

NORTHERN TERRITORY OF AUSTRALIA
AMENDMENTS OF THE SUPREME COURT RULES

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NORTHERN TERRITORY OF AUSTRALIA

Regulations 1988, No. 1*

Rules of Court under the *Supreme Court Act*

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

Dated 22 December 1987.

AUSTIN ASCHE CJ

JOHN NADER J

W. KEARNEY J

MICHAEL MAURICE J

BRIAN MARTIN J

Judges of the Supreme
Court of the Northern
Territory of Australia

AMENDMENTS OF THE SUPREME COURT RULES

1. COMMENCEMENT

These Rules shall come into operation on 1 February 1988.

2. REPEAL

Order 64 of and Schedule 2 to the Rules of the Supreme Court of the Northern Territory of Australia kept in existence by section 4 of the *Supreme Court (Rules of Procedure) Act 1987*, and Regulations 1986, No. 10, are repealed.

* Notified in the *Northern Territory Government Gazette* on 27 January 1988.

Amendments of the Supreme Court Rules

3. TRANSITIONAL

(1) Where a judgment in a cause, suit or matter was given by the Court before the commencement of these Rules or before that commencement a cause, suit or matter had reached a stage where a taxation of costs could and would be expected to proceed, any taxation of costs in the cause, suit or matter shall be in accordance with the Rules then applying as if these Rules had never commenced.

(2) Except as provided by subrule (1) or as ordered by the Court, costs, in a proceeding before the Court shall be taxed in accordance with the Supreme Court Rules as amended by these Rules, whether those costs were incurred before or after the commencement of these Rules.

4. NEW ORDER

The Supreme Court Rules are amended by omitting from Order 63 "(VACANT)" and substituting the following:

"Part 1 - Preliminary

"63.01 INTERPRETATION

"(1) In this Order, unless the contrary intention appears -

'Appendix' means the appendix to this Order;

'bill' means a bill of costs, an account, or a statement of charges;

'costs' includes disbursements;

'indemnity basis', in relation to the taxing of costs, is the basis on which costs are taxed in accordance with rule 63.27;

'party' includes -

(a) a person, not a party to the proceeding, by or to whom costs in respect of a proceeding are payable by or under an Act, these Rules or an order of the Court; or

(b) in the case of a proceeding in another court or before a tribunal or an arbitration, a person, whether or not a party to the proceeding or arbitration, by or to whom costs in respect of the proceeding or arbitration are payable where by or under an Act, these Rules or an order of the Court the costs are to be taxed in the Court;

'standard basis', in relation to the taxing of costs, is the basis on which costs are taxed in accordance with rule 63.26;

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'taxed costs' means costs taxed in accordance with this Order;

'Taxing Master' means the Master or a Deputy Master, or another officer of the Court so directed under subrule (3) by the Master, conducting a taxation of costs under this Order;

'trustee' includes an executor of a will and an administrator of the estate of a deceased person.

"(2) In this Order, unless the contrary intention appears -

(a) a reference to a fund, being a fund out of which costs are to be paid, or being a fund held by a trustee, includes a reference to property held for the benefit of a person or class of persons (including the assets of a company in liquidation) or held on trust for any purpose; and

(b) a reference to a fund held by a trustee includes a reference to other property to which the trustee is entitled as trustee, whether alone or together with another person and whether or not the property is for the time being in the possession of the trustee.

"(3) The Master may direct an officer of the Court to conduct a taxation of costs under this Order but an officer so directed shall not conduct such a taxation if a party to the taxation, or a party's solicitor, objects to the officer conducting the taxation.

"63.02 APPLICATION

"(1) This Order applies to costs payable or to be taxed under these Rules or an order of the Court and to costs to be taxed by the Taxing Master under any Act.

"(2) When used in an order for costs, but subject to rule 63.03, the following words have the following effect indicated opposite to them:

'Costs' Where this order is made in an application in a proceeding, the party in whose favour it is made -

(a) is entitled to his costs in respect of that application whatever the outcome of the proceeding; and

(b) is entitled to have his costs taxed immediately.

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'Costs here and below'	The party in whose favour this order is made is entitled not only to his costs in respect of the proceeding in which it is made, but also to his costs of the same proceeding in a lower court or tribunal.
'Costs in any event'	This order has the same effect as an order for costs made in an application in a proceeding.
'Costs in the proceeding' or 'Costs in the application'	The party in whose favour an order for costs is made in a proceeding or, in an application in a proceeding, is entitled to his costs of the proceeding or application (as the case may be) in respect of which the order is made.
'Costs reserved'	Subject to Rule 63.19, the party in whose favour an order for costs is made at the conclusion of a proceeding is entitled to the costs of any application in that proceeding in respect of which the order is made.
'Costs of the day'	Includes all costs thrown away, including an allowance for work actually done by counsel on the day but not the fee payable to counsel on brief.
'Costs thrown away'	Where an application or a proceeding, or part of it, has been ineffective or has been subsequently set aside, the party in whose favour this order is made is entitled to his costs of that proceeding or part (as the case may be) in respect of which it is made.
'No order as to costs'	This order means that each party pays his own costs.
'Plaintiff's costs in the proceeding' or 'Defendant's costs in the proceeding'	The plaintiff or defendant (as the case may be) is entitled to his costs of the application in a proceeding in respect of which such an order is made, if judgment is given in his favour in the proceeding, but he is not liable to pay the costs of a party in respect of that application if judgment is given in favour of another party in the proceeding.

"63.03 GENERAL RULE

"(1) Subject to these Rules and any other law in force in the Territory, the costs of a proceeding are in the discretion of the Court.

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"(2) Where in the opinion of the Taxing Master or the Court the strict application of this Order (other than this subrule) would result in an anomaly, the Taxing Master or the Court may tax costs, or make such order in relation to costs, as he or it thinks equitable in the circumstances and the costs so taxed or ordered are payable and may be enforced under this Order accordingly.

"63.04 TIME FOR ORDER FOR COSTS, TAXATION AND PAYMENT

"(1) The Court may exercise its power and discretion as to costs at any stage of a proceeding or after the conclusion of the proceeding.

"(2) Subject to this rule, the costs a party is required to pay under these Rules or an order of the Court shall be paid immediately.

"(3) Subject to subrule (4), where -

(a) the Court makes an interlocutory order for costs; or

(b) costs are payable by virtue of these Rules without an order for costs,

those costs shall not be taxed until the conclusion of the proceeding to which they relate.

"(4) If it appears to the Court when making an interlocutory order for costs or at a later time that all or a part of the costs ought to be taxed at an earlier stage, it may order accordingly.

"(5) In the case of an appeal, the costs of the proceeding giving rise to the appeal, as well as the costs of the appeal, may be dealt with by the Court hearing the appeal.

"63.05 COSTS OF QUESTION OR PART OF PROCEEDING

"The Court may make an order for costs in relation to a particular question in, or a particular part of, a proceeding.

"63.06 BY WHOM COSTS TO BE TAXED

"Unless the Court otherwise orders, costs taxed in accordance with this Order shall be taxed by the Taxing Master.

"63.07 OTHER ORDERS FOR PAYMENT OF COSTS

"Where the Court orders that costs be paid to a party, it may then or at a later time order that, as to

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the whole or a part of the costs specified in the order, that party is entitled to -

- (a) a portion (specified in the order) of taxed costs;
- (b) taxed costs from or up to a stage of the proceeding specified in the order; or
- (c) a gross amount specified in the order instead of taxed costs.

"63.08 COST ON WRIT AND ON DEFAULT JUDGMENT

"(1) For the purpose of rule 5.09, a plaintiff may claim for costs in a writ an amount in accordance with item 1 in the scale in Part 4 of the Appendix and, if the plaintiff so claims, rule 5.09(3) does not apply.

