

# South Australia

## Fast Track Rules 2014

The Fast Track Rules 2014 being the Schedule to the Supreme Court Fast Track Rules Adoption Rules 2014 dated 27<sup>th</sup> June 2014 that came into operation on 1<sup>st</sup> October 2014 (*Government Gazette* 24<sup>th</sup> July 2014, p. 3292) have been varied by Supreme Court rules dated:

	<i>Gazette</i>	<i>Date of operation</i>	
# 1	25 August 2014	11 September 2014 p. 5110	1 October 2014
#2	26 October 2015	12 November 2015, p. 4941	1 December 2015 ( <i>subject to paragraph 3</i> )
#3	<b>27 June 2016</b>	<b>4 August 2016, p. 3123</b>	<b>1 September 2016</b>

[The Schedule substituted by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

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# Chapter 1—Preliminary

## Part 1—Formal provisions

### 1—Citation

These Rules may be cited as the *Fast Track Rules 2014*.

### 2—Commencement

These Rules commence on 1 October 2014.

## Part 2—Objects

### 3—Objects

The objects of these Rules are to—

- (a) establish a Fast Track Stream in the Supreme and District Courts for the resolution of civil disputes in straight forward cases;
- (b) provide an optional process for the resolution of civil disputes to ensure a more expeditious and less expensive determination of straight forward cases;
- (c) encourage the resolution of civil disputes by agreement between the parties;
- (d) facilitate the allocation and transfer of actions between streams and courts to ensure that an action is heard in the most appropriate stream and court;
- (e) limit interlocutory steps and pre-trial hearings in fast track proceedings;
- (f) facilitate the listing of fast track proceedings for trial at an early stage; and
- (g) simplify the trial of fast track proceedings.

## Part 3—Interpretation

### 4—Interpretation

- (1) In these Rules, unless the contrary intention appears, terms which are defined by the *Supreme Court Civil Rules 2006* have the meaning defined by those rules.
- (2) In these Rules, unless the contrary intention appears—  
*contract offer* – see rule 25(2)(b);  
*the Court* means the Court in which a matter is proceeding;  
*defendant*—a party against whose interest the action lies or who is entitled to be heard in opposition to the plaintiff's claim;

**Examples—**

- 1 A person against whom contribution or indemnity is sought is a defendant to the claim for contribution or indemnity.
- 2 If a counterclaim is brought by a defendant, the plaintiff on the claim is defendant to the counterclaim. (In a composite action, a person may be defendant in one or more of the constituent actions and plaintiff in another or others).
- 3 A person against whom a third party action is brought is a defendant to the third party claim.

***Fast Track Appeal Scale*** means the scale of costs so defined in the Fast Track Supplementary Rules;

***Fast Track Elevated Scale*** means the scale of costs so defined in the Fast Track Supplementary Rules;

***Fast Track Ordinary Scale*** means the scale of costs so defined in the Fast Track Supplementary Rules;

***Fast Track Stream*** – see rule 7;

***Fast Track Supplementary Rules*** – see rule 6;

***formal offer of settlement*** – see rule 25(1);

***General Civil Rules*** means the rules of the Court in which a matter is proceeding applying generally to civil proceedings, being—

- (a) the *Supreme Court Civil Rules 2006* in the Supreme Court;
- (b) the *District Court Civil Rules 2006* in the District Court;
- (c) the *Magistrates Court (Civil) Rules 2013* in the Magistrates Court;

or their successors.

***Initial Hearing*** – see rule 17;

***judgment offer*** – see rule 25(2)(a);

***notice of election into the Fast Track Stream*** – see rule 10;

***Ordinary Stream*** – see rule 8;

***plaintiff***—the party that seeks relief in a primary or secondary action is the plaintiff (and, in the case of a composite action, a person may be defendant in one or more of the individual actions and plaintiff in another or others);

***prescribed date*** – see rule 10(3);

***Pre-Trial Hearing*** – see rule 18;

***prima facie eligibility criteria*** – see rule 10(2);

***quantum*** – see rules 10 and 11;

***Registrar*** means the Registrar of the Court, a Deputy Registrar or other person performing administrative functions under a Registrar's supervision;

***Relevant Stage*** means the Relevant Stage defined in the Fast Track Supplementary Rules;

*special proceedings* means—

- (a) proceedings governed by Chapters 8 or 15 of the *Supreme Court Civil Rules 2006* or governed by rules other than the *Supreme Court Civil Rules 2006*;
- (b) proceedings governed by Chapters 8 or 15 of the *District Court Civil Rules 2006* or governed by rules other than the *District Court Civil Rules 2006*;

*tender documents* means documents which a party intends to tender in evidence at trial;

*trial* includes an assessment of damages when judgment for the plaintiff on liability has been or will be entered;

*unreasonably rejects* – see rule 27(2).

