

**TABLING NOTE FOR SUBORDINATE LEGISLATION**  
**SUBORDINATE LEGISLATION NO. 23 OF 2017**  
**SUPREME COURT AMENDMENT (COSTS) RULES 2017**

**Purpose**

The *Supreme Court Amendment (Costs) Rules 2017* amend the *Supreme Court Rules* to create greater flexibility and regulate the calculation and allocation of costs.

**Summary of key provisions**

- Rule 63.02(2) is amended to provide that if a party is awarded ‘costs in the proceedings’, the party who is successful in the proceeding is entitled to their costs of the application, or part of the proceeding, in respect of which the order is made.
- Rule 63.18 is amended to provide that interlocutory application costs are to be costs in the proceeding unless the Court otherwise orders.
- Rules 63.34(5) to (7) are replaced with new rules 63.34(5) and (6) to provide that the Taxing Master may refuse to allow the solicitor who filed the bill the amount, or any part of the amount, claimed in the bill in respect of the taxation, if the amount claimed for professional charges is reduced by 20% or more, or a reasonable offer of compromise was made but not accepted, or the Taxing Master thinks it equitable.
- The Taxing Master may also direct a solicitor who filed a bill in which the amount of professional charges is reduced by 20% or more to personally pay the costs incurred by other parties attending the taxation.
- Rule 63.55(3) is amended to provide that the period within which a notice of application to the Taxing Master to reconsider a decision must be filed has been extended to be within 14 days after the date of the order on taxation that contains the decision.
- New rule 63.63A provides that a party whose costs are to be paid under a settlement agreement under which the costs are to be taxed may apply to the Court for the costs to be taxed.
- Rule 63.66 is amended to provide that the Taxing Master may decrease, as well as increase, the amount of an allowance or expense in the Appendix as thought fit.
- New rule 63.72A provides that, if a trial listed and allocated hearing dates settled, a cancellation fee for counsel will be allowed where the ordinary proceeding was settled two weeks or less before the trial was due to start or four weeks or less before the trial of a large proceeding, or otherwise as the Taxing Master considers appropriate.
- New rule 63.73A provides that the Taxing Master may increase the costs allowed by up to 20% if the party entitled to the costs makes an offer of compromise which is not accepted and, on the taxation of the costs, the party is allowed an amount greater than the amount the party offered.
- Rule 63.74 is amended to provide that the rate of interest payable in respect of taxed costs is no longer limited to the rate fixed in accordance with Rule 59.02 as interest payable on a judgement debt.
- The Appendix in Order 63 is amended as follows:

- Part 1, new paragraph 3 - adding various categories dependent on a person's position and experience and increasing the rate per unit;
- Part 2, paragraphs 4 and 5 - omitting charges for general care and conduct;
- Part 3, new paragraphs 2 and 3 - a solicitor may charge a fee equal to the composite fee or a fee calculated in accordance with Part 2 of the Appendix. However the Taxing Master may decide to allow work for a fee to be calculated by one method if the Master considers it equitable to do so; and
- Part 3, Composite Scale – adding new items 14 and 15 for attendance at listing or direction hearings and settlement conferences respectively.

**Legislative Authority**

Section 86 of the *Supreme Court Act*.

**NORTHERN TERRITORY OF AUSTRALIA**  
**SUPREME COURT AMENDMENT (COSTS) RULES 2017**

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**Subordinate Legislation No. 23 of 2017**

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# NORTHERN TERRITORY OF AUSTRALIA

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**Subordinate Legislation No. 23 of 2017\***

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## ***Supreme Court Amendment (Costs) Rules 2017***

We, the undersigned Judges of the Supreme Court of the Northern Territory of Australia, under section 86 of the *Supreme Court Act*, make the following Rules of Court.