"(2) Where judgment is entered for costs under rule 21.03(2), unless the Court otherwise orders, the costs shall not be taxed but shall be in accordance with the appropriate item in the scale in Part 4 of the Appendix.

"63.09 COSTS IN LOCAL COURT, &c.

"Where proceedings in the Local Court or before a tribunal are remitted or transferred to or removed into the Court, or an appeal to the Court is brought from another court or a tribunal, and the Court makes an order as to the costs of proceedings in that court or before that tribunal, the Court may -

- (a) specify the amount of the costs to be allowed;
- (b) order that the costs be taxed in the Court in accordance with this Order; or
- (c) order that the amount of the costs be determined in the court or tribunal in such manner as that court or tribunal directs.

"63.10 NO ORDER FOR TAXATION REQUIRED IN CERTAIN CASES

"Where -

- (a) the Court makes an order for the payment of costs;
- (b) a proceeding is dismissed with costs;
- (c) an application in a proceeding is refused with costs;
- (d) a party is otherwise liable under these Rules to pay the costs of another party;
- (e) a party may tax costs under these Rules; or

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- (f) the parties have agreed in writing that costs payable by one party to another may be taxed and the agreement is filed,

the costs may be taxed without an order for taxation.

"63.11 NO ORDER FOR COSTS REQUIRED IN CERTAIN CASES

"(1) Where an application is made to set aside a pleading on the ground of irregularity and that application is dismissed, the party who made the application shall pay the costs of every other party to the application.

"(2) Where a plaintiff, by notice in writing in accordance with these Rules, accepts money paid into court in satisfaction of his claim or accepts money paid in satisfaction of one or more of his claims and gives notice that he abandons the others, he is entitled to his costs of the action incurred up to the time of giving notice of acceptance and the costs of obtaining payment out of court of the money.

"(3) Where, in a proceeding for defamation against several defendants sued jointly, a plaintiff, by notice in writing, accepts money paid into court by one of the defendants, the plaintiff is entitled to his costs of the proceeding against that defendant incurred up to the time of giving notice of acceptance and the costs of obtaining payment out of court of the money.

"(4) A defendant who has counterclaimed is entitled to the costs of the counterclaim if -

- (a) he pays money into Court and his notice of payment in states that he has taken into account and satisfied the claims in respect of which he counterclaims; and
- (b) the plaintiff accepts the money paid in,

but the costs of that counterclaim are limited to those incurred up to the time when the defendant received notice of acceptance by the plaintiff of the money paid into court.

"(5) Where a party applies for an extension or abridgement of a time fixed by these Rules or by an order fixing, extending or abridging time, he shall pay the costs of and occasioned by the application.

"(6) A party who discontinues a proceeding or withdraws part of a proceeding, counterclaim or claim by third party notice shall pay the costs of the party to whom the discontinuance or withdrawal relates to the time of the discontinuance or withdrawal.

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"(7) A party who amends -

- (a) a pleading without leave of the Court; or
- (b) a pleading or other document by leave,

shall pay the costs of and occasioned by the amendment and the costs thrown away because of the amendment.

"(8) The costs of and occasioned by an adjournment made necessary by the default of a party shall be borne by that party.

"(9) This rule is subject to such other order as the Court makes.

"63.12 ENFORCEMENT OF ORDER OF TAXING OFFICER

"(1) Where costs are taxed otherwise than under a judgment or order for costs, an order of the Taxing Master for payment of an amount found to be due may be enforced in the same manner as a judgment for the payment of money.

"(2) Subrule (1) extends to an interim order for payment of an item in a bill of costs made under rule 63.54(3).

"63.13 COSTS IN ACCOUNT

"Where the Court orders that an account be taken and the account consists in part of costs, the Court may, then or at a later date, direct that those costs be fixed or be taxed in accordance with this Order.

"Part 2 - Entitlement to Costs

"63.14 ORDER FOR PAYMENT

"Subject to these Rules, a party to a proceeding is not entitled to recover any costs of the proceeding from another party except by order of the Court.

"63.15 OFFER OF COMPROMISE

"Where an offer of compromise is served and the offer has not been accepted at the time of verdict or judgment, liability for costs shall be determined in accordance with rule 26.08.

"63.16 NON-ADMISSION OF FACT OR DOCUMENT

"Where a party serves a notice -

- (a) under rule 35.03(2) disputing a fact and afterwards the fact is proved in the proceeding; or

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- (b) under rule 35.05(2) disputing the authenticity of a document and afterwards the authenticity of the document is proved in the proceeding,

that party shall pay the costs of proof, unless the Court otherwise orders.

"63.17 INTERLOCUTORY INJUNCTION

"Where the Court grants an interlocutory injunction and afterwards grants a further interlocutory injunction continuing the first injunction with or without modification, an order as to the costs of the further injunction shall, unless the Court otherwise orders, include the costs of the first injunction.

"63.18 INTERLOCUTORY APPLICATION

"Each party shall bear his own costs of an interlocutory or other application in a proceeding, whether made on or without notice, unless the Court otherwise orders.

"63.19 INQUIRY AS TO OWNERSHIP OF PROPERTY

"The costs of an inquiry to ascertain the person entitled to a legacy, money, share or other property shall be paid out of the property, unless the Court otherwise orders.

"63.20 COSTS RESERVED

"(1) Where, by order of the Court, the costs of an interlocutory or other application or of a step in a proceeding are reserved, the Court may direct by and to whom those costs are to be paid.

"(2) Where the Court makes no direction under subrule (1), a party may, within 21 days after the conclusion of the proceeding, apply to the Court for a direction as to the payment of costs reserved.

"63.21 COSTS LIABILITY OF LEGAL PRACTITIONER

"(1) Where a solicitor for a party, whether personally or through a servant or agent, has caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by other misconduct or default, the Court may order that -

- (a) all or any of the costs between the solicitor and the client be disallowed;
- (b) the solicitor repay to the client the whole or part of money paid on account of costs;
- (c) the solicitor pay to the client all or any of the costs which the client has been ordered to pay to a party; or

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(d) the solicitor pay all or any of the costs payable by a party other than his client.

"(2) Without limiting subrule (1), a solicitor is in default for the purpose of this rule where an application in or trial of a proceeding cannot conveniently be heard or proceed, or fails or is adjourned without useful progress being made, by reason of the failure of the solicitor to -

- (a) attend in person or by a proper representative;
- (b) file a document which ought to have been filed;
- (c) lodge or deliver a document for the use of the Court which ought to have been lodged or delivered;
- (d) be prepared with proper evidence or account; or
- (e) otherwise proceed.

"(3) The Court shall not make an order under subrule (1) without giving the solicitor a reasonable opportunity to be heard.

"(4) The Court may, before making an order under subrule (1), refer the matter to the Master for inquiry and report.

"(5) Order 50, with the necessary changes, applies to a reference to the Master for inquiry and report made under subrule (4).

"(6) The Court may order that notice of a proceeding or order against a solicitor under this rule be given to his client in such manner as it directs.

"(7) This rule, with the necessary changes, applies to a barrister as it applies to a solicitor.

"63.22 MONEY CLAIM IN WRONG COURT, &c.

"(1) Subject to subrule (2), where in a proceeding -

- (a) a plaintiff recovers (or but for a set off under rule 13.14 against his claim would be entitled to recover) an amount which is an amount within the jurisdiction of the Local Court; and
- (b) the Court makes an order that the defendant pay the plaintiff's costs of the proceeding,

the plaintiff is not entitled to recover from the defendant an amount for costs which exceeds that which he would have recovered in the Local Court, unless the Court is satisfied that he had good reason to commence the proceeding in the Court.

