



Australian Capital Territory

Court Procedures Amendment Rules 2014 (No 3)

Subordinate Law SL2014-34

We, the rule-making committee, make the following rules of court under the *Court Procedures Act 2004*, section 7.

Dated 19 December 2014.

H MURRELL

Chief Justice

R REFSHAUGE

Judge

L WALKER

Chief Magistrate

L CAMPBELL

Magistrate



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made under the

[Court Procedures Act 2004](#)

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1 Name of rules

These rules are the *Court Procedures Amendment Rules 2014 (No 3)*.

2 Commencement

These rules commence on 1 January 2015.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 6 (5), example and note

omit

5 Rule 455

substitute

455 Pleadings—defence of tender

A defendant cannot plead a defence of tender before the proceeding was started unless the defendant has paid the amount tendered into court or filed a bond or other security approved by the registrar for the payment of the amount.

6 Part 2.10

substitute

Part 2.10 Offers of compromise

1000 Application—pt 2.10

This part is subject to the *Civil Law (Wrongs) Act 2002*, chapter 14 (Limitations on legal costs) and the *Road Transport (Third-Party Insurance) Act 2008*, part 4.8 (Mandatory final offers) and part 4.9 (Court proceedings).

1001 Definitions—pt 2.10

In this part:

judgment in favour of the defendant includes a dismissal of an originating application or an originating claim.

offer means an offer of compromise under rule 1002.

period of acceptance, for an offer, means the period when the offer is open for acceptance.

1002 Making offer

- (1) A party may, by written notice, make an offer to another party to compromise any claim in proceedings, either in whole or in part, on stated terms.
- (2) An offer under this rule must—
 - (a) identify—
 - (i) the claim or part of the claim to which it relates; and
 - (ii) the proposed orders for disposal of the claim or part of the claim including, if a monetary judgment is proposed, the amount of the judgment; and

- (b) if the offer relates only to part of the proceedings, include a statement—
 - (i) for an offer by the plaintiff—stating whether the remainder of the proceedings will be abandoned or pursued; or
 - (ii) for an offer by a defendant—stating whether the remainder of the proceedings will be defended or conceded; and
 - (c) not include an amount for costs or state that it is inclusive of costs; and
 - (d) state that the offer has been made in accordance with this part; and
 - (e) state the period of acceptance.
- (3) An offer under this rule may propose—
- (a) a judgment in favour of the defendant—
 - (i) with no order as to costs; or
 - (ii) despite subrule (2) (c), with an order that the defendant will pay to the plaintiff a stated amount for the plaintiff's costs; or
 - (b) that the costs as agreed or assessed up to the time of the offer will be paid by the person making the offer; or
 - (c) that the costs as agreed or assessed on a party and party basis or indemnity basis will be paid out of a stated estate or fund identified in the offer.

- (4) If the offeror makes an offer before the offeree is given particulars of the offeror's claim, and documents available to the offeror necessary for the offeree to properly consider the offer, the offeree may, within 14 days after receiving the offer give notice to the offeror that—
 - (a) the offeree is unable to assess the reasonableness of the offer because of the lack of particulars or documents; and
 - (b) if rule 1010 applies—the offeree will seek an order under rule 1010 (2).
- (5) The end of a period of acceptance for an offer—
 - (a) for an offer made 2 months or more before the date set down for the start of the trial—must be not less than 28 days after the day the offer is made; and
 - (b) in any other case—must be after a period that is reasonable in the circumstances.
- (6) Unless the notice of offer otherwise provides, an offer providing for the payment of money or doing of an act is taken to provide for the payment or doing of the act within 28 days after the offer is accepted.
- (7) Unless the notice of offer otherwise provides, an offer is made without prejudice.
- (8) A party may make more than 1 offer in relation to the same claim.
- (9) Unless the court orders otherwise, an offer may not be withdrawn during the period of acceptance for the offer.
- (10) A notice of offer purporting to exclude, modify or restrict rule 1010 or rule 1011 is invalid.

1003 Acceptance of offer

- (1) A party may accept an offer by serving written notice on the offeror at any time during the period of acceptance for the offer.
- (2) The offer may be accepted even if a further offer is made during the period of acceptance for the offer.
- (3) If an offer is accepted under this rule, any party to the offer may apply for judgment to be entered accordingly.