Dated 5 June 2017

M. GRANT CJ

S. R. SOUTHWOOD J

J. KELLY J

J. BLOCKLAND J

P. BARR J

G. HILEY J

Judges of the Supreme Court  
of the Northern Territory of Australia

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\* Notified in the *Northern Territory Government Gazette* on 12 July 2017.

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## 1 Citation

These Rules may be cited as the *Supreme Court Amendment (Costs) Rules 2017*.

## 2 Rules amended

These Rules amend the *Supreme Court Rules*.

## 3 Rule 63.01 amended

Rule 63.01(1)

*insert (in alphabetical order)*

**administrative assistant** means a person other than a solicitor, law clerk, graduate clerk or legal secretary.

**clerk** means an administrative assistant, graduate clerk, law clerk or legal secretary.

**graduate clerk** means a person who holds a law degree but is not admitted to the legal profession.

**law clerk** means a person who does not hold a law degree but has sufficient experience to be able to conduct legal matters with minimal supervision by a solicitor.

**legal secretary** means a person who has particular experience and skills in legal secretarial work and is capable of preparing and formatting legal documents on the instructions of a solicitor.

## 4 Rule 63.02 amended

Rule 63.02(2), entry for "**Costs in the proceeding** or **Costs in the application**"

*omit, insert*

**Costs in the proceeding**

The party who is successful in the proceeding is entitled to the party's costs of the application, or part of the proceeding, in respect of which this order is made.

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**5 Rule 63.18 amended**

(1) Rule 63.18

*omit*

Each party shall bear his own

*insert*

The

(2) Rule 63.18, after "notice,"

*insert*

are to be costs in the proceeding

**6 Rule 63.34 amended**

Rule 63.34(5) to (7)

*omit, insert*

- (5) On the taxation of a bill of costs the Taxing Master may refuse to allow to the solicitor who filed the bill the amount, or any part of the amount, claimed in the bill in respect of the taxation if:
- (a) the amount of professional charges contained in the bill is reduced by 20% or more on the taxation; or
  - (b) a reasonable offer of compromise was made under this rule but not accepted; or
  - (c) the Master otherwise thinks it equitable in the circumstances.
- (6) In addition, if on the taxation of a bill of costs the amount of professional charges contained in the bill is reduced by 20% or more, the Taxing Master may direct the solicitor who filed the bill to personally pay the costs of attending the taxation incurred by a party who:
- (a) appeared on the taxation; and
  - (b) in the opinion of the Taxing Master, had a right to appear.

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**7 Rule 63.40 amended**

- (1) Rule 63.40(6)(c)  
*omit*  
care and conduct and
- (2) Rule 63.40(6)(e)  
*omit*  
, care and conduct
- (3) Rule 63.40(9)  
*omit, insert*
- (9) The Taxing Master may disallow multiple items claimed as one item in a bill.

**8 Rule 63.55 amended**

- Rule 63.55(3)  
*omit, insert*
- (3) The notice must be filed within 14 days after the date of the order on taxation that contains the decision.

**9 Rule 63.63A inserted**

After rule 63.63

*insert*

**63.63A Taxation under settlement agreement**

- (1) This rule applies if, under an agreement:
  - (a) costs are payable by one party to the other; and
  - (b) the costs are to be taxed.
- (2) The party whose costs are to be paid may apply to the Court by originating motion in Form 5B for the costs to be taxed.



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**10 Rule 63.66 amended**

(1) Rule 63.66, after "increase"

*insert*

or decrease

(2) Rule 63.66

*omit*

he

*insert*

the Master

**11 Rule 63.72 amended**

Rule 63.72(2)

*omit*

The

*insert*

Subject to rule 63.72A, the

**12 Rule 63.72A inserted**

After rule 63.72

*insert*

**63.72A Cancellation fees for counsel**

(1) This rule applies if:

(a) a proceeding was listed for trial and allocated hearing dates;  
but

(b) the trial did not take place because the proceeding was  
settled.