## **Part 4—Application of Rules**

### **5—Application of Rules**

- (1) It is intended that these Rules operate in a Court if they are adopted by that Court.
- (2) It is intended that, if these Rules are adopted by the Supreme Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the Supreme Court.
- (3) It is intended that, if these Rules are adopted by the District Court, they apply generally to civil proceedings instituted in or transferred to the Fast Track Stream in the District Court.
- (4) It is intended that, if a proceeding in the Fast Track Stream is transferred to the Magistrates Court, these Rules except Chapter 3 apply to the proceeding in the Magistrates Court if an order is made by a Magistrate that these Rules are to apply to that proceeding.
- (5) It is intended that, if a proceeding is instituted in the Magistrates Court and a Magistrate in his or her discretion considers that it is desirable that and orders that the proceeding be governed by these Rules, these Rules except Chapter 3 apply to that proceeding in the Magistrates Court.
- (6) Unless the Court otherwise directs, these Rules do not apply to special proceedings.
- (7) Unless the Court otherwise directs, these Rules do not apply to proceedings instituted before 1 October 2014.
- (8) To the extent of any inconsistency between these Rules and the General Civil Rules, these Rules prevail insofar as they operate.
- (9) Unless the Court otherwise orders, if a proceeding is transferred from the Fast Track Stream to the Ordinary Stream or vice versa—
  - (a) the Rules applicable to the proceeding at the time a formal offer of settlement is made govern the validity and meaning of that offer; and

- (b) the Rules applicable at the time of acceptance of the formal offer of settlement or at trial, as the case may be, govern the costs consequences of the making of that offer and of any acceptance or non-acceptance of it.
- (10) Subject to subrules (8) and (9), the General Civil Rules apply to proceedings in the Fast Track Stream.

## **Part 5—Court’s control of procedure**

### **6—Supplementary Rules**

- (1) It is intended that the Court make supplementary rules necessary or convenient for the regulation of proceedings in and institution and transfer of proceedings into or out of the Fast Track Stream (the *Fast Track Supplementary Rules*).
- (2) In particular, it is intended that the Fast Track Supplementary Rules—
  - (a) supplement these Rules;
  - (b) modify these Rules in respect of a particular category of proceedings;
  - (c) give directions as to practices to be followed;
  - (d) prescribe scales of costs;
  - (e) prescribe approved forms.

## **Chapter 2—Establishment of streams**

### **Part 1—Establishment of streams**

#### **7—Establishment of Fast Track Stream**

- (1) A Fast Track Stream is established in the Supreme Court.
- (2) A Fast Track Stream is established in the District Court.
- (3) It is intended that proceedings which are straight forward and which are suited to Fast Track Stream processes without causing unfairness to a party will proceed in the Fast Track Stream of the appropriate court.

#### **8—Establishment of Ordinary Stream**

- (1) An Ordinary Stream is established in the Supreme Court.
- (2) An Ordinary Stream is established in the District Court.
- (3) General civil proceedings will proceed in the Ordinary Stream unless they are instituted in or transferred into the Fast Track Stream.

## **Part 2—Entry into and designation of streams**

### **9—Entry of proceedings into appropriate stream**

- (1) The Registrar of the Court is to maintain a record of the stream in which a general civil proceeding is proceeding.

- (2) All documents filed in a general civil proceeding are to show as part of the action heading, immediately above the action number, the stream in which the matter is proceeding at the time of filing the relevant document.

