meaning in that Division as it has in the Federal Safety Commissioner Act.

#### **31.02 Application of Part 31**

This Part applies to a proceeding in the Court to which the Fair Work Act, the Registered Organisations Act or the Federal Safety Commissioner Act applies.

Rule 31.03

---

**Division 31.2—Contraventions of the Fair Work Act**

**31.03 Application in relation to dismissal from employment in contravention of a general protection (Fair Work Act, subsection 539(2), table item 11)**

- (1) A person who wants to apply 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 the approved form.

- (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 31.05 provides for an application for an order in relation to a contravention of subsection 351(1) of the Fair Work Act (alleged discrimination).

- (3) The application must be accompanied by:
  - (a) a claim in the approved form; and
  - (b) unless the application includes an application for an interim injunction—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) Paragraph (3)(b) does not apply to an application brought by a Fair Work Inspector.

Note 1: Part 8 of these Rules sets out general rules about starting a proceeding.

Note 2: An originating application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 8.04).

**31.04 Application in relation to alleged unlawful termination of employment (Fair Work Act, subsection 539(2), table item 35)**

- (1) A person who wants to apply for an order in relation to an alleged unlawful termination of an employee's employment must file an originating application in the approved form.

- (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) a claim in the approved form; and
  - (b) unless the application includes an application for an interim injunction—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: Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

Note 2: Part 8 of these Rules sets out general rules about starting a proceeding.

Note 3: An originating application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 8.04).

Rule 31.05

---

- (4) Paragraph (3)(b) does not apply to an application brought by a Fair Work Inspector.

**31.05 Application in relation to alleged discrimination (Fair Work Act, subsection 539(2), table item 11)**

- (1) A person who wants to apply for an order in relation to an alleged contravention of subsection 351(1) of the Fair Work Act must file an originating application in the approved form.
- (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: 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 orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin (see subsection 351(1) of the Fair Work Act). For *adverse action*, see 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.

**31.06 Application in relation to alleged sexual harassment (Fair Work Act, subsection 539(2), table item 27A)**

- (1) A person who wants to apply for an order in relation to an alleged contravention of subsection 527D(1) of the Fair Work Act must file an originating application in the approved form.
- (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) a claim in the approved form; and
  - (b) unless the application includes an application for an interim injunction—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: 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.

- (4) Paragraph (3)(b) does not apply to a sexual harassment application that is brought by a Fair Work Inspector.

Rule 31.07

---

**31.07 Application in relation to other alleged contraventions of the Fair Work Act general protections**

- (1) A person who wants to apply for an order in relation to an alleged contravention, or an alleged proposed contravention, of a general protection mentioned in Part 3-1 of the Fair Work Act (other than a contravention mentioned in rule 31.03 or rule 31.05) must file an originating application in the approved form.

- (2) The application must be accompanied by a claim in the approved form.

Note 1: Sections 545 and 546 of the Fair Work Act set out the orders the Court may make.

Note 2: Part 8 of these Rules sets out general rules about starting a proceeding.

Note 3: An application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 8.04).

**31.08 Application in relation to other alleged contraventions of the Fair Work Act**

A person who wants to apply for an order in relation to an alleged contravention of the Fair Work Act (other than a contravention mentioned in rule 31.03, 31.04, 31.05, 31.06 or 31.07) must file an originating application in the approved form.

Note: Part 8 of these Rules sets out general rules about starting a proceeding.

DRAFT

Rule 31.09

---

**Division 31.3—Contraventions of the Registered Organisations Act**

**31.09 Application in relation to taking a reprisal (Registered Organisations Act, section 337BB)**

- (1) A person who wants to apply for an order in relation to an allegation that a person took or threatened to take, or is taking or threatening to take, a reprisal against another person must file an originating application in the approved form.
- (2) The application must be accompanied by a claim in the approved form.

Note 1: Section 337BB of the Registered Organisations Act sets out the orders the Court may make.

Note 2: Part 8 of these Rules sets out general rules about starting a proceeding.

Note 3: An originating application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 8.04).

DRAFT

Rule 31.10

---

**Division 31.4—Small claims applications under the Fair Work Act**

**31.10 Small claims procedure**

- (1) A person who wants to apply for compensation may request that the application be dealt with under this Division if:
  - (a) the compensation is not more than \$100,000; and
  - (b) the compensation is for an entitlement mentioned in subsection 548(1A) of the Fair Work Act.

Note 1: Subsection 548(1A) applies to certain amounts that an employer is required to pay to an employee, or an outworker entity is required to pay to an outworker.

Note 2: A party to a small claims application may be represented by a lawyer only with the leave of the Court. If the Court gives a party leave to be represented by a lawyer, the leave may be given subject to conditions designed to ensure that no other party is unfairly disadvantaged. A party is taken not to be represented by a lawyer if the lawyer is an employee or officer of the party (see subsections 548(5)–(7) of the Fair Work Act).

- (2) An applicant may request that an application made under subsection 548(1B) of the Fair Work Act be dealt with under this Division.

Note 1: Subsection 548(1B) applies to proceedings in connection with a dispute relating to conversion of casual employment to full-time or part-time employment.

Note 2: The Court is not bound by any rules of evidence and procedure when dealing with a small claims application and may act:

- (a) in an informal manner; and
- (b) without regard to legal forms and technicalities.

**31.11 Starting a Fair Work Act small claims proceeding**

- (1) A person who wants to make a small claims application must file an originating application in the approved form.
- (2) The application must be accompanied by a claim in the approved form.

Note 1: Sections 545, 545A and 548 of the Fair Work Act set out the orders the Court may make.

