



Australian Capital Territory

# Court Procedures Amendment Rules 2017 (No 3)

Subordinate Law SL2017-17

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

Dated 5 July 2017.

H G MURRELL

Chief Justice

M ELKAIM

Judge

L WALKER

Chief Magistrate

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Australian Capital Territory

# Court Procedures Amendment Rules 2017 (No 3)

Subordinate Law SL2017-17

made under the

[Court Procedures Act 2004](#)

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J2016-723

Authorised by the ACT Parliamentary Counsel—also accessible at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

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**1 Name of rules**

These rules are the *Court Procedures Amendment Rules 2017 (No 3)*.

**2 Commencement**

These rules commence on the day after their notification day.

*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 40 (1) (h)**

*substitute*

(h) amend or set aside leave under rule 6503 (Service of originating process with leave); or

**5 Subdivision 2.9.4.2 heading, new note**

*insert*

*Note* An application for a freezing order or an ancillary order may be served on a person who is outside of Australia where such service is authorised by or under div 6.8.9 (Service out of Australia). See, in particular, r 6502 (d).

**6 Rule 744**

*omit*

**7 Rule 1120 (3) (c) and (d)**

*after 1st mention of*

claimed

*insert*

, include

**8 Rule 1534 (1) and note**

*omit*

*Commercial Arbitration Act 1986*

*substitute*

*Commercial Arbitration Act 2017*

**9 Rule 1620 (1) (a)**

*substitute*

- (a) if the court has entered judgment for an amount of interest under rule 1120 (2) (a) (Default judgment—debt or liquidated demand) worked out in accordance with the rate stated in the plaintiff’s claim for relief—at the rate stated in the plaintiff’s claim for relief; or

**10 Rule 3250**

*omit*

*Commercial Arbitration Act 1986*

*substitute*

*Commercial Arbitration Act 2017*



**11 Rule 3251**

*substitute*

**3251 Terms used in Commercial Arbitration Act**

A term used in the Commercial Arbitration Act has the same meaning in this part.

*Note 1* For example, the following terms are defined in the [Commercial Arbitration Act](#), dictionary:

- arbitral tribunal
- arbitration
- arbitration agreement
- party
- the court.

*Note 2* In particular, *the court* is defined in the [Commercial Arbitration Act](#), dictionary as follows:

*the court* means, subject to section 6 (2), the Supreme Court.

Section 6 (2) provides as follows:

(2) If—

- (a) an arbitration agreement provides that the Magistrates Court is to have jurisdiction under this Act; or
- (b) the parties to an arbitration agreement have agreed, in writing, that the Magistrates Court is to have jurisdiction under this Act and that agreement is in force;

the functions are to be performed, in relation to that agreement, by the Magistrates Court, as the case requires.

*Note* This section differs from the Model Law to the extent that it relates to functions conferred on the court with respect to domestic commercial arbitrations that are not referred to in the Model Law.

**12 Rule 3253**

*substitute*

**3253 Commercial arbitration—leave to appeal under Commercial Arbitration Act, s 34A**

- (1) An application for leave to appeal to the Supreme Court under the [Commercial Arbitration Act](#), section 34A (1) (b) (Appeals against awards) must include, or be accompanied by, a statement of—
- (a) the nature of the case; and
  - (b) the questions involved; and
  - (c) the reasons why leave should be given.

*Note* The [Commercial Arbitration Act](#), s 34A provides that an appeal may be brought by a party to an arbitration agreement if the parties agree and with the court's leave (see subrules (1) and (2)).

- (2) The application must be made not later than 3 months from—
- (a) the date on which the party making the appeal received the award; or
  - (b) if a request had been made under the [Commercial Arbitration Act](#), section 33 (Correction and interpretation of award, and making additional award)—the date on which that request had been disposed of by the arbitral tribunal.

*Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (3) If the court grants leave to appeal, the appeal must be filed within—
- (a) 30 days after the day leave is granted; or
  - (b) any further time allowed by the court.

**13 Rule 3254**

*omit*

**14 Rules 3255 and 3256***substitute***3255 Commercial arbitration—application under Commercial Arbitration Act, s 27J**

- (1) A proceeding under the [Commercial Arbitration Act](#), section 27J (2) (Determination of preliminary point of law by court) must be started not later than 28 days after the day the consent, or consents, mentioned in that subsection is or are given.

*Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) A decision by the court to hear or not to hear an application under the [Commercial Arbitration Act](#), section 27J (2) (a) must be given by order.

**3256 Commercial arbitration—application for order under Commercial Arbitration Act, s 34 (1)**

- (1) This rule applies in relation to an application for an order under the [Commercial Arbitration Act](#), section 34 (1) (Application for setting aside as exclusive recourse against arbitral award).
- (2) The application must be made not later than 3 months from—
- (a) the date on which the party making the application had received the award; or
  - (b) if a request had been made under the [Commercial Arbitration Act](#), section 33 (Correction and interpretation of award, and making additional award)—the date on which that request had been disposed of by the arbitral tribunal.

*Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

**15 Rules 3259 to 3262**

*substitute*

**3259 Commercial arbitration—decision to refuse to issue interim measure**

The court may refuse to issue an interim measure under the [Commercial Arbitration Act](#), section 17J (Court-ordered interim measures) if the court considers that the arbitral tribunal has power to make the order applied for.

**3260 Commercial arbitration—application to enforce arbitral award**

An application under the [Commercial Arbitration Act](#), section 35 (Recognition and enforcement) to enforce an arbitral award—

- (a) must be supported by an affidavit that states—
  - (i) the extent to which the award has not been complied with at the date the application is made; and
  - (ii) the usual, or last-known home or business address of the person against whom it is sought to enforce the award or, if the person is a corporation, its last-known registered office; and
- (b) may be made without giving notice to anyone.

**3261 Commercial arbitration—evidence of arbitral award for purposes of enforcement**

- (1) This rule applies in a proceeding in which an application is made to the court for enforcement of an arbitral award under the [Commercial Arbitration Act](#), section 35 (Recognition and enforcement).

- (2) The *International Arbitration Act 1974* (Cwlth), section 9 (Evidence of awards and arbitration agreements) applies in the proceeding as that section applied in a proceeding in which enforcement of a foreign award was sought under the *International Arbitration Act 1974* (Cwlth).

**3262 Commercial arbitration—endorsement and service of application for enforcement**

- (1) An application under the *Commercial Arbitration Act*, section 35 (Recognition and enforcement) to enforce an arbitral award must—
- (a) be endorsed with a statement that the person on whom the application is served may, before the end of 5 days after the day the application is served, apply to have the award set aside; and
  - (b) be served on the person against whom it is sought to enforce the award.

*Note* Rule 6351 (Time—extending and shortening by court order) provides for the extending of time.

- (2) The court must not recognise an arbitral award, or make an order for its enforcement, until—
- (a) the end of the period mentioned in subrule (1); and
  - (b) if the person against whom it is sought to enforce the award applies, within the period mentioned in subrule (1), to have the award set aside—the application is decided.

**16 Rule 3904**

*omit*

*Commercial Arbitration Act 1986*

*substitute*

*Commercial Arbitration Act 2017*

**17 Rule 4006 (i)**

*substitute*

- (i) division 6.8.9 (Service out of Australia);

**18 New rule 6121 (e)**

*insert*

- (e) in the absence of a practice note under paragraph (d)—with the registrar’s leave, sending it by electronic communication to the registry’s email address for the filing of documents.

**19 New rule 6126 (2) (f)**

*before the note, insert*

- (f) for a document filed in the court by electronic communication with the registrar’s leave—
  - (i) before 4 pm on a day the registry is open—that day; or
  - (ii) on a day the registry is not open, or after 4 pm on a day the registry is open—the next day the registry is open.

**20 Rule 6126 (3) and (4)**

*substitute*

- (3) However, if the registrar opens the registry for a document to be filed in the court—
  - (a) under subrule (2) (d), the date of filing for the document is the date the document is faxed to the registry’s fax number; or
  - (b) under subrule (2) (f) (ii), the date of filing for the document is the date the document is sent by electronic communication to the registry’s email address.

- (4) For this rule, a document is taken to have been—
- (a) faxed to the registry’s fax number only if it is received at that number; or
  - (b) sent by electronic communication to the registry’s email address only if it is received at that address.

**21 New rule 6200 (2) (c) and (d)**

*insert*

- (c) in hearing and deciding applications under the [Bail Act 1992](#); and
- (d) in presiding at pre-trial hearings under the [Evidence \(Miscellaneous Provisions\) Act 1991](#), division 4.2.2B.

**22 Rule 6250 (2) (y)**

*omit*

**23 Rule 6250 (3) (e)**

*substitute*

- (e) under the [Commercial Arbitration Act 2017](#), section 27A (Parties may obtain subpoenas);

**24 Rule 6251 (2) (v)**

*omit*

**25 Rule 6251 (3) (d)**

*substitute*

- (d) under the [Commercial Arbitration Act 2017](#), section 27A (Parties may obtain subpoenas);

**26 Rule 6400 note 2, dot point 9**

*substitute*

- div 6.8.9 (Service out of Australia)

**27 Division 6.8.9**

*substitute*

**Division 6.8.9 Service out of Australia**

*Note 1* This division does not apply to a criminal proceeding (see r 4006 (Criminal proceedings—application of pt 6.8)).

*Note 2* Service outside Australia under the Hague Convention is dealt with in div 6.8.12 (Service under the Hague Convention).