## **Chapter 3—Entry into and transfer between streams**

### **Part 1—Election into Fast Track Stream**

#### **10—Election of party**

- (1) Any party may elect that a proceeding be instituted in or transferred into the Fast Track Stream by filing in the Court and serving on all other parties a notice of election into the Fast Track Stream on or before the prescribed date.
- (2) A *notice of election into the Fast Track Stream* is to be in the approved form and to include a certification by the party’s solicitor, or the party where self-represented, that in the reasonable opinion of the solicitor or party respectively—
  - (a) the combined quantum of the claim and of any counterclaim does not exceed \$250,000; and
  - (b) the trial of the proceeding is not expected to take more than three days (the *prima facie eligibility criteria*).
- (3) For the purpose of this rule, the *prescribed date* is five days after the last to occur of—
  - (a) the date or due date (whichever first occurs) of or for filing of the defence by the defendant or each defendant to the primary action; and
  - (b) the date or due date (whichever first occurs) of or for filing of the defence by the defendant or each defendant to a cross action when a cross action is commenced at the same time as a defence; and
  - (c) the date or due date (whichever first occurs) of or for filing of the defence by the third party or each third party to a third party action when a third party action is commenced at the same time as a defence.

#### **11—Quantum of claims**

- (1) The following rules apply for the purpose of forming an opinion concerning the quantum of the claim and of any counterclaim.
- (2) When the plaintiff elects upon institution of the action that it be entered in the Fast Track Stream, the quantum of the plaintiff’s claim will be the amount shown in the statement of claim. If the defendant had foreshadowed a claim against the plaintiff before institution of the action, the quantum of the anticipated counterclaim will be the amount quantified by the defendant or otherwise the amount reasonably anticipated by the plaintiff to be the amount of a counterclaim upon filing.



**Note—**

Under rule 15(4), a statement of claim and a counterclaim in the Fast Track Stream are required to quantify the amount of the plaintiff's or counterclaimant's claim, whether the claim is liquidated or unliquidated.

- (3) When a party elects that an action be transferred into the Fast Track Stream after it has been instituted, the quantum of the claim and counterclaim (where applicable) will be the amount claimed in the statement of claim and any counterclaim and otherwise the amount reasonably anticipated to be the amount of the claim and of any counterclaim or anticipated counterclaim.

## **Part 2—Discretionary transfer between streams**

### **12—Transfer into Fast Track Stream**

- (1) A party may apply to the Court to transfer a proceeding out of the Ordinary Stream into the Fast Track Stream even if it does not meet the *prima facie* eligibility criteria.
- (2) Unless the Court otherwise orders, any such application is to be made at or before the first hearing of the proceeding (whether a preliminary hearing or directions hearing).
- (3) The Court may on its own initiative transfer a proceeding out of the Ordinary Stream into the Fast Track Stream or to a different court to which the Court has power to transfer.

### **13—Transfer out of Fast Track Stream**

- (1) A party may apply to the Court to transfer a proceeding out of the Fast Track Stream into the Ordinary Stream notwithstanding that it meets the *prima facie* eligibility criteria.
- (2) Unless the Court otherwise orders, any such application is to be made at or before the Initial Hearing.

[subrule 13(3) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (3) A party may request that the application be heard as soon as practicable at a preliminary hearing. Unless the Court otherwise orders, any such application must be made within five days of the applicant receiving notice that the proceeding is in or is now in the Fast Track Stream.

[subrule 13(4) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (4) Subject to subrule (3), unless the Court otherwise orders, the application will be heard and determined at the Initial Hearing.

[subrule 13(5) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (5) The Court may on its own initiative transfer a proceeding out of the Fast Track Stream into the Ordinary Stream or to a different court to which the Court has power to transfer.

### **14—Criteria for discretionary transfer**

When considering whether to transfer a proceeding into or out of the Fast Track Stream, the criteria are—

- (a) whether the proceeding is straight forward so as to be suitable to proceed at both the pre-trial and trial stages in the Fast Track Stream;
- (b) the advantages and disadvantages to the parties of the matter proceeding in the Fast Track Stream;
- (c) whether it will be unfair to a party for the matter to proceed in the Fast Track Stream; and
- (d) the preferences of the parties.

