

South Australia

Fast Track Supplementary Rules 2014

The Fast Track Supplementary Rules 2014 dated 27th June 2014, being the Schedule to the Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 came into operation on 1st October 2014 (*Government Gazette* 24th July 2014, p. 3310) have been varied by Supreme Court rules dated:

	<i>Gazette</i>	<i>Date of operation</i>	
# 1	2 September 2014	11 September 2014, p. 2867	1 October 2014
#2	26 October 2015	12 November 2015, p.4942	1 December 2015
#3	27 June 2016	4 August 2016, p. 3124	1 September 2016

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History of Amendment

Chapter 1—Preliminary

Part 1—Formal provisions

1—Citation

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

2—Commencement

These Supplementary Rules commence on 1 October 2014.

Part 2—Objects

3—Objects

The objects of these Supplementary Rules are to—

- (a) make rules necessary or convenient for the regulation of proceedings involving the institution and transfer of proceedings into and out of the Fast Track Stream;
- (b) supplement the Rules;
- (c) modify the Rules in respect of a particular category of proceedings;
- (d) prescribe approved forms; and
- (e) prescribe costs scales.

Part 3—Interpretation

4—Interpretation

(1) Unless the contrary intention appears, terms which are defined by the *Fast Track Rules 2014* have the meaning defined by those Rules.

(2) In these Supplementary Rules, unless the contrary intention appears—

Fast Track Rules or the *Rules* means the *Fast Track Rules 2014*;

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

- (a) the *Supreme Court Civil Supplementary Rules 2014* in the Supreme Court;
- (b) the *District Court Civil Supplementary Rules 2014* in the District Court;

or their successors.

principal relief – see Schedule 1;

professional costs – see Schedule 1;

quantum – see Schedule 1.

Part 4—Application of Supplementary Rules

5—Application of Supplementary Rules

- (1) It is intended that these Supplementary Rules operate in a Court if they are adopted by that Court.
- (2) It is intended that, if these Supplementary 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 Supplementary 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 Supplementary Rules except Chapter 3 apply to the proceeding in the Magistrates Court if an order is made by a Magistrate that the Fast Track 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 and orders that the proceeding be governed by the Fast Track Rules and Fast Track Supplementary Rules, these Supplementary Rules, except Chapter 3, apply to that proceeding in the Magistrates Court.
- (6) Unless the Court otherwise directs, these Supplementary Rules do not apply to special proceedings.
- (7) Unless the Court otherwise directs, these Supplementary Rules do not apply to proceedings instituted before 1 October 2014.
- (8) To the extent of any inconsistency between these Supplementary Rules and the General Civil Supplementary Rules, these Supplementary 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 a formal offer of settlement or at trial, as the case may be, govern the costs consequences of the making of a formal offer of settlement and of any acceptance or non-acceptance of it.
- (10) Subject to paragraphs (8) and (9), the General Civil Supplementary Rules apply to proceedings in the Fast Track Stream.

Chapter 2—Establishment of streams

Part 1—Establishment of streams

[No supplementary rule]

Part 2—Entry into and designation of streams

6—Entry of proceedings into appropriate stream

- (1) When—
 - (a) a party files a notice of election into the Fast Track Stream under rule 10 of the Rules; or
 - (b) the Court orders that a proceeding be transferred into the Fast Track Stream under rule 12 of the Rules; or
 - (c) the Court orders that a proceeding be transferred out of the Fast Track Stream under rule 13 of the Rules;

the Registrar of the Court is to assign the proceedings accordingly.

Chapter 3—Entry into and transfer between streams

Part 1—Election into Fast Track Stream

7—Election of party

The approved form of a notice of election into the Fast Track Stream under rule 10 of the Rules is FTS 1.

Part 2—Discretionary transfer between streams

8—Criteria for discretionary transfer

- (1) When considering whether a proceeding is straight forward so as to be suitable to proceed in the Fast Track Stream, the following factors will typically be considered—
 - (a) number of parties;
 - (b) type of dispute and nature of cause of action;
 - (c) complexity of the facts and/or law;
 - (d) need for complex or controversial interlocutory steps;
 - (e) whether expert evidence is likely to be adduced at trial, number of experts and complexity of expert evidence;
 - (f) number of lay witnesses and complexity of lay evidence;
 - (g) likely length of trial;

- (h) readiness of parties for trial;
 - (i) compliance with applicable pre-action protocols;
 - (j) any special reasons for expediency;
 - (k) any other relevant consideration.
- (2) When considering whether it will be unfair to a party for a matter to proceed in the Fast Track Stream, the following factors will typically be considered—
- (a) amount of the claim or claims;
 - (b) readiness of parties for trial;
 - (c) likely costs incurred and recoverable on success;
 - (d) circumstances of the parties;
 - (e) any other relevant consideration.