1004 Withdrawal of acceptance

- (1) A party who accepts an offer may, by written notice served on the offeror, withdraw the acceptance if—
 - (a) the offer provides for the doing of an act or for payment of money, and the act is not done or the money is not paid to the offeree or into court within 28 days after acceptance of the offer or within another time provided for in the offer; or
 - (b) the court grants the party leave to withdraw the acceptance.
- (2) If the party withdraws acceptance of the offer—
 - (a) except where paragraph (b) provides otherwise, all steps in the proceedings that were taken as a consequence of the acceptance no longer have effect; and
 - (b) the court may, after the offer is withdrawn or when granting leave to withdraw the offer, give directions that—
 - (i) restore the parties as nearly as possible to their positions at the time of acceptance; and
 - (ii) give effect to any steps in the proceedings taken as a consequence of the acceptance; and
 - (iii) provide for the further conduct of the proceedings.

1005 Failure to comply with accepted offer

- (1) If the plaintiff, as a party to an accepted offer, fails to comply with the terms of the offer, the defendant is entitled—
 - (a) to a judgment or order that is appropriate to give effect to the terms of the accepted offer; or
 - (b) to an order that the proceedings be dismissed, and to judgment accordingly, as the defendant elects, unless the court orders otherwise.
- (2) If the defendant, as a party to an accepted offer, fails to comply with the terms of the offer, the plaintiff is entitled—
 - (a) to a judgment or order that is appropriate to give effect to the terms of the accepted offer; or
 - (b) to an order that the defence be struck out, and to judgment accordingly, as the plaintiff elects, unless the court orders otherwise.
- (3) If a party to an accepted offer fails to comply with the terms of the offer, and a defendant in the proceedings has made a counterclaim that is not the subject of the accepted offer, the court—
 - (a) may make an order or give a judgment under this rule; and
 - (b) may make an order as to the further conduct of proceedings on the counterclaim it considers appropriate.

1006 Disclosure of offer to court

- (1) No statement that an offer has been made may be included in any pleading or affidavit.
- (2) If an offer is not accepted, no communication in relation to the offer may be disclosed to the court at trial.

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- (3) Despite subrule (2), an offer may be disclosed to the court—
- (a) if a notice of offer provides that the offer is not made without prejudice; or
 - (b) to the extent necessary to enable the offer to be taken into account for determining an amount of interest up to judgment; or
 - (c) after all questions of liability and relief have been determined, to the extent necessary to determine questions as to costs.

1007 Compromises in certain Supreme Court proceedings

- (1) This rule applies to proceedings in the Supreme Court concerning—
- (a) the administration of a deceased person's estate; or
 - (b) property the subject of a trust; or
 - (c) the construction of an Act, instrument or other document, involving any matter in which 1 or more people have the same interest or liability.
- (2) If a compromise affects a person who is not a party but who has the same interest or liability, and the court is satisfied that the compromise will benefit the person, the court may approve a compromise that—
- (a) 1 party has agreed to; or
 - (b) the court has sanctioned on behalf of the party.
- (3) A compromise under subrule (2) binds the person who is not a party unless the court's approval of the compromise has been obtained by fraud or nondisclosure of material facts.

1008 Offer to contribute

- (1) An offer in a proceeding must not be brought to the attention of the court until all questions of liability or amount of debt or damages have been decided, if in the proceeding—
 - (a) one party (*the first party*) stands to be held liable to another party (*the second party*) to contribute towards any debt or damages which may be recovered against the second party in the proceeding; and
 - (b) the first party, at any time after filing a notice of intention to respond or defence, makes an offer to the second party to contribute to the debt or damages; and
 - (c) the offer is made without prejudice to the first party's defence.
- (2) In this rule:
debt or damages includes any interest up to judgment claimed on any debt or damages.

1009 Offer accepted and no provision for costs

- (1) This rule applies if an offer—
 - (a) is accepted in relation to a claim; and
 - (b) does not make provision for costs in relation to the claim.
- (2) If the offer proposed a judgment in favour of the plaintiff in relation to the claim, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to the time when the offer was made.
- (3) If the offer proposed a judgment in favour of the defendant in relation to the claim (including a dismissal of an originating application or originating claim), the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a party and party basis up to the time when the offer was made.