## Chapter 4—Elements of action at first instance

### 15—Pleadings

- (1) Subject to subrules (2) to (5), the pleadings are governed by the General Civil Rules.
- (2) The originating process for an action, cross action or third party action is to be accompanied by a pleading and not an affidavit in lieu of a pleading. However, if the proceeding is transferred into the Fast Track Stream after having proceeded on affidavits in lieu of pleadings, unless the Court otherwise orders, it is to continue on affidavits in lieu of pleadings.
- (3) The pleadings are to be expressed simply and concisely, identify the issues in dispute and give to the other parties notice of the case to be met.

[subrule 15(4) substituted by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (4) A pleading of an action, cross action or third party action is to quantify all claims whether liquidated or unliquidated.

[subrule 15(5) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (5) If a pleading or affidavit in lieu of pleading filed before transfer into the Fast Track Stream does not comply with subrule (4), the party filing it is within five days after the transfer to file a pleading or affidavit in lieu of pleading, as the case may be, complying with subrule (4).

## Chapter 5—Pre-trial procedures

[Note amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

### Note—

Parts 1 and 2 of Chapter 7 of the *Supreme Court Civil Rules 2006* and the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream – see rule 124(1) exception 4 of those Rules.

## Part 1—Preliminary hearing

### 16—Preliminary hearing

- (1) A preliminary hearing will be convened by the Registrar if a party requests a preliminary hearing—
  - (a) under rule 13(3); or
  - (b) under the General Civil Rules.
- (2) At a preliminary hearing, the Court may fix the date and time for an Initial Hearing or make any directions which could be made at an Initial Hearing.

## **Part 2—Initial Hearing**

### **17—Initial Hearing**

- (1) An Initial Hearing is to be held on a date and at a time fixed by the Registrar and notified to the parties.
- (2) In the District and Supreme Courts, the notice of Initial Hearing will also nominate a proposed trial week.
- (3) The principal matters to be considered at the Initial Hearing are—
  - (a) settlement;
  - (b) identification of the real issues in dispute;
  - (c) determination whether there should be split trials (dividing liability from quantum, issue from issue, or claim from counterclaim or third party claim);
  - (d) transfer to a different stream or a different court;
  - (e) any application that the Low, Mid or High Fast Track Scale of costs apply to the proceeding instead of the otherwise applicable Fast Track Scale;
  - (f) directions for interlocutory steps and evidence at trial;
  - (g) hearing or fixing a date for hearing any interlocutory application or other pre-trial matter;
  - (h) fixing the date of the Pre-Trial Hearing; and
  - (i) fixing the trial week for a proceeding in the District or Supreme Courts or a trial date for a proceeding in the Magistrates Court.
- (4) If it is proposed that expert evidence be adduced at trial, the Court will consider whether—
  - (a) a single independent expert should be jointly instructed by the parties to provide a report;
  - (b) expert evidence should be adduced only from experts retained separately by the parties; or
  - (c) expert evidence should be adduced under both paragraphs (a) and (b).

## **Part 3—Pre-Trial Hearing**

### **18—Pre-Trial Hearing**

- (1) A Pre-Trial Hearing is to be held on a date fixed at the Initial Hearing or otherwise on a date fixed by the Registrar and notified to the parties.
- (2) The principal matters to be considered at the Pre-Trial Hearing are—
  - (a) settlement;
  - (b) confirmation of readiness for trial and estimated trial length;
  - (c) pre-trial directions not already made at the Initial Hearing; and

- (d) identification of the real issues in dispute.
- (3) At the Pre-Trial Hearing, the parties are to produce to the Court—
  - (a) tender documents;
  - (b) lists of witnesses;
  - (c) written evidence when a direction has previously been made for written evidence; and
  - (d) copies of expert reports not previously filed.

## **Part 4—Interlocutory steps**

### **19—Interpretation**

In this Part, unless the contrary intention appears—

*general interlocutory application* means an interlocutory application relating to pleadings (including particulars), disclosure of documents, notices to admit, written answers to written questions, expert reports or other interlocutory steps taken in preparation towards trial;

*special interlocutory application* means an interlocutory application seeking—

- (a) an extension of time or permission to serve originating process, to constitute or continue an action as a representative action, or other permission needed to proceed with the action; or
- (b) a search order, a freezing order, an interim or interlocutory injunction, security for costs, default or summary judgment, setting aside judgment, transfer of the action, a stay of proceedings, referral to mediation or other special order outside the scope of orders for steps in preparation for trial.