Chapter 4—Elements of action at first instance

[No supplementary rule]

Chapter 5—Pre-trial procedures

Part 1—Preliminary hearing

9—Preliminary hearing

A preliminary hearing in the District and Supreme Courts will be conducted by a Judge or a Master depending on the nature of the application and judicial availability.

Part 2—Initial Hearing

[rule 9 renumbered to Rule 10 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

10—Initial Hearing

[subrule 10(1) amended by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

- (1) As a general rule, the date fixed for the Initial Hearing will be approximately four weeks after a defence or affidavit in lieu of defence is filed or after the date on which the proceeding was transferred into the Fast Track Stream, whichever is later. In urgent cases, the Registrar will list the Initial Hearing to be heard earlier.
- (2) An Initial Hearing in the District and Supreme Courts will generally be conducted by a Judge.
- (3) The Court expects that the solicitor with principal conduct of the proceeding or, if counsel is briefed in the proceeding, counsel will attend at the Initial Hearing.
- (4) The matters to be considered at the Initial Hearing will typically include—

- (a) inquiring into the steps taken to explore the possibility of settlement and what steps should be taken to explore, or further explore, the possibility of settlement;
- (b) the desirability of the parties attending a mediation;
- (c) identifying the real issues in dispute;
- (d) determining whether there should be split trials (dividing liability from quantum, issue from issue or claim from counterclaim or third party claim);
- (e) reviewing the estimated trial length;
- (f) reviewing whether it is appropriate for the proceeding to remain in the Fast Track Stream and determining whether it should be transferred to a different stream;
- (g) reviewing whether it is appropriate that the proceeding remain in the Court and determining whether it should be transferred to a different court;
- (h) on the application of any party, determining whether the Low, Mid or High Fast Track Scale of costs is to apply to the proceeding;

[paragraph 10(4)(ha) inserted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 3)]

- (ha) whether an order should be made under rule 31(4) that the costs of the action be determined in accordance with Parts 1 and 2 of Chapter 12 of the *Supreme Court Civil Rules 2006* or of the *District Court Civil Rules 2006* (as applicable);
 - (i) inquiring whether any potential trial Judge or Magistrate is disqualified;
 - (j) making orders for discovery or disclosure of documents in addition to preliminary disclosure if and to the extent appropriate;
 - (k) giving directions for written evidence (witness statements, affidavits or summaries) if and to the extent appropriate;
 - (l) giving directions for expert reports where applicable;
 - (m) if appropriate, making directions restricting expert evidence to be adduced by the parties and/or appointing a single independent expert at the parties' expense;
 - (n) hearing and determining any interlocutory application or other pre-trial matter;
 - (o) fixing a date for hearing and determination of any interlocutory application or other pre-trial matter.
 - (p) fixing the date for the Pre-Trial Hearing;
 - (q) fixing the trial date or trial week, as the case may be (taking into account the time reasonably required for the parties to be ready for trial).
- (5) If one party at the Initial Hearing seeks referral of the proceeding to mediation, it may be expected that ordinarily an order will be made requiring the parties to mediate.

Part 3—Pre-Trial Hearing

[rule 10 renumbered to Rule 11 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

11—Pre-Trial Hearing

- (1) As a general rule, the date fixed for the Pre-Trial Hearing will be approximately four weeks before the scheduled commencement of trial.
- (2) The Court expects that counsel (whether barrister or solicitor) who is to conduct the trial will attend at the Pre-Trial Hearing.
- (3) The matters to be considered at the Pre-Trial Hearing will typically include—
 - (a) inquiring into the steps taken to explore the possibility of settlement and what steps, if any, should be taken to further explore the possibility of settlement;
 - (b) reviewing whether the parties have complied with applicable timetables;
 - (c) identifying the real issues in dispute;
 - (d) confirming that the proceeding is ready for trial and the estimated trial length;
 - (e) confirming that the proceeding should remain in the Fast Track Stream;
 - (f) giving any pre-trial directions which may be required or appropriate.

