

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT AMENDMENT (MISCELLANEOUS) RULES 2018

Subordinate Legislation No. 6 of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 6 of 2018*

Supreme Court Amendment (Miscellaneous) Rules 2018

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 30 January 2018

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

* Notified in the *Northern Territory Government Gazette* on 14 March 2018.

1 Citation

These Rules may be cited as the *Supreme Court Amendment (Miscellaneous) Rules 2018*.

2 Rules amended

These Rules amend the *Supreme Court Rules*.

3 Commencement

These Rules commence on the day on which they are notified in the *Gazette*.

4 Rule 20.03 amended

Rule 20.03(3)(a)

omit

15

insert

30

5 Order 22 heading amended

Order 22, heading

omit

for plaintiff

6 Rules 22.01 and 22.02 replaced

Rules 22.01 and 22.02

repeal, insert

22.01 Summary judgment

- (1) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
 - (a) the first party is prosecuting the proceeding or that part of the proceeding; and
 - (b) the Court is satisfied that the other party has no reasonable prospect of successfully defending the proceeding or that part of the proceeding.

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- (2) The Court may give judgment for one party against another in relation to the whole or any part of a proceeding if:
 - (a) the first party is defending the proceeding or that part of the proceeding; and
 - (b) the Court is satisfied that the other party has no reasonable prospect of successfully prosecuting the proceeding or that part of the proceeding.
 - (3) For this rule, a defence of a proceeding or part of a proceeding need not be hopeless or bound to fail for it to have no reasonable prospect of success.
 - (4) The powers under this rule may be exercised at any stage in a proceeding.
 - (5) This rule does not limit any powers that the Court has apart from this rule.

7 Rule 22.03 amended

- (1) Rule 22.03(4)
omit
plaintiff shall
insert
applicant must
- (2) Rule 22.03(4)
omit
defendant
insert
respondent

8 Rule 22.04 amended

- (1) Rule 22.04, heading
omit
Defendant

insert

Respondent

(2) Rule 22.04(1)

omit

defendant

insert

respondent

(3) Rule 22.04(3)

omit

defendant shall

insert

respondent must

(4) Rule 22.04(3)

omit

plaintiff

insert

applicant

9 Rule 22.05 amended

(1) Rule 22.05

omit

Where the defendant

insert

If the respondent

(2) Rule 22.05

omit

plaintiff

insert

applicant

10 Rule 22.06 amended

(1) Rule 22.06(1)(b)

omit

plaintiff against the defendant

insert

applicant against the respondent

(2) Rule 22.06(1)(b) and (c) and (2)

omit

defendant

insert

respondent

11 Rules 22.08, 22.11, 22.12, 22.13 and 22.14 repealed

Rules 22.08, 22.11, 22.12, 22.13 and 22.14

repeal

12 Rule 22.15 amended

Rule 22.15

omit

22.02 or 22.08

insert

22.01

13 Rule 23.01 amended

(1) Rule 23.01(1)(a) and (2)(a)

omit

(2) Rule 23.01(1)(c) and (2)(c)

omit

Court,

insert

Court;

14 Rule 23.03 repealed

Rule 23.03

repeal

15 Rule 23.04 amended

Rule 23.04(1)

omit

or 23.03

16 Order 26 replaced

Order 26

repeal, insert

Order 26 Offers of compromise

26.01 Definitions

In this Order:

applicant means a party claiming relief, other than a party claiming relief in a cross-claim.

claim includes a counterclaim and a claim made in accordance with Order 11.

respondent means a party against whom relief is claimed, other than a party against whom relief is claimed in a cross-claim.

26.02 Offers of compromise generally

- (1) A party (the ***offeror***) may make an offer to compromise by serving a notice on another party (the ***offeree***) to settle some or all issues in the proceeding.

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- (2) The notice must:
 - (a) be in writing and prepared in accordance with rules 27.02, 27.03 and 27.04; and
 - (b) state whether:
 - (i) the offer is inclusive of costs; or
 - (ii) costs are in addition to the offer.
 - (3) If the offer is of a sum of money, the notice may separately specify the amount that represents:
 - (a) the offer in respect to the claim; and
 - (b) interest (if any).
 - (4) Unless the notice specifies otherwise, an offer is taken to have been made without prejudice save as to costs.
 - (5) An offer to pay a sum of money is, unless the notice provides otherwise, taken to be an offer that the sum will be paid within 28 days after acceptance.