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- (2) A cancellation fee for counsel of an amount equal to 60% of counsel's daily fee for each day allocated for the trial will be allowed for:
    - (a) an ordinary proceeding that was settled 2 weeks or less before the trial was due to start; or
    - (b) a large proceeding that was settled 4 weeks or less before the trial was due to start.
  - (3) For any other proceeding, no cancellation fee for counsel will be allowed.
  - (4) However, if the Taxing Master considers it appropriate for a particular proceeding, the Master may allow a cancellation fee or a different cancellation fee.
  - (5) In this rule:

**large proceeding** means a proceeding that, in the opinion of the Taxing Master, can be characterised as a large proceeding by reason of length, complexity or otherwise.

**ordinary proceeding** means a proceeding that is not a large proceeding.

### **13 Rule 63.73A inserted**

After rule 63.73

*insert*

#### **63.73A Increase in costs allowed if offer of compromise not accepted**

- (1) This rule applies if:
  - (a) a party entitled to costs makes an offer to compromise under rule 63.34; and
  - (b) the offer is not accepted; and
  - (c) on the taxation of the costs, the party is allowed an amount greater than the amount the party offered.
- (2) The Taxing Master may increase the costs allowed, including costs taxed on an indemnity basis, by up to 20%.

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**14 Rule 63.74 amended**

(1) Rule 63.74(1)

*omit*

all words from "(1)" to "subrule (2)"

*insert*

Despite rule 59.02(3), at the conclusion of the taxing of a bill, the Taxing Master may, in the Master's discretion

(2) Rule 63.74(2)

*omit*

**15 Order 63, Appendix amended**

(1) Order 63, Appendix, Part 1, paragraph 3

*omit, insert*

3. The rate per unit, until varied in accordance with paragraph 4 of this Part is as follows:

(a) for a solicitor who has held an Australian practising certificate (as defined in section 4 of the *Legal Profession Act*) for:

(i) at least 10 years – \$35.64; or

(ii) at least 5 years but less than 10 years – \$32.08; or

(iii) at least 2 years but less than 5 years – \$27.54; or

(iv) less than 2 years – \$24.00;

(b) for a law clerk – \$18.00;

(c) for a legal secretary – \$14.40;

(d) for a graduate clerk – \$12.00;

(e) for an administrative assistant – \$7.20.

(2) Order 63, Appendix, Part 1, paragraph 7

*omit*

out-going telephone calls, telex messages and other similar outgoings shall

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*insert*

outgoing telephone calls, facsimile messages and other similar outgoings must

- (3) Order 63, Appendix, Part 2, paragraphs 4 and 5

*omit*

- (4) Order 63, Appendix, Part 3, paragraph 1, definition **drawing and engrossing**

*omit, insert*

**drawing and engrossing** means drawing and engrossing a document of 1 or 2 pages in length and includes:

- (a) if item 2(a)(i) applies:
- (i) the time (up to 4 units) spent by a solicitor in drawing the document; and
  - (ii) clerk's time (up to 2 units) in engrossing it; and
- (b) if item 2(a)(ii) applies:
- (i) the time (up to 2 units) spent by a solicitor in drawing the document; and
  - (ii) clerk's time (up to 2 units) in engrossing it; and
- (c) if item 2(b)(i) applies:
- (i) the time (up to 1 unit) spent by a solicitor in drawing the document; and
  - (ii) clerk's time (up to 1 unit) in engrossing it; and
- (d) if item 2(b)(ii) applies – clerk's time (up to 2 units) in drawing and engrossing the document.

- (5) Order 63, Appendix, Part 3, paragraph 1, definition **letter**

*omit, insert*

**letter** includes a facsimile, email and any other form of written communication.

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- (6) Order 63, Appendix, Part 3, paragraph 1, definition ***special letter***, paragraph (a), at the end

*insert*

and

- (7) Order 63, Appendix, Part 3, paragraph 1, definition ***special letter***, paragraph (b)

*omit*

- (8) Order 63, Appendix, Part 3, paragraphs 2 to 4A

*omit, insert*

2. For work actually done by a solicitor that is of a kind covered in the aggregate by a composite fee mentioned in the composite scale, the solicitor may charge and be allowed for the work:

(a) a fee equal to the composite fee; or

(b) a fee calculated in accordance with Part 2 of this Appendix.