*Note 3* Service of initiating documents in New Zealand for certain civil proceedings is dealt with in the [Trans-Tasman Proceedings Act](#), pt 2. See also these rules, pt 6.10A (Trans-Tasman proceedings).

**6500 Meaning of *Australia*—div 6.8.9**

In this division:

*Australia* includes the external territories.

**6501**

*Note* These rules do not include a r 6501.

The rule number has been kept to ensure that provision numbers in these rules are consistent with the Harmonised Court Rules On Service Out Of Australia.



**6502 Service of originating process without leave**

An originating process may be served out of Australia on a person without the court's leave in the following circumstances:

- (a) if the proceeding is based on a tortious act or omission—
  - (i) which was done or which happened wholly or partly in the ACT; or
  - (ii) in relation to which the damage was sustained wholly or partly in the ACT;
- (b) if the proceeding is for the enforcement, rescission, dissolution, annulment, cancellation, rectification, interpretation or other treatment of, or for damages or other relief in relation to a breach of, a contract which—
  - (i) was made or entered into in the ACT; or
  - (ii) was made by or through an agent trading or residing in the ACT; or
  - (iii) was to be wholly or in part performed in the ACT; or
  - (iv) was by its terms or by implication to be governed by a territory law or to be enforceable or cognisable in the court;
- (c) if the proceeding is for a breach in the ACT of any contract, wherever made, whether or not that breach was preceded or accompanied by a breach out of the ACT that rendered impossible the performance of that part of the contract that ought to have been performed in the ACT;

- (d) if the proceeding—
  - (i) is for an injunction to compel or restrain the performance of any act in the ACT; or
  - (ii) is for interim or ancillary relief in relation to any matter or thing in or connected with the ACT, where the relief is sought in relation to judicial or arbitral proceedings started or to be started, or an arbitration agreement made, in or outside the ACT (including without limitation interim or ancillary relief in relation to any proceedings under the *International Arbitration Act 1974* (Cwlth) or the *Commercial Arbitration Act 2017*); or
  - (iii) without limiting subparagraph (ii), is an application for a freezing order or ancillary order under subdivision 2.9.4.2 (Freezing orders) in relation to any matter or thing in or connected with the ACT;
- (e) if the subject matter of the proceeding is land or other property situated in the ACT, or any act, deed, will, instrument, or thing affecting the land or property, or the proceeding is for the perpetuation of testimony relating to the land or property;
- (f) if the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged under territory law;
- (g) if any relief is sought against any person domiciled or ordinarily or habitually resident in the ACT (whether present in the ACT or not);
- (h) if any person out of the ACT is—
  - (i) a necessary or proper party to a proceeding properly brought against another person served or to be served, (whether in the ACT or outside the ACT) under any other provision of these rules); or

- (ii) a defendant to a proceeding for contribution or indemnity in relation to a liability enforceable by a proceeding in the court;
- (i) if the proceeding is for—
  - (i) the administration of the estate of a person who died domiciled in the ACT; or
  - (ii) any relief or remedy that might be obtained in a proceeding for the administration of the estate of a person who died domiciled in the ACT;
- (j) if the proceeding arises under a territory law and—
  - (i) any act or omission to which the proceeding relates was done or occurred in the ACT; or
  - (ii) any loss or damage to which the proceeding relates was sustained in the ACT; or
  - (iii) the territory law applies expressly or by implication to an act or omission that was done or occurred outside the ACT in the circumstances alleged; or
  - (iv) the territory law expressly or by implication confers jurisdiction on the court over people outside the ACT (in which case any requirements of the territory law relating to service must be complied with);
- (k) if the person to be served has submitted to the jurisdiction of the court;
- (l) if a proceeding is made for restitution or for the remedy of constructive trust and the alleged liability of the person to be served arises out of an act or omission that was done or happened wholly or partly in the ACT;
- (m) if it is sought to recognise or enforce any judgment;

- (n) if the proceeding is founded on a cause of action arising in the ACT;
- (o) if the proceeding affects the person to be served in relation to the person's membership of a corporation incorporated in the ACT, or of an association formed or carrying on any part of its affairs in the ACT;
- (p) if the proceeding is about the construction, effect or enforcement of—
  - (i) an ACT law; or
  - (ii) a law of the Commonwealth (including an Imperial Act applying as a law of the Commonwealth) affecting property in the ACT;
- (q) if the proceeding—
  - (i) relates to an arbitration held in the ACT or governed by territory law; or
  - (ii) is to enforce in the ACT an arbitral award wherever made; or
  - (iii) is for orders necessary or convenient for carrying into effect in the ACT the whole or any part of an arbitral award wherever made;
- (r) if the proceeding is for relief relating to the custody, guardianship, protection or welfare of a child present in the ACT or who is domiciled or ordinarily or habitually resident in the ACT (whether present in the ACT or not);

- (s) if the proceeding, as far as it relates to the person to be served, falls partly within 1 or more of paragraphs (a) to (r) and, as to the residue, within 1 or more of the other of paragraphs (a) to (r).