Note 2: Part 8 of these Rules sets out general rules about starting a proceeding.

Note 3: An originating application filed under this rule need not be accompanied by an affidavit, statement of claim or points of claim (see rule 8.04).

Note 4: A party to a small claims application may be represented by a lawyer only with the leave of the Court. If the Court gives a party leave to be represented by a lawyer, the leave may be given subject to conditions the Court considers appropriate. A party is not taken to be represented by a lawyer if the lawyer is an employee or officer of the party (see subsections 548(5)–(7) of the Fair Work Act).

**31.12 Representation for corporations—Fair Work Act small claims proceeding**

Despite subrule 4.01(2), an officer or employee of a corporation may represent the corporation in a small claims proceeding under this Division if the officer or employee is authorised by the corporation to represent the corporation in the proceeding.

Rule 31.13

---

**Division 31.5—Proceedings under the Federal Safety Commissioner Act**

**31.13 Applications for order under section 81 of the Federal Safety Commissioner Act**

A person who wants to apply for an order under section 81 of the Federal Safety Commissioner Act in relation to an alleged contravention of that Act must file an originating application in the approved form.

Note 1: Section 81 of the Federal Safety Commissioner Act sets out the orders the Court may make for contravention of civil remedy provision.

Note 2: Part 8 of these Rules sets out general rules about starting a proceeding.

DRAFT



## Chapter 4—Costs, enforcement and contempt

### Part 32—Costs

#### Division 32.1—General

##### 32.01 Order for costs

- (1) A party or a person who is entitled to costs may apply for an order for costs:
  - (a) at any stage during a proceeding; or
  - (b) by interlocutory application within 28 days after a final order is made; or
  - (c) within any further time allowed by the Court.
- (2) In making an order for costs, the Court may set a time for payment of the costs, which may be before the proceeding is concluded.

##### 32.02 Determining costs

In making an order for costs, the Court may:

- (a) award costs as between party and party; or
- (b) award costs other than as between party and party; or
- (c) award costs in a lump sum; or
- (d) refer the costs for taxation under Part 40 of the Federal Court Rules.

Note 1: For *costs as between party and party* see rule 1.19.

Note 2: The Court may dispense with compliance with the Rules or make orders inconsistent with these Rules (see rules 1.09 and 1.10).

Note 3: The Court may order that costs be paid on an indemnity basis (see paragraph 192(4)(e) of the Act).

##### 32.03 Costs reserved

If the Court reserves the question of costs, and no further order is made, costs follow the event.

##### 32.04 Costs if a proceeding is transferred

- (1) This rule applies if a proceeding is transferred to the Court from the Federal Court.
- (2) If the Federal Court has not made an order for costs, the Court may make an order for costs including costs before the transfer.
- (3) Unless the Federal Court otherwise orders, costs before the transfer must be in accordance with this Part.

##### 32.05 Order for costs against lawyer

- (1) The Court may make an order for costs against a lawyer if the lawyer, or an employee or agent of the lawyer, has caused costs:

Rule 32.05

---

- (a) to be incurred by a party or another person; or
  - (b) to be thrown away;because of undue delay, negligence, improper conduct or other misconduct or default.
- (2) A lawyer may be in default if a hearing cannot proceed conveniently because the lawyer has unreasonably failed:
  - (a) to attend, or arrange for a proper representative to attend, the hearing; or
  - (b) to file, lodge or deliver a document as required; or
  - (c) to prepare any proper evidence or information; or
  - (d) to comply with these Rules or an order of the Court; or
  - (e) to do any other act necessary for the hearing to proceed.
- (3) An order for costs against a lawyer may be made:
  - (a) on the initiative of the Court; or
  - (b) on application by a party to the proceeding; or
  - (c) on application by another person who has incurred the costs or costs thrown away.
- (4) The order may provide:
  - (a) that the costs, or part of the costs, as between the lawyer and party be disallowed; or
  - (b) that the lawyer pay the costs, or part of the costs, incurred by the other person; or
  - (c) that the lawyer pay to the party or other person the costs, or part of the costs, that the party has been ordered to pay to the other person.
- (5) Before making an order for costs, the Court:
  - (a) must give the lawyer, and any other person who may be affected by the decision, a reasonable opportunity to be heard; and
  - (b) may order that notice of the order, or of any proceeding against the lawyer, be given to a party for whom the lawyer may be acting or any other person.

Note 1: For *lawyer*, see rule 1.19.

Note 2: For the duty of a party's lawyer to assist the party to conduct a proceeding in accordance with the overarching purpose of the Act (which includes facilitating the just resolution of disputes as quickly, inexpensively and efficiently as possible), see subsection 191(2) of the Act.

Note 3: For the power of the Court to order a lawyer to pay costs if the lawyer does not comply with the duty under subsection 191(2) of the Act, see subsection 191(4) of the Act.

Rule 32.06

---

## Division 32.2—Calculation of costs

### 32.06 Application of Division 32.2

This Division applies to costs payable, or to be taxed, under an Act, these Rules or an order of the Court, in a proceeding.

### 32.07 Costs and disbursements

A party entitled to costs in a proceeding to which these Rules apply (other than a proceeding to which the *Bankruptcy Act 1966* applies) is entitled to:

- (a) costs calculated in accordance with Schedule 2; and
- (b) disbursements properly incurred.

Note 1: The Court may dispense with compliance with the Rules or make orders inconsistent with these Rules (see rules 1.09 and 1.10).

Note 2: For costs in a proceeding to which the *Bankruptcy Act 1966* applies, see Part 13 of the *Federal Circuit and Family Court of Australia (Division 2) (Bankruptcy) Rules 2021*.