### **20—Interlocutory steps**

- (1) The parties to a proceeding, and their lawyers, have a duty to the Court to take all steps necessary to ensure that the proceeding is ready for trial at the allocated time and to use all reasonable endeavours to agree on any dispute which arises in the progress towards trial.
- (2) If a party fails to comply with an applicable timetable fixed by these Rules or a direction of the Court, the Court may order that the defaulting party pay the costs incurred due to the delay in an amount fixed by way of lump sum payable immediately.

### **21—Interlocutory applications**

- (1) Before making an interlocutory application for any order which the Court is empowered to make before trial, a party is first to use reasonable endeavours to resolve the issue by agreement.
- (2) An interlocutory application is to identify concisely the orders sought and grounds on which it is sought.

- (3) A supporting affidavit is not to be filed with a general interlocutory application.
- (4) A supporting affidavit may be filed with a special interlocutory application if necessary.

**22—Interlocutory hearings**

- (1) The hearing of an interlocutory application will be conducted informally according to equity, good conscience and the substantial merits of the case. The interlocutory hearing will take the form of an inquiry by the Court into the matters in dispute.
- (2) In general, the Court will not receive sworn evidence on a general interlocutory application.
- (3) No order for costs of a general interlocutory application or hearing will be made, unless the Court is satisfied that a party has adopted an unreasonable position, in which event an order for costs may be made against that party in an amount fixed by way of lump sum payable immediately.
- (4) No order for costs of an application for permission to proceed with or transfer of an action will ordinarily be made.

**Part 5—Expert reports**

**23 Disclosure of instructions to expert**

- (1) Upon providing assumptions and questions to an expert for the purpose of obtaining an expert report upon which a party intends to rely at trial, a party must simultaneously serve upon each other party to the action a copy of the assumptions and questions.
- (2) For the purposes of this rule, a party intends to rely upon the expert report at trial despite the intention being conditional upon the opinions expressed by the expert.

**Chapter 6—Settlement offers**

**Part 1—Offers of settlement**

**24—Exclusion of General Civil Rules**

[subrule 24(1) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 2)]

- (1) Rules 188F, 188G and 188I of the *Supreme Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.

[subrule 24(2) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 2)]

- (2) Rules 188F, 188G and 188I of the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.

[rule 25 deleted by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 2)]

**25—\*\*\*\*\***

**26**—\*\*\*\*\*

## **27—Unreasonable rejection of formal offer of settlement**

- (1) Subject to the residual discretion of the Court, when a party unreasonably rejects a formal offer of settlement—
  - (a) the costs incurred in the proceeding up to the Relevant Stage which has been reached 14 days after service of the formal offer of settlement are unaffected by the unreasonable rejection; but
  - (b) thereafter that party will not be entitled to costs and the offeror will be entitled to costs for subsequent Relevant Stages on the appropriate Fast Track Elevated Scale in accordance with the Fast Track Supplementary Rules.
- (2) For the purpose of this Rule—
  - (a) a plaintiff unreasonably rejects a judgment offer by a defendant if the Court determines the proceeding on terms not more favourable than 90 per cent of the monetary value of the defendant’s offer and the plaintiff does not accept the offer;
  - (b) a defendant unreasonably rejects a judgment offer by a plaintiff if the Court determines the proceeding on terms not less than 10 per cent more favourable to the plaintiff than the monetary value of the plaintiff’s offer and the defendant does not accept the offer;
  - (c) a plaintiff unreasonably rejects a formal offer of settlement by a defendant if the defendant is successful at trial and the trial Judge or Magistrate considers that in all the circumstances the plaintiff unreasonably rejected the formal offer of settlement;
  - (d) a co-defendant or co-defendants unreasonably reject a formal offer of settlement by another defendant to contribute a specified dollar figure or a specified percentage of the quantum awarded to the plaintiff if the defendants are found to be jointly and severally liable to the plaintiff and the trial Judge or Magistrate considers that in all the circumstances the co-defendant or co-defendants unreasonably rejected the formal offer of settlement.