[Chapter 6 deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

Chapter 6—*****

[rule 11 renumbered to Rule 12 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

[rule 12 deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

12—*****

[rule 12 renumbered to Rule 13 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

[rule 13 deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

13—*****

Chapter 7—Trial

[rule 13 renumbered to Rule 14 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

14—Reasons for judgment

Parties should expect that reasons for judgment will be concise and will ordinarily be confined to—

- (a) brief reference to significant background or uncontested matters;
- (b) credibility findings in respect of significant witnesses whose credit is challenged with brief reasons;
- (c) findings on contested issues of fact with brief reasons;
- (d) conclusions on contested issues of law; and

- (e) where relief is granted, the relief granted and brief reasons for it.

Chapter 8—Costs

Part 1—Court’s discretion as to costs

[rule 14 renumbered to Rule 15 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

15—Relevant Stages

The Relevant Stages of a proceeding for the purpose of costs are as follows—

- (a) stage 1 – from institution of action to and including Initial Hearing;
- (b) stage 2 – from completion of Initial Hearing to commencement of trial incorporating—
 - (i) stage 2A – from stage 1 to half way between Initial Hearing and Pre-Trial Hearing;
 - (ii) stage 2B – from stage 2A to and including Pre-Trial Hearing;
 - (iii) stage 2C – from stage 2B to commencement of trial;
- (c) stage 3 – trial and judgment incorporating—
 - (i) stage 3A – first day of trial;
 - (ii) stage 3B – second day of trial;
 - (iii) stage 3C – third day of trial.

[rule 15 renumbered to Rule 16 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

16—Costs Scales

- (1) The Fast Track Ordinary Scale is contained in table 1 of Schedule 1.
- (2) The Fast Track Elevated Scale is contained in table 2 of Schedule 1.

Chapter 9—Appeals

[rule 16 renumbered to Rule 17 by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

17—Fast Track Appeal Scale

The Fast Track Appeal Scale is contained in table 3 of Schedule 1.

Schedule 1 — Fast Track Scales of Costs

- (1) For the purposes of the cost scales in this Schedule—
 - (a) when costs are awarded in favour of a successful plaintiff, cross claimant or third party claimant, the *quantum* of the claim is the total amount or value of the principal relief granted in favour of the plaintiff or cross claimant or third party claimant;
 - (b) when the defendant to a claim, cross action or third party action is successful, the *quantum* of the claim, cross action or third party action is the total amount or value of the principal relief claimed against that defendant;
 - (c) when there is both a claim by a successful party and an unsuccessful cross action against that party, the *quantum* of the proceedings is the total of the amount referred to in (a) and the amount referred to in (b).
- (2) For the purposes of this Schedule, *principal relief* means the principal relief awarded or claimed (as the case may be) disregarding interest since instituting the action, cross action or third party action (as the case may be) and disregarding costs.
- (3) For the purposes of this Schedule, *professional costs* encompass costs on account of all professional fees charged by solicitors and counsel for work performed in connection with the proceedings together with all photocopying, communications and like charges.
- (4) When professional costs are recoverable in accordance with the Fast Track Scale of Costs, the successful party is also entitled to recover disbursements reasonably incurred in the proceeding, including court fees, witness fees and other external disbursements. However, unless the trial Judge or Magistrate otherwise orders, a party cannot recover disbursements for more than one expert witness and cannot recover more than \$3,000 for disbursements paid to an expert witness.
- (5) When—
 - (a) a proceeding settles by acceptance of a formal offer of settlement under rule 26 of the Rules during stage 2 and it is necessary to determine the costs payable by one party to the other under the terms of settlement up to that stage of the proceedings; or
 - (b) a proceeding does not settle due to the rejection of a formal offer of settlement filed during stage 2 and a party is entitled under rule 27 of the Rules to an order of the Court for costs on the Fast Track Ordinary Scale up to the stage reached 14 days after the formal offer of settlement was filed and to costs on the Fast Track Elevated Scale thereafter;

the costs payable under (a) and the costs payable on the Fast Track Ordinary Scale under (b) are to be calculated according to whether the proceeding was in stage 2A, stage 2B or stage 2C at the relevant time on the basis that one third of the costs in table 1 is attributable to stage 2A, one third to stage 2B and one third to stage 2C.

Example—

If the case is the subject of the Fast Track Ordinary Mid Scale and it settles part way through stage 2A by the acceptance of a formal offer made part way through stage 2A and the terms of the offer included that the offeror's costs of action were payable for the period up to acceptance of the offer, the offeror is entitled to costs in the "mid" column table 1 for stage 1 and one third of the figure in the "mid" column for stage 2.