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"(2) Where in a proceeding a plaintiff recovers (or but for a set off under rule 13.14 against his claim would be entitled to recover) no more than \$2,000, he is not entitled to costs.

"63.23 TRUSTEE OR MORTGAGEE

"A party who sues as trustee or mortgagee, unless the Court otherwise orders, is entitled to the costs of the proceeding out of the fund held by the trustee, or out of the mortgaged property, to the extent that the costs are not paid by any other person.

"Part 3 - Costs of Party in a Proceeding

"63.24 APPLICATION

"This Part applies to costs in a proceeding which by or under an Act, these Rules or an order of the Court are to be paid to a party to the proceeding either by another party or out of a fund.

"63.25 BASES OF TAXATION

"Subject to this Part, costs in a proceeding which are to be taxed shall be taxed on -

- (a) the standard basis; or
- (b) the indemnity basis.

"63.26 STANDARD BASIS

"On a taxation of costs on the standard basis, there shall be allowed a reasonable amount in respect of all costs reasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the paying party.

"63.27 INDEMNITY BASIS

"On a taxation of costs on the indemnity basis, all costs shall be allowed except to the extent that they are of an unreasonable amount or have been unreasonably incurred, and any doubts which the Taxing Master has as to whether the costs were reasonably incurred or were reasonable in amount shall be resolved in favour of the receiving party.

"63.28 GENERAL BASIS

"(1) Except as provided by these Rules or an order of the Court, costs shall be taxed on the standard basis.

- "(2) Where the Court makes an order for costs -
- (a) without indicating the basis of taxation; or

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- (b) to be taxed on a basis other than the standard basis or the indemnity basis;

the costs shall be taxed on the standard basis.

"63.29 WHERE INDEMNITY BASIS APPLICABLE

"(1) Subject to this Order, the Court may order that costs be taxed on the indemnity basis.

"(2) Where the Court makes an order for -

- (a) the payment to a party of costs out of a fund; or
- (b) the payment of costs to a party who sues or is sued as trustee,

subject to rule 63.30, the costs shall be taxed on the indemnity basis.

"63.30 PARTY AS TRUSTEE

"Where a party who sues or is sued as trustee is entitled to be paid costs out of a fund which he holds in that capacity, the costs shall, unless the Court otherwise orders, be taxed on the indemnity basis.

"63.31 COSTS PAYABLE TO SOLICITOR WHERE MONEY CLAIMED BY OR ON BEHALF OF PERSON UNDER DISABILITY

"(1) This rule applies to a proceeding (including a proceeding in the Court of Appeal) in which -

- (a) money is claimed or recovered by or on behalf of, or adjudged, ordered, or agreed to be paid to or for the benefit of, a person under a disability; or
- (b) money paid into court is accepted on behalf of a person under a disability.

"(2) The costs of a proceeding to which this rule applies which are payable by a plaintiff to his solicitor shall, unless the Court otherwise orders, be taxed on the indemnity basis.

"(3) On a taxation under subrule (2), the Taxing Master shall also tax the costs payable to that plaintiff in those proceedings and shall certify -

- (a) the amount allowed on the taxation of the solicitor's bill to his own client;
- (b) the amount allowed on the taxation of costs payable to that plaintiff in that proceeding;

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- (c) the amount (if any) by which the amount referred to in subparagraph (a) exceeds the amount referred to in subparagraph (b); and
- (d) where necessary, the proportion of the amount of that excess payable by, or out of money belonging to, respectively, any claimant who is a person under a disability and any other party.

"(4) Subrules (2) and (3) apply to and in relation to a proceeding in the Court of Appeal as if for a reference to the plaintiff there were substituted a reference to the party, whether appellant or respondent, who was the plaintiff in the proceeding which gave rise to the appeal proceeding.

"(5) Nothing in this rule prejudices a solicitor's lien for costs.

"(6) This rule also applies to and in relation to a counterclaim by or on behalf of a person under a disability as if for a reference to a plaintiff there were substituted a reference to a defendant.

"63.32 ASCERTAINING COSTS ON A TAXATION

"(1) Subject to these Rules, the scales of costs contained in Parts 2 and 3 of the Appendix, together with the notes and provisions contained in Parts 1 and 3 of the Appendix, apply in relation to the taxation of all costs for work done after the commencement of this Order.

"(2) On the taxation of costs payable to a solicitor by his own client or of costs payable by a person who is or has been a party to a proceeding in the capacity of trustee who is entitled to be paid out of the fund which he holds in that capacity, and in other cases which, in the opinion of the Taxing Master, warrant his so allowing, costs may, in the discretion of the Taxing Master, be allowed -

- (a) in relation to items not mentioned in the scales in the Appendix; or
- (b) of an amount higher than that prescribed in the scales in the Appendix.

"(3) There shall be allowed to a witness attending at Court to give evidence such fees as are reasonable having regard to the occupation of the witness and those fees shall include -

- (a) the actual expenses reasonably incurred by the witness for travel to and from the place of trial or hearing;
- (b) the actual expense reasonably incurred by the witness for accommodation and sustenance;

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- (c) loss of salary, wages or other remuneration of any kind reasonably caused by the attendance; and
- (d) any other necessary expense reasonably incurred by the witness because of the attendance.

"(4) Subrule (3) applies to a person required to attend at Court to act as an interpreter as if that person were a witness.

"Part 4 - Taxing Master

"63.33 POWERS OF TAXING MASTER

"On a taxation of costs under this Order, the Taxing Master, in addition to powers conferred by the Act, has all the power which under the Act or these Rules a Master has on a hearing of an application in a proceeding.

"63.34 COSTS OF TAXATION

"(1) Costs to be taxed under these Rules include the costs of the taxation.

"(2) Costs to be taxed under a judgment, unless the judgment otherwise provides, include the costs of the taxation.

"(3) After service of a summons under rule 63.36 for the taxation of costs, the party entitled to costs and the party liable for them may serve on each other an offer of compromise in respect of the amount of the costs to be taxed.

"(4) Subject to this rule and to an order of the Court, the Taxing Master may make orders for the costs of a taxation.

"(5) If on the taxation of a bill of costs payable out of a fund or out of the assets of a company liquidation, the amount of professional charges contained in the bill is reduced by 20% or more, no costs shall be allowed to the solicitor filing the bill for any amount claimed in the bill in respect of the taxation of the bill.

"(6) If on the taxation of a bill, other than the taxation of a bill referred to in subrule (5), the amount of professional charges contained in the bill is reduced by 20% or more, the Taxing Master may refuse to allow to the solicitor filing the bill the amount or any part of the amount claimed in the bill in respect of the taxation of the bill and, if the Taxing Master so directs, the solicitor shall personally pay the costs of attending the taxation incurred by a party who, in the opinion of the Taxing Master, had a right to appear on the taxation and who did so appear.

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"(7) In making a direction under subrule (6), the Taxing Master may have regard to an offer of compromise under this rule made by a party who had a right to appear on the taxation and may take into consideration a failure by the party liable for costs to make such an offer.

*"Part 5 - Procedure on Taxation on
Standard Basis*

"63.35 APPLICATION

"(1) This Part applies to -

- (a) the costs of a proceeding in the Court, including -
 - (i) the costs of an application to or proceeding before the Full Court under Division 3 of Part II of the Act;
 - (ii) the costs of a proceeding in pursuance of Division 4 of Part II of the Act;
 - (iii) the costs of an appeal, or application for leave to appeal, under Part III of the Act;
 - (iv) in the case of an appeal to the Court from another court or from a tribunal below, as defined in Order 83.01, the costs of proceedings in that court or before that tribunal; and
 - (v) in the case of proceedings in another court or before a tribunal below, as defined in Order 83.01, which are remitted or transferred to or removed into the Court, the costs of the whole of the proceeding, both before and after the remission, transfer or removal which by or under these Rules or an order of the Court are to be paid to a party by another party or out of a fund; and
- (b) the costs of an arbitration or other proceedings which by or under an Act are to be taxed in the Court.