*Note 1* Originating process includes a document that starts a civil proceeding as well as a cross-claim or third-party claim.

*Note 2* If a proceeding is started in the court and originating process is served out of Australia under this rule but the court later decides that it is more appropriate that the proceeding be determined by a court of another Australian jurisdiction, the court may transfer the proceeding to the other court under the *Jurisdiction of Courts (Cross-vesting) Act 1993* and may make an order for costs against the party who started the proceeding in the court rather than in the transferee court.

### **6503 Service of originating process with leave**

- (1) In any proceeding if service is not allowed under rule 6502, an originating process may be served out of Australia with the leave of the court.
- (2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.
- (3) A sealed copy of every order made under this rule must be served with the document to which it relates.
- (4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is an Australian citizen.
- (5) The court may give leave if satisfied that—
  - (a) the proceeding has a real and substantial connection with the ACT; and
  - (b) the ACT is an appropriate forum for the trial; and
  - (c) in all the circumstances the court should assume jurisdiction.

**6504 Court's discretion whether to assume jurisdiction**

- (1) On application by a person on whom an originating process has been served out of Australia, the court may dismiss or stay the proceeding or set aside service of the originating process.
- (2) Without limiting subrule (1), the court may make an order under this rule if satisfied that—
  - (a) service of the originating process is not authorised by these rules; or
  - (b) the court is an inappropriate forum for the trial of the proceeding; or
  - (c) the proceeding has insufficient prospects of success to warrant putting the person served outside Australia to the time, expense and trouble of defending the proceeding.

**6505 Notice to person served outside Australia**

If a person is to be served out of Australia with an originating process, the person must also be served with a notice informing the person of—

- (a) the scope of the jurisdiction of the court in relation to proceedings against people who are served outside Australia; and
- (b) the grounds alleged by the plaintiff to establish jurisdiction; and
- (c) the person's right to challenge service of the originating process or the jurisdiction of the court or to file a conditional notice of intention to respond.

*Note* See approved form 6.5 (Service outside the jurisdiction).

**6506 Time for filing notice of intention to respond**

Except when the court otherwise orders, a defendant who has been served out of Australia must file a notice of intention to respond within 42 days from the date of service.

**6507 Leave to proceed if notice of intention to respond not filed**

- (1) If an originating process is served on a person outside Australia and the person does not file a notice of intention to respond, the party serving the document may not proceed against the person served except by leave of the court.
- (2) An application for leave under subrule (1) may be made without serving notice of the application on the person served with the originating process.

**6508 Service of other documents outside Australia**

Any document other than an originating process may be served outside Australia with the leave of the court, which may be given with any directions that the court considers appropriate.

**6509 Mode of service**

A document to be served outside Australia need not be personally served on a person so long as it is served on the person in accordance with the law of the country in which service is effected.

**28 Rule 6602 (1), note**

*substitute*

*Note* See the following approved forms:

- (a) approved form 6.10 (Subpoena to give evidence);
- (b) approved form 6.10A (Subpoena to produce documents);
- (c) approved form 6.10B (Subpoena to give evidence and produce documents).

**29 Rule 6606 (1)**

*omit*

to attend to give evidence

**30 Rule 6614 (1) (c) and (d)**

*omit*

arbitrator or umpire

*substitute*

arbitral tribunal

**31 Rule 6614 (2)**

*substitute*

(2) In this rule:

***arbitral tribunal***, for a subpoena, means the arbitral tribunal for the arbitration in relation to which the subpoena was issued.

***Commercial Arbitration Act*** means the [Commercial Arbitration Act 2017](#).

*Note* The court has wide powers to issue subpoenas under the Commercial Arbitration Act (see s 27A).

**32 Rule 6869 (2), note**

*omit*

outside

*substitute*

out of



**33 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**

<b>column 1 item</b>	<b>column 2 court and amount claimed</b>	<b>column 3 prescribed amount (\$)</b>
1	Magistrates Court—< \$10 000	491.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	998.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 193.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 340.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 489.00
6	Supreme Court—any amount	1 489.00

## 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	637.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 274.00
3	Magistrates Court—≥ \$25 000 but < \$40 000	1 530.00
4	Magistrates Court—≥ \$40 000 but < \$50 000	1 722.00
5	Magistrates Court—≥ \$50 000 but < \$250 000	1 912.00
6	Supreme Court—any amount	1 912.00

## 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	4 334.00

## 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	832.00	605.00
2	Magistrates Court—≥ \$10 000 but < \$25 000	1 689.00	1 229.00

column 1 item	column 2 court and amount claimed	column 3 amount claimed— with agent (\$)	column 4 amount claimed— no agent (\$)
3	Magistrates Court— $\geq$ \$25 000 but $<$ \$40 000	2 016.00	1 467.00
4	Magistrates Court— $\geq$ \$40 000 but $<$ \$50 000	2 270.00	1 650.00
5	Magistrates Court— $\geq$ \$50 000 but $<$ \$250 000	2 521.00	1 834.00
6	Supreme Court—any amount	2 521.00	1 834.00