1010 Offer not accepted and judgment no less favourable to plaintiff

- (1) This rule applies if an offer is made by the plaintiff in relation to a claim, but not accepted by the defendant, and the plaintiff obtains an order or judgment on the claim no less favourable to the plaintiff than the terms of the offer.
- (2) Unless the court orders otherwise, the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim—
 - (a) if the claim is a personal injury claim—assessed on a solicitor and client basis for the whole of the proceeding; or
 - (b) in any other case—
 - (i) assessed on a party and party basis up to the time when the costs are to be assessed on a solicitor and client basis under subparagraph (ii); and
 - (ii) assessed on a solicitor and client basis—
 - (A) if the offer was made before the first day of the trial—from the day the period for acceptance of the offer ends; and
 - (B) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1011 Offer not accepted and judgment no more favourable to plaintiff

- (1) This rule applies if an offer is made by the defendant in relation to a claim, but not accepted by the plaintiff, and the plaintiff obtains an order or judgment on the claim no more favourable to the plaintiff than the terms of the offer.
- (2) Unless the court orders otherwise—
 - (a) if the claim is a personal injury claim—the plaintiff—
 - (i) is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to and including the day the offer was made; and
 - (ii) is not entitled to an order against the defendant for the plaintiff's costs in relation to the claim after the day the offer was made; but
 - (iii) is not required to pay the defendant's costs in relation to the claim on and from the day the offer was made; or
 - (b) in any other case—
 - (i) the plaintiff is entitled to an order against the defendant for the plaintiff's costs in relation to the claim, assessed on a party and party basis up to the time when the defendant is entitled to costs under subparagraph (ii); and
 - (ii) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a party and party basis—
 - (A) if the offer was made before the first day of the trial—from the day the period for acceptance of the offer ends; and

- (B) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1012 Offer not accepted and judgment no less favourable to defendant

- (1) This rule applies if the offer is made by the defendant, but not accepted by the plaintiff, and the defendant obtains an order or judgment on the claim no less favourable to the defendant than the terms of the offer.
- (2) Unless the court orders otherwise—
 - (a) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, to be assessed on a party and party basis, up to the time when the defendant is entitled to costs under paragraph (b); and
 - (b) the defendant is entitled to an order against the plaintiff for the defendant's costs in relation to the claim, assessed on a solicitor and client basis—
 - (i) if the offer was made before the first day of the trial—on and from the day after the offer was made; and
 - (ii) if the offer was made on or after the first day of the trial—at and from 11 am on the day after the offer was made.

1013 Costs in relation to interest

- (1) This rule applies if a plaintiff obtains an order or judgment for the payment of a debt or damages, and—
 - (a) the amount payable under the order or for which the judgment is given includes interest or damages in the nature of interest; or
 - (b) the court, by a separate order, awards the plaintiff interest or damages in the nature of interest in relation to the amount.
- (2) In determining the consequences for costs under rule 1010, rule 1011 or rule 1012, the court must disregard the interest, or damages in the nature of interest, that relates to the period after the day the offer was made.
- (3) For this rule, the court may be informed that the offer was made, and the date that the offer was made, but must not be informed of its terms.

1014 Miscellaneous

- (1) Before the court makes an order under rule 1010 or rule 1011, the party to whom the offer was made may request that the party making the offer (the *offeror*) satisfy the court that the offeror was at all material times willing and able to carry out the offer.
- (2) If the court is satisfied that the offeror was at all material times willing and able to carry out the offer, then, unless the court orders otherwise, the party making the request must pay the costs of the offeror caused by the request.
- (3) If the court is not satisfied that the offeror was at all material times willing and able to carry out the offer, then, unless the court orders otherwise—
 - (a) rule 1010 and rule 1011 do not apply; and

- (b) the offeror must pay the costs of the party making the request caused by the request.
- (4) Unless the court orders otherwise, any application for an order for costs under rule 1010 or rule 1011 must be made immediately after the order or judgment giving rise to the entitlement to the order for costs is given.

7 Rule 1100

omit

(Claim for debt or liquidated amount)

substitute

(Claim for debt or liquidated demand)

8 New rule 1616

insert

1616 Payment into court—payment of amount paid into court under order

An amount paid into court under an order of the court may be paid out of court only under an order of the court.

Note 1 Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

Note 2 An order of the court includes a consent order (see r 1611 (Orders—by consent)).

9 Rule 1617

substitute

1617 Payment into court—amount recovered by person with legal disability

- (1) An amount (including an amount of damages) recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person with a legal disability must be paid into court.
- (2) The amount may be paid out of court only under an order of the court.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

- (3) In this rule:

order of the court does not include a consent order.

10 New rules 1618 to 1623

insert

1618 Person with legal disability—orders about recovered amounts etc

- (1) The court may make an order directing how an amount recovered, awarded or agreed to be paid in a proceeding in relation to the claim for relief of a person with a legal disability (the *claimant*) must be dealt with.

Note An amount ordered to be paid to a person with a legal disability must be paid into court and, unless the court otherwise directs, be paid out to the public trustee (see [Public Trustee Act 1985](#), s 25).