"(2) Subject to Part 6, this Part extends to the taxation of costs payable to a solicitor by his client.

"63.36 SUMMONS FOR TAXATION

"(1) An application to the Taxing Master for costs to be taxed shall be made by summons filed in the office of the Taxing Master.

"(2) Where the taxation is pursuant to a judgment, the judgment shall be authenticated before the summons is filed.

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"(3) A summons under this rule shall be in accordance with Form 63A.

"(4) Unless the Taxing Master otherwise directs, the summons shall be served not later than 21 days before the day for hearing named in the summons.

"(5) Except as provided in subrules (1) to (4) inclusive, Order 46, with the necessary changes, applies to an application under this rule.

"63.37 FILING OF BILL

"(1) A party who applies for costs to be taxed shall file a bill in respect of the costs with the Taxing Master at the time the summons under rule 63.36 is filed.

"(2) The bill of costs shall be prepared in accordance with rule 63.40.

"(3) The Taxing Master may direct the party entitled to costs to lodge, before the day for hearing named in the summons, any documents in his possession, custody or power that will be required for the purpose of evidence on the taxation.

"63.38 SERVICE OF BILL

"Subject to rule 63.39, the Taxing Master shall not tax costs unless the party entitled to costs serves a copy of the bill of costs on the party liable for the costs before or at the time of service of the summons under rule 63.36.

"63.39 DEFENDANT NOT APPEARING

"Service of a summons and copy bill of costs on a defendant who has not filed an appearance in the proceeding the subject of the application for costs is not necessary.

"63.40 CONTENT OF BILL

"(1) In this rule -

'attendance at trial' includes all work reasonably done in and in relation to attending at the trial or hearing of a proceeding or an appeal and to hear a deferred judgment;

'conference' includes all work reasonably done in and in relation to the appointment of a conference with, or consultation with or between, counsel and attending to appoint, and attending at that conference or consultation;

'interlocutory applications' comprises all work reasonably done in and in relation to an application in a proceeding for -

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- (a) particulars, discovery, inspection or interrogatories; or
 - (b) any other interlocutory order,
- and includes -
- (c) all attendances in court or elsewhere at the hearing of the application; and
 - (d) the authentication and service of the order made;

'originating process' in relation to -

- (a) a plaintiff's bill, comprises all work reasonably done in a proceeding from and including the originating process to and including setting the proceeding down for trial in accordance with Order 48 and includes the consideration, preparation, filing and service of -
 - (i) the originating process itself;
 - (ii) all relevant affidavits, pleadings and other documents; and
 - (iii) all documents necessary to set the proceedings down for trial,
and correspondence with the defendant and the consideration of relevant documents and pleadings received from the defendant before the proceeding is set down for trial; and
- (b) a defendant's bill, comprises all work reasonably done in a proceeding from and including the filing of an appearance to and including the time the proceeding is set down for trial in accordance with Order 48 and includes -
 - (i) the receipt and consideration of the originating process;
 - (ii) the preparation, filing and service of the appearance itself;
 - (iii) the consideration of pleadings and other relevant correspondence and documents, including the documents setting the proceeding down for trial;
 - (iv) relevant correspondence; and
 - (v) the preparation, filing and service of pleadings or other relevant documents,

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other than the work done in relation to matters referred to in Order 10, 11 or 12;

'preparation' includes the doing of all reasonable work, other than that referred to in the previous definitions in this subparagraph, which was reasonably done arising out of or incidental to a proceeding, including work done in respect of -

- (a) the client - taking instructions to sue, defend, counterclaim, or appeal and attending on and corresponding with the client and taking and preparing proofs of evidence;
- (b) witnesses - interviewing and corresponding with witnesses and potential witnesses, taking and preparing proofs of evidence and, where appropriate, arranging attendance at Court, including the issuing of a subpoena;
- (c) expert evidence - obtaining and considering reports or advice from experts and plans, photographs and models and, where appropriate, arranging their attendance at Court, including the issuing of a subpoena;
- (d) inspections - inspecting a property or place material to the proceeding;
- (e) searches and enquiries - making searches at offices of public records and elsewhere for relevant documents and similar matters;
- (f) special damages - obtaining details of special damages and making or obtaining relevant calculations;
- (g) other parties - attending on and corresponding with other parties or their solicitors;
- (h) discovery - perusing, considering or collating documents for a list of documents, attending to inspect or producing for inspection a document required to be produced or inspected under an order or by virtue of Order 29;
- (j) interrogatories - administering interrogatories and considering replies to or answering interrogatories under an order or by virtue of Order 30;

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- (k) documents - consideration of instructions to and advice from counsel, any law involved and any other relevant documents, including collating and service;
- (m) negotiations - work done in connection with negotiations with a view to settlement;
- (n) agency - correspondence and attendances on agents and work done by them;
- (p) interest - where relevant, the calculation of interest; and
- (q) notices - preparation, consideration and service of miscellaneous notices, including notices to witnesses to attend court;

'taxation' includes all work done in preparing a bill (where allowable) and includes preparing for and attending on the taxation.

"(2) A bill shall commence with a short narrative succinctly indicating the issues involved in the proceeding.

"(3) A bill shall consist of parts dealing with the matters referred to in subrule (5) or such of those parts as are appropriate, which parts -

- (a) shall appear in chronological order (except for matters referred to in subrule (5)(e)) and in the order set out in that subrule; and
- (b) may, subject to subrule (4), include an allowance for general care and conduct applicable in the relevant parts.

"(4) Subrule (3)(b) applies only to the extent that item 4 of Part 2 of the Appendix allows but does not apply in relation to a taxation of costs.

"(5) The parts of a bill to which subrule (3) refers shall deal with -

- (a) originating process;
- (b) interlocutory applications;
- (c) conferences;
- (d) attendance at trial;
- (e) preparation; and
- (f) taxation.

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"(6) A bill shall be divided into 7 columns -

- (a) the first column of which shall be for numbering consecutively each item in the bill;
- (b) the second column of which shall be for setting out chronologically the relevant dates on which the work was done in respect of each item in the bill;
- (c) the third column of which shall contain succinct details of each item and any claim in respect of that item for professional costs and, where claimable, for care and conduct and waiting time;
- (d) the fourth column of which shall contain the amount of such disbursements as are claimed in connection with an item in the bill;
- (e) the fifth column of which shall contain the total amount claimed for professional costs, care and conduct and waiting time for all the items that make up each relevant part of the bill; and
- (f) the last 2 columns of which shall be respectively for amounts disallowed as disbursements and professional costs claimed in the bill and shall be respectively headed "Disbursements taxed off" and "Costs taxed off".

"(7) A bill filed under rule 63.37 shall comply with the requirements of rule 13.01(3) as though it were a pleading.

"(8) Where relevant, an item in a bill -

- (a) in which care and conduct is claimed, shall disclose first the time taken to prepare the work and then the percentage claimed for care and conduct relevant to that item; and
- (b) in which travelling time is claimed, shall state the actual time in respect of which the claim is made.

"63.41 DISBURSEMENT OR FEE NOT PAID

"(1) A disbursement may be included in a bill, notwithstanding that it has not been paid, if the bill states that fact.