3. However, if the Taxing Master considers it equitable to do so, the Master may decide to allow for the work:

(a) only a fee calculated in accordance with Part 2 of this Appendix; or

(b) only a fee equal to the appropriate composite fee.

- (9) Order 63, Appendix, Part 3, paragraph 5

*omit*

13 (inclusive)

*insert*

15

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- (10) Order 63, Appendix, Part 3, Composite Scale and Part 4  
*omit, insert*

**Composite Scale**

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<b>Item</b>	<b>Matter in respect of which charge is made</b>	<b>Charge (\$)</b>
1	Letters:	
	(a) special	138
	(b) ordinary	99
	(c) circular	15
2	Drawing and engrossing:	
	(a) court document	
	(i) requiring skill	154
	(ii) using form or standard document or in case of a standard form of judgment, order or the like	84
	(b) other	
	(i) requiring skill	43
	(ii) not requiring skill	28
3	Engrossing a document drawn by someone other than solicitor making the charge – per unit	15
4	Telephone calls:	
	(a) requiring skill – per unit	27
	(b) not requiring skill – per unit	15
5	Marking annexures, exhibits, enclosing notices of appointment and the like – per unit	15
6	Copying – per unit	15
7	Instructions to sue to notice of trial	1 908
8	Instructions to defend to notice of trial	1 381

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9	Application in a proceeding:	
	(a) contested	1 222
	(b) uncontested	977
10	Requiring discovery and inspection	733
11	Providing discovery and inspection	549
12	Seeking answers to interrogatories	843
13	Furnishing answers to interrogatories	893
14	Attendance at listing hearing or other directions hearing	300
15	Attendance at settlement conference	500

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PART 4 – FIXED COSTS

**Basic Costs**

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<b>Item</b>	<b>Matter in respect of which charge is made</b>	<b>Charge (\$)</b>
1	Costs to be claimed on writ	733
	In addition, stamp duty paid on filing the writ and on relevant copies or fees payable under the <i>Supreme Court Regulations</i> , Schedule, Part 2, item 1.	
2	Costs on judgment in default of appearance:	
	(a) where writ served by post	977
	(b) where writ served by solicitor's clerk	1 092
	(c) where writ served by person other than solicitor's clerk	977
	In addition:	
	(d) where more than one defendant – for each	27
	(e) the cost of stamp duty paid on filing the writ and on relevant copies or fees payable under the <i>Supreme Court Regulations</i> , Schedule, Part 2, item 1	
	(f) where paragraph (c) applies, a reasonable amount paid for service.	

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### Additional Costs

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Item	Matter in respect of which charge is made	Charge (\$)
3	In addition to costs payable under item 2:	
	(a) costs in default of defence	124
	(b) where service out of the jurisdiction is ordered and effected:	
	(i) in the case of service in the Commonwealth	369
	(ii) in the case of service overseas	489
	(c) where substituted service is ordered and effected:	
	(i) on only defendant	977
	(ii) where more than one defendant so served – in respect of each defendant served	124
	and in addition:	
	(iii) the reasonable fees incurred for any advertising required under an order for substituted service; and	
	(d) where a judgment is registered under the <i>Service and Execution of Process Act 1992</i> (Cth) – for costs of registration	244
	(e) where leave to proceed is given under the <i>Service and Execution of Process Act 1992</i> (Cth) – on entry of judgment	733

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#### **16 Rule 79.02 amended**

Rule 79.02(3)

*omit*

#### **17 Expiry of Rules**

These Rules expire on the day after they commence.