- (2) Without limiting subrule (1), the court may, by order, direct—
- (a) the payment of all or part of the amount to—
 - (i) the claimant or the claimant’s litigation guardian for—
 - (A) expenses incurred by or paid for the claimant; or
 - (B) the maintenance or benefit of the claimant; or
 - (ii) the claimant’s solicitor for costs; or
 - (b) the investment of all or part of the amount for the claimant in the way stated in the order; or
 - (c) the investment of all or part of the interest received from an investment under this rule for the claimant in the way stated in the order; or
 - (d) the changing of an investment made for the claimant under this rule; or
 - (e) the sale of securities in which an amount is invested for the claimant under this rule at the time, and on the conditions, stated in the order; or
 - (f) the payment of all or part of the amount, or the transfer of a security or investment under this rule (including an account with an authorised deposit-taking institution), for the claimant.

- (3) In this rule:

amount includes an amount of damages.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this rule.

1619 Interest up to judgment

- (1) In a proceeding for the recovery of money, including a debt or damages or the value of goods, the court may—
 - (a) order that interest be included in the amount for which judgment is given—
 - (i) at the rate it considers appropriate; and
 - (ii) on all or any part of the money; and
 - (iii) for all or any part of the period beginning on the day the cause of action arose and ending on the day before the day judgment is entered; or
 - (b) order that a lump sum be included in the amount for which judgment is given instead of interest under paragraph (a).
- (2) However, the court must not order that interest be included, or that an amount be included in a lump sum instead of interest, for—
 - (a) compensation in relation to liabilities incurred that do not carry interest as against the person claiming interest or claiming a lump sum instead of interest; or
 - (b) compensation for loss or damage to be incurred or suffered after the day judgment is given; or
 - (c) exemplary or punitive damages.
- (3) Subrule (4) applies if—
 - (a) a proceeding is started for a debt or liquidated demand; and
 - (b) payment of all or part of the debt or liquidated demand is made during the proceeding and before or without judgment being entered in relation to the debt or liquidated demand.

- (4) On application by a party to the proceeding, the court may order that interest be paid—
- (a) at the rate it considers appropriate on all or part of the amount paid; and
 - (b) for all or any part of the period between the day the cause of action arose and the day of the payment.

Note Pt 6.2 (Applications in proceedings) applies to an application for an order under this subrule.

- (5) For subrule (1) (a), the court may set the rate of interest—
- (a) in accordance with the rate stated in the claim for relief; or
 - (b) having regard to the rate of interest applying, from time to time, under schedule 2, part 2.1 (Interest up to judgment).
- (6) This rule does not—
- (a) authorise the giving of interest on interest awarded under this rule; and
 - (b) apply in relation to any debt on which interest is payable as of right, whether by agreement or otherwise; and
 - (c) affect damages recoverable for the dishonour of a bill of exchange.
- (7) In a proceeding for damages, the court must not order the payment of interest under this rule in relation to a period after the defendant offers (or first offers) an appropriate settlement amount to the plaintiff unless the special circumstances of the case justify the making of the order.
- (8) For subrule (7), if an amount is offered in settlement of the proceeding and the amount for which judgment is entered in the proceeding (including interest until the day of the offer) does not exceed the amount offered in settlement by more than 10%, the amount offered is an ***appropriate settlement amount***.

1620 Interest after judgment

- (1) Unless the court otherwise orders, interest is payable on the amount of a judgment debt (other than costs) that is unpaid at any time at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment).

Note Pt 6.2 (Applications in proceedings) applies to an application for an order otherwise ordering.

- (2) However, unless the court otherwise orders, interest is not payable on the amount of the judgment debt if the amount is paid in full not later than 28 days after the day the judgment takes effect.
- (3) Interest is payable on any amount awarded for costs, unless the court otherwise orders.
- (4) Unless the court otherwise orders, interest is payable on an amount awarded for costs that is unpaid at any time—
 - (a) at the rate of interest applying at that time under schedule 2, part 2.2 (Interest after judgment); and
 - (b) from the day the costs were assessed or another date decided by the court.
- (5) This rule does not authorise the giving of interest on interest payable under this rule.

1621 Judgment for interest only

- (1) This rule applies if—
 - (a) the defendant in a proceeding satisfies the plaintiff's claim after the proceeding is started; and
 - (b) the plaintiff would be entitled to judgment on the claim if the defendant had not satisfied the claim.
- (2) The plaintiff is entitled to judgment for interest in relation to the amount claimed in accordance with rule 1619 (Interest up to judgment).