"(2) On the taxation the disbursement may be allowed if it is paid before the taxation of that disbursement takes place.

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"63.42 CHARGE OF LAWYER OUT OF TERRITORY

"(1) Where a bill includes a charge for work done by a lawyer practising in a place out of the Territory -

- (a) the charge shall be shown as a disbursement; and
- (b) so far as practicable, the charge shall, if allowed, be allowed in an amount appropriate to the place where the lawyer practices.

"(2) Where subrule (1) applies, a bill in taxable form of that lawyer's fees shall be attached to the bill of the party claiming the disbursement.

"63.43 AMENDMENT OF BILL

"The Court or the Taxing Master may, at any stage -

- (a) give leave to a party to amend or withdraw a bill; or
- (b) order that a party file another bill.

"63.44 AGREEMENT AS TO PART OF BILL

"Where the parties agree in writing that part of the costs to be taxed may be allowed at a specified amount and the agreement is subscribed to the bill or filed with it -

- (a) rule 63.40 does not apply to what is agreed, unless the Taxing Master otherwise directs; and
- (b) rules 63.42 and 63.43 apply to the agreement as they apply to a bill.

"63.45 OBJECTION TO BILL

"(1) A party on whom a summons under rule 63.36 and a bill is served may, by notice, object to an item in the bill.

"(2) A notice to which subrule (1) refers shall -

- (a) be filed within 14 days after the service of the summons and bill;
- (b) identify by a list each item in the bill to which the party objects; and
- (c) state specifically and concisely the grounds of objection to each item.

"(3) The notice under subrule (1), shall, on the same day as it is filed, be served on the party filing the bill and on all other parties to whom the summons for the taxation is addressed.

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"(4) A party entitled to object to an item in accordance with this rule who fails to do so within the time limited in subrule (2)(a) or such other time as the Taxing Master allows, shall be taken to have admitted that item.

"(5) Notwithstanding subrule (4), the Taxing Master may, on taxation, for good and proper reasons, deal with an item to which no objection was raised in accordance with this rule and may exercise all his powers under this Order in relation to that item.

"(6) An application for an extension of time may be made informally before or after the expiration of the time referred to in subrule (2)(a).

"(7) A taxation shall not proceed unless the party filing the bill proves by affidavit service of a copy of the bill on all relevant parties.

"(8) Where, in the opinion of the Taxing Master, a solicitor indiscriminately objects to an item in a bill and by so doing increases the costs of the taxation of the bill, the Taxing Master may order the solicitor to pay the increased costs which, in the opinion of the Taxing Master, are attributable to the solicitor's action.

"(9) For the purposes of subrule (8), and without limiting the discretion of the Taxing Master under that subrule, an objection is indiscriminate if it constitutes no more than a blanket objection to items in the bill or if it forms part of such an objection.

"63.46 DISCRETIONARY COSTS

"(1) Except where these Rules or an order of the Court otherwise provides -

- (a) the fees; and
- (b) the allowances,

which are referred to in the Appendix, and are there expressed to be discretionary, shall be allowed at the discretion of the Taxing Master.

"(2) In exercising a discretion under subrule (1), the Taxing Master shall have regard to -

- (a) the complexity of the item or of the proceeding in which it arose and the difficulty or novelty of the questions involved;
- (b) the nature and importance of the proceeding;
- (c) the skill, specialized knowledge and responsibility involved;

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- (d) the number and importance of the documents prepared or perused, without regard to length;
- (e) the place where and the circumstances in which the business involved was transacted;
- (f) the labour involved and the time spent by the solicitor or counsel;
- (g) the amount or value of money or property involved;
- (h) other fees and allowances payable to the solicitor or counsel in respect of other items in the bill; and
- (j) any other relevant circumstances.

"63.47 TAXATION WHERE NO OBJECTION

"Where no objection to a bill is made in accordance with rule 63.45, the Taxing Master may tax the bill and allow or disallow the amount of the costs in it in whole or in part.

"63.48 ATTENDANCE OF PARTIES

"(1) The Taxing Master may give directions relating to the parties -

- (a) to whom a summons under rule 63.36 shall be addressed; and
- (b) who should attend or be represented on a taxation.

"(2) The Taxing Master may disallow the costs of attendance on a taxation of a party whose attendance is unnecessary.

"(3) Notwithstanding subrules (1) and (2), a party interested may attend a taxation before the Taxing Master.

"63.49 REFERENCE TO JUDGE

"The Taxing Master may refer to a Judge for directions a question arising on a taxation.

"63.50 NOTICE TO PERSON INTERESTED IN FUND

"(1) Where costs are payable out of a fund, the Taxing Master may -

- (a) adjourn the taxation to a specified day; and

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(b) order that the party to whom the costs are payable serve on a person interested in the fund, without charge to that person, a copy of the whole or a part of the bill and a notice in accordance with subrule (2).

"(2) A notice under subrule (1)(b) shall state -

(a) that the costs are payable out of the fund, identifying it, and that the bill is being taxed;

(b) the day to which the taxation is adjourned; and

(c) such other information as the Taxing Master directs.

"(3) Unless the Taxing Master otherwise orders, service referred to in paragraph (1)(b) shall be personal.

"63.51 APPLICATION BY PERSON LIABLE TO PAY

"(1) Where a party who is entitled to costs and to have the costs taxed under this Part does not apply to have them taxed within 30 days after service on him of a request in writing to do so by a party liable for the costs, the Taxing Master may order that the party entitled file and serve a summons under rule 63.36 and the Taxing Master may fix a time for compliance.

"(2) Where a party in respect of whom an order is made under subrule (1) fails to comply with the order, the Taxing Master may -

(a) disallow the costs of the party or allow a nominal or other amount for costs; or

(b) order him to pay the costs of any other party occasioned by the failure to comply with the order.

"63.52 SOLICITOR AT FAULT

"(1) This rule applies where -

(a) a party fails to apply to have costs taxed within a time fixed under rule 63.51(1) and the failure is occasioned by the neglect or delay of his solicitor; or

(b) in a proceeding before the taxing Master the solicitor for a party -

(i) is guilty of neglect or delay; or

(ii) causes any other party unnecessary expense.

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"(2) In a case to which this rule applies the Taxing Master may -

- (a) order the solicitor to pay costs to a party in respect of the proceeding before the Taxing Master; or
- (b) refuse to allow the fees to which the solicitor would otherwise be entitled for or incidental to taxing the bill.

"63.53 CROSS COSTS

"(1) Where a party entitled to be paid costs is also liable to pay costs, the Taxing Master may -

- (a) tax the costs which the party is liable to pay and set off the amount allowed against the amount the party is entitled to be paid and, by order, state the amount of the balance and the parties by whom and to whom the balance is payable; or
- (b) decline to make an order as to the costs which the party is entitled to be paid until the party has paid or tendered the amount he is liable to pay.

"(2) Costs may be set off under paragraph (1)(a) notwithstanding that a solicitor for a party has a lien for costs in the proceeding.

"63.54 ORDER ON TAXATION

"(1) Where the Taxing Master taxes a bill, otherwise fixes or assesses an amount for costs, or makes an order under or in pursuance of rules 63.51(2) or 63.52(2), he shall state the result in the form of an order.

"(2) The Taxing Master may, after the conclusion of the taxation of a bill, make a final order in respect of the amount at which he allows the costs or of his disallowance of the costs.

"(3) In the course of the taxation, the Taxing Master may make separate and interim orders in respect of any item in a bill.

"(4) Where, after an application has been made under rule 63.36 and a bill filed, the parties agree to the amount of costs payable under the bill, the Taxing Master may make an order for payment of those costs by consent.

"(5) An order under this rule shall be authenticated and filed in accordance with Order 60.