## 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	87.00
2	Magistrates Court— $\geq$ \$10 000 but $<$ \$25 000	176.00
3	Magistrates Court— $\geq$ \$25 000 but $<$ \$40 000	211.00
4	Magistrates Court— $\geq$ \$40 000 but $<$ \$50 000	237.00
5	Magistrates Court— $\geq$ \$50 000 but $<$ \$250 000	264.00
6	Supreme Court—any amount	264.00

### 34 Schedule 4, rule 4.12

*substitute*

#### 4.12 Costs—transitional

(1) In this rule:

*commencement day* means the day the *Court Procedures Amendment Rules 2017 (No 3)*, rule 35 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 the commencement day.
- (3) However, if work done or services performed by a solicitor after the commencement day was assessed before the commencement day, rule 4.12 as in effect immediately before the commencement day continues to apply to the work and services.
- (4) Rule 4.12 as in effect immediately before the commencement day continues to apply to work done or services performed by a solicitor before the commencement day.

### **35 Schedule 4, part 4.2**

*substitute*

## **Part 4.2 Scale of costs—items**

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
<b>Division 4.2.1 Instructions</b>		
1	to sue or defend, to appeal or oppose an appeal	181.30
2	for statement of claim, petition, special case or counterclaim	181.30
3	for defence	155.20

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
4	for— <ul style="list-style-type: none"> <li data-bbox="491 667 671 696">(a) a reply; or</li> <li data-bbox="491 707 823 736">(b) amending a pleading; or</li> <li data-bbox="491 748 847 837">(c) a notice claiming contribution or indemnity; or</li> <li data-bbox="491 848 858 972">(d) a document to be brought into the registrar’s office (for example, an account or deed); or</li> <li data-bbox="491 983 847 1012">(e) adding parties by order; or</li> <li data-bbox="491 1023 820 1052">(f) a bond or other deed; or</li> <li data-bbox="491 1064 863 1128">(g) retaining counsel, including preparing retainer</li> </ul>	64.80
5	for— <ul style="list-style-type: none"> <li data-bbox="491 1191 826 1256">(a) a pleading not otherwise provided for; or</li> <li data-bbox="491 1267 836 1355">(b) interrogatories for the examination of a party or witness; or</li> <li data-bbox="491 1366 820 1453">(c) an affidavit in answer to interrogatories or other special affidavit; or</li> <li data-bbox="491 1464 788 1529">(d) disclosure or a list of documents; or</li> <li data-bbox="491 1541 847 1628">(e) an application for an order that a matter be heard before the Full Court; or</li> <li data-bbox="491 1639 820 1704">(f) a brief on application in chambers</li> </ul>	129.40

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
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	129.40
7	for brief to advise on evidence	116.60
8	for— (a) a statement of facts in an action; or (b) a request for particulars; or (c) particulars	129.40
9	for brief in preparation for trial	the amount the registrar considers appropriate
<b>Division 4.2.2 Drawing</b>		
10	for an originating process or counterclaim	135.30 or, if longer than 700 words, 19.20 per 100 words
11	for any other pleading, a notice claiming contribution or indemnity, or an amendment of a pleading	90.70 or, if longer than 400 words, 19.20 per 100 words

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>	
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)	83.00	or, if longer than 400 words, 19.20 per 100 words
13	a formal affidavit, including an affidavit of service	45.50	
14	any other document	35.90	or, if longer than 100 words, 21.30 per 100 words
<b>Division 4.2.3 Engrossing</b>			
15	of a document	5.70	per 100 words
<b>Division 4.2.4 Copies</b>			
16	of any document, or of multiple documents copied at the same time— (a) for each of the first 10 copies; or (b) for each additional copy up to 100 copies; or (c) for each additional copy over 100 copies	3.60 1.60 0.60	per page per page per page

column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
<b>Division 4.2.5 Perusal</b>		
17	of— (a) an originating process; or (b) a pleading; or (c) an application in a proceeding; or (d) interrogatories; or (e) a special case; or (f) a notice to admit	63.90 or, if longer than 800 words, 7.20 per 100 words
18	of any other document, if it is necessary to peruse	7.20 per 100 words
19	of a document by scanning it, if it is not necessary to peruse	7.10 or, if the document has more than 10 pages, the additional amount the registrar considers appropriate
<b>Division 4.2.6 Attendances</b>		
20	for personal service, if necessary, of 1 or more documents at the same time	96.80
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	39.20



column 1 item	column 2 matter in relation to which charge is made	column 3 charge (\$)
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— <ul style="list-style-type: none"> <li data-bbox="491 819 794 853">(a) to instruct counsel; or</li> <li data-bbox="491 864 836 925">(b) on assessment of a bill of costs or other matter; or</li> <li data-bbox="491 936 855 996">(c) at conference with counsel; or</li> <li data-bbox="491 1008 703 1041">(d) on a view; or</li> <li data-bbox="491 1052 852 1113">(e) on witness or other person; or</li> <li data-bbox="491 1124 842 1158">(f) to produce a document; or</li> <li data-bbox="491 1169 847 1319">(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or</li> <li data-bbox="491 1330 823 1364">(h) to prepare appeal papers</li> </ul>	258.80 per hour