Note 3: For costs in a migration proceeding, see rule 25.14 of and Part 3 of Schedule 2 to these Rules.

### 32.08 Interest on outstanding costs

Interest is payable on outstanding costs at the rate referred to in rule 24.05.

### 32.09 Taxation of costs

In taxing a statement of costs, a taxing officer must apply the scale of costs set out in Schedule 3 to the Federal Court Rules.

Note: For *taxing officer*, see rule 1.19.

### 32.10 Expenses for attendance by witness

An amount paid, or to be paid, for attendance by a witness at a hearing is a disbursement properly incurred for a proceeding if:

- (a) the attendance is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

### 32.11 Expenses for preparation of report by expert

An amount paid, or to be paid, to an expert for preparation of a report for a party is a disbursement properly incurred for a proceeding if:

- (a) the report is reasonably required; and
- (b) the amount is reasonable or is authorised, or approved, by the Court.

### 32.12 Solicitor as advocate

- (1) If a solicitor appeared for a party at a hearing alone or as instructed by another solicitor who is a member of the same firm, the amount to which the party is entitled for the hearing is limited to:

- (a) 150% of the daily hearing fee for one solicitor; and

**Rule 32.13**

---

(b) a fee for preparation.

(2) The party is not entitled to an amount for the preparation of a brief on hearing.

**32.13 Advocacy certificate**

The Court may certify that it was reasonable to employ an advocate, or more than one advocate, to appear for a party to a proceeding.

**32.14 Counsel as advocate**

If the employment of an advocate is certified as reasonable, the amount payable for counsel to appear is the daily hearing fee and advocacy loading in accordance with Part 2 of Schedule 2.

DRAFT

Rule 32.15

---

**Division 32.3—Determination of maximum costs**

**32.15 Maximum costs in a proceeding**

- (1) The Court may by order specify the maximum costs that may be recovered as between party and party.
- (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, or has sought an extension of time for complying with, an order or any of these Rules; or
  - (b) has sought leave to amend a document; 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.
- (3) The Court may vary the maximum costs specified if, in the Court's opinion, there are special reasons and it is in the interests of justice to do so.

Rule 33.01

---

## Part 33—Enforcement

### Division 33.1—General

#### 33.01 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: For *without notice*, see rule 1.19.

#### 33.02 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 may make an order subject to conditions (see rule 1.08).

- (2) However, the party may apply to the Court for an order to revoke the condition or the variation of the order.

#### 33.03 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.

#### 33.04 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 1.15).

#### 33.05 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.
- (2) A party may apply to the Court for the issue of a warrant, in the approved form:

## **Rule 33.06**

---

- (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.
- (3) 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.
- (4) This rule does not limit the power of the Court to punish for contempt.
- (5) This rule does not apply to an order or direction of the Court requiring a party to comply with these Rules.

### **33.06 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.

### **33.07 Service of order**

- (1) An order mentioned in rule 33.06 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.

### **33.08 Application where person does not comply with order**

- (1) If a person does not 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.

## Rule 33.09

---

- (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 subrule 33.07(1), and the order carries the endorsement in rule 33.06; or
  - (b) was present when the order was made or was notified of the order in accordance with subrule 33.07(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 34.

### 33.09 Substituted performance

- (1) If a person (the **first person**) is required, 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.

Note: Contempt is dealt with in Part 34.

### 33.10 Execution generally

- (1) A party 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 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.



**Rule 33.11**

---

**33.11 Stay of execution**

A party may apply to the Court for a stay of execution of a judgment or order.

DRAFT

Rule 33.12

---

**Division 33.2—Enforcement against partnership**

**33.12 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.

**33.13 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 subrule 33.12(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.

**33.14 Application to proceeding 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
  - (b) for an order for the taking and holding of accounts and inquiries.

Rule 33.15

---

**Division 33.3—Enforcement against business name**

**33.15 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 33.12.
- (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.

DRAFT

Rule 34.01

---

## Part 34—Contempt

### Division 34.1—Contempt in face or hearing of Court

#### 34.01 Arrest for contempt

- (1) If it appears to the Court that a person is guilty of contempt, committed in the face of or in the hearing of the Court, the Court may:
  - (a) order that the person be brought before the Court; or
  - (b) issue a warrant in the approved form:
    - (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.

Note: Contempt in the court room interferes with the administration of justice. Examples of actions that may be contempt include:

- (a) assaulting or threatening a Judge or another person;
- (b) insulting the Court;
- (c) disrupting Court proceedings;
- (d) disrespect or other misbehaviour in Court.

#### 34.02 Charge, defence and determination

If a person charged with contempt is brought before the Court, the Court will:

- (a) tell the person of the contempt with which the person is charged; and
- (b) require the person to plead to the charge; and
- (c) after a hearing—determine whether the person is guilty of contempt; and
- (d) make an order for the person's discharge or punishment.

#### 34.03 Interim custody

- (1) The Court may order that, until the charge is determined, 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 applied if it is necessary to deal with the conduct complained of quickly.

Rule 34.04

---

## Division 34.2—Application for contempt

### 34.04 Application alleging contempt

- (1) If a party alleges that a person has committed a contempt 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 person has committed a contempt, 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.

### 34.05 Statement of charge

An application alleging contempt must:

- (a) be in the approved form; and
- (b) state the contempt alleged with sufficient particularity to allow the person charged to answer the charge; and
- (c) be accompanied by the affidavits on which the person making the charge intends to rely to prove the charge.

Note: The Court may act on its own initiative (see rule 1.15).