"(6) The Taxing Master may at any time correct a clerical mistake in an order made under this rule.

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"(7) In subrules (5) and (6) "order" means a final or interim order.

"63.55 OBJECTION, RECONSIDERATION AND REVIEW

"(1) Where a Taxing Master decides to allow or disallow, wholly or in part, an item in a bill or to allow some amount in respect of an item, a party to the taxation proceeding who objects to the decision may apply to have the Taxing Master reconsider the decision.

"(2) An application under subrule (1) shall be made by written notice to the Taxing Master.

"(3) A notice under subrule (2) shall be filed within 14 days after the date of the decision to which it relates.

"(4) The applicant shall file with or subscribe to a notice under subrule (2) a statement of his objections.

"(5) A statement of objections referred to in subrule (4) shall specify, by a list, the items as to which the applicant objects to the decision of the Taxing Master and shall state briefly but specifically the nature and grounds of each objection.

"(6) An applicant under subrule (1) shall, on the date of filing the notice and statement of objections, serve a copy of the notice and statement on each party interested.

"(7) A party on whom a copy of the notice and statement is served under subrule (6) may, within 14 days after the service of the copy on him or such longer period as is fixed by the Taxing Master, deliver to the Taxing Master answers in writing to the objections stating concisely the grounds on which the party will oppose the objections and shall, at the same time serve a copy of the answers on the party applying for reconsideration and on each other interested party.

"(8) On a notice and statement of objections being filed under this rule, the Taxing Master shall reconsider the decision to which objection is made and, subject to subrule (13), give to the parties his written reasons for his decision on reconsideration.

"(9) On a reconsideration under subrule (8), a party shall not, unless the Taxing Master otherwise directs, raise a ground of objection not stated in a statement of objections.

"(10) On the Taxing Master giving written reasons in accordance with subrule (8), he shall be deemed to have made an order under rule 63.54.

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"(11) Where a party interested objects to an order of the Taxing Master made following a reconsideration allowing or disallowing, wholly or in part, an item in a bill or allowing an amount in respect of an item, the Court may, on the application of that party, review the order of the Taxing Master.

"(12) An application under subrule (11) shall be made by Notice to Review.

"(13) An application under subrule (11), shall be made to a Judge.

"(14) A Judge may at any time, by order, dispense with the need for a Taxing Master to give reasons under subrule (8) and may give directions as to the conduct of the review.

"(15) A Notice of Review referred to in subrule (2) shall state, by a list, each item in the bill in respect of which the party objects to the order of the Taxing Master and shall also state specifically and concisely the grounds of objection to that order and the order sought in its place.

"(16) A Notice to Review referred to in subrule (12) shall be filed, a copy lodged with the Taxing Master and a copy served on each party interested, within 14 days after the order of the Taxing Master is made following the relevant reconsideration.

"(17) On a review under subrule (11), the Court may -

- (a) exercise all the powers and discretions of the Taxing Master in respect of the subject-matter of the review;
- (b) set aside or vary the order of the Taxing Master;
- (c) remit an item in the bill to the Taxing Master; or
- (d) make such other order as it thinks fit.

"(18) Except so far as a Judge or the Taxing Master otherwise orders, a review under this rule does not operate as a stay of execution or of proceedings under the order of the Taxing Master to which the review relates.

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"Part 6 - Costs of Solicitor

"63.56 APPLICATION

"This Part applies where -

- (a) costs are payable to a solicitor by his client, whether or not in respect of a proceeding in the Court, and by or under an Act, these Rules or an order of the Court or an agreement between the solicitor and the client the costs are required or permitted to be taxed in the Court; or
- (b) a person not the client of a solicitor is liable to pay or, having been so liable, has paid costs which are or were chargeable by the solicitor to the client, whether or not in respect of a proceeding in the Court, and by or under an Act, these Rules or an order of the Court or an agreement between the person and the client the costs are required or permitted to be taxed in the Court,

but applies to the extent only that it does not conflict with Part X of the *Legal Practitioners Act* or any other law in force in the Territory.

"63.57 BASIS OF TAXATION OF COSTS PAYABLE BY CLIENT

"(1) Costs to which this Part applies payable to a solicitor by his client shall, subject to any Act, an order of the Court or an agreement between the solicitor and the client, be taxed on a solicitor and client basis.

"(2) The solicitor and client basis of taxation is as provided by rule 63.59.

"63.58 BASIS OF TAXATION OF COSTS PAYABLE OTHERWISE THAN BY CLIENT

"Costs to which this Part applies payable to a solicitor by a person other than the client shall, subject to any Act, an order of the Court or an agreement between that person and the client, be taxed on the standard basis.

"63.59 COSTS PAYABLE TO SOLICITOR BY HIS OWN CLIENT

"(1) This rule applies to a taxation of a solicitor's bill to his client.

"(2) On a taxation to which this rule applies costs shall be taxed on the indemnity basis but shall be presumed -

- (a) to have been reasonably incurred if they were incurred with the express or implied approval of the client;

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- (b) to have been reasonable in amount if the amount was expressly or impliedly approved by the client; and
- (c) to have been unreasonably incurred if in the circumstances of the case they are of an unusual nature, unless the solicitor satisfies the Taxing Master that before the costs were incurred, the solicitor informed his client that they might not be allowed on a taxation on the standard basis.

"(3) A taxation to which this rule applies shall be carried out only by the Master.

"63.60 CONTENTIOUS BUSINESS

"(1) This rule applies to the taxation of the costs payable to a solicitor by his client for work done in a contentious matter where at the time the work was completed no proceeding had been commenced by or against the client in respect of the matter in a court or before a tribunal.

"(2) Costs for work in a matter to which this rule applies shall be allowed in accordance with the scale of costs of the court or tribunal in or before which, in the opinion of the Taxing Master, it would be appropriate to commence a proceeding in respect of the matter or, if that court or tribunal has no scale of costs, in accordance with the Appendix.

"63.61 PROCEDURE ON TAXATION

"(1) Subject to rules 63.62 to 63.72 inclusive and to any Act or an order of the Court, costs under this Part shall be taxed as provided by Part 5 and that Part, with the necessary changes, applies to the taxation accordingly.

"(2) A reference in subrule (1) to the application of Part 5 to the taxation of costs under this Part includes a reference to a review of an order of the Taxing Master on the taxation under rule 63.55.

"63.62 APPOINTMENT TO TAX

"(1) This rule applies where by an Act a bill in respect of costs to which this Part applies may be taxed by the Taxing Master on an appointment obtained as of course and without an order of the Court on application by the client or other person liable to pay the costs.

"(2) An application to the Taxing Master to tax a bill to which this rule applies shall be made by summons in accordance with rule 63.36.

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"63.63 REFERENCE FOR TAXATION

"(1) This rule applies where the Court, by order, whether or not made by or under an Act, refers a bill of costs to the Taxing Master for taxation or directs that a bill of costs be taxed.

"(2) A taxation to which this rule applies shall be brought before the Taxing Master on application by summons in accordance with rule 63.36.

"(3) Unless the Court otherwise orders, the summons referred to in subrule (2) shall be filed within 14 days after the day the order is made.

"63.64 FAILURE TO SERVE BILL OR TAX

"(1) Where a solicitor who is entitled to be paid costs fails or refuses to serve on his client a bill for the costs, the Taxing Master may -

- (a) disallow the costs of the solicitor or allow a nominal or other amount for costs; or
- (b) order him to pay any costs of the client occasioned by the failure or refusal.