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
23	by a solicitor, necessarily or properly engaged, other than a solicitor mentioned in item 22— (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	181.30 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"> <li>(a) to instruct counsel; or</li> <li>(b) on assessment of a bill of costs or other matter; or</li> <li>(c) at conference with counsel; or</li> <li>(d) on a view; or</li> <li>(e) on witness or other person; or</li> <li>(f) to produce a document; or</li> <li>(g) to inspect a document, if the registrar is satisfied there were appropriate and sufficient reasons for the inspection; or</li> <li>(h) to prepare appeal papers</li> </ul>	90.60	per hour
25	other than an attendance already mentioned, in court or any hearing without counsel— <ul style="list-style-type: none"> <li>(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</li> <li>(b) by any other solicitor</li> </ul>	388.00	per hour
26	by a solicitor involving a high degree of skill and responsibility	388.00	per hour

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
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	103.50 or 258.80 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	32.20
29	formal telephone attendance	32.20
30	telephone attendance leaving message only	16.10
31	any other attendance by a solicitor (including travelling and waiting time and including a telephone attendance)	51.90 or 64.80 per quarter hour
32	any other attendance by a clerk (including travelling and waiting time and including a telephone attendance)	32.20 or 22.60 per quarter hour

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
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 1 510.80</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 388.00</p>
<b>Division 4.2.7 Letters</b>		
34	ordinary letter	45.00 or 21.90 per 100 words
35	special letter	74.70 or 21.90 per 100 words
36	formal letter—short letter, without legal content	21.80
37	circular letters after the first	9.90
38	fax copy or telex, including attendance to send	51.00
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)	13.50
40	receiving, printing and filing incoming letter received by email	14.70

<b>column 1 item</b>	<b>column 2 matter in relation to which charge is made</b>	<b>column 3 charge (\$)</b>
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	3.60 per page 1.60 per page 0.60 per page
<b>Division 4.2.8 Witness expenses</b>		
42	a witness called because of the witness's professional, scientific or other special skill or knowledge	1 269.20 per day
43	a witness called other than because of the witness's professional, scientific or other special skill or knowledge	133.90 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 (\$)
<b>Division 4.2.9 Disbursements</b>		
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

**36 Schedule 6, part 6.3, rule 3.4 (2), except note**

*substitute*

- (2) Unless the court otherwise orders, the plaintiff must publish a notice of the hearing of the application—
- (a) for an application in relation to 1 Part 5.1 body—in a daily newspaper circulating generally in the State or Territory where the Part 5.1 body has its principal, or last known, place of business; or
  - (b) for an application in relation to 2 or more Part 5.1 bodies—in a daily newspaper circulating generally in each State or Territory where any of the Part 5.1 bodies has its principal, or last known, place of business.

**37 Schedule 6, part 6.5, new rule 5.6 (3)**

*insert*

- (3) If the notice is of an application for an order under the [Corporations Act](#), part 2F.1, the notice must be published in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

*Note* A notice of an application for an order under the [Corporations Act](#), pt 5.4 or pt 5.4A must be published in the prescribed manner—see the [Corporations Act](#), s 465A and s 1367A.

**38 Schedule 6, part 6.5, rule 5.10 (2)**

*substitute*

- (2) Unless the court otherwise directs, the notice must be published—
- (a) at least 7 days before the date fixed for the hearing of the application; and
  - (b) in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business.

**39 Schedule 6, part 6.5, rule 5.11 (3)**

*after*

liquidator's appointment

*insert*

in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business

**40 Schedule 6, part 6.6, rule 6.2 (3)**

*after*

appointment

*insert*

in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business



**41 Schedule 6, part 6.7, rule 7.9 (1)**

*after*

a surplus

*insert*

in relation to a company

**42 Schedule 6, part 6.7, rule 7.9 (2)**

*after 2nd mention of*

application

*insert*

in a daily newspaper circulating generally in the State or Territory where the company has its principal, or last known, place of business

**43 Schedule 6, part 6.15A, new division 6.15A.1 heading**

*before rule 15A.1, insert*

**Division 6.15A.1 Introduction**

**44 Schedule 6, part 6.15A, rule 15A.2 (1), new note**

*insert*

*Note 2 Model Law*—see r 1.5.