### 34.06 Service

The person charged must be served personally with:

- (a) the application; and
- (b) the statement of charge; and
- (c) the affidavits on which the party making the charge intends to rely.

### 34.07 Arrest

- (1) If the Court is satisfied that a person who is the subject of an application for punishment of a contempt is likely to abscond or otherwise withdraw from the jurisdiction of the Court, the Court may:
  - (a) order that the person charged give security for the person's appearance to answer the charge; or
  - (b) issue a warrant in the approved form:
    - (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) If the person charged does not comply with an order to give security, the Court may issue a warrant 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.
- (3) 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;

**Rule 34.08**

---

- (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.

**34.08 Charge and defence**

If a person charged with contempt under this Division is brought before the Court, the Court will:

- (a) tell the person of the allegation; and
- (b) ask the person to state whether the person admits or denies the allegation;  
and
- (c) hear any evidence in support of the allegation.

**34.09 Determination of contempt application**

- (1) After hearing evidence in support of the allegation, the Court may:
  - (a) if the Court decides there is no prima facie case—dismiss the application;  
or
  - (b) if the Court decides there is a prima facie case:
    - (i) invite the person to state the person’s defence to the allegation; and
    - (ii) after hearing any defence, determine the charge.
- (2) If the Court finds the charge proved, the Court may make an order for the punishment of the person.

Rule 34.10

---

**Division 34.3—General**

**34.10 Warrant for imprisonment**

A warrant for the imprisonment of a person charged under this Part may be issued by the Judge presiding in the Court directing the arrest or detention.

**34.11 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.

DRAFT

## Schedule 1—Powers delegated to Registrars

Note: see rule 3.01.

**Table xx—Powers delegated to Registrars**

Item	Column 1 Legislative provision	Column 2 Description of power (for information only)
<i><b>Federal Circuit and Family Court of Australia Act 2021</b></i>		
1	Section 153	To transfer a proceeding from the Court to the Federal Court
2	Paragraph 174(2)(b)	To give directions about the practice and procedure to be followed in relation to a proceeding or a part of a proceeding
3	Section 182	To give directions about the length of documents required or permitted to be filed in the Court
4	Section 184	To order, at any stage, a change of venue
5	Section 187	To give directions about limiting the time for oral argument in a proceeding
6	Section 188	To give directions about the use, or length, of written submissions in a proceeding
7	Subsection 189(2)	To make an order declaring that a proceeding is not invalid by reason of a formal defect or an irregularity
8	Section 197	To give directions about limiting the time for giving testimony in a proceeding
9	Subsection 199(2)	To give directions that particular testimony is to be given orally or by affidavit
10	Subsection 201(1)	To direct or allow testimony to be given by video link or audio link
11	Subsection 202(1)	To direct or allow a person to appear by way of video link or audio link
12	Subsection 203(1)	To direct or allow a person to make a submission by way of video link or audio link
13	Section 205	To direct or allow a document to be put to a person who is appearing or being examined by video link or audio link
14	Section 207	To make orders for the payment of expenses incurred in connection with giving testimony, appearing, or making submissions, by video link or audio link



**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
15	Subsection 212(3)	To fix a rate of interest that is lower than that fixed by subsection 212(2)
16	Sections 230 and 233	To make an order prohibiting or restricting the publication or other disclosure of particular evidence or the name of a party of witness
17	Subsection 254(2)	<p>All of the following:</p> <ul style="list-style-type: none"> <li>(a) to require a party’s lawyer to estimate the likely duration of the proceeding and likely amount of costs;</li> <li>(b) to make orders about the conduct of a proceeding;</li> <li>(c) to make orders following a party’s failure to comply with orders made as mentioned in paragraph (b);</li> <li>(d) to dispense with the service of any process of the Court;</li> <li>(e) to make orders in relation to substituted service;</li> <li>(f) to make orders in relation to discovery, inspection and production of documents;</li> <li>(g) to make orders in relation to interrogatories;</li> <li>(h) to make an order adjourning the hearing of proceedings;</li> <li>(i) to make an order as to costs;</li> <li>(j) to make an order about security for costs;</li> <li>(k) to make an order exempting a party to proceedings from compliance with a provision of these Rules;</li> <li>(l) to exercise a power of the Court prescribed by these Rules</li> <li>(m) to make an order the terms of which have been agreed upon by all the parties to the proceedings</li> </ul>

<b>Table xx—Powers delegated to Registrars</b>		
<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
<b><i>Fair Work Act 2009</i></b>		
18	Paragraph 545(2)(b)	To order a person to pay compensation
19	Section 548	To deal with small claims proceedings
20	Subsection 548(4)	To amend the papers starting the proceeding
21	Subsections 548(5) and (6)	To give leave for a party to a small claims proceeding to be represented by a lawyer
22	Subsection 548(8)	To give leave for a party to a small claims proceeding to be represented by an official of an industrial association
23	Subsection 548(10)	To order a party to pay costs incurred for any filing fees
24	Section 570	To order a party to pay costs incurred by another party
<b><i>Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Rules 2023</i></b>		
25	Subrule 1.05(2)	To apply the Federal Court Rules and modify or dispense with those rules, as necessary, where these Rules are insufficient or inappropriate
26	Rule 1.08	To make an order subject to conditions
27	Rule 1.09	To dispense with compliance with the Rules
28	Rule 1.10	To make an order inconsistent with these Rules
29	Rule 1.12	To make an order about procedure
30	Rule 1.13	To fix a time within which an act or thing is to be done
31	Subrule 1.14(1)	To extend or shorten a time fixed by the Rules or by an order of the Court
32	Subrule 1.14(2)	To extend a time fixed by the Rules or by an order of the Court even if the time fixed has passed
33	Rule 1.15	To exercise a power on its own initiative or on the application of a party
34	Rule 1.16	To give judgment or make an order even if the applicant has not made a claim for that relief
35	Rule 1.17	To specify in an order the consequences of non-compliance
36	Subrule 1.18(2)	To depart from a practice direction if appropriate in the circumstances
37	Paragraph 2.01(b)	To direct that the seal of the Court be attached to a document
38	Paragraph 2.02(2)	To direct that the seal or stamp of the Court be attached to a document
39	Rule 2.04	To consider an application to have a proceeding heard in another registry of the Court and to have regard to certain matters when considering the application
40	Subrule 2.05	To make orders in relation to compliance with requirements for documents
41	Subrule 2.06(2)	To make orders in relation to compliance with forms

