

## Supreme Court Amendment Rules (No. 2) 2014

Made by the Judges of the Supreme Court.

### 1. Citation

These rules are the *Supreme Court Amendment Rules (No. 2) 2014*.

### 2. Commencement

These rules come into operation as follows —

- (a) rules 1 and 2 — on the day on which these rules are published in the *Gazette*;
- (b) the rest of the rules — on the day after that day.

### 3. Rules amended

These rules amend the *Rules of the Supreme Court 1971*.

### 4. Order 66 amended

After Order 66 rule 24 insert:

### 25. Own costs orders

- (1) In this rule —

***claim*** means a claim for relief in connection with —

- (a) an alleged breach of any provision in the Australian Consumer Law (as defined in the *Fair Trading Act 2010* section 17) Part 2.2, 2.3 or 5.5; or
- (b) an alleged breach of the *Corporations Act 2001* (Commonwealth) section 991A or 1325C; or
- (c) an allegation of unconscionable conduct; or
- (d) an allegation of economic duress or abuse of power;

***claimant*** means a person making a claim;

***own costs order***, in relation to a case, means an order that each party to the case is to bear its own costs of the proceedings.

- (2) Subject to subrules (3) and (4), the Court may, on an application by a claimant, make an own costs order at

any time during proceedings on a case that involves a claim.

- (3) Before making the own costs order the Court must have regard to the following —
  - (a) whether the proceedings raise an issue of general importance;
  - (b) whether a defendant to the claim has substantially greater financial resources than a claimant;
  - (c) whether the claim has reasonable merit;
  - (d) whether the practitioners of each claimant have agreed to act on a fee arrangement that, viewed objectively at the time the arrangement is made, is likely to result in the claimant being charged no more than the fees that could be recovered under the applicable Court scale;
  - (e) any other matter the Court considers appropriate.
- (4) The Court must not make an own costs order if a claimant has agreed to pay any part of the proceeds obtained by way of judgment or settlement of the claim to any third party who is in the business of providing litigation funding or support.
- (5) An own costs order does not affect a party's liability for costs ordered against the party —
  - (a) by way of sanction for improper conduct or abuse of process, including persistently advancing by way of claim or defence contentions that are not reasonably arguable; or
  - (b) in other exceptional circumstances that the Court considers warrant the making of a special order for costs.
- (6) An own costs order applies to costs incurred by the parties —
  - (a) from a time during the proceedings specified in the order; or
  - (b) if no time is specified in the order, from the day on which the order is made.
- (7) For the purposes of subrule (6)(a), the Court may specify a time during the proceedings that is before the own costs order was made or applied for.
- (8) The Court may revoke an own costs order at any time during proceedings if the Court considers that there has been a material change in the circumstances warranting the revocation.

- (9) An own costs order revoked under subrule (8) continues to apply to costs incurred by the parties before the day on which the order was revoked as if the order had not been revoked.
- (10) This rule does not affect the Court's general discretion with respect to costs.

Dated: 22 September 2014.

Judges' signatures:

Chief Justice MARTIN

Justice McKECHNIE

Justice HEENAN

Justice JENKINS

Justice SIMMONDS

Justice BUSS

Justice BEECH

Justice NEWNES

Justice CHANEY

Justice MARTIN

Justice MURPHY

Justice MAZZA

Justice CORBOY

Justice PRITCHARD

Justice ALLANSON

Justice EDELMAN

Justice CURTHOYS

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