1622 Interest after judgment—usual order as to interest

- (1) This rule applies if the court order in relation to a judgment debt or costs awarded is expressed to be the usual order as to interest.
- (2) Subject to this rule, interest is payable on the amount of the judgment debt, and on any costs awarded, at the rate that applies, from time to time, under rule 1620.
- (3) Interest is not payable on the amount of the judgment debt if, not later than 28 days after the date of the judgment—
 - (a) the debt is paid; and
 - (b) the plaintiff gives the defendant notice from Medicare Australia confirming that no amount of the debt is payable to Medicare Australia; and
 - (c) the defendant has not been given a notice under—
 - (i) the *Social Security Act 1991* (Cwlth), section 1182 (Secretary may send preliminary notice to potential compensation payer or insurer) (a *preliminary compensation recovery notice*); or
 - (ii) the *Social Security Act 1991* (Cwlth), section 1184 (Secretary may send recovery notice to compensation payer or insurer) (a *compensation recovery notice*).
- (4) Interest is not payable on the amount of the judgment debt if, not later than 28 days after the date of the judgment, the defendant—
 - (a) pays to Medicare Australia—
 - (i) the amount of any charge stated in a Medicare Australia notice of charge given to the defendant; or
 - (ii) if the defendant has not been given a Medicare Australia notice of charge—10% of the judgment debt; and
 - (b) pays to the plaintiff—the remainder of the judgment debt.

- (5) Interest is not payable on the amount of the judgment debt while a preliminary compensation recovery notice given to the defendant has effect.

Note For the effect of a notice, see the *Social Security Act 1991* (Cwlth), s 1184B (Preliminary notice or recovery notice suspends liability to pay compensation).

- (6) Interest is not payable on the amount of the judgment debt if—
- (a) the defendant is given a compensation recovery notice; and
 - (b) the defendant pays the amount of the judgment debt, less any amount owing to the Commonwealth under the notice, to the plaintiff not later than 28 days after the later of the following:
 - (i) the day the judgment takes effect;
 - (ii) the day the defendant receives the notice.
- (7) Interest is not payable on any amount awarded for costs if the amount is paid not later than 28 days after—
- (a) the day the parties agree on the amount; or
 - (b) if paragraph (a) does not apply—the day the costs are assessed.

1623 Change in interest rates up to and after judgment

The advisory committee may recommend a change in the rates of interest set out in schedule 2 to take effect on 1 January of the year following the recommendation.

11 Rule 3010 (2) (j) and (k) and note

substitute

- (j) whether the deceased person married or entered into a civil union or civil partnership after the will was made and, if so, the date of the marriage or civil union or civil partnership and the name of the spouse or civil union partner or civil partner;
- (k) if under the *Wills Act 1968*, section 20A (Effect of termination of marriage, civil union or civil partnership), the deceased person's marriage, civil union or civil partnership is taken to have been terminated—the date of the termination;

Note 1 The *Wills Act 1968*, s 20A (4) provides that a marriage is taken to be terminated if—

- (a) the marriage ends by divorce under the *Family Law Act 1975* (Cwlth); or
- (b) a decree of nullity is made under the *Family Law Act 1975* (Cwlth) in relation to the marriage; or
- (c) the marriage is annulled in accordance with the law of a place outside Australia if the annulment is recognised in Australia under the *Family Law Act 1975* (Cwlth).

Note 2 The *Wills Act 1968*, s 20A (4) provides that a civil union is taken to be terminated if the civil union ends under the *Civil Unions Act 2012*, div 2.4 (otherwise than on the death of a party to the civil union).

Note 3 The *Wills Act 1968*, s 20A (4) provides that a civil partnership is taken to be terminated if the civil partnership ends under the *Domestic Relationships Act 1994*, div 4A.4 (otherwise than on the death of a party to the civil partnership).

12 New division 3.3.1 heading

before rule 3250, insert

Division 3.3.1 Commercial arbitration—general

13 Rule 3257

substitute

3257 Commercial arbitration—offers of compromise

- (1) A party to an arbitration agreement may at any time, by written notice, make an offer to another party to the agreement to compromise any claim to which the agreement applies, either in whole or in part, on stated terms.
- (2) Part 2.10 (Offers of compromise) applies, with necessary changes, in relation to the offer as if—
 - (a) the arbitration were a proceeding; and
 - (b) the respondent were a defendant who has made or received an offer of compromise in the proceeding; and
 - (c) the claimant were the plaintiff who has made or received an offer of compromise in the proceeding; and
 - (d) the other parties to the agreement were other parties to the proceeding.