- (6) For the purposes of table 3, a proceeding will be classified on appeal as Low, Mid or High according to its classification in the court at first instance.
- (7) If the quantum of the judgment or claim (as the case may be) is less than \$63,000, the costs are calculated at the percentage of the quantum shown in table 1 or table 2 with the quantum rounded to the nearest \$1,000.

Table 1 - Fast Track Ordinary Scale (Professional Costs)

Quantum \$63,000 or more

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	\$4,500	\$5,625	\$6,750
2	Up to commencement of trial	\$4,500	\$5,625	\$6,750
3A	First day of trial	\$3,000	\$3,750	\$4,500
3B	Second day of trial	\$3,000	\$3,750	\$4,500
3C	Third day of trial	\$3,000	\$3,750	\$4,500

Quantum less than \$63,000*

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	7.2% of quantum	9% of quantum	10.8% of quantum
2	Up to commencement of trial	7.2% of quantum	9% of quantum	10.8% of quantum
3A	First day of trial	4.8% of quantum	6% of quantum	7.2% of quantum
3B	Second day of trial	4.8% of quantum	6% of quantum	7.2% of quantum
3C	Third day of trial	4.8% of quantum	6% of quantum	7.2% of quantum

* Quantum rounded to nearest \$1,000

Table 2 - Fast Track Elevated Scale (Professional Costs)

Quantum \$63,000 or more

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	\$6,000	\$7,500	\$9,000
2	Up to commencement of trial	\$6,000	\$7,500	\$9,000
3A	First day of trial	\$4,000	\$5,000	\$6,000
3B	Second day of trial	\$4,000	\$5,000	\$6,000
3C	Third day of trial	\$4,000	\$5,000	\$6,000

Quantum less than \$63,000*

NUMBER	STAGE	Low	Mid	High
1	Institution to Initial Hearing	9.6% of quantum	12% of quantum	14.4% of quantum
2	Up to commencement of trial	9.6% of quantum	12% of quantum	14.4% of quantum
3A	First day of trial	6.4% of quantum	8% of quantum	9.6% of quantum
3B	Second day of trial	6.4% of quantum	8% of quantum	9.6% of quantum
3C	Third day of trial	6.4% of quantum	8% of quantum	9.6% of quantum

* Quantum rounded to nearest \$1,000

Table 3 – Fast Track Appeal Scale (Professional Costs)

	Low	Mid	High
Appeal against an interlocutory judgment	\$1,500	\$1,500	\$1,500
Appeal against a final judgment	\$4,000	\$5,000	\$6,000

Schedule 2 — Approved Forms

[Action heading]

Rule 10

Form FTS 1

Election into Fast Track Stream

ELECTION INTO FAST TRACK STREAM

The *(role of party)*, *(name of party)* **ELECTS** pursuant to rule 10 that this proceeding be instituted in/transferred into *(strike out whichever is inapplicable)* the Fast Track Stream.

It is **CERTIFIED** that, in my reasonable opinion:

- (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.

Dated 20.....

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

[Form FTS 2A deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

Form FTS 2A*****

[Form FTS 2B deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

Form FTS 2B*****

[Form FTS 3 deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

[Form FTS 3 amended by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 1)]

Form FTS 3*****

[Form FTS 4A deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

Form FTS 4A*****

[Form FTS 4B deleted by Supreme Court Fast Track Supplementary Rules Adoption Rules 2014 (Amendment No. 2)]

Form FTS 4B*****

ELECTION FOR FAST TRACK MID/HIGH SCALE

The *(role of party)*, *(name of party)* **ELECTS** under rule 34 that the Fast Track Mid/High *(strike out whichever is inapplicable)* Scale of Costs applies to this proceeding.

Dated 20.....

(signed)

Solicitor for the *(role and name of party)*

(OR)

(where self represented, role and name of party)

History of Amendment

Rules	Amendments	Date of Operation
am = amended; del = deleted; ins = inserted; ren = renumbered; sub = substituted		
10	ren am01	1 October 2014
10(1)	am am01	1 October 2014
10(4)(ha)	ins am03	1 September 2016
11	ren am01	1 October 2014
Chapter 6	del am02	1 December 2015
12	ren am01 del am02	1 October 2014 1 December 2015
13	ren am01 del am02	1 October 2014 1 December 2015
14	ren am01	1 October 2014
15	ren am01	1 October 2014
16	ren am01	1 October 2014
17	ren am01	1 October 2014
Form 2A	del am02	1 December 2015
Form 2B	del am02	1 December 2015
Form FTS3	am am01 del am02	1 October 2014 1 December 2015
Form 4A	del am02	1 December 2015
Form 2B	del am02	1 December 2015