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
42	Subrule 2.06(3)	To accept a document prepared in the form prescribed for a similar purpose for the Federal Court
43	Paragraph 2.14(3)(b)	To direct that the original of a document or transmission report be produced
44	Rule 2.18	To make an order for removal of a document from the Court file and to impose conditions on the removal
45	Rule 2.19	To make an order for redaction of a document on a Court file and to impose conditions on the redaction
46	Rule 2.20	To permit or impose conditions on the removal of a document from the Registry
47	Paragraphs 2.21(1)(b), (3)(a)	To order that a document for inspection be confidential
48	Subrule 2.21(4)	To give leave for a person to inspect a document that the person is not otherwise entitled to inspect
49	Rule 2.23	To order that money be paid out of a Litigants' Fund
50	Rule 3.07	To order that the application operates as a stay of an exercise of the power under review
51	Rule 4.01	To give leave to a corporation to proceed otherwise than by a lawyer
52	Subrule 4.05(2)	To give leave to a lawyer to file a notice of withdrawal without satisfying the requirement to serve a notice of intention to withdraw on the party for whom the lawyer is acting
53	Subrules 4.06(1) and (2)	To refer a party to a lawyer for legal assistance and to take certain matters into account when making such a referral
54	Rule 5.01	To order that a party, or the party's lawyer, need not attend the Court on the first court date
55	Rule 5.03	To give directions for the conduct of the proceeding, including at the first court date
56	Rule 5.04	To make directions or orders for the management, conduct and hearing of a cross-claim
57	Rule 5.06	To hear and determine a proceeding at a directions hearing
58	Rule 5.10	To make orders if an applicant is in default
59	Rule 5.11	To make orders if a respondent is in default
60	Rule 6.01	To remove from the Court file a document containing matter that is scandalous, vexatious or oppressive To strike from a document matter that is scandalous, vexatious or oppressive
61	Rule 6.04	To give leave for the use of a recording device or communication device in a place where a hearing is taking place, and to make directions relating to that use

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
62	Subrule 8.05(2)	To make an order permitting an originating application and any document filed with it to be served otherwise than as provided by subrule 8.05(2)
63	Subrule 8.09	To allow or direct a party to amend an originating application
64	Rule 8.12	To make an order about the procedure for amending an originating application
65	Rule 8.14	To make an order about service of the amended originating application
66	Rule 8.18	To give leave to file an amended response to include a cross-claim
67	Rule 8.21	To make an order permitting a response and any document filed with it to be served otherwise than as provided by subrule 8.21(1)
68	Rule 8.26	To make an order in relation to a cross-claim
69	Rule 8.28	To give leave to amend a response generally
70	Rule 8.29	To make an order about the procedure for amending a response
71	Rule 8.31	To make an order about service of the amended response
72	Rule 9.02	To give leave for two or more persons to be joined as applicants or respondents in a proceeding
73	Rule 9.05	To make orders in relation to persons who must be included as parties to a proceeding
74	Rule 9.08	To consider an application by a party to be removed as a party
75	Rule 9.09	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
76	Rule 9.10	To order that a proceeding be dismissed if a party is not substituted for a deceased party
77	Rule 9.12	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
78	Subrule 9.25(2)	To order that a minor in a proceeding is not taken to need a litigation guardian in relation to the proceeding
79	Subrule 9.28(1)	To appoint a litigation guardian in a proceeding
80	Subrule 9.31(1)	To remove a litigation guardian
81	Subrule 9.31(2)	To stay a proceeding until a replacement litigation guardian is appointed

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
82	Rule 9.38	To make orders for the payment of the costs and expenses of a litigation guardian
83	Rule 10.13	To find that a document is taken to have been served
84	Rule 10.14	To make an order in relation to service of a document in accordance with rule 10.14
85	Rule 10.15	To make an order that the filing of a document does not have effect as service of a document
86	Rule 10.16	To make an order about service of a notice or other document by the Court or an officer of the Court
87	Rule 10.21	To make an order about a person's address for service
88	Subrule 10.30(1)	To order evidence of service of a document to be given otherwise than by affidavit
89	Rule 12.01	To make an order about an originating application
90	Subrule 13.15(1)	To order that the whole or a part of a pleading be struck out
91	Subrule 13.15(2)	To order that a pleading be removed from the Court file
92	Rule 13.16	To make an order varying the times for filing and serving pleadings
93	Rule 13.23	To order a party to file and serve particulars or a statement of the nature of the party's case
94	Rule 13.25	To disallow the amendment of a pleading
95	Rule 13.26	To allow or direct a party to amend a pleading
96	Rule 13.27	To order when an amendment of a pleading takes effect
97	Rule 13.28	To make an order about the procedure for amending a pleading
98	Rule 13.33	To make an order about the service of an amended pleading
99	Subrule 14.01(3)	To make an order permitting an interlocutory application and any document filed with it to be served otherwise than as provided by subrule 14.01(3)
100	Rule 14.03	To make an order about the service of an interlocutory application
101	Rule 14.04	To make orders if a party is absent from an interlocutory hearing
102	Rule 15.01	To order the applicant to give the security the Court considers appropriate for the respondent's costs of the proceeding
103	Paragraph 15.01(1)(b)	To order that a proceeding be stayed until security is provided
104	Paragraph 15.01(1)(c)	To order that a proceeding be stayed or dismissed if security is not provided