14 New division 3.3.2

after rule 3262, insert

Division 3.3.2 Commercial arbitration—payment into court**3263 Commercial arbitration—payment into court**

- (1) A party to an arbitration agreement (the *respondent*) may at any time pay an amount into court in satisfaction of a claim to which the agreement applies of another party to the agreement (the *claimant*).
- (2) The respondent must serve a notice of the payment on the claimant and any other party to the agreement.
- (3) A claimant who has paid an amount into court in accordance with this rule may make further payments increasing the amount without the court's leave.
- (4) The respondent cannot plead a defence of tender before the arbitration was started unless the respondent has paid the amount tendered into court in accordance with this division.

3264 Payment into court—costs

- (1) If a party to an arbitration agreement is liable to pay the costs of another party to the agreement, the party may, at any time after the party becomes liable to pay the costs, pay an amount into court in satisfaction of the costs.
- (2) This division applies, with necessary changes, in relation to costs as if—
 - (a) the party entitled to the costs is a claimant; and
 - (b) the party liable to pay the costs is a respondent; and
 - (c) the party's entitlement to costs is a claim to which the arbitration agreement applies.

3265 Payment into court—bond or security

- (1) The respondent may lodge a bond or security for the amount of payment with the registrar instead of paying the amount into court.
- (2) The bond must be given by—
 - (a) a corporation approved by the registrar; or
 - (b) the Territory, the Commonwealth or a State; or
 - (c) a person who is authorised, in writing, to give the bond for a person mentioned in paragraph (a) or (b).
- (3) The bond or security—
 - (a) remains in effect unless the arbitrator otherwise certifies; and
 - (b) applies as if the party had paid the amount of the bond or security into court under subrule (1).

3266 Payment into court—interest up to payment

The claimant's claim to which an arbitration agreement applies is taken to include a claim for the interest that might be included in the award if the award were made at the date of the payment into court.

3267 Payment into court—acceptance

- (1) The claimant may accept an amount paid into court by a respondent in satisfaction of a claim by serving a notice of acceptance on the respondent (or, if the payment was made by 1 of 2 or more respondents, each respondent)—
 - (a) not later than 14 days after the day notice of the payment into court is served on the claimant; or
 - (b) if 2 or more payments into court have been made—not later than 14 days after the day notice of the last payment into court is served on the claimant.

- (2) If the respondent paid the amount into court by bond or security, the respondent must pay into court the amount of the bond or security not later than 14 days after the day the notice of acceptance is served on the respondent.
- (3) If the respondent does not comply with subrule (2), the respondent is not entitled to any advantage under this division, and the claimant may—
 - (a) withdraw the claimant's acceptance by notice; or
 - (b) ask the registrar to assign the bond or security to the claimant so the claimant can enforce it.
- (4) If the amount was paid into court by 1 of 2 or more respondents, the amount may be paid out only—
 - (a) with the agreement of the parties to the agreement; or
 - (b) in accordance with a certificate of the arbitrator.
- (5) Unless the arbitrator otherwise awards, payment must be made to—
 - (a) the claimant; or
 - (b) if the claimant has given written authority for payment to be made to the claimant's solicitor—the claimant's solicitor.
- (6) If payment out of court is made in accordance with this rule, the claim is permanently stayed.

3268 Payment into court—costs on acceptance by claimant

- (1) Unless the arbitrator otherwise directs, a claimant may file a bill of costs for assessment not earlier than 7 days after the day the amount is paid into court if the claimant accepts an amount paid into court in satisfaction of the claim.
- (2) The costs claimed in the bill of costs may include—
 - (a) the costs incurred to the day of payment into court; and

- (b) the costs reasonably incurred in accepting the payment; and
- (c) the costs incurred in preparing the bill of costs.

3269 Payment into court—payment out of remaining amount

If an amount paid into court is not taken out in accordance with this division, the amount may be paid out only—

- (a) with agreement of all parties to the agreement; or
- (b) in accordance with a certificate of the arbitrator.

3269A Payment into court—nondisclosure

The arbitrator must not be told about any payment into court before the arbitrator makes an award.

15 Rule 3903 (4), definition of *applied civil rules*

omit

- rule 1015 (Payment into court—amount recovered by person with legal disability)
- rule 1017 (Person with legal disability—orders about recovered amounts etc)

16 Rule 3903 (4), definition of *applied civil rules*

after

- division 2.12.1 (Expert evidence generally)

insert

- rule 1617 (Payment into court—amount recovered by person with legal disability)
- rule 1618 (Person with legal disability—orders about recovered amounts etc)

17 Rule 5001 (3), definition of *applied civil rules**omit*

- part 2.10 (Payment into court)

substitute

- part 2.10 (Offers of compromise)

18 Schedule 2 heading, reference*omit*

(see r 1617)

substitute

(see r 1619 and r 1620)