**45 Schedule 6, part 6.15A, new rule 15A.2 (3) and 15A.2 (4)**

*insert*

(3) In this part:

*concurrent proceedings*—see rule 15A.10 (1) (a).

**coordination agreement** means an agreement governing a form of cooperation mentioned in rule 15A.10 (1).

**foreign party participation**—see rule 15A.10 (1) (c).

**Global Guidelines** means the Global Guidelines for Court-to-Court Communications in International Insolvency Cases published by the American Law Institute and the International Insolvency Institute, as in force from time to time.

**Global Principles** means the Global Principles for cooperation in International Insolvency Cases published by the American Law Institute and the International Insolvency Institute, as in force from time to time.

**local proceeding** means a proceeding under the [Corporations Act](#), chapter 5 (other than part 5.2 and part 5.4A) or section 601CL.

**service list** means a service list established under the Global Guidelines, guideline 13.

- (4) The [Legislation Act](#), section 47 (3) and (6) do not apply to the Global Guidelines and the Global Principles.

*Note 1* The Global Guidelines and the Global Principles do not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)).

*Note 2* The Global Guidelines are accessible at <https://www.insol.org/>.

*Note 3* The Global Principles are accessible at [https://www.iiglobal.org/sites/default/files/alireportmarch\\_0.pdf](https://www.iiglobal.org/sites/default/files/alireportmarch_0.pdf).

## **46 Schedule 6, part 6.15A, new division 6.15A.2 heading**

*before rule 15A.3, insert*

### **Division 6.15A.2 Recognition of a foreign proceeding**

**47 Schedule 6, part 6.15A, rule 15A.5 heading**

*substitute*

**15A.5 Liquidator's consent to act**

**48 Schedule 6, part 6.15A, rule 15A.5 (c)**

*substitute*

- (c) be eligible to be appointed by the court as a liquidator under the [Corporations Act](#), section 472; and

**49 Schedule 6, part 6.15A, new divisions 6.15A.3 to 6.15A.5**

*insert*

**Division 6.15A.3 Cooperation with foreign courts and representatives**

**15A.10 Cooperation involving court to be under coordination agreement**

- (1) This rule applies if—
- (a) a foreign proceeding and a local proceeding in relation to the same debtor are taking place concurrently within the meaning of the Model Law, article 1 (c) (*concurrent proceedings*); or
  - (b) assistance is sought in Australia by a foreign court or foreign representative in relation to a foreign proceeding or is sought in a foreign state in relation to a local proceeding in relation to a debtor within the meaning of the Model Law, article 1 (a) and article 1 (b) (*cross-border assistance*); or
  - (c) creditors or other interested people in a foreign state have an interest in requesting the commencement of participation in a local proceeding in relation to a debtor within the meaning of the Model Law, article 1 (d) (*foreign party participation*).

- (2) Subject to subrule (5), coordination of concurrent proceedings under the Model Law, article 27 (e) is to take place under a coordination agreement approved by the court under rule 15A.11.
- (3) Subject to subrule (5), coordination of the administration and supervision of a debtor's assets and affairs under the Model Law, article 27 (c) that involves the court is to take place under a coordination agreement approved by the court under rule 15A.11.
- (4) Subject to subrule (5), any other form of cooperation under the Model Law, article 27 that involves the court is to take place under a coordination agreement approved by the court under rule 15A.11.
- (5) The court may, on application by a party or on its own motion, order that a form of cooperation under subrule (2), (3) or (4) is to proceed other than under a coordination agreement approved by the court under rule 15A.11.
- (6) An application by a party under subrule (5)—
  - (a) subject to paragraph (b), must be made by originating process; and
  - (b) may, if a proceeding has been started in the court in relation to the debtor under these rules, be made by interlocutory process in that proceeding; and
  - (c) must be supported by an affidavit identifying the form and substance of cooperation sought, the grounds for seeking it and the provisions of the Global Guidelines that the party proposes apply to the cooperation.
- (7) If the court makes an order under subrule (5), the court must determine which provisions of the Global Guidelines apply to the cooperation.

### **15A.11 Application for approval of coordination agreement**

- (1) A coordination agreement that involves the court is subject to the approval of the court.

- (2) An application under subrule (1)—
  - (a) subject to paragraph (b), must be made by originating process; and
  - (b) may, if a proceeding has been started in the court in relation to a debtor under these rules, be made by interlocutory process in the proceeding.
- (3) An application under subrule (1) must be supported by an affidavit—
  - (a) exhibiting the coordination agreement; and
  - (b) identifying the manner in which the agreement involves the court; and
  - (c) identifying all relevant foreign proceedings; and
  - (d) identifying and providing contact details for all relevant foreign courts; and
  - (e) identifying all relevant foreign representatives; and
  - (f) identifying any local liquidator or controller appointed in relation to the debtor's local property.
- (4) When filing the application, the applicant must file, but need not serve, an interlocutory process seeking directions as to service, and the court may give any directions about service, and make any incidental orders, which it considers just.
- (5) The applicant must serve a copy of the application and supporting affidavit—
  - (a) unless the court otherwise orders, on the parties to the proceeding under rule 2.7 (1); and
  - (b) on any other people the court may direct at the hearing of the interlocutory process.