"(2) Where a person who is entitled to have a bill of costs taxed fails or refuses to do so and a person interested in the taxation is prejudiced by the failure or refusal, the Taxing Master may -

- (a) disallow any costs which might otherwise be payable to the person entitled to have the bill taxed or allow a nominal or other amount for costs; or
- (b) order him to pay any costs of the person interested occasioned by the failure or refusal.

"(3) For the purpose of this rule -

- (a) a solicitor shall be taken to have failed or refused to serve a bill of costs if, within 60 days after service on him of a request in writing by the client that he serve a bill, the solicitor does not do so; or
- (b) a person shall be taken to have failed or refused to have a bill of costs taxed if, within 60 days after service on him of a request in writing by a person interested that the bill be taxed, he does not apply in accordance with rule 63.36 for the taxation of the bill.

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*"Part 7 - Allowances or Disallowances
on Taxation Generally*

"63.65 APPLICATION

"This Part applies to all taxation of costs in the Court.

"63.66 INCREASED ALLOWANCE

"The Taxing Master may, in relation to a particular taxation of costs, increase the amount or value of an allowance or expense in the Appendix as he thinks fit.

"63.67 SERVICE OF SEVERAL DOCUMENTS

"Two or more documents in the same proceeding, which can be served together, shall be so served and a fee for the service of one only shall be allowed.

"63.68 INCLUSION IN BILL OF DISBURSEMENT NOT MADE

"Where a solicitor acts as agent for a lawyer practising in a place out of the Territory, the professional fees of that lawyer shall not constitute a disbursement of the solicitor for the purpose of rule 63.41 so as to require payment of those fees before the commencement of the taxation.

"63.69 DEFENDANTS WITH SAME SOLICITOR

"Where 2 or more defendants are represented by the same solicitor and the solicitor does work for one or some of them separately which could have been done for some or all of them together, on taxation of the solicitor's bill, whether between party and party or between solicitor and client, the Taxing Master may disallow costs for the unnecessary work.

"63.70 CERTAIN COST TO BE INCLUDED IN WITNESSES ALLOWANCE

"In a taxation of costs the attendance of a witness includes an attendance at a conference with counsel before trial and, in the case of an expert witness, includes qualifying to give evidence as an expert.

"63.71 NEGOTIATIONS

"Costs reasonably incurred in respect of negotiations for compromise shall be allowed, whether or not the negotiations were successful.

"63.72 COUNSEL'S FEES

"(1) A retaining fee to counsel shall not be allowed on taxation on the standard basis.

"(2) The allowance of counsel's fees is in the discretion of the Taxing Master.

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"(3) In assessing fees on brief and other fees for counsel the Taxing Master shall have regard to -

- (a) the complexity of the question of law or of fact involved;
- (b) the amount involved;
- (c) any interlocutory application or other work which has reduced the work otherwise necessary in relation to the brief;
- (d) the possibility that counsel might be called on to argue on behalf of a party not represented at the hearing;
- (e) the fees reasonably charged by counsel in matters of a similar kind; and
- (f) the standing of counsel.

"(4) Costs reasonably incurred in respect of -

- (a) the advice of counsel on the pleadings, evidence or other matter in a proceeding; or
- (b) counsel drawing or settling a pleading or other document in a proceeding which is reasonable to be drawn or settled by counsel,

shall be allowed.

"(5) Where affidavits or interrogatories which are reasonable to be drawn or settled by counsel are or could have been drawn or settled at the same time, only one fee shall be allowed.

"(6) Where a hearing or trial occupies, either on the first day only or partly on the first day and partly on a subsequent day or days, more than 5 working hours (not including a luncheon adjournment) without being concluded, the Taxing Master may allow a refresher fee for every 5 working hours (not including a luncheon adjournment) subsequent to the expiration of the first 5 hours.

"(7) The final refresher may be allowed for a period of less than 5 hours that the hearing or trial occupies.

"(8) Costs in respect of the preparation and delivery of a brief to counsel for a hearing or trial which did not take place shall not be allowed if the costs were incurred prematurely.

"(9) No fee shall be allowed -

- (a) for counsel attending on an interlocutory application, unless the Court otherwise certifies; and

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- (b) for more than one counsel, unless the Court certifies that the retainer of more than one counsel was warranted.

"(10) A solicitor may charge and be allowed a fee for an attendance on counsel to obtain or give some information in respect of which counsel does not charge a fee.

"63.73 BARRISTER AND SOLICITOR

"(1) This rule applies where a legal practitioner acts in both capacities as a barrister and solicitor, or appears as a barrister instructed by a partner, employee, fellow employee or employer.

"(2) An allowance in accordance with rule 63.40(5)(e) shall be allowed to a legal practitioner to whom subrule (1) of this rule refers and who appears as counsel.

"(3) The allowance for counsel's fees in a case to which subrule (2) refers shall, subject to subrule (4) -

- (a) in the case of a legal practitioner who briefs himself as counsel - be three-quarters; and
- (b) in the case where a partner, employee, fellow employee or employer is briefed - be five-sixths,

of what would otherwise be allowed to counsel.

"(4) The Master may allow a legal practitioner who appears as counsel and to whom subrule (3) applies a larger fee for so appearing and, in doing so, shall have regard to the matters referred to in section 63.72(3) as far as they are applicable.

"(5) A legal practitioner to whom subrule (3) refers is entitled, for each refresher in a trial, to a fee equal to what would have been allowed to an independent counsel in the same circumstances.

"63.74 INTEREST ON COSTS

"(1) At the conclusion of the taxing of a bill, the Taxing Master may, in his discretion, but subject to subsection (2), fix a rate of interest payable in respect of the taxed costs and the date, not earlier than the date of commencement of this Order, from which that interest shall run.

"(2) A rate of interest fixed under subrule (1) shall not exceed the rate from time to time fixed in accordance with rule 59.02 as interest payable on a judgment debt.

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"APPENDIX

PART 1

1. Subject to this Part, solicitors are entitled to charge and be allowed the fees set out in Parts 2 and 3 of this Appendix.
2. For the purposes of Parts 2 and 3 of this Appendix, a unit is one-tenth of an hour.
3. The rate per unit, until varied in accordance with paragraph 4 of this Part, is -
 - (a) for a solicitor \$11.00; and
 - (b) for his clerk \$6.00.
4. The rate per unit shall be that from time to time declared by the Chief Justice by practice directions after considering the recommendation of the Master who shall, on 1 January 1989 and thereafter on that date in each subsequent year, calculate and recommend any adjustment -
 - (a) as to 37% of the rate - according to the average Consumer Price Index for Darwin; and
 - (b) as to 50% of the rate - according to Average Weekly Earnings for Darwin,as published by the Australian Bureau of Statistics for the previous year, with the resulting rate rounded off to the nearest dollar.
5. Except for disbursements, all claims made or allowed in a bill shall be made and if allowed calculated to the nearest dollar.
6. Letters include making necessary copies and also perusing and considering incoming letters, and no separate charge shall be allowed for the perusal of incoming letters.
7. The cost of postage, out-going telephone calls, telex messages and other similar outgoings shall not be allowed by the Taxing Master except where incurred in unusual circumstances or where the cost is unusually heavy.
8. The preparation of a document includes all necessary copies.

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9. The fees recoverable under Part 3 of this Appendix, when the rate per unit is adjusted in accordance with paragraph 4, shall be increased by the same proportion as the difference between the adjusted rate per unit under this Part and the previous rate per unit bears to the previous rate per unit, rounded off to the nearest dollar.