19 Schedule 3*substitute*

Schedule 3

Costs amount—debts, liquidated demands, company windings-up, enforcement orders and certificates of registration

Part 3.1

Claim for debt or liquidated demand

(see r 51, r 304 and r 1100)

Table 3.1 Prescribed costs amount—claim for debt or liquidated demand

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—< \$10 000	469.00

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
2	Magistrates Court—≥ \$10 000 but < \$25 000	952.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 138.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 279.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 421.00
6	Supreme Court—any amount	1 421.00

Part 3.2 Default judgment

(see r 1121)

Table 3.2 Prescribed costs amount—default judgment

column 1 item	column 2 court and amount claimed	column 3 prescribed amount (\$)
1	Magistrates Court—< \$10 000	608.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 216.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 460.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 643.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 825.00
6	Supreme Court—any amount	1 825.00

Part 3.3 Company winding-up

(see r 1740)

Table 3.3 Prescribed costs amount—company winding-up

column 1 item	column 2 claimed amount (\$)
1	4 136.00

Part 3.4 Enforcement orders

(see r 1741)

Table 3.4 Prescribed costs amount—enforcement orders

column 1 item	column 2 court and amount claimed	column 3 amount claimed— with agent (\$)	column 4 amount claimed— no agent (\$)
1	Magistrates Court—< \$10 000	794.00	577.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 612.00	1 173.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 924.00	1 400.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	2 166.00	1 575.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	2 406.00	1 750.00
6	Supreme Court—any amount	2 406.00	1 750.00

Part 3.5 Certificate of registration

(see r 2010B)

Table 3.5 Prescribed costs amount—certificate of registration

column 1 item	column 2 court and amount claimed	column 3 claimed amount (\$)
1	Magistrates Court—< \$10 000	83.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	168.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	201.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	226.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	252.00
6	Supreme Court—any amount	252.00

20 **Schedule 4, rules 4.12 and 4.13**

substitute

4.12 **Costs—transitional**

- (1) In this rule:
commencement day means the day the *Court Procedures Amendment Rules 2014 (No 3)*, rule 13 commences.
- (2) A solicitor is entitled to charge and be allowed the costs set out in this schedule for work done or services performed on or after 1 January 2015.
- (3) However, if work done or services performed by a solicitor after 1 January 2015 was assessed before the commencement day, rule 4.13 as in effect immediately before the commencement day continues to apply to the work and services.
- (4) Rule 4.13 as in effect immediately before the commencement day continues to apply to work done or services performed by a solicitor before 1 January 2015.

21 Schedule 4, part 4.2*substitute***Part 4.2 Scale of costs—items**

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.1 Instructions		
1	to sue or defend, to appeal or oppose an appeal	173.00
2	for statement of claim, petition, special case or counterclaim	173.00
3	for defence	148.10
4	for— <ul style="list-style-type: none"> (a) a reply; or (b) amending a pleading; or (c) a notice claiming contribution or indemnity; or (d) a document to be brought into the registrar's office (for example, an account or deed); or (e) adding parties by order; or (f) a bond or other deed; or (g) retaining counsel, including preparing retainer 	61.80

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
5	for— (a) a pleading not otherwise provided for; or (b) interrogatories for the examination of a party or witness; or (c) an affidavit in answer to interrogatories or other special affidavit; or (d) disclosure or a list of documents; or (e) an application for an order that a matter be heard before the Full Court; or (f) a brief on application in chambers	123.50
6	for— (a) an application whether in court, before the registrar or in chambers; or (b) opposition to an application; or (c) the assessment of a bill of costs	123.50
7	for brief to advise on evidence	111.30
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	123.50

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)	
9	for brief in preparation for trial	the amount the registrar considers appropriate	
Division 4.2.2 Drawing			
10	for an originating process or counterclaim	129.10	or, if longer than 700 words, 18.30 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	86.60	or, if longer than 400 words, 18.30 per 100 words
12	for— (a) a notice of an application in a proceeding; or (b) a notice to produce documents; or (c) a notice to admit facts; or (d) a special case; or (e) interrogatories; or (f) a special affidavit; or (g) a brief (including observations)	79.20	or, if the document is longer than 400 words, 18.30 per 100 words
13	a formal affidavit, including an affidavit of service`	43.40	
14	any other document	34.30	or, if longer than 100 words, 20.30 per 100 words
Division 4.2.3 Engrossing			
15	of a document	5.40	per 100 words