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
105	Rule 16.05	To make an order about the use of a document
106	Rule 16.06	To order a party to give discovery in accordance with Division 16.2
107	Subrule 16.07(1)	To make orders for discovery
108	Subrule 16.08(1)	To inspect a document for the purpose of determining whether a claim for privilege is valid
109	Rule 16.09	To make an order about the manner and time for giving discovery
110	Rule 16.10	To make an order about the form and content of a list of discovered documents
111	Rule 16.11	To order a party to file an affidavit regarding the party's control of a document or class of document
112	Subrule 16.12(3)	To order that a document be produced for inspection
113	Rule 16.13	To order a party to produce a document for inspection and to specify the time and place for inspection
114	Rule 16.14	To order otherwise than permitting a party who inspects a document under Division 16.3 to make a copy of, or take an extract from, the document
115	Subrule 16.15(1)	To order a party to produce to the Court a document in the party's control
116	Subrule 16.15(2)	To inspect a document for the purpose of determining the validity of an objection
117	Subrule 16.16(2)	To make appropriate orders in relation to the administration of interrogatories
118	Rule 17.05	To make an order about the payment of the costs of proving a fact
119	Subrule 17.12(2)	To order that material referred to in subrule 17.12(1) be removed from the Court file
120	Subrule 17.13(4)	To allow an affidavit to be used in a proceeding where the affidavit is made by a person who is incapable of reading it or incapable of signing it and no certificate or statement under rule 17.13 appears on the affidavit
121	Rule 17.15	To make an order about the filing of an affidavit that is irregular in form
122	Rule 17.16	To give leave to use an affidavit if the maker of the affidavit fails to attend for cross-examination
123	Rule 17.17	To appoint an expert as Court expert to inquire into and report on a question arising in a proceeding, and give directions for the purposes of the inquiry or report
124	Rule 17.18	To direct otherwise than that the parties are jointly liable to pay the reasonable remuneration and expenses of a Court expert for preparing a report

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
125	Subrule 17.19(3)	To do a thing referred to in subrule 17.19(3) in relation to a report prepared by a court expert
126	Rule 17.20	To give leave to a party to adduce evidence of another expert on a question on which a Court expert has made a report
127	Rule 17.23	To order a party to provide copies of that party's expert report
128	Subrule 17.24(2)	To give a direction in relation to opinion evidence by an expert witness
129	Rule 18.01	To direct that a party may request the issue of more than 5 subpoenas in a proceeding
130	Rule 18.02	To give leave to issue a subpoena
131	Subrule 18.04(1)	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
132	Rule 18.06	To fix time limits for service of a subpoena otherwise than as required by rule 18.06(a)
133	Subrule 18.09(1)	To make an order setting aside all or part of a subpoena
134	Subrule 18.09(3)	To order that an applicant give notice of an application to set aside a subpoena
135	Rule 18.13(1)	To give a direction for the removal, return, inspection, copying and disposal of a document or thing
136	Subrule 18.13(2)	To permit a person who inspects or copies a document under these Rules to disclose the contents of the document or give a copy of it to another person
137	Rule 18.14	To permit a person who inspects or copies a document under these Rules to disclose the contents of the document or give a copy of it to another person
138	Rule 18.15	To give leave to inspect a document or thing
139	Rule 18.17	To make an order for the payment of any loss or expense incurred in complying with a subpoena
140	Rule 18.19	To give leave to inspect and copy a document produced to the Court from another court
141	Rule 20.01	To transfer a proceeding from the Court to the Federal Court

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
142	Rule 21.02	To: (a) refer a proceeding, a part of a proceeding or a matter arising out of a proceeding, for mediation or, with the parties' consent, arbitration; and (b) adjourn or stay the proceeding; and (c) order the mediator or arbitrator to report to the Court on progress in the mediation or arbitration
143	Rule 21.03	To make orders about mediation or arbitration
144	Rule 21.04	To order that a party or a lawyer representing a party is not required to attend a mediation in person
145	Rule 21.05	To end a mediation or arbitration or terminate the appointment of a mediator or arbitrator
146	Rule 21.07	To give directions for the management and conduct of the proceeding following the parties' referral of the proceeding to a dispute resolution process
147	Paragraph 21.08(b)	To make consent orders if parties resolve the issues between them following a dispute resolution process
148	Rule 21.10	To appoint a new mediator and give directions on how a mediation should continue
149	Rule 22.01	To order that a question be heard separately from any other question
150	Rule 22.03	To order that several proceedings be consolidated, tried at the same time or in a specified order, or stayed until one of the proceedings has been determined
151	Rule 22.04	To make orders if a party is absent from a hearing
152	Rule 22.05	To adjourn a proceeding or strike out a proceeding if no party appears at trial
153	Rule 22.06	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
154	Rule 22.07	To give judgment and make an order for entry of judgment after a party dies
155	Rule 22.08	To give leave to a party to read evidence taken or an affidavit filed in other proceedings
156	Rule 22.12	To: (a) require 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