- (6) A person who intends to appear before the court at the hearing of the application must file and serve the documents mentioned in rule 2.9.

#### **15A.12 Appointment of independent intermediary**

- (1) This rule applies if the court has made or is contemplating making an order under rule 15A.10 (Cooperation involving court to be under coordination agreement) or has approved or is contemplating approving a coordination agreement under rule 15A.11.
- (2) The court may, on application by a party or on its own motion, order that an independent intermediary under Global Principle 23, be appointed to carry out any tasks in accordance with the conditions (if any) the court states.
- (3) An application by the party under subrule (2) must be accompanied by an affidavit identifying the following matters:
  - (a) the proposed independent intermediary;
  - (b) the qualifications of the intermediary by reference to Global Principle 23 (5);
  - (c) the grounds for appointment of the intermediary;
  - (d) the tasks proposed to be performed by the intermediary;
  - (e) the proposed remuneration of the intermediary.

### **Division 6.15A.4 Concurrent proceedings**

#### **15A.13 Starting proceeding after recognition of a foreign main proceeding**

- (1) This rule applies if a foreign main proceeding in relation to a debtor has been recognised under division 6.15A.2 (Recognition of a foreign proceeding) of the rules or of corresponding rules in the Federal Court of Australia or Supreme Court of a State or Territory of Australia.

- (2) A party who wishes to start a local proceeding in relation to the debtor or the debtor's assets which is governed by the Model Law, article 28 must file with the originating process an affidavit—
  - (a) exhibiting the order recognising the foreign main proceeding; and
  - (b) identifying the assets of the debtor in Australia; and
  - (c) identifying any other assets of the debtor that under the law of the Commonwealth should be administered in the local proceeding.

## **Division 6.15A.5    General**

### **15A.14    Proof of orders or documents of foreign courts**

- (1) This rule applies if an apparently authentic order or document of a foreign court is received by the court directly from the foreign court by physical or electronic delivery under provisions governing the transmission of the documents contained in—
  - (a) an order under rule 15A.10 (Cooperation involving court to be under coordination agreement); or
  - (b) a coordination agreement approved by the court under rule 15A.11 (Application for approval of coordination agreement).
- (2) Unless the court otherwise orders, the order or document of the foreign court is presumed to be authentic in the absence of evidence to the contrary.

**15A.15 Service in accordance with service list**

- (1) This rule applies if—
  - (a) a service list has been agreed under a coordination agreement approved by the court under rule 15A.11; or
  - (b) a service list has been established under an order by the court under rule 15A.10.
- (2) Unless the court otherwise orders, the following applications must be served on all people named in the service list to which this rule applies that is applicable to the application:
  - (a) an application for recognition under rule 15A.3;
  - (b) an application to modify or terminate an order for recognition under rule 15A.9;
  - (c) an application for relief after recognition under rule 15A.8.
- (3) If any application not governed by subrule (2) is made, the court may direct that the application be served on some or all people named in the service list to which this rule applies that is applicable to the application.

**50 Dictionary, definition of *Australia***

*substitute*

*Australia*, for division 6.8.9 (Service out of Australia)—see rule 6500.

**51 Dictionary, new definition of *concurrent proceedings***

*insert*

*concurrent proceedings*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.10 (1) (a).



**52 Dictionary, definitions of *convention* and *convention country***

*omit*

**53 Dictionary, new definition of *coordination agreement***

*insert*

*coordination agreement*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

**54 Dictionary, definition of *filed*, new paragraph (c)**

*insert*

- (c) the registrar gives leave to file the document in the court by electronic communication and the document is sent by electronic communication to the registry's email address for the filing of documents.

**55 Dictionary, new definitions**

*insert*

*foreign party participation*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.10 (1) (c).

*Global Guidelines*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

*Global Principles*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

*local proceeding*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

**56 Dictionary, definition of *non-convention country***

*omit*

**57 Dictionary, new definition of *service list***

*insert*

*service list*, for part 6.15A (Proceedings under the Cross-Border Insolvency Act)—see rule 15A.2 (3).

**58 Further amendments, mentions of *arbitrator***

*omit*

arbitrator

*substitute*

arbitral tribunal

*in*

- rule 1534 (1) (b)
- rule 3265 (3) (a)
- rule 3267 (4) and (5)
- rule 3268 (1)
- rule 3269 (b)
- rule 3269A

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## Endnotes

**1 Notification**

Notified under the [Legislation Act](#) on 7 July 2017.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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