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.6 Attendances		
20	for personal service, if necessary, of 1 or more documents at the same time	92.40
21	for service of 1 or more documents at the same time— (a) at the office of a solicitor on the record or the address for service of a party; or (b) by post; or (c) made through a document exchange	37.40
22	by a solicitor, necessarily or properly engaged, if the solicitor holds an unrestricted practising certificate or has been the holder of a practising certificate for at least 2 years— (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers	247.00 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
23	by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22— <ul style="list-style-type: none"> <li data-bbox="491 725 794 757">(a) to instruct counsel; or <li data-bbox="491 770 836 831">(b) on assessment of a bill of costs or other matter; or <li data-bbox="491 844 855 904">(c) at conference with counsel; or <li data-bbox="491 918 703 949">(d) on a view; or <li data-bbox="491 963 852 1023">(e) on witness or other person; or <li data-bbox="491 1037 842 1068">(f) to produce a document; or <li data-bbox="491 1081 847 1232">(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or <li data-bbox="491 1245 823 1276">(h) to prepare appeal papers 	173.00 per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)	
24	by a clerk, necessarily or properly engaged— <ul style="list-style-type: none"> (a) to instruct counsel; or (b) on assessment of a bill of costs or other matter; or (c) at conference with counsel; or (d) on a view; or (e) on witness or other person; or (f) to produce a document; or (g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or (h) to prepare appeal papers 	86.50	per hour
25	other than an attendance already mentioned, in court or any hearing without counsel— <ul style="list-style-type: none"> (a) by a solicitor holding an unrestricted practising certificate, or a solicitor who has been the holder of a practising certificate for at least 2 years; or (b) by any other solicitor 	370.30	per hour
26	by a solicitor involving a high degree of skill and responsibility	370.30	per hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
27	in court or chambers or before the registrar— (a) to take a reserved judgment; or (b) to mention a matter; or (c) for an adjournment; or (d) for settling the terms of and entering orders; or (e) for another reason	98.80 or 247.00 per hour
28	at the registry or other office or place for— (a) filing, delivering, or collecting a document; or (b) a purpose not involving the exercise of legal skill or knowledge	30.70
29	formal telephone attendance	30.70
30	telephone attendance leaving message only	15.40
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	49.50 or 61.80 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	30.70 or 21.60 per quarter hour

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
33	<p>if the registrar is satisfied, in relation to travel, that the purpose of the journey could not have been satisfactorily accomplished by an agent and that—</p> <p>(a) a solicitor has been necessarily absent from the place where the solicitor carries on practice; or</p> <p>(b) a clerk has attended in place of the solicitor</p>	<p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the solicitor is absent, of not more than 1 441.70</p> <p>an allowance (in addition to reasonable travelling expenses), for each day (other than Saturdays and Sundays) that the clerk is absent, of not more than 370.30</p>
Division 4.2.7 Letters		
34	ordinary letter	42.90 or 20.90 per 100 words
35	special letter	71.30 or 20.90 per 100 words
36	formal letter—short letter, without legal content	20.80
37	circular letters after the first	9.40
38	fax copy or telex, including attendance to send	48.70
39	receiving and filing any incoming letter, other than a letter received by email (postage and transmission fees properly incurred may be claimed as a disbursement)	12.90
40	receiving, printing and filing incoming letter received by email	14.00

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
41	printing any attachment to an email, or multiple attachments to an email printed at the same time— (a) for each of the first 10 pages; or (b) for each additional page up to 100 copies; or (c) for each additional page over 100 copies	3.40 per page 1.50 per page 0.60 per page
Division 4.2.8 Witness expenses		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	1 211.20 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	127.80 per day
44	a witness paid in the witness's occupation by wages, salary or fees	the amount lost by attendance at court
45	a witness qualifying to give skilled evidence	the additional amount the registrar considers reasonable and properly incurred and paid
46	if the witness lives more than 50km from the court	the additional amount the registrar considers reasonable for the actual cost of travel, and for accommodation and meals
47	attendance at court by a witness acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing	the amount the registrar considers appropriate (but not affecting the existing practice of allowing qualifying fees for witnesses)

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
Division 4.2.9 Disbursements		
48	all court fees, counsel's fees and other fees and payments	allowed to the extent that they have been properly and reasonably incurred and paid

22 Schedule 5, part 5.1, item 18, column 2

omit

1015

substitute

1617

23 Schedule 5, part 5.4, item 8, column 2

omit

1015

substitute

1617

24 Dictionary, new definitions

insert

judgment in favour of the defendant, for part 2.10 (Offers of compromise)—see rule 1001.

offer, for part 2.10 (Offers of compromise)—see rule 1001.

period of acceptance, for an offer, for part 2.10 (Offers of compromise)—see rule 1001.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 23 December 2014.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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