26.03 Timing of offer

- (1) An offer may be made at any time before judgment is given (including before proceedings have commenced).
- (2) A party may make more than one offer.
- (3) An offer may be limited in time for which it is open to be accepted, however the time for acceptance must be:
 - (a) reasonable in the circumstances; and
 - (b) in any case not less than 14 days after the offer is made.
- (4) An offer of compromise must not be withdrawn during the time it is open to be accepted, unless the Court orders otherwise.

26.04 No communication to Court of offer

- (1) A pleading or affidavit must not contain a statement that an offer has been made.
- (2) No communication about the existence or terms of an offer made without prejudice is to be made to the Court until:
 - (a) the offer is accepted; or

-
- (b) judgment is given; or
 - (c) an application is made under rule 26.05.

26.05 Failure to comply with offer

If, after acceptance of an offer by an offeree, an offeror fails to comply with the offer's terms, the offeree may apply to the Court for an order:

- (a) giving effect to the accepted offer; or
- (b) staying or dismissing the proceeding if the applicant is in default; or
- (c) striking out the respondent's defence if the respondent is in default; or
- (d) that a cross-claim, not the subject of the offer, proceed.

26.06 Multiple respondents

- (1) Rule 26.05 does not apply if:
 - (a) 2 or more respondents are alleged to be jointly, or jointly and severally, liable to the applicant for a debt or damages; and
 - (b) rights of contribution or indemnity appear to exist between the respondents.
- (2) However, rule 26.05 applies if:
 - (a) for an offer made by the applicant – the offer:
 - (i) is made to all respondents; and
 - (ii) is an offer to compromise the claim against all of them; or
 - (b) for an offer made to the applicant:
 - (i) the offer is to compromise the claim against all respondents; and
 - (ii) if the offer is made by 2 or more respondents – those respondents offer to be jointly, or jointly and severally, liable to the applicant for the whole amount of the offer.

26.07 Costs where offer not accepted

If an offer is made by an offeror but not accepted within a reasonable time by an offeree and the offeror obtains judgment against the offeree more favourable to the offeror than the terms of the offer, the Court shall take this into account when considering:

- (a) the exercise of its discretion as to costs under rule 63.03; and
- (b) the exercise of its discretion as to interest under section 84 of the Act.

26.08 Taxation of costs where offer accepted

If an offer does not include the offeree's costs of the proceeding and the offeree accepts the offer, the offeree may tax costs on a standard basis against the offeror up to and including 14 days after the offer was made.

26.09 Contributor parties

- (1) If 2 or more parties (the **contributor parties**) may be held liable to contribute towards an amount of debt or damages that may be recovered from the contributor parties, any of those contributor parties, without prejudice to that contributor party's defence, may make an offer to another contributor party to contribute, to a specified extent, to the amount of the debt or damages.
- (2) If an offer is made by a contributor party (the **first contributor party**) and not accepted by another contributor party, and the first contributor party obtains a judgment against the other contributor party more favourable than the terms of the offer, the Court shall take this into account when considering:
 - (a) the exercise of its discretion as to costs under rule 63.03; and
 - (b) the exercise of its discretion as to interest under section 84 of the Act.

17 Rule 29.09 amended

Rule 29.09(3)

omit

shall be within 15

insert

must be within 30

18 Rule 63.76 inserted

After rule 63.75 in Order 63

insert

63.76 Further provision as to costs and interest on costs

- (1) The Court will take into account whether a party has complied with the party's duties under these Rules when considering:
 - (a) the exercise of its discretion as to costs under rule 63.03; and
 - (b) the exercise of its discretion as to interest under section 84 of the Act.
- (2) Despite rule 63.74, if the Court decides that a party has failed to comply with the party's duties under these Rules, the Court may award interest on costs at a rate not exceeding the rate fixed from time to time in accordance with rule 59.02, plus an additional 8%.
- (3) The Court may order costs in addition to interest under subrule (2) against a practitioner, if it is established that the practitioner has failed to take reasonable steps to ensure that the client has complied with the client's duties under these Rules.
- (4) For the avoidance of doubt and for the purposes of this Order, the costs of a proceeding include the costs of complying with these Rules.

19 Rule 79.09 repealed

Rule 79.09

repeal

20 Schedule 1 amended

Schedule 1, Forms 26A, 26B, 26C and 26D

repeal

21 Repeal of Rules

These Rules are repealed on the day after they commence.