**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
157	Rule 22.13	To make an order for the attendance of a person for examination, or for the attendance of the person and the production of a document or thing by the person
158	Rule 23.01	To give leave to a party to withdraw an admission or other matter operating for the benefit of another party
159	Subrule 23.02(2)(c)	To give leave to file a notice of discontinuance other than as required by paragraph 23.02(2)(a) or (b)
160	Subrule 23.02(4)	To give leave to file a notice of discontinuance where the proceeding is a creditor's petition or a party is represented by a litigation guardian
161	Subrule 23.05(2)	To direct that a party may file an application for costs more than 28 days after a notice of discontinuance has been served on the party
162	Rule 23.06	To stay further proceedings until costs are paid by the party bringing the further proceedings
163	Subrule 23.07(4)	To require a party to provide additional information before a consent order is made
164	Subrule 23.08(1)	To give summary judgment for a party
165	Subrule 23.08(3)	To stay execution on, or other enforcement of, a judgment until determination of a claim
166	Subrules 23.09	To order that a proceeding, or a part of a proceeding, be dismissed if a party has not taken a step in the proceeding for 6 months, and to give notice to each party of the date and time the Court will consider whether to make such an order
167	Rule 23.10	To stay a subsequent proceeding until costs are paid by the party bringing the subsequent proceeding
168	Rule 24.01	To order that a judgment or order take effect on a specified date
169	Rule 24.02	To order the time for compliance with an order
170	Rule 24.03	To vary or set aside a judgment or order before it has been entered
171	Rule 24.04	To vary or set aside a judgment or order after it has been entered
172	Subrule 25.08(4)	To direct the persons to be served with a notice and High Court order remitting a matter to the Court
173	Rule 25.09	To stay a proceeding
174	Subrule 25.10(1)	To give orders or directions for the conduct of a migration proceeding
175	Subrule 25.10(2)	To give orders or directions in Chambers without a hearing or to require the parties to attend a hearing

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
176	Subrule 25.14(2)	To make a costs order in Chambers in accordance with subrule 25.14(2)
177	Rule 25.15	To dismiss a proceeding in open court or in Chambers without a hearing on the death of an applicant
178	Rule 27.07	To give directions for the conduct of an appeal from a decision of the AAT
179	Rule 28.06	To give leave to a special purpose Commissioner to assist the Court
180	Paragraph 32.01(1)(c)	To allow further time for an application for an order for costs to be made
181	Subrule 32.02	To do a thing referred to in any of paragraphs 32.02 (a) to (d) in making an order for costs in a proceeding
182	Rule 32.03	If costs of an application or other proceeding are reserved—to order otherwise than that the costs follow the event
183	Rule 32.05	To make an order for costs against a lawyer
184	Rule 32.07	To order otherwise than that a party is entitled to costs in accordance with Schedule 2 and disbursements properly incurred
185	Rule 32.08	To order otherwise than that interest is payable on outstanding costs at the rate specified in rule 32.08
186	Paragraph 32.10(b)	To authorise or approve an amount for attendance by a witness
187	Paragraph 32.11(b)	To authorise or approve an amount for preparation of a report by an expert
188	Rule 32.13	To certify that it was reasonable to employ one or more advocates to appear for a party to a proceeding
189	Subrule 32.15(1)	To specify the maximum costs that may be recovered on a party and party basis
190	Subrule 32.15(3)	To vary the maximum costs specified if there are special reasons and it is in the interests of justice to do so
191	Rule 33.01	To give a direction for the enforcement or execution of an order
192	Rule 33.03	To order that a judgment or order be stayed but only for a judgment or order of a Registrar
193	Rule 33.10	To make an order, issue a writ or take another step to enforce a judgment or order
194	Rule 33.11	To stay the execution of a judgment but only for a judgment of a Registrar

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
<b><i>Migration Act 1958</i></b>		
195	Subsection 476(1), but only where a respondent consents to the orders	To order that a decision be quashed or that a matter be remitted for determination according to law where a respondent concedes jurisdictional error
196	Subsection 477(2)	To order that the time for making an application under section 476 of the Migration Act be extended
197	Subsection 486F(1)	To make a costs order where the Court finds that migration litigation has no reasonable prospect of success
<b><i>National Consumer Credit Protection Act 2009</i></b>		
198	Section 178	To order a person to pay compensation
199	Section 199	To deal with small claims proceedings
200	Subsection 199(6)	To amend the papers starting the proceedings
201	Subsections 199(7) and (8)	To give leave for a party to a small claims proceeding to be represented by a lawyer
202	Section 200	To order a party to pay costs incurred by another party
<b><i>National Credit Code</i></b>		
203	Section 37	To order a credit provider to provide a statement
204	Subsection 38(7)	To determine a disputed liability and make consequential orders
205	Subsection 74(2)	To make orders changing, or refusing to change, the terms of a credit contract
206	Subsection 74(3)	To stay enforcement proceedings or make other orders relating to a debtor's application to change the terms of a credit contract
207	Subsection 75(1)	To vary or revoke an order under subsection 74(2)
208	Subsection 75(2)	To vary or revoke a stay or order under subsection 74(3)
209	Section 76	To reopen an unjust transaction that gave rise to an unjust contract, mortgage or guarantee
210	Section 78	To annul or reduce an unconscionable change to a rate, fee or charge
211	Subsection 96(2)	To order or refuse to order a postponement
212	Subsection 96(3)	To stay enforcement proceedings until an application for postponement has been heard
213	Subsection 101(1)	To order a person to deliver mortgaged goods to a credit provider
214	Subsection 101(2)	To make orders varying the place at which, or time or period within which, mortgaged goods must be delivered to a credit provider
215	Subsection 106(1)	To order a credit provider to credit a mortgagor
216	Subsection 106(2)	To order a credit provider to compensate a mortgagor or mortgagee