## **Chapter 7—Trial**

### **Part 1—Listing for trial**

#### **28—Supreme and District Courts**

- (1) The Registrar will designate certain months during the year as Fast Track Months.
- (2) Proceedings will not be listed for trial on a specific date but will be listed for a specific week in a Fast Track Month.
- (3) A callover of proceedings listed for trial in a Fast Track Month will be held on a date fixed by the Registrar during the preceding month.

- (4) At the callover, there will be identified those proceedings which are proceeding to trial during the allocated weeks and the order of listing of proceedings for each allocated week.

## **29—Magistrates Court**

Proceedings will be listed for trial in the same manner as in the Ordinary Stream.

## **Part 2—Trial**

### **30—Conduct of trial**

- (1) The parties to a proceeding, and their lawyers, have a duty to the Court to take all reasonable steps to ensure that the trial proceeds as expeditiously and efficiently as possible.
- (2) The trial Judge or Magistrate may control the conduct of the trial to efficiently identify the issues in dispute, the parties' respective contentions and hear the evidence relevant to those issues.
- (3) The trial Judge or Magistrate may give directions about—
  - (a) the issues on which the Court requires evidence;
  - (b) the nature of the evidence the Court requires to decide those issues;
  - (c) the way in which the evidence is to be placed before the Court;
  - (d) limiting the number of witnesses or the amount of evidence that a party may call or introduce on a particular issue.
- (4) For example, the trial Judge or Magistrate may—
  - (a) inquire into and determine the issues in dispute at trial;
  - (b) give directions as to the order in which witnesses give evidence, regardless of the party by whom they are called;
  - (c) direct that witnesses give evidence on different topics at different times during the trial;
  - (d) direct the concurrent hearing of evidence by experts in the same or related fields of expertise;
  - (e) direct the concurrent hearing of evidence by lay witnesses concerning similar or overlapping topics;
  - (f) direct that submissions be heard on different topics at different times during the trial or otherwise depart from the usual order in which submissions are made;
  - (g) direct that evidence or submissions or both be heard on one issue before they are heard on another issue;
  - (h) limit the time spent on the whole or any part of evidence or submissions.
- (5) The trial Judge or Magistrate will exercise existing powers under the *Evidence Act 1929* to dispense with technicalities and control the trial to ensure that it proceeds efficiently and expeditiously.

- (6) The trial Judge or Magistrate may use his or her power under this rule to exclude evidence that would otherwise be admissible.

## **Chapter 8—Costs**

### **Part 1— Court’s discretion as to costs**

#### **31—Exclusion of General Civil Rules**

- (1) Parts 1 and 2 of Chapter 12 of the *Supreme Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.
- (2) Parts 1 and 2 of Chapter 12 of the *District Court Civil Rules 2006* do not apply to a proceeding in the Fast Track Stream.

[subrule 31(3) inserted by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 3)]

- (3) If all parties agree in writing that Parts 1 and 2 of Chapter 12 of the *Supreme Court Civil Rules 2006* or of the *District Court Civil Rules 2006* (as applicable) are to apply to a proceeding in the Fast Track Stream, those rules apply to that proceeding in lieu of rules 33 to 35.

[subrule 31(4) inserted by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 3)]

- (4) The Court may if it thinks fit order that Parts 1 and 2 of Chapter 12 of the *Supreme Court Civil Rules 2006* or of the *District Court Civil Rules 2006* (as applicable) are to apply to a proceeding in the Fast Track Stream in lieu of rules 33 to 35.

#### **32—Court’s discretion as to costs**

- (1) Subject to the express provisions of any applicable legislation and these Rules, the costs of a proceeding in the Fast Track Stream are in the discretion of the Court.
- (2) As a general rule, costs follow the event.
- (3) The Court may make an order reflecting different results on discrete issues in the proceeding but only if there are exceptional circumstances.

#### **33—Fast Track Ordinary Scale**

Unless and to the extent that costs are to be on the Fast Track Elevated Scale in accordance with these Rules and the Fast Track Supplementary Rules or the Court otherwise orders in its residual discretion, when costs are awarded in favour of a party, the costs are to be determined in accordance with the Fast Track Ordinary Scale.