PART 2 - BASIC SCALE

1. Time spent by a solicitor on work requiring the application of legal skill, other than where otherwise provided. Minimum 1 unit
2. Time spent by a solicitor or clerk on work not requiring the application of legal skill, other than where otherwise provided. Minimum 1 unit
3. Travelling and waiting time to apply to charges under item 1 where waiting or travelling time is reasonably incurred. Minimum 1 unit
4. There may be allowed, in addition to a charge under item 1, a charge for care and conduct being a percentage of the amount allowed under that item which, in the discretion of the Taxing Master, ought to be allowed having regard to all the relevant circumstances, and in particular to the matters referred to in rule 63.46(2).

PART 3 - NOTES

1. In this Part -

"clerks time", in relation to work, means the time a clerk reasonably spent, or would reasonably be expected to spend, in carrying out that work;

"circular letter" means a letter other than an ordinary letter or a special letter that, in the opinion of the Taxing Master, is capable of being composed and prepared by a clerk, and includes clerk's time;

"composition" includes signing and the perusal of relevant incoming letters;

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"item" means an item in the Composite Scale in this Part;

"letter" includes telexes, telegrams and the like;

"ordinary letter" means a letter that does not exceed one page in the composition of which, in the opinion of the Taxing Master, little or no exercise of the skill of a solicitor is required and includes -

(a) the time (up to 2 units) spent by a solicitor or clerk in the composition of the letter; and

(b) clerk's time (up to 3 units) in preparing it;

"page" means a page of not less than international paper size A4, with wording reasonably spaced;

"preparation" includes typing, making copies and dispatching;

"special letter" means a letter that is between 1 and 2 pages in length and, in the opinion of the Taxing Master, the composition of which requires the exercise of the skill of a solicitor, and includes -

(a) the time (up to 3 units) spent by the solicitor in composition of the letter;

(b) an additional amount of 15% in respect of the time spent in composing allowed for care and conduct; and

(c) clerk's time (up to 3 units) in preparing it.

2. A solicitor shall, for work actually performed by him of the kind referred to in items 1 to 6 (inclusive) charge, and be allowed for that work, the composite fee as set out in the composite scale opposite that item.
3. (a) A solicitor may, for work actually performed by him of the kind to which items 7 to 13 (inclusive) relate, charge, and be allowed for that work, as the whole or for a part of the bill, one or more of the composite fees set out in the composite scale opposite those items.
(b) In lieu of charging a composite fee, a solicitor may elect to charge such fees as are reasonable and calculated in accordance with Part 2 of this Appendix.

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4. The Taxing Master may, in his discretion and, if satisfied that the amount of work done or time reasonably spent warrants it, allow a larger fee than that chargeable under paragraphs 2 and 3, but, where a larger fee is claimed and the amount allowed on taxation for that work does not exceed the appropriate composite fee by 20% or more, only the amount of the composite fee shall be allowed.
5. A composite fee to which items 7 to 13 (inclusive) relates means a lump sum fee in respect of all allowances for time spent in carrying out work that, in the Taxing Master's opinion, is or should be included in that composite fee.
6. Without limiting the meaning of paragraph 5 -
 - (1) items 7 and 8 include all time taken in carrying out work in respect of all aspects of a proceeding from and including the dispatch or receipt of a letter of demand and the filing of originating process to and including the setting down of a proceeding for trial in accordance with rule 48.02 and time taken in carrying out work with respect to a request for particulars of a pleading, but does not include work in respect of an application to the Court in the proceeding;
 - (2) item 9 includes all time taken in carrying out work in and incidental to an application to the Court in a proceeding and in particular an application under Order 46.
 - (3) items 10 and 11 include all time taken in carrying out work in respect of the giving or obtaining of discovery and the inspection of documents in accordance with Order 29, but do not include work done in or incidental to an application to the Court in which discovery or inspection is sought; and
 - (4) items 12 and 13 include all time taken in carrying out work in respect of the seeking of answers to interrogatories and the providing of answers to interrogatories under Order 30, but does not include work done in or incidental to an application to the Court in respect of interrogatories.
7. A composite fee to which this Part refers does not include a reasonable disbursement which a solicitor is obliged to pay in the course of carrying out a part of the work included, or which ought to be included, in that fee and such a disbursement, including counsel's fees, where reasonable and reasonably incurred, may be claimed in the bill and shall be allowed by the Taxing Master.

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8. Items 5 and 6, where appropriate, shall be allowed as a part of a unit but, if so allowed, the charge shall be rounded off to the nearest dollar.

COMPOSITE SCALE

Item	Matter in respect of which charge is made	Charge \$
1.	Letters -	
	(a) special	56
	(b) ordinary	34
	(c) circular	6
2.	Drawing and engrossing -	
	(a) court document	
	(i) requiring skill	62
	(ii) using form or standard document or in case of a standard form of judgment, order, or the like	34
	(b) other	
	(i) requiring skill	17
	(ii) not requiring skill	12
3.	Engrossing a document drawn by someone other than solicitor making the charge - per unit	6
4.	Telephone calls -	
	(a) requiring skill - per unit	11
	(b) not requiring skill - per unit	6
5.	Marking annexures, exhibits, enclosing notices of appointment and the like per unit	6
6.	Copying - per unit	6
7.	Instructions to sue to notice of trial	780
8.	Instructions to defend to notice of trial	565

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Item	Matter in respect of which charge is made	Charge \$
9.	Application in a proceeding -	
	(a) contested	500
	(b) uncontested	400
10.	Requiring discovery and inspection	300
11.	Providing discovery and inspection	225
12.	Seeking answers to Interrogatories	345
13.	Furnishing answers to interrogatories	365

PART 4 - FIXED COSTS

BASIC COSTS

	\$
1. Costs to be claimed on writ	300
In addition, stamp duty paid on filing the writ and on relevant copies.	
2. Costs on judgment in default of appearance -	
(a) where writ served by post	400
(b) where writ served by solicitor's clerk..	450
(c) where writ served by person other than solicitor's clerk	400
In addition -	
(d) where more than one defendant - for each	10
(e) the cost of stamp duty paid on filing the writ and on relevant copies;	
(f) where (c) applies, a reasonable amount paid for service.	

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ADDITIONAL COSTS

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.....	50
	(b) where service out of the jurisdiction is ordered and effected -	
	(i) in the case of service in the Commonwealth.....	150
	(ii) in the case of service overseas....	200
	(c) where substituted service is ordered and effected -	
	(i) on only defendant.....	400
	(ii) where more than one defendant so served - in respect of each defendant served.....	50
	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</i> Act of the Commonwealth - for costs of registration.....	100
	(e) where leave to proceed is given under the <i>Service and Execution of Process</i> Act - on entry of judgment.....	300

"

Amendments of the Supreme Court Rules

5. SCHEDULE

The Schedule to the Supreme Court Rules is amended by inserting after Form 60L the following:

"FORM 63A

SUMMONS FOR TAXATION OF COSTS

(heading as in originating process)

Rule 63.36(3)

To: [identify each party or other person to whom summons is addressed and state address of each person not a party.]

You are summoned to attend before the Taxing Master, Supreme Court Building, Mitchell Street, Darwin *(or as the case may be)* on the _____ day of _____ 19____ at _____ a.m. [or p.m.] on the hearing of an application by [identify party] for the costs which are payable to [that party] by [identify party liable for costs] under [identify the judgment, etc., by which payable] to be taxed in accordance with the bill of costs served on _____ 19____ [or with this summons].

Filed [e.g., 15 June, 19 ____].

This summons was filed by _____ of _____ solicitor for the _____

Whether or not you attend on the day for hearing referred to above, the costs claimed in the bill may be allowed unless within 14 days after service on you of this summons and the bill you file and serve on the [identify party] a notice identifying by list each item in the bill to which you object and stating specifically and concisely the grounds of objection to each item. Failure to file such a notice amounts to an admission of the items to which you have taken no objection."