**Table xx—Powers delegated to Registrars**

<b>Item</b>	<b>Column 1 Legislative provision</b>	<b>Column 2 Description of power (for information only)</b>
217	Subsection 107(3)	To determine the amount of enforcement expenses that may be recovered by a credit provider
218	Section 108	To order a credit provider to return possession of goods to a mortgagor
219	Section 118	To order a credit provider to pay compensation to a debtor, lessee or guarantor
220	Section 175F	To order a lessor under a consumer lease to provide a statement
221	Subsection 175G(6)	To determine a disputed liability and make consequential orders
222	Section 177D	To make orders changing, or refusing to change, the terms of a consumer lease or staying enforcement proceedings or make other orders relating to a lessee's application to change the terms of a consumer lease
223	Section 177E	To vary or revoke an order or stay under section 177D
224	Section 177F	To reopen an unjust transaction that gave rise to an unjust consumer lease
225	Section 179K	To order or refuse to order a postponement or to stay enforcement proceedings until an application for postponement has been heard
226	Section 179Q	To order a person to deliver mortgaged goods to a lessor or to make orders varying the place at which, or time or period within which, mortgaged goods must be delivered to a lessor
227	Subsection 179R(3)	To determine the amount of enforcement expenses that may be recovered by a lessor

- (1) The powers of the Court mentioned in items 18 and 23 of the table in Schedule 1 may be exercised only by an approved Registrar and only when dealing with a claim mentioned in section 548 of the *Fair Work Act 2009*.
- (2) The powers of the Court mentioned in items 198 and 202 to 227 of the table in Schedule 1 may be exercised only by an approved Registrar and only when dealing with an application for an order mentioned in subsection 199(2) of the *National Consumer Credit Protection Act 2009*.

---

## **Schedule 2—Costs**

Note: See rules 25.17, 32.07 and 32.14.

### **Part 1—Application of this Schedule**

#### **1 Application of this Schedule**

This Schedule, as substituted by the *Federal Circuit and Family Court of Australia (Division 2) (General Federal Law) Amendment (2022 Measures No. 1) Rules 2022*, applies to work done or services performed on or after 1 January 2023.

DRAFT

## Part 2—Proceedings other than migration proceedings

Costs for general federal law proceedings other than migration proceedings		
Item	Description	Amount (including GST)
1	Initiating or opposing an application up to the completion of the first court date	Both: (a) \$3,354.70; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
2	Initiating or opposing an application which includes interlocutory orders (other than procedural orders) up to the completion of the first court date	Both: (a) \$4,197.91; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
3	Interlocutory or summary hearing—as a discrete event  Note: This stage applies to an interlocutory application or a summary proceeding of a type not otherwise addressed in this fee structure. It does not include the item 1 or 2 component.	Both: (a) \$2,093.62; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
4	Dispute resolution litigation intervention	\$3,517.80
5	Preparation for final hearing—one day matter	\$7,543.02
6	Preparation for final hearing—2 day matter	\$11,335.84
7	Preparation for final hearing—each additional hearing day after the second hearing day	\$2,384.64
8	Final hearing costs for attendance of solicitor at hearing to take judgment and explain orders	Both: (a) \$342.19; and (b) the daily hearing fee mentioned in item 9 that applies to the hearing
9	Daily hearing fee	(a) for a short mention—\$342.19; or (b) for a half day hearing—\$1,255.75; or (c) for a full day hearing—\$2,512.56
10	Advocacy loading	50% of the daily hearing fee mentioned in item 9 that applies to the hearing
11	Disbursements—Court fees and other fees and payments to the extent that they have been reasonably incurred	The amount of the fees and payments
12	Disbursements—photocopying for each page	\$0.86
13	Agents' fees and travelling costs	\$706.76
	Note: For 2 or more hours travel.	

Division 1 Migration proceedings that have concluded

---

## Part 3—Migration proceedings

### Division 1—Migration proceedings that have concluded

---

Costs for migration proceedings that have concluded		
Item	Description	Amount (including GST)
1	A proceeding concluded: <ul style="list-style-type: none"><li>- at or before the first court date for the proceeding, or</li><li>- before directions are given under rule 25.10</li></ul>	\$1,675.75
2	A proceeding concluded: <ul style="list-style-type: none"><li>(a) after the first court date for the proceeding or the giving of directions under rule 25.10; and</li><li>(b) at or before an interlocutory hearing</li></ul>	\$4,189.38
3	A proceeding concluded at a final hearing	\$8,371.30

---

**Division 2** Migration proceedings that have been discontinued

---

**Division 2—Migration proceedings that have been discontinued**

<b>Costs for migration proceedings that have been discontinued</b>		
<b>Item</b>	<b>Description</b>	<b>Amount (including GST)</b>
1	A proceeding in which the notice of discontinuance is filed and served at least 14 days before the first court date for the proceeding	\$833.61
2	A proceeding in which the notice of discontinuance is filed and served: (a) less than 14 days before the first court date for the proceeding; and (b) at least 15 days before an interlocutory hearing	\$2,089.36
3	A proceeding in which the notice of discontinuance is filed and served: (a) less than 15 days before an interlocutory hearing; and (b) at least 15 days before the final hearing	\$4,189.38
4	Any other case	\$5,859.80