#### **34—Levels of Ordinary Scale**

- (1) At any time before or at the Initial Hearing, any party may elect that the Fast Track Mid or High Scale applies to the proceeding by filing and serving a notice in the approved form. Otherwise the Fast Track Low Scale is applicable.



[subrule 34(2) amended by Supreme Court Fast Track Rules Adoption Rules 2014 (Amendment No. 1)]

- (2) If one party so elects, the Fast Track Mid or High Scale, as the case may be, will apply in lieu of the Fast Track Low Scale (for the purposes of both rules 33 and 35) unless the Court otherwise orders at the Initial Hearing.
- (3) The criterion for determining whether the Low, Mid or High scale is to apply is whether the work required before and at trial is likely to be in the low, mid or high range for a Fast Track proceeding.

### **35—Fast Track Elevated Scale**

The appropriate Fast Track Elevated Scale applies to Relevant Stages of a proceeding in accordance with rule 27.

### **36—Amount of judgment**

- (1) Subject to the Court's order to the contrary, general costs of action are not to be awarded in favour of a successful plaintiff unless the amount or value of the principal relief (excluding interest since institution of the action and costs) exceeds the prescribed sum.
- (2) The prescribed sum means \$25,000 or a higher or lower sum as may be fixed by the Court at the Initial Hearing or, in exceptional circumstances, at the Pre-Trial Hearing.
- (3) The Court may make an order that subrule (1) does not apply at any stage of the proceeding.

## **Chapter 9—Appeals**

### **37—Application of General Civil Rules**

- (1) Subject to rules 38 to 40, Chapter 13 of the *Supreme Court Civil Rules 2006* applies to appeals to the Supreme Court in relation to interlocutory and final judgments in Fast Track Stream proceedings.
- (2) Subject to rules 38 to 40, Chapter 13 of the *District Court Civil Rules 2006* applies to appeals to the District Court from interlocutory judgments of Masters in Fast Track Stream proceedings.

### **38—Interlocutory appeal**

- (1) An appeal in respect of an order made for the transfer of a proceeding into or out of the Fast Track Stream is an appeal in respect of an interlocutory order.
- (2) All interlocutory appeals are subject to the granting of permission to appeal in accordance with the General Civil Rules.
- (3) The application for permission to appeal and the appeal will be heard concurrently. The hearing will be conducted informally according to equity, good conscience and the substantial merits of the case.

### **39—Final appeal**

- (1) An appeal is to be by way of re-hearing (unless the law under which the appeal is brought provides to the contrary).

- (2) Subject to any limitation on its powers arising apart from these Rules, the Court may determine an appeal as the justice of the case requires despite the failure of parties to the appeal to raise relevant grounds of appeal, or to state grounds of appeal appropriately in the notice of appeal.
- (3) Subject to any limitation on its powers arising apart from these Rules, the Court may—
  - (a) draw inferences of fact from evidence taken at the original hearing and, in its discretion, hear further evidence on a question of fact;
  - (b) amend or set aside the judgment subject to the appeal and give any judgment that the justice of the case requires; and
  - (c) make orders for the costs of the appeal.
- (4) The Court will not remit the case or part of the case for re-hearing or re-consideration unless exceptional circumstances apply and it is necessary in the interests of justice.

#### **40—Costs on appeal**

- (1) Unless the Court otherwise orders, any costs awarded on an appeal against an interlocutory judgment will be for a fixed sum in accordance with the Fast Track Appeal Scale payable immediately.
- (2) Unless the Court otherwise orders, any costs awarded in respect of an appeal against a final judgment will be for a fixed sum in accordance with the Fast Track Appeal Scale.

## History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
Schedule (Contents page)	sub am01	1 October 2014
13(3)	am am01	1 October 2014
13(4)	am am01	1 October 2014
13(5)	am am01	1 October 2014
15(4)	sub am01	1 October 2014
15(5)	am am01	1 October 2014
Note (Chapter 5)	am am01	1 October 2014
24(1)	am am02	1 December 2015
24(2)	am am02	1 December 2015
25	del am02	1 December 2015
26	del am02	1 December 2015
<b>31(3)</b>	<b>ins am03</b>	<b>1 September 2016</b>
<b>31(4)</b>	<b>ins am03</b>	<b>1 September 2016</b>
34(2)	am am01	1 October 2014